Reprint
as at 4 January 2020



Copyright Act 1994

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Date of assent	15 December 1994
Commencement	see section 1(2)

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.

Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Business, Innovation, and Employment.

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An Act to consolidate and amend the law relating to copyright

1 Short Title and commencement

(1) This Act may be cited as the Copyright Act 1994.

(2) Except as provided in sections 27(2) and 144(5), this Act shall come into force on 1 January 1995.

2 Interpretation

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

accessible format copy means a copy of a published literary, dramatic, musical, or artistic work, or a part of the work, in an alternative manner or form that gives persons who have a print disability access to the work

adaptation,—

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

(i) a translation of the work from one language to another:

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

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

(b) in relation to a literary work that is a computer program, includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code, otherwise than incidentally in the course of running the program:

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

Archives New Zealand has the same meaning as in section 4 of the Public Records Act 2005

article, in relation to an article in a periodical, includes an item of any description

artistic work—

(a) means—

(i) a graphic work, photograph, sculpture, collage, or model, irrespective of artistic quality; or

(ii) a work of architecture, being a building or a model for a building; or

(iii) a work of artistic craftsmanship, not falling within subparagraph (i) or subparagraph (ii); but

(b) does not include a layout design or an integrated circuit within the meaning of section 2 of the Layout Designs Act 1994

authorised, with respect to anything done in relation to a work, means done—

(a) by or with the licence of the copyright owner; or

(b) pursuant to section 62

authorised entity means—

(a) an entity of a type set out in section 69(1); and

(b) in relation to the import into and export from New Zealand of accessible format copies, includes an entity authorised or recognised by the government of the relevant Marrakesh Treaty country as an authorised entity for the purposes of the Treaty

building includes—

(a) any fixed structure; and

(b) a part of a building or fixed structure

business includes a trade or profession

charitable entity has the meaning given in section 4(1) of the Charities Act 2005

chief executive,—

(a) for the purposes of Part 6A, means the chief executive of the Ministry; and

(b) for the purposes of Part 7, has the meaning set out in section 135

CMI or **copyright management information** has the meaning given to it in section 226F

collective work means—

(a) a work of joint authorship; or

(b) a work in which there are distinct contributions by different authors or in which works, or parts of works, of different authors are incorporated

communicate means to transmit or make available by means of a communication technology, including by means of a telecommunications system or electronic retrieval system, and **communication** has a corresponding meaning

communication work means a transmission of sounds, visual images, or other information, or a combination of any of those, for reception by members of the public, and includes a broadcast or a cable programme

compilation includes—

(a) a compilation consisting wholly of works or parts of works; and

(b) a compilation consisting partly of works or parts of works; and

(c) a compilation of data other than works or parts of works

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

convention country, except in Part 9, means an entity that is a party to an international agreement or arrangement relating to copyright

copying—

(a) means, in relation to any description of work, reproducing, recording, or storing the work in any material form (including any digital format), in any medium and by any means; and

(b) *[Repealed]*

(c) includes, in relation to an artistic work, the making of a copy in 3 dimensions of a two-dimensional work and the making of a copy in 2 dimensions of a three-dimensional work; and

(d) includes, in relation to a film or communication work, the making of a photograph of the whole or any substantial part of any image forming part of the film or communication work—

and **copy** and **copies** have corresponding meanings

copyright licence means a licence to do, or authorise the doing of, any restricted act

copyright work means a work of any of the descriptions in section 14(1) in which copyright exists

country includes every territory for whose international relations the Government of that country is responsible

Crown—

(a) means Her Majesty the Queen in right of New Zealand; and

(b) includes a Minister of the Crown, a government department, an Office of Parliament, and the Parliamentary Counsel Office; but

(c) does not include—

(i) a Crown entity; or

(ii) a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986

Crown entity has the same meaning as it has in section 2(1) of the Public Finance Act 1989

director, in relation to a copyright work that is a film, includes any person nominated by the director of the film to exercise the director's rights under Part 4 if—

(a) the nomination is in writing and signed by the director; and

(b) the nomination is made before the completion of the making of the film; and

(c) the person nominated makes a creative contribution to the making of the film

document, for the purposes of Part 6A and sections 144A and 144C to 144E, means—

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or from which symbols, images, or sounds can be derived, and includes—

(i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached:

(ii) a book, map, plan, graph, or drawing:

(iii) a photograph, film, or negative; and

(b) information electronically recorded or stored, and information derived from that information

dramatic work includes—

(a) a work of dance or mime; and

(b) a scenario or script for a film

educational establishment means—

(a) any school to which the Education Act 1989 or the Private Schools Conditional Integration Act 1975 applies:

(b) any—

(i) special school; or

(ii) special class; or

(iii) special clinic; or

(iv) special service—

established under section 98(1) of the Education Act 1964:

(c) any special institution within the meaning of section 92(1) of the Education Act 1989:

(d) any early childhood service within the meaning of section 309 of the Education Act 1989:

(e) any—

(i) institution; or

(ii) private training establishment; or

(iii) government training establishment—

within the meaning of section 159(1) of the Education Act 1989, that is not conducted for profit:

(f) any body, or class of body, that is not conducted for profit and that is approved by the Minister of Education as an educational establishment for the purposes of this Act by a notice published in the *Gazette*

educational resource supplier means any person—

(a) whose principal function is the copying of communication works and the supply of the copies it makes to educational establishments for educational purposes; and

(b) who does not conduct its business for profit; and

(c) who has been approved by the Minister of Education as an educational resource supplier for the purpose of this Act by a notice published in the *Gazette* and whose approval has not been revoked

electronic means actuated by electric, magnetic, electro-magnetic, electro-chemical, or electro-mechanical energy; and **in electronic form** means in a form usable only by electronic means

employed means employed under a contract of service or a contract of apprenticeship; and **employee**, **employer**, and **employment** have corresponding meanings

exclusive licence means a licence in writing, signed by or on behalf of a copyright owner, authorising the licensee, to the exclusion of all other persons (including the copyright owner), to exercise a right that would otherwise be exercisable exclusively by the copyright owner

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

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

future copyright means copyright that will or may come into existence in respect of a future work or a class of future work or on the occurrence of a future event

Government means the Executive Government of New Zealand

government department means any department or instrument of the Government, or any branch or division of any such department or instrument; but does not include—

(a) a body corporate or other legal entity that has the power to contract:

(b) an Office of Parliament:

(c) Public Trust:

(d) the Export Guarantee Office:

(e) the Parliamentary Counsel Office

graphic work includes—

(a) any painting, drawing, diagram, map, chart, or plan; and

(b) any engraving, etching, lithograph, woodcut, print, or similar work

infringing copy has the meaning given by section 12

instruction means—

(a) giving a lesson, either in person or by correspondence, to a student or a group of students, at an educational establishment or elsewhere; or

(b) receiving a lesson, either in person or by correspondence and either alone or in a group of students, at an educational establishment or elsewhere

international organisation means an organisation the members of which include 1 or more States

Internet service provider means a person who does either or both of the following things:

(a) offers the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing:

(b) hosts material on websites or other electronic retrieval systems that can be accessed by a user

judicial proceedings includes—

(a) proceedings before any court, tribunal, or person having authority to decide any matter affecting a person's legal rights or liabilities; and

(b) proceedings before any other body that is prescribed by regulations made under this Act as a judicial body for the purposes of this Act

lawful user, in relation to a computer program, means a person who has a right to use the program, whether under a copyright licence or otherwise

licensing body means a body of persons (whether corporate or unincorporate) that, as copyright owner or prospective copyright owner or as agent for a copyright owner,—

(a) negotiates copyright licences; and

(b) grants copyright licences, including licences that cover the works of more than 1 author

licensing scheme means a scheme setting out—

(a) the classes of cases in which the operator of the scheme, or the person on whose behalf the operator acts, is willing to grant copyright licences; and

(b) the terms on which copyright licences would be granted in those classes of cases;—

and for the purpose of this definition a **scheme** includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name

literary work means any work, other than a dramatic or musical work, that is written, spoken, or sung; and includes—

(a) a table or compilation; and

(b) a computer program

Marrakesh Treaty country means a Contracting Party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, done at Marrakesh on 27 June 2013

material time,—

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

(i) in the case of an unpublished work, when the work is made or, if the making of the work extends over a period, a substantial part of that period; and

(ii) in the case of a published work, when the work is first published or, if the author has died before that time, immediately before his or her death; and

(b) in relation to a sound recording or film, means when the work is made or, if the making of the work extends over a period, a substantial part of that period; and

(c) in relation to a communication work, means when the work is made or received in New Zealand; and

(d) in relation to a typographical arrangement of a published edition, means when the edition is first published

(e) *[Repealed]*

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

Ministerial inquiry includes the proceedings of a committee set up by the Government or a Minister or Ministers to inquire into or advise on any matter

Ministry means the department of State that, with the authority of the Prime Minister, is responsible for the administration of the Act

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

New Zealand includes Tokelau

Office of Parliament means—

(a) the Parliamentary Commissioner for the Environment (and that Commissioner's office):

(b) the Office of Ombudsmen:

(c) the Auditor-General

(d) *[Repealed]*

performance, except in Part 9,—

(a) in the case of a literary work that is a lecture, address, speech, or sermon, includes delivery of that work; and

(b) in general, includes any mode of visual or acoustic presentation of a literary, dramatic, musical, or artistic work, including presentation of the work by means of a sound recording, film, or communication work

photograph means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced; but does not include a film or part of a film

plate includes any stereotype, stone, block, mould, matrix, transfer, negative, or other similar appliance

prescribed foreign country means any country (other than New Zealand)—

(a) to which section 230 applies; or

(b) that is declared by Order in Council made under section 232 to be a foreign country to which any provision of this Act applies; and, with respect to the application of any provision of this Act to such a country, the provision shall be read subject to the terms of that Order in Council

print disability, in relation to a person,—

(a) means an impairment that prevents the person from enjoying a printed copyright work to the same degree as a person who does not have that impairment; but

(b) excludes an impairment of visual function that can be improved, by the use of corrective lenses, to a level that is normally acceptable for reading without a special level or kind of light

proceedings includes a counterclaim; and references to the plaintiff and to the defendant in proceedings shall be construed accordingly

published edition means a published edition of the whole or any part of 1 or more literary, dramatic, or musical works

regulations includes instruments published under Part 2 of the Legislation Act 2012 or under any corresponding former enactment

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

(a) for payment (in money or money's worth); or

(b) in the course of a business, as part of services or amenities for which payment is made,—

on terms that it will or may be returned

reprographic copy means a copy made by a reprographic process; and **reprographic copying** has a corresponding meaning

reprographic process means a process—

(a) for making facsimile copies; or

(b) involving the use of an appliance for making multiple copies;—

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

restricted act means any of the acts described in section 16

sculpture includes a cast or model made for purposes of sculpture

sound recording means—

(a) a recording of sounds, from which the sounds may be reproduced; or

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

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

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

sufficient acknowledgement, in relation to a work, means an acknowledgement identifying—

(a) the work by its title or other description; and

(b) the author of the work, unless,—

(i) in the case of a published work, it is published anonymously:

(ii) in the case of an unpublished work, it is not possible by reasonable inquiry to ascertain the identity of the author

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

TPM or **technological protection measure** has the meaning given to it in section 226

TPM circumvention device has the meaning given to it in section 226

TPM work has the meaning given to it in section 226

transcript means a written record of words spoken on a recording

Tribunal means the Copyright Tribunal continued by section 205

unauthorised, with respect to anything done in relation to a work, means done otherwise than—

(a) by or with the licence of the copyright owner; or

(b) pursuant to section 62

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

working day means any day of the week other than—

(a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and

(ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year

writing includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded; and **written** has a corresponding meaning.

(2) References in this Act to the time at which a literary, dramatic, or musical work is made are to the time at which the work is recorded, in writing or otherwise.

Compare: 1962 No 33 ss 2(1), 3(6), 3(8), 17(1), 24(5), 26(9), 36(1); 1989 No 44 s 2; Copyright, Designs and Patents Act 1988 ss 1(2), 3(1), 3(2), 4, 5(1), 6(1), 8(1), 16(1), 19(2), 21(3), 21(4), 92(1), 178 (UK)

Section 2(1) **accessible format copy**: inserted, on 4 January 2020, by section 4 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

Section 2(1) **Archives New Zealand**: inserted, on 21 April 2005, by section 67(1) of the Public Records Act 2005 (2005 No 40).

Section 2(1) **authorised entity**: inserted, on 4 January 2020, by section 4 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

Section 2(1) **broadcast**: repealed, on 31 October 2008, by section 4(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **charitable entity**: inserted, on 4 January 2020, by section 4 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

Section 2(1) **chief executive**: inserted, on 7 October 2011, by section 4 of the Copyright Amendment Act 2011 (2011 No 72).

Section 2(1) **CMI** or **copyright management information**: inserted, on 31 October 2008, by section 4(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **communicate**: inserted, on 31 October 2008, by section 4(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **communication work**: inserted, on 31 October 2008, by section 4(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **convention country**: substituted, on 14 October 1999, by section 3(2) of the Copyright Amendment Act 1999 (1999 No 124).

Section 2(1) **copying** paragraph (a): substituted, on 31 October 2008, by section 4(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **copying** paragraph (b): repealed, on 31 October 2008, by section 4(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **copying** paragraph (d): substituted, on 31 October 2008, by section 4(4) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **Crown** paragraph (b): amended, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 2(1) **document**: inserted, on 7 October 2011, by section 4 of the Copyright Amendment Act 2011 (2011 No 72).

Section 2(1) **educational establishment** paragraph (d): substituted, on 1 December 2008, by section 60(1) of the Education Amendment Act 2006 (2006 No 19).

Section 2(1) **educational resource supplier**: inserted, on 31 October 2008, by section 4(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **government department** paragraph (c): substituted, on 1 March 2002, by section 170(1) of the Public Trust Act 2001 (2001 No 100).

Section 2(1) **government department** paragraph (e): inserted, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 2(1) **infringing copy**: inserted, on 19 May 1998, by section 3 of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20).

Section 2(1) **Internet service provider**: inserted, on 31 October 2008, by section 4(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **Marrakesh Treaty country**: inserted, on 4 January 2020, by section 4 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

Section 2(1) **material time** paragraph (c): substituted, on 31 October 2008, by section 4(5) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **material time** paragraph (d): substituted, on 31 October 2008, by section 4(5) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **material time** paragraph (e): repealed, on 31 October 2008, by section 4(5) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **Minister**: substituted, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 2(1) **Ministry**: inserted, on 7 October 2011, by section 4 of the Copyright Amendment Act 2011 (2011 No 72).

Section 2(1) **National Archives**: repealed, on 21 April 2005, by section 67(1) of the Public Records Act 2005 (2005 No 40).

Section 2(1) **Office of Parliament** paragraph (c): substituted, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

Section 2(1) **Office of Parliament** paragraph (d): repealed, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 2(1) **performance** paragraph (b): amended, on 31 October 2008, by section 4(6) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **print disability**: inserted, on 4 January 2020, by section 4 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

Section 2(1) **regulations**: replaced, on 5 August 2013, by section 77(3) of the Legislation Act 2012 (2012 No 119).

Section 2(1) **TPM** or **technological protection measure**: inserted, on 31 October 2008, by section 4(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **TPM circumvention device**: inserted, on 31 October 2008, by section 4(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **TPM work**: inserted, on 31 October 2008, by section 4(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 2(1) **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

3 Associated definitions for communication works

(1) References in this Act to a person making a communication work are—

(a) to the person transmitting the communication work or making it available by means of a communication technology, if that person has responsibility to any extent for its contents; and

(b) any person who provides the contents of the work and who makes with the person communicating the work the arrangements necessary for its communication.

(2) For the purposes of this Act, in the case of communicating a work by satellite transmission,—

(a) the place from which the work is communicated is the place from which the signals carrying the work are transmitted to the satellite; and

(b) the person communicating the work is the person who transmits those signals to the satellite.

Section 3: substituted, on 31 October 2008, by section 5 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

4 Meaning of cable programme service, and associated definitions

[Repealed]

Section 4: repealed, on 31 October 2008, by section 6 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

5 Meaning of author

(1) For the purposes of this Act, the **author** of a work is the person who creates it.

(2) For the purposes of subsection (1), the person who **creates** a work shall be taken to be,—

(a) in the case of a literary, dramatic, musical, or artistic work that is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken:

(b) in the case of a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken:

(c) in the case of a communication work, the person who makes the communication work:

(d) in the case of a typographical arrangement of a published edition, the publisher.

(e) *[Repealed]*

(3) The author of a work of any of the descriptions referred to in subsection (2) may be a natural person or a body corporate.

Compare: Copyright, Designs and Patents Act 1988 s 9(1)–(3) (UK)

Section 5(2)(c): substituted, on 31 October 2008, by section 7 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 5(2)(d): substituted, on 31 October 2008, by section 7 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 5(2)(e): repealed, on 31 October 2008, by section 7 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

6 Meaning of work of joint authorship

(1) In this Act, the term **work of joint authorship** means a work produced by the collaboration of 2 or more authors in which the contribution of each author is not distinct from that of the other author or authors.

(2) A communication work must be treated as a work of joint authorship in any case where more than 1 person is to be taken as making the communication work.

(3) References in this Act to the author of a work shall be construed in relation to a work of joint authorship as a reference to all the authors of the work.

(4) Where, in relation to a work of joint authorship, copyright would not exist in the work if 1 or more of the authors were the sole author or sole joint authors, the work shall be treated as if the other author or authors were the sole author or sole joint authors of the work.

Compare: 1962 No 33 ss 12(3), (4), (6); Copyright, Designs and Patents Act 1988 s 10 (UK)

Section 6(2): substituted, on 31 October 2008, by section 8 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

7 Meaning of unknown authorship

(1) For the purposes of this Act, a work is of **unknown authorship** if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(2) For the purposes of this Act, the identity of an author shall be regarded as unknown if it is not possible for a person who wishes to ascertain the identity of the author to do so by reasonable inquiry; but if that identity is once known it shall not subsequently be regarded as unknown.

Compare: 1962 No 33 s 11(3), (4); Copyright, Designs and Patents Act 1988 s 9(4), (5) (UK)

8 Meaning of copyright owner

(1) Where copyright or any aspect of copyright is owned by more than 1 person jointly, references in this Act to the copyright owner, or to the owner of the copyright in the work, are to all owners.

(2) Where different persons are entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Act is the person who is entitled to the aspect of copyright relevant for that purpose.

(3) Subject to the provisions of Part 7, where a question arises under this Act whether an object of any description has been imported, sold, or otherwise dealt with other than pursuant to a copyright licence, the copyright owner shall be taken to be the person entitled to the copyright in respect of its application to the making of objects of that description in the country into which the object was imported or in which it was sold or otherwise dealt with.

Compare: 1962 No 33 s 3(10); Copyright, Designs and Patents Act 1988 s 173 (UK)

9 Meaning of issue to the public

(1) References in this Act to the issue of copies of a work to the public mean the act of putting into circulation copies not previously put into circulation; and do not include the acts of—

(a) subsequent distribution or sale of those copies; or

(b) subject to subsections (2) and (3), subsequent hiring or loan of those copies; or

(c) subsequent importation of those copies into New Zealand; or

(d) distribution of imported copies that are not infringing copies within the meaning of section 12 subsequent to their importation into New Zealand.

(2) The issue of copies of a work to the public, in relation to computer programs, includes the rental of copies of computer programs to the public and rental subsequent to those works having been put into circulation; but does not include any such rental where—

(a) the computer program is incorporated into any other thing; and

(b) the rental of the computer program is not the principal purpose or one of the principal purposes of the rental; and

(c) the computer program cannot readily be copied by the hirer.

(3) The issue of copies of a work to the public, in relation to sound recordings and films, includes the rental of copies of those works to the public and rental subsequent to those works having been put into circulation.

Compare: Copyright, Designs and Patents Act 1988 s 18(2) (UK)

Section 9(1)(c): amended, on 19 May 1998, by section 4 of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20).

Section 9(1)(d): added, on 19 May 1998, by section 4 of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20).

Section 9(2): amended, on 31 October 2003, by section 3(1) of the Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003 (2003 No 111).

Section 9(3): amended, on 31 October 2003, by section 3(2) of the Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003 (2003 No 111).

10 Meaning of publication

(1) In this Act, the term **publication**, in relation to a work,—

(a) means the issue of copies of the work to the public; and

(b) includes, in the case of a literary, dramatic, musical, or artistic work, making it available to the public by means of an electronic retrieval system;—

and **publish** has a corresponding meaning.

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

(3) References in this Act to publication do not include publication that is not intended to satisfy the reasonable requirements of the public.

(4) The following acts do not constitute **publication** for the purposes of this Act:

(a) in the case of a literary, dramatic, or musical work,—

(i) the performance of the work; or

(ii) the communication of the work to the public (otherwise than for the purposes of an electronic retrieval system):

(b) in the case of any artistic work,—

(i) the exhibition of the work; or

(ii) the issue to the public of copies of a film including the work; or

(iii) the communication of the work to the public (otherwise than for the purposes of an electronic retrieval system):

(c) in the case of an artistic work being—

(i) a sculpture; or

(ii) a work of architecture in the form of a building or a model for a building; or

(iii) a work of artistic craftsmanship,—

the issue to the public of copies of a graphic work representing, or of photographs of, the work:

(d) in the case of a sound recording or film,—

(i) the playing or showing of the work in public; or

(ii) the communication of the work to the public.

(5) No account shall be taken for the purposes of this section of any unauthorised act.

Compare: 1962 No 33 s 3(1), (2), (5), (6); Copyright, Designs and Patents Act 1988 s 175(1), (3)–(6) (UK)

Section 10(4)(a)(ii): amended, on 31 October 2008, by section 9(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 10(4)(b)(iii): amended, on 31 October 2008, by section 9(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 10(4)(d)(ii): substituted, on 31 October 2008, by section 9(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

11 Meaning of commercial publication

In this Act, the term **commercial publication**, in relation to a literary, dramatic, musical, or artistic work, means the publication of the work consisting of—

(a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or

(b) making the work available to the public by means of an electronic retrieval system;—

and related expressions shall be construed accordingly.

Compare: Copyright, Designs and Patents Act 1988 s 175(2) (UK)

12 Meaning of infringing copy

(1) In this Act, the term **infringing copy**, in relation to a copyright work, shall be construed in accordance with this section.

(2) An object is an infringing copy if its making constitutes an infringement of the copyright in the work in question.

(3) An object that a person imports, or proposes to import, into New Zealand is an infringing copy if—

(a) the making of the object constituted an infringement of the copyright in the work in question in the country in which the object was made; or

(b) the importer would have infringed the copyright in the work in question in New Zealand had the importer made the object in New Zealand, unless the object is one to which subsection (5A) or subsection (6) applies.

(4) Where in any proceedings the question arises whether an object is an infringing copy, and it is shown—

(a) that the object is a copy of the work in question; and

(b) that copyright exists in the work or has existed at any time,—

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

(5) In this Act, an infringing copy includes a copy falling to be treated as an infringing copy under any of the following provisions of this Act:

(a) section 85(4) (which relates to incidental recording for the purposes of a communication work):

(b) section 93(1) (which relates to subsequent dealings with copies made under Part 3).

(5A) An object that a person imports or proposes to import into New Zealand is not an infringing copy under subsection (3)(b) if—

(a) it was made by or with the consent of the owner of the copyright, or other equivalent intellectual property right, in the work in question in the country in which the object was made; or

(b) where no person owned the copyright, or other equivalent intellectual property right, in the work in question in the country in which the object was made, any of the following applies:

(i) the copyright protection (or other equivalent intellectual property right protection) formerly afforded to the work in question in that country has expired:

(ii) the person otherwise entitled to be the owner of the copyright (or other equivalent intellectual property right) in the work in question in that country has failed to take some step legally available to them to secure the copyright (or other equivalent intellectual property right) in the work in that country:

(iii) the object is a copy in 3 dimensions of an artistic work that has been industrially applied in that country in the manner specified in section 75(4):

(iv) the object was made in that country by or with the consent of the owner of the copyright in the work in New Zealand.

(6) In this Act, an infringing copy does not include a literary work or an artistic work that—

(a) relates to a medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981; and

(b) has been made, copied, published, adapted, or distributed, in an overseas country, by or with the licence of the owner of the copyright in the work in that country.

Compare: 1962 No 33 s 10(5); 1990 No 71 s 2; Copyright, Designs and Patents Act 1988 s 27 (UK)

Section 12(3): substituted, on 19 May 1998, by section 5(1) of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20).

Section 12(5)(a): substituted, on 31 October 2008, by section 10 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 12(5A): inserted, on 19 May 1998, by section 5(2) of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20).

13 Act to bind the Crown

This Act binds the Crown.

Part 1
Description, ownership, and duration of copyright

Description of copyright

14 Copyright in original works

(1) Copyright is a property right that exists, in accordance with this Act, in original works of the following descriptions:

(a) literary, dramatic, musical, or artistic works:

(b) sound recordings:

(c) films:

(d) communication works:

(e) typographical arrangements of published editions.

(2) A work is not original if—

(a) it is, or to the extent that it is, a copy of another work; or

(b) it infringes the copyright in, or to the extent that it infringes the copyright in, another work.

(3) *[Repealed]*

Compare: 1962 No 33 ss 7(1), 13(1), 14(1), 15(1), 17(1); Copyright, Designs and Patents Act 1988 ss 1(1), 5(2), 6(6), 7(6), 8(2) (UK)

Section 14(1): substituted, on 31 October 2008, by section 11(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 14(3): repealed, on 31 October 2008, by section 11(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

15 Recording necessary for some works

(1) Copyright does not exist in a literary or dramatic or musical work unless and until the work is recorded, in writing or otherwise.

(2) It is immaterial for the purposes of subsection (1) whether the work is recorded by or with the consent of the author.

(3) Where a work is not recorded by the author, the question whether copyright exists in the record, as distinct from the work recorded, is not affected by anything in subsection (1).

Compare: Copyright, Designs and Patents Act 1988 s 3(2), (3) (UK)

16 Acts restricted by copyright

(1) The owner of the copyright in a work has the exclusive right to do, in accordance with sections 30 to 34, the following acts in New Zealand:

(a) to copy the work:

(b) to issue copies of the work to the public, whether by sale or otherwise:

(c) to perform the work in public:

(d) to play the work in public:

(e) to show the work in public:

(f) to communicate the work to the public:

(g) to make an adaptation of the work:

(h) to do any of the acts referred to in any of paragraphs (a) to (f) in relation to an adaptation of the work:

(i) to authorise another person to do any of the acts referred to in any of paragraphs (a) to (h).

(2) Subsection (1) applies subject to Parts 3 and 8.

Compare: 1962 No 33 ss 6(1), 7(3), 7(4), 13(5), 14(5), 17(3); Copyright, Designs and Patents Act 1988 s 16(1), (4) (UK)

Section 16(1)(f): substituted, on 31 October 2008, by section 12 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Qualification for copyright

17 Qualification for copyright

(1) Copyright does not exist in a work unless the requirements of section 18 or section 19 or section 20 are satisfied in respect of that work.

(2) Subsection (1) does not apply to copyright that exists by virtue of section 26 or section 28.

(3) If the requirements of section 18 or section 19 or section 20 or section 26 or section 28 are once satisfied in respect of a work, copyright in that work does not cease to exist if any change occurs in any of the circumstances by reason of which those requirements were satisfied.

(4) For the avoidance of doubt, it is hereby declared that where any other provision of this Act imposes requirements, in addition to the requirements of section 18 or section 19 or section 20, that must be satisfied for copyright to exist in a work, copyright does not exist in a work unless the requirements of that provision and the requirements of section 18 or section 19 or section 20 are satisfied in respect of that work.

Compare: Copyright, Designs and Patents Act 1988 s 153 (UK)

18 Qualification by reference to author

(1) A work qualifies for copyright if the author is, at the material time,—

(a) a New Zealand citizen; or

(b) an individual domiciled or resident in New Zealand; or

(c) a body incorporated under the law of New Zealand.

(2) A work qualifies for copyright if the author is, at the material time,—

(a) a citizen or subject of a prescribed foreign country; or

(b) an individual domiciled or resident in a prescribed foreign country; or

(c) a body incorporated under the law of a prescribed foreign country.

(3) Subject to subsection (4), a work of joint authorship qualifies for copyright if, at the material time, any of the authors satisfies the requirements of subsection (1) or subsection (2).

(4) Where a work of joint authorship qualifies for copyright under this section alone, only those authors who satisfy the requirements of subsection (1) or subsection (2) shall be taken into account for the purposes of the application, to that work, of the following provisions of this Act:

(a) section 21 (which relates to the first ownership of copyright):

(b) subsections (1) and (4) of section 22 (which relate to the duration of copyright in literary, dramatic, musical, or artistic works):

(c) section 67 (which relates to acts permitted on assumptions as to expiry of copyright or death of the author in relation to anonymous or pseudonymous works).

Compare: 1962 No 33 ss 7(1), 12(1), 13(1), 14(1), 15(1), 17(1); Copyright, Designs and Patents Act 1988 s 154 (UK)

19 Qualification by reference to country of first publication

(1) A work (being a literary, dramatic, musical, or artistic work, a sound recording, a film, or a typographical arrangement of a published edition) qualifies for copyright if it is first published—

(a) in New Zealand; or

(b) in a prescribed foreign country.

(2) For the purposes of this section, publication in one country shall not be regarded as other than the first publication by reason of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous 30 days shall be treated as simultaneous.

Compare: 1962 No 33 ss 7(2), 13(2), 14(2), 17(1); Copyright, Designs and Patents Act 1988 s 155 (UK)

20 Qualification by reference to origin of communication work

A communication work qualifies for copyright if it is made from—

(a) a place in New Zealand; or

(b) a place in a prescribed foreign country.

Section 20: substituted, on 31 October 2008, by section 13 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Ownership of copyright

21 First ownership of copyright

(1) Subject to the provisions of this section, the person who is the author of a work is the first owner of any copyright in the work.

(2) Where an employee makes, in the course of his or her employment, a literary, dramatic, musical, or artistic work, that person's employer is the first owner of any copyright in the work.

(3) Where—

(a) a person commissions, and pays or agrees to pay for, the taking of a photograph or the making of a computer program, painting, drawing, diagram, map, chart, plan, engraving, model, sculpture, film, or sound recording; and

(b) the work is made in pursuance of that commission,—

that person is the first owner of any copyright in the work.

(4) Subsections (2) and (3) apply subject to any agreement to the contrary.

(5) Subsections (1) to (4) apply subject to sections 26 and 28.

Compare: 1962 No 33 ss 9, 13(4), 14(4); Copyright, Designs and Patents Act 1988 s 11 (UK)

Duration of copyright

22 Duration of copyright in literary, dramatic, musical, or artistic works

(1) Subject to the following provisions of this section, copyright in a literary, dramatic, musical, or artistic work expires at the end of the period of 50 years from the end of the calendar year in which the author dies.

(2) If the work is computer-generated, copyright expires at the end of the period of 50 years from the end of the calendar year in which the work is made.

(3) If the work is of unknown authorship, copyright expires at the end of the period of 50 years from the end of the calendar year in which it is first made available to the public by an authorised act.

(4) For the purposes of subsection (3), the circumstances in which a work may be made available to the public include,—

(a) in the case of a literary, dramatic, or musical work,—

(i) performance in public:

(ii) communication to the public:

(b) in the case of an artistic work,—

(i) exhibition in public:

(ii) the playing or showing in public of a film that includes the work:

(iii) communication to the public.

(5) If—

(a) a work is of unknown authorship; and

(b) copyright in the work has expired pursuant to subsection (3); and

(c) the identity of the author becomes known after the copyright has expired,—

subsection (1) does not apply to revive copyright in the work.

(6) In relation to a work of joint authorship,—

(a) the reference in subsection (1) to the death of the author shall be construed,—

(i) if the identity of all the authors is known, as a reference to the last of them to die:

(ii) if the identity of 1 or more, but not all, of the authors is known, as a reference to the death of the last of the authors whose identity is known; and

(b) the reference in subsection (5) to the identity of the author becoming known shall be construed as a reference to the identity of any of the authors becoming known.

(7) This section does not apply to copyright in a work to which section 26 or section 28 applies.

Compare: 1962 No 33 s 8(1); Copyright, Designs and Patents Act 1988 s 12 (UK)

Section 22(4): substituted, on 31 October 2008, by section 14 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

23 Duration of copyright in sound recordings and films

(1) Copyright in a sound recording or film expires—

(a) at the end of the period of 50 years from the end of the calendar year in which the work is made; or

(b) if it is made available to the public by an authorised act before the end of that period, 50 years from the end of the calendar year in which it is so made available,—

whichever is the later.

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

(a) the work is first—

(i) published; or

(ii) communicated to the public; or

(b) in the case of a film or film soundtrack,—

(i) the work is first shown in public; or

(ii) the work is first played in public.

Compare: 1962 No 33 ss 13(3), 14(3); Copyright, Designs and Patents Act 1988 s 13 (UK)

Section 23(2): substituted, on 31 October 2008, by section 15 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

24 Duration of copyright in communication works

(1) Copyright in a communication work expires at the end of the period of 50 years from the end of the calendar year in which the communication work is first communicated to the public.

(2) Copyright in a repeated communication work expires at the same time as copyright in the initial communication work expires.

(3) There is no copyright in a repeated communication work that is communicated to the public after copyright in the initial communication work has expired.

Section 24: substituted, on 31 October 2008, by section 16 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

25 Duration of copyright in typographical arrangement of published editions

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

Compare: 1962 No 33 s 17(2); Copyright, Designs and Patents Act 1988 s 15 (UK)

Crown copyright

26 Crown copyright

(1) Where a work is made by a person employed or engaged by the Crown under a contract of service, a contract of apprenticeship, or a contract for services,—

(a) the work qualifies for copyright notwithstanding section 17(1); and

(b) the Crown is the first owner of any copyright in the work.

(2) Copyright in such a work is referred to in this Act as **Crown copyright**, notwithstanding that such copyright is assigned to another person.

(3) Crown copyright shall expire,—

(a) in the case of a typographical arrangement of a published edition, at the end of the period of 25 years from the end of the calendar year in which the work is made:

(b) in the case of any other work, at the end of the period of 100 years from the end of the calendar year in which the work is made.

(4) In the case of a work of joint authorship where 1 or more, but not all, of the authors are persons employed or engaged by the Crown under a contract of service, a contract of apprenticeship, or a contract for services, this section applies only in relation to those authors and the copyright existing by virtue of their contribution to the work.

(5) Subject to this section and to any other express provision of this Act, the provisions of this Act apply in relation to Crown copyright as to other copyright.

(6) Subsection (1) applies subject to any agreement to the contrary.

(7) This section is subject to section 27.

Compare: 1962 No 33 s 52; Copyright, Designs and Patents Act 1988 s 163 (UK)

27 No copyright in certain works

(1) No copyright exists in any of the following works, whenever those works were made:

(a) any Bill introduced into the House of Representatives:

(b) any Act as defined in section 29 of the Interpretation Act 1999:

(c) any regulations:

(d) any bylaw as defined in section 2 of the Bylaws Act 1910:

(e) the New Zealand Parliamentary Debates:

(f) reports of select committees laid before the House of Representatives:

(g) judgments of any court or tribunal:

(h) reports of Royal commissions, commissions of inquiry, ministerial inquiries, or statutory inquiries; or

(i) reports of any inquiry established under section 6 of the Inquiries Act 2013.

(1A) No Crown copyright exists in any work, whenever that work was made,—

(a) in which the Crown copyright has not been assigned to another person; and

(b) that is incorporated by reference in a work referred to in subsection (1).

(1B) Except as specified in subsection (1A), nothing in subsection (1) affects copyright in any work that is incorporated by reference in a work referred to in subsection (1).

(1C) Subsection (1A) does not affect copyright in any New Zealand Standard (as that term is defined in the Standards and Accreditation Act 2015).

(2) Subsection (1) shall come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different paragraphs of that subsection.

Section 27(1): brought into force, on 1 April 2001, by the Copyright Act Commencement Order 2000 (SR 2000/245).

Section 27(1)(h): amended, on 27 August 2013, by section 39 of the Inquiries Act 2013 (2013 No 60).

Section 27(1)(i): inserted, on 27 August 2013, by section 39 of the Inquiries Act 2013 (2013 No 60).

Section 27(1A): inserted, on 14 April 2005, by section 3 of the Copyright Amendment Act 2005 (2005 No 33).

Section 27(1B): inserted, on 14 April 2005, by section 3 of the Copyright Amendment Act 2005 (2005 No 33).

Section 27(1C): inserted, on 1 March 2016, by section 44(2) of the Standards and Accreditation Act 2015 (2015 No 91).

28 Copyright vesting in certain international organisations

(1) Where an original work (being a literary, dramatic, musical, or artistic work or a film) is made by an officer or employee of, or is published by, an international organisation to which this section applies,—

(a) the work qualifies for copyright notwithstanding section 17(1); and

(b) the organisation is the first owner of any copyright in the work.

(2) The copyright of an international organisation under this section shall expire,—

(a) in the case of a typographical arrangement of a published edition, at the end of the period of 25 years from the end of the calendar year in which the work is made or such longer period as may be specified for the purposes of this paragraph pursuant to subsection (5):

(b) in the case of any other work, at the end of the period of 50 years from the end of the calendar year in which the work is made or such longer period as may be specified for the purposes of this paragraph pursuant to subsection (5).

(3) Subject to this section and to any other express provision of this Act, the provisions of this Act apply in relation to the copyright of an international organisation under this section.

(4) An international organisation to which this section applies shall be deemed to have, and to have had at all material times, the legal capacities of a body corporate for the purposes of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

(5) The Governor-General may from time to time, by Order in Council,—

(a) declare that any international organisation is an international organisation to which this section applies:

(b) for the purposes of complying with any international obligation of New Zealand, specify a period for the purposes of paragraph (a) or paragraph (b) of subsection (2).

Compare: 1962 No 33 s 50; Copyright, Designs and Patents Act 1988 s 168 (UK)

Part 2
Infringement of copyright

Primary infringement of copyright

29 Infringement of copyright

(1) Copyright in a work is infringed by a person who, other than pursuant to a copyright licence, does any restricted act.

(2) References in this Act to the doing of a restricted act are to the doing of that act—

(a) in relation to the work as a whole or any substantial part of it; and

(b) either directly or indirectly;—

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

(3) This Part is subject to Parts 3 and 8.

Compare: 1962 No 33 ss 3(1); Copyright, Designs and Patents Act 1988 s 16(2), (3), (4) (UK)

30 Infringement by copying

The copying of a work is a restricted act in relation to every description of copyright work.

Compare: Copyright, Designs and Patents Act 1988 s 17(1) (UK)

31 Infringement by issue of copies to public

The issue of copies of a work to the public is a restricted act in relation to every description of copyright work.

Compare: Copyright, Designs and Patents Act 1988 s 18(1) (UK)

32 Infringement by performance or playing or showing in public

(1) The performance of a work in public is a restricted act only in relation to a literary, dramatic, or musical work.

(2) The playing or showing of a work in public is a restricted act only in relation to a sound recording, film, or communication work.

(3) Where copyright in a work is infringed by the performance, playing, or showing of the work in public by means of apparatus for receiving visual images or sounds conveyed by electronic or other means,—

(a) the person by whom the visual images or sounds are sent; and

(b) in the case of a performance, the performers—

shall not be regarded as responsible for the infringement.

(4) For the purposes of subsection (3), a person who sends visual images or sounds does not include a person who retransmits visual images or sounds.

Compare: Copyright, Designs and Patents Acts 1988 s 19(1), (3), (4) (UK)

Section 32(2): amended, on 31 October 2008, by section 17 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

33 Infringement by communicating to public

Communicating a work to the public is a restricted act in relation to every description of copyright work.

Section 33: substituted, on 31 October 2008, by section 18 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

34 Infringement by making adaptation or act done in relation to adaptation

(1) The making of an adaptation of a work is a restricted act only in relation to a literary, dramatic, or musical work.

(2) For the purposes of subsection (1), an adaptation is made when it is recorded, in writing or otherwise.

(3) The doing of any of the acts specified in any of sections 30 to 33 or in subsection (1), in relation to an adaptation of a work, is also a restricted act in relation to the literary, dramatic, or musical work from which the adaptation was made.

(4) For the purposes of subsection (3), where the act done in relation to an adaptation of a work is an act specified in section 32 or section 33, it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

Compare: Copyright, Designs and Patents Act 1988 s 21(1), (2) (UK)

Secondary infringement of copyright

35 Infringement by importation

(1) A person infringes copyright in a work if—

(a) that person imports into New Zealand an object that is an infringing copy of the work and,—

(i) in the case of a work that is a sound recording, film, or computer program to which subsection (6) applies, that person knows or ought reasonably to know that the object is an infringing copy; or

(ii) in the case of other works, that person knows or has reason to believe that the object is an infringing copy; and

(b) the object was imported into New Zealand without a copyright licence; and

(c) the object was imported into New Zealand other than for that person's private and domestic use.

(2) In civil proceedings for infringement of copyright under subsection (1), in the case of a work that is a sound recording, film, or computer program to which subsection (6) applies,—

(a) an object is presumed to be an infringing copy in the absence of evidence to the contrary; and

(b) the court must not require any person to disclose any information concerning the sources of supply of the object if it appears to the court that it is unreasonable to do so.

(3) *[Repealed]*

(4) *[Repealed]*

(5) Subsections (3) and (4) are repealed on 31 October 2016.

(6) This subsection applies to the following sound recordings, films, and computer programs:

(a) a sound recording stored in a material form that is separate from any device or apparatus capable of playing sound recordings:

(b) a film produced principally for cinematic release, or a copy of that film, or a copy of a substantial part of that film:

(c) a computer program stored in a material form that is separate from any device or apparatus capable of executing computer programs.

Section 35: substituted, on 31 October 2003, by section 4 of the Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003 (2003 No 111).

Section 35(1)(c): amended, on 31 October 2008, by section 19(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 35(3): repealed, on 31 October 2016, by section 35(5).

Section 35(4): repealed, on 31 October 2016, by section 35(5).

Section 35(5): substituted, on 12 April 2008, by section 19(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 35(5): amended, on 31 October 2013, by section 4(2) of the Copyright (Parallel Importing of Films) Amendment Act 2013 (2013 No 86).

36 Possessing or dealing with infringing copy

Copyright in a work is infringed by a person who, in New Zealand, other than pursuant to a copyright licence,—

(a) possesses in the course of a business; or

(b) in the course of a business or otherwise, sells or lets for hire; or

(c) in the course of a business, offers or exposes for sale or hire; or

(d) in the course of a business, exhibits in public or distributes; or

(e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner—

an object that is, and that the person knows or has reason to believe is, an infringing copy of the work.

Compare: 1962 No 33 ss 10(3), (4), 18(3), (4); Copyright, Designs and Patents Act 1988 s 23 (UK)

37 Providing means for making infringing copies

(1) Copyright in a work is infringed by a person who, other than pursuant to a copyright licence,—

(a) makes; or

(b) imports into New Zealand; or

(c) possesses in the course of a business; or

(d) in the course of a business or otherwise, sells or lets for hire; or

(e) in the course of a business, offers or exposes for sale or hire—

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

(2) Copyright in a work is infringed by a person who, other than under a copyright licence, communicates a work to 1 or more persons, knowing or having reason to believe that infringing copies will be made by means of the reception of the communication in New Zealand or elsewhere.

Compare: Copyright, Designs and Patents Act 1988 s 24 (UK)

Section 37(2): substituted, on 31 October 2008, by section 20 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

38 Permitting use of premises for infringing performance

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

(2) In this section, the term **place of public entertainment** includes premises that are occupied mainly for purposes other than public entertainment but are from time to time made available for hire for the purposes of public entertainment.

Compare: Copyright, Designs and Patents Act 1988 s 25 (UK)

39 Provision of apparatus for infringing performance, etc

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

(a) playing sound recordings; or

(b) showing films; or

(c) receiving visual images or sounds conveyed by electronic means,—

the persons described in subsections (2) to (4) are also liable for the infringement.

(2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if, when he or she supplied the apparatus or part,—

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

(b) in the case of apparatus whose normal use involves a performance, playing, or showing in public, he or she had no reasonable grounds for believing that the apparatus would not be so used as to infringe copyright.

(3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if, when the occupier gave that permission, he or she knew, or had reason to believe, that the apparatus was likely to be so used as to infringe copyright.

(4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if, when the person supplied the copy, he or she knew, or had reason to believe, that the copy he or she supplied, or a copy made directly or indirectly from the copy, was likely to be so used as to infringe copyright.

Compare: Copyright, Designs and Patents Act 1988 s 26 (UK)

Part 3
Acts permitted in relation to copyright works

40 Provisions to be construed independently

The provisions of this Part are to be construed independently of one another so that the fact that an act is not permitted by one provision does not mean that it is not permitted by another provision.

Compare: Copyright, Designs and Patents Act 1988 s 28(4) (UK)

41 Incidental copying of copyright work

(1) Copyright in a work is not infringed by—

(a) the incidental copying of the work in an artistic work, a sound recording, a film, or a communication work; or

(b) the issue to the public of copies of an artistic work, the playing of a sound recording, the showing of a film, or the communication of a work to the public, in which a copyright work has been incidentally copied; or

(c) the issue to the public of copies of a sound recording, film, or communication work to which paragraph (a) or (b) applies.

(2) For the purposes of subsection (1), a musical work, words spoken or sung with music, or so much of a sound recording or communication work as includes a musical work or those words, must not be regarded as incidentally copied in

another work if the musical work or the words, sound recording, or communication work is deliberately copied.

Section 41: substituted, on 31 October 2008, by section 21 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

42 Criticism, review, and news reporting

(1) Fair dealing with a work for the purposes of criticism or review, of that or another work or of a performance of a work, does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement.

(2) Fair dealing with a work for the purpose of reporting current events by means of a sound recording, film, or communication work does not infringe copyright in the work.

(3) Fair dealing with a work (other than a photograph) for the purposes of reporting current events by any means other than those referred to in subsection (2) does not infringe copyright in the work if such fair dealing is accompanied by a sufficient acknowledgement.

Compare: 1962 No 33 ss 19(2), (3), 20(2), (3); Copyright, Designs and Patents Act 1988 s 30 (UK)

Section 42(2): substituted, on 31 October 2008, by section 22 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

43 Research or private study

(1) Fair dealing with a work for the purposes of research or private study does not infringe copyright in the work.

(2) For the avoidance of doubt, it is hereby declared that fair dealing with a published edition for the purposes of research or private study does not infringe copyright in either the typographical arrangement of the edition or any literary, dramatic, musical, or artistic work or part of a work in the edition.

(3) In determining, for the purposes of subsection (1), whether copying, by means of a reprographic process or by any other means, constitutes fair dealing for the purposes of research or private study, a court shall have regard to—

(a) the purpose of the copying; and

(b) the nature of the work copied; and

(c) whether the work could have been obtained within a reasonable time at an ordinary commercial price; and

(d) the effect of the copying on the potential market for, or value of, the work; and

(e) where part of a work is copied, the amount and substantiality of the part copied taken in relation to the whole work.

(4) This section does not authorise the making of more than 1 copy of the same work, or the same part of a work, on any one occasion, but in this subsection

copy does not include a non-infringing transient reproduction to which section 43A applies.

Compare: 1962 No 33 ss 19(1), (5), 20(1); Copyright Act 1968 s 40(1), (2) (Aust); Copyright, Designs and Patents Act 1988 s 29(1), (2) (UK)

Section 43(4): substituted, on 31 October 2008, by section 23 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

43A Transient reproduction of work

A reproduction of a work does not infringe copyright in the work if the reproduction—

(a) is transient or incidental; and

(b) is an integral and essential part of a technological process for—

(i) making or receiving a communication that does not infringe copyright; or

(ii) enabling the lawful use of, or lawful dealing in, the work; and

(c) has no independent economic significance.

Section 43A: inserted, on 31 October 2008, by section 24 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Education

44 Copying for educational purposes of literary, dramatic, musical or artistic works or typographical arrangements

(1) Copyright in a literary, dramatic, musical, or artistic work or the typographical arrangement of a published edition is not infringed by the copying of the whole or part of the work or edition if—

(a) the copying is done by means of a reprographic process or by any other means; and

(b) the copying is done—

(i) in the course of preparation for instruction; or

(ii) for use in the course of instruction; or

(iii) in the course of instruction; and

(c) the copying is done by or on behalf of the person who is to give, or who is giving, a lesson at an educational establishment; and

(d) no more than 1 copy of the whole or part of the work or edition is made on any one occasion.

(2) Copyright in a literary, dramatic, musical, or artistic work or the typographical arrangement of a published edition is not infringed by the copying of the whole or part of the work or edition if—

(a) the copying is not done by means of a reprographic process; and

(b) the copying is done—

(i) in the course of preparation for instruction; or

(ii) for use in the course of instruction; or

(iii) in the course of instruction; or

(iv) after the course of instruction; and

(c) the copying is done by a person who is to give, is giving, or has given the lesson or by a person who is to receive, is receiving, or has received the lesson; and

(d) 1 or more copies of the whole or part of the work or edition is or are made on any one occasion.

(3) Copyright in a literary, dramatic, or musical work or the typographical arrangement of a published edition is not infringed by the copying of part of the work or edition if—

(a) the copying is done by means of a reprographic process or by any other means; and

(b) the copying is done for an educational purpose; and

(c) the copying is done by or on behalf of an educational establishment; and

(d) 1 or more copies of part of the work or edition is or are made on any one occasion; and

(e) no charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received a lesson; and

(f) subject to subsection (4), either,—

(i) in the period beginning with the commencement of this Act and ending with the close of 31 December 1997, the copying is of no more than the greater of 5% of the work or edition or 5 pages of the work or edition; or

(ii) on and after 1 January 1998, the copying is of no more than the greater of 3% of the work or edition or 3 pages of the work or edition.

(4) If the effect of subparagraph (i) or subparagraph (ii) of subsection (3)(f) would be that the whole of a work or edition is copied, those subparagraphs shall not apply and the copying that is permitted under subsection (3) shall be of no more than 50% of the whole work or edition.

(4A) A copy of a work made in accordance with subsections (3) and (4) may be communicated to a person who is a student or other person who is to receive, is receiving, or has received, a lesson that relates to the work.

(5) Copyright in an artistic work is not infringed by the copying, by means of a reprographic process or by any other means, of the whole or a part of that work if the artistic work is included within the part of any work or edition copied under subsection (3).

(6) Where any part of a work or edition is copied under subsection (3) by or on behalf of an educational establishment,—

(a) that part of that work or edition may not, within 14 days of that copying, be copied again under that subsection by or on behalf of that educational establishment; and

(b) no other part of that work or edition may, within 14 days of that copying, be copied under that subsection by or on behalf of that educational establishment.

(7) In subsections (3) to (6),—

published edition or **edition**, in relation to a collective work, means that part of the edition containing each work or part of a work

work, in relation to a collective work, means each of the works or parts of works in the collective work.

Compare: Copyright, Designs and Patents Act 1988 ss 32(1), 36(1) (UK)

Section 44(4A): inserted, on 31 October 2008, by section 25 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

44A Storing copies for educational purposes

(1) An educational establishment does not infringe copyright in a work that is made available on a website or other electronic retrieval system by storing a copy of the page or pages in which the work appears if—

(a) the material is stored for an educational purpose; and

(b) the material—

(i) is displayed under a separate frame or identifier; and

(ii) identifies the author (if known) and source of the work; and

(iii) states the name of the educational establishment and the date on which the work was stored; and

(c) the material is restricted to use by authenticated users.

(2) Subsection (1) does not apply, and the educational establishment does infringe copyright in the work, if the educational establishment knowingly fails to delete the stored material within a reasonable time after the material becomes no longer relevant to the course of instruction for which it was stored.

(3) In subsection (1), **authenticated user** means a person who—

(a) is a participant in the course of instruction for which the material is stored; and

(b) can access the stored material only through a verification process that verifies that he or she is entitled to access the stored material.

Section 44A: inserted, on 31 October 2008, by section 26 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

45 Copying for educational purposes of films and sound recordings

(1) Copyright in any work that is a film, sound recording, or communication work, or any work included in a film, sound recording, or communication work, is not infringed by the copying of that work in the circumstances set out in subsection (2).

(2) The circumstances referred to in subsection (1) are—

(a) that the copying consists of or includes the making of a film or film soundtrack—

(i) in the course of preparation for instruction; or

(ii) for use in the course of instruction; or

(iii) in the course of instruction; or

(iv) after the course of instruction,—

where the lesson is on how to make films or film soundtracks; and

(b) that the copying is done by or on behalf of a person who is to give, is giving, or has given the lesson or by or on behalf of a person who is to receive, is receiving, or has received the lesson; and

(c) that no charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received the lesson.

(3) Copyright in—

(a) any work that is a sound recording; or

(b) any work included in a sound recording—

is not infringed by the copying of that work in the circumstances set out in subsection (4).

(4) The circumstances referred to in subsection (3) are—

(a) that the copying is done—

(i) in the course of preparation for instruction; or

(ii) for use in the course of instruction; or

(iii) in the course of instruction; or

(iv) after the course of instruction,—

where the lesson—

(v) relates to the learning of a language; or

(vi) is conducted by correspondence; and

(b) that the copying is done by or on behalf of a person who is to give, is giving, or has given the lesson or by or on behalf of a person who is to receive, is receiving, or has received the lesson; and

(c) that no charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received the lesson.

(5) Subsections (3) and (4) do not apply if or to the extent that licences authorising the copying of a work in the circumstances set out in subsection (4) are available under a licensing scheme and the person doing the copying knew that fact.

Compare: Copyright, Designs and Patents Act 1988 s 32(2) (UK)

Section 45(1): substituted, on 31 October 2008, by section 27 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

46 Anthologies for educational use

(1) The copying of a short passage from a published work (being a literary, dramatic, or musical work) in a collection that—

(a) is intended for use in educational establishments and is so described in its title, and in any advertisements issued by or on behalf of the publisher of that collection; and

(b) consists mainly of material in which no copyright exists or in which copyright is owned by the publisher of that collection or the Crown—

does not infringe copyright in the work if—

(c) the publisher of the work did not intend it to be used in such establishments; and

(d) the passage is accompanied by a sufficient acknowledgement.

(2) Subsection (1) does not authorise the copying of more than 2 passages from copyright works by the same author in collections published by the same publisher over any period of 5 years.

(3) In relation to any given passage, the reference in subsection (2) to passages from copyright works by the same author—

(a) shall be taken to include passages from collective works of which that author is one of the authors; and

(b) if the passage in question is from such a collective work, shall be taken to include passages from works by any of the authors, whether alone or in collaboration with another.

(4) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

(5) Subsection (1) does not apply to a literary work that is a computer program.

Compare: 1962 No 33 s 19(6); Copyright, Designs and Patents Act 1988 s 33 (UK)

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

(1) The performance of a literary, dramatic, or musical work before an audience consisting of persons who are students or staff members at an educational establishment or are directly connected with the activities of the establishment—

(a) by a student or staff member in the course of the activities of the establishment; or

(b) at the establishment, by any person for the purposes of instruction,—

is not a performance in public for the purposes of section 32(1).

(2) The playing or showing, for the purposes of instruction, of a sound recording, film, or communication work to the audience described in subsection (1) at an educational establishment is not a playing or showing of the work in public for the purposes of section 32(2).

(3) For the purposes of this section, a person shall not be treated as a person directly connected with the activities of an educational establishment by reason only that the person is a parent or guardian of a student at that educational establishment.

Compare: 1962 No 33 s 21(5); Copyright, Designs and Patents Act 1988 s 34 (UK)

Section 47(2): substituted, on 31 October 2008, by section 28 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

48 Copying and communication of communication work for educational purposes

(1) This section applies when a copy of a communication work is—

(a) made or communicated by or on behalf of an educational establishment; or

(b) made and supplied by an educational resource supplier to an educational establishment.

(2) In any case to which subsection (1)(a) applies, the making or communication of a copy of the communication work by or on behalf of an educational establishment, and the subsequent communication of the copy within the educational establishment, does not infringe copyright in the communication work or in any work included in it if the copy is made or communicated for the educational establishment's educational purposes.

(3) In any case to which subsection (1)(b) applies, the making and supply of a copy of the communication work by an educational resource supplier does not infringe copyright in the communication work or in any work included in it if the copy is made and supplied for the educational purposes of the educational establishment to which it is supplied.

(4) However, the exclusions from infringement of copyright in subsections (2) and (3) do not apply to—

(a) the copying of a communication work if or to the extent that—

(i) licences authorising the copying of the communication work by or on behalf of educational establishments or by educational resource suppliers are available under a licensing scheme; and

(ii) the educational establishment or the educational resource supplier, as the case may be, knew that fact; or

(b) the communication of a communication work if or to the extent that—

(i) licences authorising the communication of the copy by or on behalf of educational establishments are available under a licensing scheme; and

(ii) the educational establishment knew that fact; or

(c) the supply of a communication work by an educational resource supplier if or to the extent that—

(i) licences authorising the supply of the communication work are available under a licensing scheme; and

(ii) the educational resource supplier knew that fact.

Section 48: substituted, on 31 October 2008, by section 29 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

49 Things done for purposes of examination

Copyright 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.

Compare: 1962 No 33 s 21(4)(b); Copyright, Designs and Patents Act 1988 s 32(3) (UK)

Libraries and archives

50 Interpretation

(1) In sections 51 to 56C, unless the context otherwise requires,—

archive—

(a) means—

(i) Archives New Zealand (Te Rua Mahara o te Kāwanatanga); or

(ii) the National Library; or

(iii) the sound archive maintained by Radio New Zealand Limited; or

(iv) the film archive maintained by Television New Zealand Limited; or

(v) the film archive maintained by the New Zealand Film Archive Incorporated; or

(vi) any collection of documents (within the meaning of section 2 of the Official Information Act 1982) of historical significance or public interest that is in the custody of and being maintained by a body, whether incorporated or unincorporated, that does not keep and maintain the collection for the purpose of deriving a profit; and

(b) includes, in relation only to its holding of public archives (within the meaning of section 4 of the Public Records Act 2005), an approved repository within the meaning of that section of that Act

prescribed library means—

(a) the National Library; or

(b) the Parliamentary Library; or

(c) every law library provided and maintained under section 375(1) of the Lawyers and Conveyancers Act 2006 or provided and maintained by the New Zealand Law Society; or

(d) a library maintained by an educational establishment, government department, or local authority; or

(e) a library of any other class of library prescribed by regulations made under this Act, not being a library conducted for profit.

(2) In sections 51 to 56C, every reference to the librarian of a prescribed library or the archivist of an archive shall be read as including a person acting on behalf of the librarian or archivist.

Compare: Copyright, Designs and Patents Act 1988 s 37(6) (UK)

Section 50(1): amended, on 31 October 2008, by section 30 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 50(1) **archive** paragraph (a)(i): substituted, on 21 April 2005, by section 67(1) of the Public Records Act 2005 (2005 No 40).

Section 50(1) **archive** paragraph (b): substituted, on 21 April 2005, by section 67(1) of the Public Records Act 2005 (2005 No 40).

Section 50(1) **prescribed library** paragraph (c): substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 50(1) **prescribed library** paragraph (c): amended, on 7 July 2010, by section 4 of the Copyright Amendment Act 2010 (2010 No 55).

Section 50(2): amended, on 31 October 2008, by section 30 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

51 Copying by librarians of parts of published works

(1) The librarian of a prescribed library may, if the conditions contained in subsection (2) are complied with, make from a published edition (other than a published edition that is an article in a periodical), for supply to any person, a copy of a reasonable proportion of any literary, dramatic, or musical work, and may include in the copy any artistic work that appears within the proportion copied, without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The conditions referred to in subsection (1) are—

(a) that no person is supplied on the same occasion with more than 1 copy of the same material; and

(b) that, where any person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than a sum consisting of the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library.

(3) Where any person is supplied with, or otherwise comes into possession of, a copy made in accordance with this section, that person may use the copy only for the purposes of research or private study.

(4) This section does not apply to a literary work that is a computer program.

(5) In this section, **copy** includes a digital copy, but in that case section 56B applies as well.

Compare: 1962 No 33 s 21(1); Copyright, Designs and Patents Act 1988 s 39 (UK)

Section 51(5): added, on 31 October 2008, by section 31 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

52 Copying by librarians of articles in periodicals

(1) The librarian of a prescribed library may, if the conditions contained in subsection (2) are complied with, make for supply to any person a copy of—

(a) a literary, dramatic, or musical work, and any artistic work included in that work, that is contained in an article in a periodical; or

(b) a published edition that is an article in a periodical,—

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The conditions referred to in subsection (1) are—

(a) that no person is supplied on the same occasion with more than 1 copy of the same article; and

(b) that no person is supplied on the same occasion with copies of more than 1 article contained in the same issue of a periodical, unless the copies supplied all relate to the same subject matter; and

(c) that, where any person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than a sum consisting of the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library.

(3) Where any person is supplied with, or otherwise comes into possession of, a copy made in accordance with this section, that person may use the copy only for the purposes of research or private study.

(4) In this section, **copy** includes a digital copy, but in that case section 56B applies as well.

Compare: 1962 No 33 s 21(1); Copyright, Designs and Patents Act 1988 s 38 (UK)

Section 52(4): added, on 31 October 2008, by section 32 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

53 Copying by librarians for users of other libraries

(1) The librarian of a prescribed library may, if the condition contained in subsection (2) is complied with, make from a published edition, for supply to another prescribed library, a copy of,—

(a) subject to paragraph (b), a reasonable proportion of any literary, dramatic, or musical work (and the librarian may include in the copy any artistic work that appears within the proportion copied):

(b) in relation to a literary, dramatic, or musical work that is contained in an article in a periodical,—

(i) the whole article and any artistic work included in that article; and

(ii) if there is any other article in the same issue of the periodical relating to the same subject matter as the first article copied, the whole of that other article and any artistic work included in that article,—

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The condition referred to in subsection (1) is that a person has requested the library to which the copy is being supplied to supply him or her with the copy for the purposes of research or private study.

(3) Where any person is supplied with, or otherwise comes into possession of, a copy made in accordance with this section, that person may use the copy only for the purposes of research or private study.

(4) This section does not apply to a literary work that is a computer program.

(5) In this section, **copy** includes a digital copy, but in that case section 56C applies as well.

Section 53(5): added, on 31 October 2008, by section 33 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

54 Copying by librarians for collections of other libraries

(1) The librarian of a prescribed library may, if the conditions contained in subsection (2) are complied with, make a copy of a literary, dramatic, or musical work and any artistic work included in the work, where the copy is—

(a) from a published edition that is a book; and

(b) for supply to the librarian of another prescribed library,—

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The conditions referred to in subsection (1) are that the librarian to whom the copy of the work is supplied—

(a) has been unable to obtain the work at an ordinary commercial price within the 6 months preceding the supply; and

(b) makes and keeps a record sufficient to identify the work copied; and

(c) permits the inspection of the record by the copyright owner during normal office hours; and

(d) pays, on demand, equitable remuneration to the copyright owner for the work copied.

(3) In subsection (2)(d), the term **equitable remuneration** means a sum agreed by the librarian and the copyright owner or, in the absence of agreement, a sum determined by the Tribunal on an application under section 168.

(4) This section does not apply to a literary work that is a computer program.

(5) In this section, **copy** includes a digital copy, but in that case section 56C applies as well.

Compare: 1962 No 33 s 21(2); Copyright, Designs and Patents Act 1988 s 41 (UK)

Section 54(5): added, on 31 October 2008, by section 34 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

55 Copying by librarians or archivists to replace copies of works

(1) The librarian of a prescribed library or the archivist of an archive may make a copy (other than a digital copy) of any item in the collection of the library or archive for the purposes of—

(a) preserving or replacing that item by placing the copy in the collection of the library or archive in addition to or in place of the item; or

(b) replacing in the collection of another prescribed library or archive an item that has been lost, destroyed, or damaged,—

without infringing copyright in any work included in the item.

(2) Subsection (1) applies only where it is not reasonably practicable to purchase a copy of the item in question to fulfil the purpose.

(3) The librarian of a prescribed library or the archivist of an archive may make a digital copy of any item (the **original item**) in the collection of the library or archive without infringing copyright in any work included in the item if—

(a) the original item is at risk of loss, damage, or destruction; and

(b) the digital copy replaces the original item; and

(c) the original item is not accessible by members of the public after replacement by the digital copy except for purposes of research the nature of which requires or may benefit from access to the original item; and

(d) it is not reasonably practicable to purchase a copy of the original item.

(4) The librarian of a prescribed library or the archivist of an archive may make a digital copy of any item (the **original item**) in the collection of the library or archive without infringing copyright in any work included in the item if—

(a) the digital copy is used to replace an item in the collection of another prescribed library or archive that has been lost, damaged, or destroyed; and

(b) it is not reasonably practicable to purchase a copy of the original item.

Compare: Copyright, Designs and Patents Act 1988 s 42 (UK)

Section 55(1): amended, on 31 October 2008, by section 35(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 55(3): added, on 31 October 2008, by section 35(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 55(4): added, on 31 October 2008, by section 35(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

56 Copying by librarians or archivists of certain unpublished works

(1) The librarian of a prescribed library or the archivist of an archive may, if the conditions contained in subsection (3) are complied with, copy for supply to any person a copy of an unpublished work in the library or archive, without infringing copyright in that work.

(2) This section does not apply if the copyright owner has prohibited copying of the work and at the time the copy is made the librarian or archivist making it is, or ought to be, aware of that fact.

(3) The conditions referred to in subsection (1) are—

(a) that no person is supplied on the same occasion with more than 1 copy of the same work; and

(b) that, where any person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than a sum consisting of the total of the cost of production of the copy and a reasonable contribution to the general expenses of the library or archive.

(4) Where any person is supplied with, or otherwise comes into possession of, a copy made in accordance with this section, that person may use the copy only for the purposes of research or private study.

(5) The provisions of this section do not apply to the sound archive maintained by Radio New Zealand Limited, the film archive maintained by Television New Zealand Limited, or the film archive maintained by the New Zealand Film Archive Incorporated.

(6) In this section, **copy** includes a digital copy, but in that case section 56B applies as well.

Compare: 1962 No 33 s 21(3); Copyright, Designs and Patents Act 1988 s 43 (UK)

Section 56(6): added, on 31 October 2008, by section 36 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

56A Library or archive may communicate digital copy to authenticated users

(1) The librarian of a prescribed library or the archivist of an archive does not infringe copyright in a work by communicating a digital copy of the work to an authenticated user if the following conditions are met:

(a) the librarian or archivist has obtained the digital copy lawfully; and

(b) the librarian or archivist ensures that each user is informed in writing about the limits of copying and communication allowed by this Act, including that a digital copy of a work may only be copied or communicated by the user in accordance with the provisions of this Act; and

(c) the digital copy is communicated to the user in a form that cannot be altered or modified; and

(d) the number of users who access the digital copy at any one time is not more than the aggregate number of digital copies of the work that—

(i) the library or the archive has purchased; or

(ii) for which it is licensed.

(2) In subsection (1), **authenticated user** means a person who—

(a) has a legitimate right to use the services of the library or archive; and

(b) can access the digital copy only through a verification process that verifies that the person is entitled to access the digital copy.

Section 56A: inserted, on 31 October 2008, by section 37 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

56B Additional conditions for supply of copy of work in digital format by librarian or archivist under section 51, 52, or 56

A copy of a work to which section 51, 52, or 56 applies must not be supplied in a digital format, by the librarian of a prescribed library or the archivist of an archive, to a person (**A**) unless the following conditions are also complied with:

(a) the librarian or archivist must give A, when the copy is supplied, a written notice that sets out the terms of use of the copy; and

(b) the librarian or archivist must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied to A.

Section 56B: inserted, on 31 October 2008, by section 37 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

56C Additional condition for making digital copies under section 53 or 54

A copy of a work to which section 53 or 54 applies must not be supplied in a digital format to a library unless the librarian supplying the digital copy destroys, as soon as is reasonably practicable, any additional copy made in the process of making the copy that is supplied.

Section 56C: inserted, on 31 October 2008, by section 37 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

57 Playing or showing sound recordings or films

(1) The sound archive maintained by Radio New Zealand Limited may play a sound recording held in the archive to an audience consisting of members of the public, without infringing copyright in the sound recording or in any work included in the sound recording, if the condition contained in subsection (3) is complied with.

(2) The film archive maintained by Television New Zealand Limited or by the New Zealand Film Archive Incorporated may show a film, and play any sound recording associated with the film, held in the archive to an audience consisting of members of the public, without infringing copyright in the film or in any sound recording associated with the film or in any work included in the film or sound recording, if the condition contained in subsection (3) is complied with.

(3) The condition referred to in subsections (1) and (2) is that, where any person is required to pay to—

(a) hear any sound recording played under subsection (1); or

(b) see any film shown, and hear any sound recording associated with the film played, under subsection (2),—

the payment required is no more than a reasonable contribution towards the maintenance of the archive in which the sound recording or film is held.

(4) This section does not apply if or to the extent that licences authorising the playing of a sound recording, or the showing of a film and the playing of a sound recording associated with the film, by an archive to which this section applies are available and if the archive knew that fact.

57A Making archived works available for public viewing

(1) The communication of an archived work in accordance with section 29C of the Television New Zealand Act 2003 does not infringe copyright (if any) in the archived work under this Act.

(2) In this section, **archived work** has the same meaning as in section 29A of the Television New Zealand Act 2003.

Section 57A: inserted, on 23 July 2011, by section 14 of the Television New Zealand Amendment Act 2011 (2011 No 52).

Public administration

58 Copying by Parliamentary Library for members of Parliament

(1) An officer of the Parliamentary Library may, if the conditions contained in subsection (3) are complied with, supply to any member of Parliament a copy of a literary or dramatic work, and any artistic work included in that work, without

infringing copyright in that literary, dramatic, or artistic work or the typographical arrangement of a published edition.

(2) An officer of the Parliamentary Library may, if the conditions contained in subsection (3) are complied with, supply to any member of Parliament a recording of a communication work or a transcript of a recording of the communication work, without infringing copyright in the communication work or any work included in that communication work.

(3) The conditions referred to in subsections (1) and (2) are—

(a) that no member of Parliament is supplied on the same occasion with more than 1 copy or recording or transcript, as the case may be, of the same material; and

(b) that the copy or recording or transcript is required by that member of Parliament for the purposes of performing his or her duties as such a member.

Section 58(2): amended, on 31 October 2008, by section 38 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

59 Parliamentary and judicial proceedings

(1) Copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings.

(2) Copyright is not infringed by anything done for the purposes of reporting parliamentary or judicial proceedings.

Compare: 1962 No 33 ss 19(4), 20(7); Copyright, Designs and Patents Act 1988 s 45 (UK)

60 Royal commissions and statutory inquiries

(1) Copyright is not infringed by anything done for the purposes of the proceedings of a Royal commission, commission of inquiry, ministerial inquiry, or statutory inquiry.

(2) Copyright is not infringed by anything done for the purposes of reporting any proceedings of a Royal commission, commission of inquiry, ministerial inquiry, or statutory inquiry that are held in public.

(3) Copyright in a work is not infringed by the issue to the public of copies of the report of a Royal commission, commission of inquiry, ministerial inquiry, or statutory inquiry containing the work or material from it.

Compare: Copyright, Designs and Patents Act 1988 s 46 (UK)

61 Material open to public inspection or on official register

(1) Subject to any Order in Council made under subsection (4), where material is open to public inspection or public reference pursuant to a statutory requirement, or is on a statutory register, copyright in the material is not infringed by the copying of the material, by or with the authority of the appropriate person, for a purpose that does not involve the issuing of copies to the public.

(2) Subject to any Order in Council made under subsection (4), where material is open to public inspection or public reference pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

(3) Subject to any Order in Council made under subsection (4), where material that is open to public inspection or public reference pursuant to a statutory requirement, or that is on a statutory register, contains information about matters of general scientific, technical, commercial, or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information.

(4) The Governor-General may from time to time, by Order in Council, provide that all or any of subsections (1) to (3) shall, in such cases as may be specified in the order, apply only to copies marked in such manner as may be so specified.

(5) The Governor-General may from time to time, by Order in Council, provide that all or any of subsections (1) to (3) apply, to such extent and with such modifications as may be specified in the order, in relation to—

(a) material made open to public inspection or public reference by—

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

(ii) a person specified in the order who has functions in New Zealand under an international agreement to which New Zealand is a party; or

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

as those provisions apply in relation to material open to public inspection or public reference pursuant to a statutory requirement or by virtue of being on a statutory register.

(6) In this section,—

appropriate person means the person required to make the material open to public inspection or public reference or, as the case may be, the person maintaining the register

statutory register means a register maintained pursuant to a statutory requirement

statutory requirement means a requirement imposed by a provision of an enactment.

Compare: 1962 No 33 s 61; Copyright, Designs and Patents Act 1988 ss 47, 49 (UK)

62 Material communicated to the Crown in course of public business

(1) This section applies where—

(a) a literary, dramatic, musical, or artistic work has, in the course of public business, been communicated to the Crown for any purpose, by or with the licence of the copyright owner; and

(b) a document (within the meaning of section 2 of the Official Information Act 1982) recording or embodying the work is owned by, or is in the custody or control of, the Crown.

(2) The Crown may, for—

(a) the purpose for which the work was communicated to the Crown; or

(b) any related purpose that could reasonably have been anticipated by the copyright owner,—

copy the work, and issue copies of the work to the public, without infringing copyright in the work.

(3) The Crown may not copy a work, or issue copies of a work to the public, under this section if the work has previously been published otherwise than under this section.

(4) In subsection (1), the term **public business** includes any activity carried on by the Crown.

(5) This section has effect subject to any agreement to the contrary between the Crown and the copyright owner.

Compare: Copyright, Designs and Patents Act 1988 s 48 (UK)

63 Use of copyright material for services of the Crown

(1) Copyright in a work is not infringed by anything done in relation to the work, by or on behalf of the Crown or any person authorised in writing by a government department,—

(a) for the purpose of national security or during a period of emergency; or

(b) in the interests of the safety or health of the public or any members of the public.

(2) Where any act is done under subsection (1), the Crown shall be liable to pay, out of money appropriated by Parliament for the purpose, equitable remuneration to the copyright owner upon such terms as may be agreed upon between the Crown and the copyright owner or, in the absence of agreement, upon such terms as shall be determined by the Tribunal.

(3) No act to which subsection (1) applies shall—

(a) constitute publication of a work; or

(b) affect the term of copyright in a work.

Compare: 1962 No 33 s 53(1), (3), (4)

64 Rights of third parties in respect of Crown use

(1) No provision of any assignment or licence in force between the copyright owner and a person other than a government department shall be effective to prevent any act being done in relation to a copyright work, where that act is done under section 63.

(2) Where—

(a) an act is done under section 63; and

(b) an exclusive licence is in force in respect of the work in relation to which the act is done,—

the Crown shall be liable to pay, out of money appropriated by Parliament for the purpose, equitable remuneration to the licensee upon such terms as may be agreed between the Crown and the licensee or, in the absence of agreement, upon such terms as shall be determined by the Tribunal.

(3) Where—

(a) a person has a right in relation to a work, by any licence other than an exclusive licence; and

(b) a payment is made, in respect of that work, under section 63 to the copyright owner or under subsection (2) to the exclusive licensee,—

the person is entitled to recover from the owner or exclusive licensee, as the case may be, such part of any payment as may be agreed between that person and the copyright owner or the exclusive licensee, as the case may be, or, in the absence of agreement, as shall be determined by the Tribunal.

Compare: 1962 No 33 s 54

65 Proceedings against the Crown

(1) Where any employee or agent of the Crown infringes copyright in a work, and the infringement is committed with the authority of the Crown, civil proceedings in respect of the infringement shall, subject to this Act, lie against the Crown under the Crown Proceedings Act 1950.

(2) Nothing in subsection (1) shall affect the rights of the Crown, or any person authorised by a government department, under section 63.

Compare: 1962 No 33 s 55(1), (2)

66 Acts done under statutory authority

(1) Where the doing of a particular act is specifically authorised by an enactment, the doing of that act does not infringe copyright, unless the enactment provides otherwise.

(2) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or pursuant to any enactment.

Compare: Copyright, Designs and Patents Act 1988 s 50 (UK)

Literary, dramatic, musical, or artistic works

67 Acts permitted on assumptions as to expiry of copyright or death of author in relation to anonymous or pseudonymous works

(1) Copyright in a literary, dramatic, musical, or artistic work is not infringed by any act done at a time when, or in pursuance of arrangements made at a time when,—

(a) it is not possible for a person who wishes to do so to ascertain the identity of the author by reasonable inquiry; and

(b) it is reasonable to assume—

(i) that copyright has expired; or

(ii) that the author died 50 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to—

(a) a work in which Crown copyright exists under section 26; or

(b) a work—

(i) in which copyright originally vested in an international organisation under section 28; and

(ii) in respect of which an order made under that section specifies a copyright period longer than 50 years.

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

(a) the reference in subsection (1)(a) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and

(b) the reference in subsection (1)(b)(ii) to the author having died shall be construed as a reference to all the authors having died.

Compare: Copyright, Designs and Patents Act 1988 s 57 (UK)

68 Use of recording of spoken words in certain cases

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

(a) reporting current events; or

(b) communicating to the public the whole or part of the work,—

it is not an infringement of copyright in the words as a literary work to use the recording or material taken from it (or to copy the recording, or any such material, and use the copy) for that purpose, if the conditions in subsection (2) are complied with.

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

(a) the recording is a direct record of the spoken words and is not taken from a previous recording or from a communication work; and

(b) the making of the recording was not prohibited by the speaker and, where copyright already existed in the work, did not infringe copyright; and

(c) the use made of the recording or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the recording was made; and

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

Compare: Copyright, Designs and Patents Act 1988 s 58 (UK)

Section 68(1)(b): amended, on 31 October 2008, by section 39(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 68(2)(a): amended, on 31 October 2008, by section 39(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

69 Authorised entity types

(1) An entity that is 1 or more of the following may undertake the activities set out in section 69A:

(a) an educational establishment:

(b) an educational resource supplier:

(c) a prescribed library within the meaning given in section 50(1):

(d) a charitable entity that has a purpose consistent with making accessible format copies available to persons who have a print disability.

(2) Before beginning activities under section 69A for the first time, an authorised entity must give notice to the Ministry that it intends to do so.

Section 69: replaced, on 4 January 2020, by section 5 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

69A Accessible format copy activities by authorised entity

(1) An authorised entity does not infringe copyright in the relevant work if the entity acts in accordance with this section.

(2) An authorised entity may make an accessible format copy if the entity—

(a) has taken all reasonable steps to notify the owner of the copyright in the work of its intention to make an accessible format copy; and

(b) is making the copy to provide it only to persons who have a print disability, persons acting on their behalf, or other authorised entities; and

(c) ensures that the copy respects the integrity of the original work, as far as is reasonably possible and taking into account changes needed to make the work accessible in the alternative format.

(3) An authorised entity (**A**) may import into New Zealand an accessible format copy from an authorised entity (**B**) in another Marrakesh Treaty country if A—

(a) has taken all reasonable steps to notify the owner of the copyright in the work of its intention to make an accessible format copy; and

(b) is importing the copy to provide it only to persons who have a print disability, persons acting on their behalf, or other authorised entities; and

(c) has taken all reasonable steps to ensure that the copy respects the integrity of the original work, as far as is reasonably possible and taking into account changes needed to make the work accessible in the alternative format.

(4) An authorised entity may do 1 or more of the following:

(a) export from New Zealand an accessible format copy to an authorised entity, or a person who has a print disability, in another Marrakesh Treaty country:

(b) reproduce copies—

(i) made or imported into New Zealand under this section; or

(ii) provided to the entity under section 69B(2)(c):

(c) provide, by communication or otherwise, accessible format copies made or imported under this section or provided to the entity under section 69B(2)(c) to—

(i) persons in New Zealand who have a print disability or persons acting on their behalf; and

(ii) other authorised entities in New Zealand.

Section 69A: inserted, on 4 January 2020, by section 5 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

69B Accessible format copy activities by person who is not authorised entity

(1) A person who is not an authorised entity does not infringe copyright in the relevant work if he or she—

(a) has a print disability or is acting on behalf of someone who has a print disability; and

(b) intends the accessible format copy to be only for the use of the person who has a print disability; and

(c) acts in accordance with subsection (2).

(2) The person may do 1 or more of the following:

(a) make an accessible format copy that respects the integrity of the original work, as far as is reasonably possible and taking into account changes needed to make the work accessible in the alternative format:

(b) import into New Zealand an accessible format copy from an authorised entity in another Marrakesh Treaty country:

(c) provide the accessible format copy that he or she made or imported under paragraph (a) or (b) to an authorised entity.

Section 69B: inserted, on 4 January 2020, by section 5 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

69C Duties of authorised entity in regard to records and fees

(1) An authorised entity must—

(a) make and keep a record of a work of which it has—

(i) made, provided, reproduced, imported, or exported an accessible format copy under section 69A; or

(ii) received an accessible format copy under section 69B(2)(c); and

(b) permit the copyright owner to inspect the record—

(i) during normal office hours; or

(ii) at any reasonable time, if the entity does not have office hours.

(2) An authorised entity may charge a fee for providing an accessible format copy to a person, but the fee must not be higher than the sum of the cost to the entity of making, providing, reproducing, importing, or exporting the copy (as applicable) and a reasonable contribution to the general expenses of the entity.

Section 69C: inserted, on 4 January 2020, by section 5 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

69D Ministry must publish list of authorised entities on Internet site

The Ministry must publish on its Internet site a list of authorised entities that have given notice under section 69(2).

Section 69D: inserted, on 4 January 2020, by section 5 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

70 Public reading or recitation

(1) The reading in public or recitation in public by 1 person of a reasonable extract from a published literary or dramatic work shall not be treated as a performance in public for the purposes of section 32(1), if that reading or recitation is accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the communication to the public, of a reading or recitation that under subsection (1) is not treated as a performance in public, if the recording or communication work consists mainly of material in relation to which it is not necessary to rely on that subsection.

Compare: 1962 No 33 s 19(8); Copyright, Designs and Patents Act 1988 s 59 (UK)

Section 70(2): substituted, on 31 October 2008, by section 41 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

71 Abstracts of scientific or technical articles

Where an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of the article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or issue copies of the abstract to the public.

Compare: Copyright, Designs and Patents Act 1988 s 60(1) (UK)

72 Recordings of folk songs

(1) A sound recording of a performance of a song may be made for the purpose of including the song in an archive maintained by a body prescribed by regulations made under this Act, without infringing copyright in the words as a literary work or in the accompanying musical work, if the conditions in subsection (2) are complied with.

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

(a) the words are unpublished and of unknown authorship at the time the recording is made; and

(b) the making of the recording does not infringe any other copyright; and

(c) the making of the recording is not prohibited by any performer.

(3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a body prescribed by regulations made under this Act may, if the condition contained in subsection (4) is complied with, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.

(4) The condition referred to in subsection (3) is that no person is furnished with more than 1 copy of the same recording.

Compare: Copyright, Designs and Patents Act 1988 s 61 (UK)

73 Representation of certain artistic works on public display

(1) This section applies to the following works:

(a) buildings:

(b) works (being sculptures, models for buildings, or works of artistic craftsmanship) that are permanently situated in a public place or in premises open to the public.

(2) Copyright in a work to which this section applies is not infringed by—

(a) copying the work by making a graphic work representing it; or

(b) copying the work by making a photograph or film of it; or

(c) communicating to the public a visual image of the work.

(3) Copyright is not infringed by the issue to the public of copies, or the communication to the public, of anything the making of which was, under this section, not an infringement of copyright.

Compare: Copyright, Designs and Patents Act 1988 s 62 (UK)

Section 73(2)(c): substituted, on 31 October 2008, by section 42(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 73(3): substituted, on 31 October 2008, by section 42(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

74 Special exception from protection of literary or artistic works

(1) The making of any object in 3 dimensions (including, subject to subsection (2), a copy in 2 dimensions reasonably required for the making of the object) does not infringe copyright in a literary or artistic work, if the work or a copy of it forms part of—

(a) a patent specification that—

(i) is open to public inspection in the Intellectual Property Office of New Zealand in respect of a New Zealand patent that, for any reason, has ceased to have effect; and

(ii) is used for the purpose of making the object; or

(b) a representation or specimen of a design that—

(i) is open to public inspection in the Intellectual Property Office of New Zealand in respect of a design for which registered protection in New Zealand has ceased; and

(ii) is used for the purpose of making the object.

(2) Subsection (1) does not authorise—

(a) the making of a copy in 2 dimensions of an artistic work—

(i) to which subsection (1) applies; and

(ii) that is in 2 dimensions,—

where the copy is made directly from that artistic work; or

(b) the making of a copy of a literary work to which subsection (1) applies, where the copy is made directly from that literary work.

(3) If a patent that has ceased to have effect is restored by an order made under subpart 12 of Part 3 of the Patents Act 2013, nothing done under subsection (1) in the period beginning with the day on which the patent ceased to have effect and ending with the close of the day on which the order is made constitutes an infringement of copyright in any literary or artistic work or copy of the work forming part of the patent specification.

(4) If the registered protection in New Zealand of a design that has ceased to have effect is restored by an order made under section 41A of the Designs Act 1953, nothing done under subsection (1) in the period beginning with the day on which the protection ceased to have effect and ending with the close of the day

on which the order is made constitutes an infringement of copyright in any literary or artistic work or copy of the work forming part of the design.

Compare: 1962 No 33 s 20A; 1985 No 134 s 4

Section 74(1): replaced, on 13 September 2014, by section 249 of the Patents Act 2013 (2013 No 68).

Section 74(3): replaced, on 13 September 2014, by section 249 of the Patents Act 2013 (2013 No 68).

Section 74(4): added, on 19 April 2011, by section 8 of the Designs Amendment Act 2010 (2010 No 15).

75 Special exception from protection of artistic work that has been applied industrially

(1) The making of—

(a) any object in 3 dimensions; or

(b) subject to subsection (3), a copy in 2 dimensions reasonably required for the making of the object—

does not infringe copyright in an artistic work if, when the object or copy is made, the artistic work has been applied industrially, in New Zealand or in any other country, by or with the licence of the copyright owner,—

(c) in the case of a work of artistic craftsmanship, more than 25 years before the object or copy is made:

(d) in the case of a sculpture that is a cast or pattern for an object that has a primarily utilitarian function, more than 16 years before the object or copy is made:

(e) subject to subsection (2), in the case of any other artistic work, more than 16 years before the object or copy is made.

(2) Subsection (1) does not apply to—

(a) a sculpture that is not a cast or pattern for an object that has a primarily utilitarian function; or

(b) a work of architecture, being a building or a model for a building.

(3) Subsection (1) does not authorise the making of a copy in 2 dimensions of an artistic work that is in 2 dimensions, where the copy is made directly from that artistic work.

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

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

(b) the work is copied in 3 dimensions in 1 or more objects manufactured in lengths, for the purposes of sale or hire; or

(c) the work is copied as a plate that has been used to produce—

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

(ii) 1 or more objects in 3 dimensions manufactured in lengths for the purposes of sale or hire.

(5) For the purposes of subsection (4), 2 or more copies in 3 dimensions that are of the same general character and intended for use together are a single copy.

Compare: 1962 No 33 s 20B; 1985 No 134 s 5

76 Special exception from protection of literary and artistic works relating to medicines

The copying or adaptation or publication of a literary work or an artistic work does not infringe copyright in that work if that work—

(a) relates to a medicine that has been imported by the Crown pursuant to section 32A of the Medicines Act 1981; and

(b) has been made, copied, published, adapted, or distributed, in an overseas country, by or with the licence of the owner of the copyright in the work in that country.

Compare: 1962 No 33 s 20C; 1990 No 71 s 5

77 Making of subsequent works by same artist

Where the author of an artistic work is not the copyright owner, he or she does not infringe copyright in that work by copying the work in making another artistic work, if the main design of the earlier work is not repeated or imitated.

Compare: 1962 No 33 s 20(9); Copyright, Designs and Patents Act 1988 s 64 (UK)

78 Reconstruction of buildings

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

(a) in the building; or

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

Compare: 1962 No 33 s 20(10); Copyright, Designs and Patents Act 1988 s 65 (UK)

Computer programs, sound recordings, and films

79 Rental by educational establishments and libraries

Copyright in a work (being a computer program, sound recording, or film) is not infringed by the rental of that work to any person by an educational establishment or a prescribed library within the meaning of section 50, where—

(a) the educational establishment or prescribed library does not effect the rental of the work for the purposes of making a profit; and

(b) the work that is the subject of the rental has previously been put into circulation with the licence of the copyright owner.

80 Back-up copy of computer program

(1) Subject to subsection (3), copyright in a computer program is not infringed by the making of a copy of the computer program if—

(a) the copy is made by or on behalf of the lawful user of the copy of the program (in this section referred to as the **original copy**) from which the first-mentioned copy is made; and

(b) the copy is made solely for the purpose of being used by or on behalf of the lawful user of the original copy—

(i) instead of the original copy in order to preserve the original copy for use if the copy is lost, destroyed, or rendered unusable; or

(ii) if the original copy is lost, destroyed, or rendered unusable.

(2) If the original copy is lost, destroyed, or rendered unusable, the copy made pursuant to subsection (1) shall be deemed for the purposes of this section to be the original copy.

(3) Subsection (1) does not apply to the making of a copy of a computer program—

(a) from an infringing copy of the computer program; or

(b) contrary to an express direction by or on behalf of the owner of the copyright in the computer program given to the lawful user of the original copy not later than the time when the lawful user of the original copy acquired that original copy.

(4) For the purposes of this section,—

(a) a reference to a computer program includes a reference to an adaptation of that program; and

(b) a reference to a copy of a computer program is a reference to any object in which the program is reproduced in a material form; and

(c) a reference to an express direction, in relation to a copy of a computer program, includes a reference to a clearly legible direction printed on the copy or on a package in which the copy is supplied.

Compare: Copyright Act 1968 s 43A (Aust)

80A Decompilation of computer program

(1) The lawful user of a copy of a computer program expressed in a low level language does not infringe copyright in the program by decompiling it, if the conditions in subsection (2) are met.

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

(a) decompilation is necessary to obtain information necessary for the objective of creating an independent program that can be operated with the program decompiled or with another program; and

(b) the information obtained from the decompilation is not used for any purpose other than the objective referred to in paragraph (a).

(3) In particular, the conditions in subsection (2) are not met if—

(a) the information necessary to create the independent program is readily available to the lawful user without decompiling the computer program; or

(b) the lawful user does not confine decompilation of the computer program strictly to the steps that are necessary to create an independent program; or

(c) the lawful user gives the information obtained from decompiling the computer program to any person when it is not necessary for creating an independent program to do so; or

(d) the lawful user uses the information obtained from decompiling the computer program to create a program that is substantially similar in its expression to the program that has been decompiled; or

(e) the lawful user uses the information obtained from decompiling the computer program to do any act that is restricted by copyright.

(4) In this section, **decompile** means—

(a) to convert a computer program expressed in a low level language into a version expressed in a higher level language; or

(b) to copy the program as a necessary incident of converting it into that version.

Section 80A: inserted, on 31 October 2008, by section 43 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

80B Copying or adapting computer program if necessary for lawful use

(1) The lawful user of a computer program (**A**) does not infringe copyright in it by copying or adapting it, if—

(a) copying or adapting it is necessary for A's lawful use of the program (for example, to correct an error in the program); and

(b) a properly functioning and error-free copy of the program is not available to A within a reasonable time at an ordinary commercial price.

(2) This section does not apply to copying or adapting that is permitted under section 80A or 80C.

Section 80B: inserted, on 31 October 2008, by section 43 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

80C Observing, studying, or testing of computer program

The lawful user of a computer program (**A**) does not infringe copyright in it by observing, studying, or testing the functioning of the program in order to determine the ideas and principles that underlie any element of the program if A

does so while performing the acts of loading, displaying, running, transmitting, or storing the program that A is entitled to do.

Section 80C: inserted, on 31 October 2008, by section 43 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

80D Certain contractual terms relating to use of computer programs have no effect

A term or condition in an agreement for the use of a computer program has no effect in so far as it prohibits or restricts any activity undertaken in accordance with section 80A(2) or 80B(1).

Section 80D: inserted, on 31 October 2008, by section 43 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

81 Playing of sound recordings for purposes of club, society, etc

(1) It is not an infringement of copyright in a sound recording to play the sound recording as part of the activities of, or for the benefit of, a club, society, or other organisation, if the conditions contained in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are—

(a) that the club, society, or organisation is not established or conducted for profit; and

(b) that the main objects of the club, society, or organisation are charitable or are otherwise concerned with the advancement of religion, education, or social welfare; and

(c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the club, society, or organisation.

Compare: 1962 No 33 s 13(6); Copyright, Designs and Patents Act 1988 s 67 (UK)

81A Copying sound recording for personal use

(1) Copyright in a sound recording and in a literary or musical work contained in it is not infringed by copying the sound recording, if the following conditions are met:

(a) the sound recording is not a communication work or part of a communication work; and

(b) the copy is made from a sound recording that is not an infringing copy; and

(c) the sound recording is not borrowed or hired; and

(d) the copy is made by the owner of the sound recording; and

(e) that owner acquired the sound recording legitimately; and

(f) the copy is used only for that owner's personal use or the personal use of a member of the household in which the owner lives or both; and

(g) no more than 1 copy is made for each device for playing sound recordings that is owned by the owner of the sound recording; and

(h) the owner of the sound recording retains the ownership of both the sound recording and of any copy that is made under this section.

(2) For the avoidance of doubt, subsection (1) does not apply if the owner of the sound recording is bound by a contract that specifies the circumstances in which the sound recording may be copied.

Section 81A: inserted, on 31 October 2008, by section 44 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Communication works

Heading: substituted, on 31 October 2008, by section 45 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

82 Recording for purposes of maintaining standards in programmes

The author of a communication work does not infringe copyright in it, or in any work included in it, by recording it, if the recording is made and used solely for the purpose of checking on the maintenance of standards in communication works made by the author.

Section 82: substituted, on 31 October 2008, by section 45 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

83 Recording for purposes of complaining

(1) A person (**A**) does not infringe copyright in a communication work, or in any work included in it, by recording it or communicating it or both to a complaint authority, if the recording or the communication or both are done solely for the purpose of complaining to a complaint authority.

(2) However, subsection (1) does not apply, and A does infringe copyright in the communication work recorded and in any work included in the recording, if A retains the recording for any longer than is reasonably necessary to prepare and despatch the complaint.

(3) If a person infringes copyright under subsection (2), the recording is treated as an infringing copy.

(4) In this section and in section 84, **complaint authority** means any person or body that is responsible for dealing with complaints about the content of communication works, including the content of advertisements in communication works.

Section 83: substituted, on 31 October 2008, by section 45 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

84 Recording for purposes of time shifting

(1) A person (**A**) does not infringe copyright in a programme included in a communication work, or in any work included in it, by recording it, if—

(a) A makes the recording solely for A's personal use or the personal use of a member of the household in which A lives or both; and

(b) A makes the recording solely for the purpose of viewing or listening to the recording at a more convenient time; and

(c) the recording is not made from an on-demand service; and

(d) A has lawful access to the communication work at the time of making the recording.

(2) However, subsection (1) does not apply, and A does infringe copyright in the communication work recorded and in any work included in the communication work, if—

(a) A retains the recording for any longer than is reasonably necessary for viewing or listening to the recording at a more convenient time; or

(b) in the event that the person who views or listens to the recording wishes to make a complaint to a complaint authority, A retains the recording for any longer than is reasonably necessary to prepare and despatch the complaint.

(3) If a person infringes copyright under subsection (2), the recording is treated as an infringing copy.

Example

A records a movie to be screened on television because she will be at work when it screens. She watches the movie on the weekend and then later tapes over it. Provided the conditions in s 84(1) are met, the copy that A makes is not an infringing copy.

B copies music from a streamed Internet audio service and keeps the copy as part of B's music collection, in order to listen to it multiple times on demand. Copies made for the home library or collection in this way are infringing copies.

Section 84: substituted, on 31 October 2008, by section 45 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

85 Incidental recording for purposes of communication

(1) This section applies where, under an assignment or a licence, a person is authorised to communicate the following works to the public:

(a) a literary, dramatic, or musical work, or an adaptation of that work; or

(b) an artistic work; or

(c) a sound recording or film.

(2) Where this section applies, the person so authorised may, without the consent of the copyright owner but only if the conditions contained in subsection (3) are complied with, do or authorise the doing of any of the following acts for the purposes of the communication work:

(a) in the case of a literary, dramatic, or musical work, or an adaptation of such a work, copy the work or adaptation by making a sound recording or film of the work or adaptation:

(b) in the case of an artistic work, copy the work by taking a photograph or making a film of the work:

(c) in the case of a sound recording or a film, make a copy of the recording or film.

(3) The conditions referred to in subsection (2) are—

(a) that the recording, film, photograph, or copy is not used for any other purpose; and

(b) that the recording, film, photograph, or copy is destroyed within 6 months of being first used for communicating the work to the public, unless the Minister has authorised the preservation of any recording, film, photograph, or copy in the records of a government department or in Archives New Zealand (Te Rua Mahara o te Kāwanatanga) because of its documentary character or exceptional importance.

(4) A recording, film, photograph, or copy made in accordance with this section shall be treated as an infringing copy—

(a) for the purposes of any use in breach of the condition contained in subsection (3)(a); and

(b) for all purposes after either of the conditions contained in subsection (3) is broken.

Compare: 1962 No 33 s 19(9), (10); Copyright, Designs and Patents Act 1988 s 68 (UK)

Section 85 heading: amended, on 31 October 2008, by section 46(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 85(1): substituted, on 31 October 2008, by section 46(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 85(2): amended, on 31 October 2008, by section 46(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 85(3)(b): amended, on 31 October 2008, by section 46(4) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 85(3)(b): amended, on 21 April 2005, by section 67(1) of the Public Records Act 2005 (2005 No 40).

86 Photographs of television broadcasts or cable programmes

[Repealed]

Section 86: repealed, on 31 October 2008, by section 47 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

87 Free public playing or showing of communication work

(1) The free public playing or showing of a communication work (other than a communication work to which section 87A applies) does not infringe any copyright in—

(a) the communication work; or

(b) any sound recording or film included in the communication work.

(2) For the purposes of this section, the public playing or showing of a communication work is not free if—

(a) the audience has paid for admission to—

(i) the place where the communication work is played or shown (which in this section is called the **venue**); or

(ii) any place of which the venue is a part; or

(b) goods or services are supplied at the venue or a place of which it forms part at prices that—

(i) are substantially attributable to the facilities afforded for hearing or seeing the communication work; or

(ii) exceed those usually charged there and that are partly attributable to those facilities; or

(c) the venue is a hotel, motel, camping ground, or any other place that admits persons for a fee for purposes of temporary accommodation, and the audience is made up of persons residing at that hotel, motel, camping ground, or other place.

(3) For the purposes of subsection (2)(a), the following persons must not be treated as having paid for admission to the venue:

(a) a person admitted as a resident or an inmate of a place (other than a hotel, motel, camping ground, or any other place to which subsection (2)(c) applies):

(b) a person admitted as a member of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing communication works is only incidental to the main purposes of the club or society.

Section 87: substituted, on 16 September 2011, by section 5(1) of the Copyright Amendment Act 2011 (2011 No 72).

87A Free public playing or showing of communication work that is simultaneous with reception

(1) This section applies to the playing or showing of a communication work that—

(a) is made for reception in the area in which it is played or shown; and

(b) is not a communication work for which a subscription fee must be paid in order to receive it; and

(c) is played or shown simultaneously upon reception of the communication work.

(2) The free public playing or showing of a communication work to which this section applies does not infringe any copyright in—

(a) the communication work; or

(b) any sound recording or film that is played or shown in public by reception of the communication work.

(3) For the purposes of this section, the public playing or showing of a communication work is not free if—

(a) the audience has paid for admission to the place where the communication work is played or shown (which in this section is called the **venue**), including any place of which the venue is a part; or

(b) goods or services are supplied at the venue or a place of which it forms part at prices that—

(i) are substantially attributable to the facilities afforded for hearing or seeing the communication work; or

(ii) exceed those usually charged there and that are partly attributable to those facilities.

(4) For the purposes of subsection (3)(a), the following persons must not be treated as having paid for admission to the venue:

(a) a person admitted as a resident or an inmate of a place (including a person residing in a hotel, motel, camping ground, or any other place that admits persons for a fee for the purpose of temporary accommodation):

(b) a person admitted as a member of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing communication works is only incidental to the main purposes of the club or society.

Section 87A: inserted, on 16 September 2011, by section 5(1) of the Copyright Amendment Act 2011 (2011 No 72).

87B Assessment of damages for infringement of copyright in sound recording or film

Where the making of a communication work is an infringement of copyright, the fact that the work was heard or seen in public by the reception of the communication work must be taken into account in assessing the damages for the infringement.

Section 87B: inserted, on 16 September 2011, by section 5(1) of the Copyright Amendment Act 2011 (2011 No 72).

88 Reception and retransmission of broadcast in cable programme service

(1) This section applies where a broadcast made from a place in New Zealand is, by reception and immediate retransmission, included in a cable programme service.

(2) Where this section applies,—

(a) copyright in the broadcast is not infringed if and to the extent that the broadcast—

(i) is made for reception in the area in which the cable programme service is provided; and

(ii) is not a satellite transmission or an encrypted transmission:

(b) copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided:

(c) where the making of the broadcast was an infringement of the copyright in any work included in the broadcast, the fact that the broadcast was retransmitted as a programme in a cable programme service shall be taken into account in assessing the damages for that infringement.

(3) This section does not apply if or to the extent that licences authorising the reception and immediate retransmission of a broadcast and any work included in the broadcast are available to the person providing the cable programme service under a licensing scheme and the person providing the cable programme service knew that fact.

(4) For the purposes of this section only,—

(a) sections 3 and 4 of this Act before repeal by the Copyright (New Technologies) Amendment Act 2008 continue to apply as if they had not been repealed and as if references in those provisions to "this Act" were references to this section; and

(b) the definition of broadcast in section 2(1) of this Act before repeal by the Copyright (New Technologies) Amendment Act 2008 continues to apply as if that definition had not been repealed.

Compare: 1962 No 33 s 60; Copyright, Designs and Patents Act 1988 s 73 (UK)

Section 88(4): added, on 31 October 2008, by section 49 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

89 Provision of subtitled copies of communication work

(1) A body prescribed by regulation made under this Act may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally disabled in any other way, with copies that are subtitled or otherwise modified for their special needs, make copies of a communication work and issue copies to the public, without infringing any copyright in the communication work or in any work included in the communication work.

(2) A body must not be prescribed for the purposes of subsection (1) if it is established or conducted for profit.

Section 89: substituted, on 31 October 2008, by section 50 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

90 Recording for archival purposes

(1) A person (**A**) does not infringe copyright in a communication work, or in any work included in it, by recording it or making a copy of a recording of it, if—

(a) the communication work is in a class of communication work prescribed by regulations made under this Act; and

(b) A makes the recording or the copy for the purpose of placing it in an archive maintained by a body prescribed by regulations made under this Act.

(2) A body shall not be prescribed for the purposes of subsection (1) if it is established or conducted for profit.

Compare: Copyright, Designs and Patents Act 1988 s 75 (UK)

Section 90(1): substituted, on 31 October 2008, by section 51 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

91 Recording by media monitors

(1) This section applies to a recording, or a transcript of a recording, of a communication work that consists wholly or substantially of news or reports or discussions of current events.

(1A) The person who makes the recording or transcript does not infringe copyright in the communication work, or in any work included in the communication work, if the conditions in subsection (2) are complied with.

(2) The conditions referred to in subsection (1A) are—

(a) that the recording—

(i) is played solely to enable the making of a transcript of it; and

(ii) is destroyed as soon as is reasonably practicable after the transcript is made and not later than 1 month after the recording is made; and

(b) that the transcript of the recording is made only—

(i) by or on behalf of the person who made the recording; and

(ii) for the use of that person or in response to a request from another person for a transcript of the recording; and

(c) that copies of the transcript are made only—

(i) by or on behalf of the person who made the recording; and

(ii) for the use of that person or in response to a request from another person for a copy of a transcript of the recording; and

(d) that the person who made the recording pays equitable remuneration to the copyright owner.

(3) In subsection (2)(d), the term **equitable remuneration** means a sum agreed by the person who makes the recording and the copyright owner or, in the absence of agreement, a sum determined by the Tribunal on an application under section 168.

(4) This section does not apply if or to the extent that licences authorising the recording of the communication work and the making of transcripts of the

recordings are available under a licensing scheme and the person making the recording knew that fact.

Section 91(1): substituted, on 31 October 2008, by section 52(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 91(1A): inserted, on 31 October 2008, by section 52(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 91(2): amended, on 31 October 2008, by section 52(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 91(4): amended, on 31 October 2008, by section 52(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Adaptations

92 Adaptations

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

Compare: Copyright, Designs and Patents Act 1988 s 76 (UK)

Internet service provider liability

Heading: inserted, on 31 October 2008, by section 53 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

92A Internet service provider must have policy for terminating accounts of repeat infringers

[Repealed]

Section 92A: repealed (without coming into force), on 1 September 2011, by section 4 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

92B Internet service provider liability if user infringes copyright

(1) This section applies if a person (**A**) infringes the copyright in a work by using 1 or more of the Internet services of an Internet service provider to do a restricted act without the consent of the copyright owner.

(2) Merely because A uses the Internet services of the Internet service provider in infringing the copyright, the Internet service provider, without more,—

(a) does not infringe the copyright in the work:

(b) must not be taken to have authorised A's infringement of copyright in the work:

(c) subject to subsection (3), must not be subject to any civil remedy or criminal sanction.

(2A) An Internet service provider does not infringe the copyright in the work, or authorise A's infringement of the copyright in the work, merely because the Internet service provider knows of the infringement from information received as a result of anything done under sections 122A to 122U, provided that, in

relation to the alleged infringement, the Internet service provider complies with all its obligations under those sections and under any regulations made under section 234(eb) to (eh).

(3) However, nothing in this section limits the right of the copyright owner to injunctive relief in relation to A's infringement or any infringement by the Internet service provider.

(4) In subsections (1) and (2), **Internet services** means the services referred to in the definition of Internet service provider in section 2(1).

Section 92B: inserted, on 31 October 2008, by section 53 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 92B(2A): inserted, on 1 September 2011, by section 5 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

92C Internet service provider liability for storing infringing material

(1) This section applies if—

(a) an Internet service provider stores material provided by a user of the service; and

(b) the material infringes copyright in a work (other than as a result of any modification by the Internet service provider).

(2) The Internet service provider does not infringe copyright in the work by storing the material unless—

(a) the Internet service provider—

(i) knows or has reason to believe that the material infringes copyright in the work; and

(ii) does not, as soon as possible after becoming aware of the infringing material, delete the material or prevent access to it; or

(b) the user of the service who provided the material is acting on behalf of, or at the direction of, the Internet service provider.

(3) A court, in determining whether, for the purposes of subsection (2), an Internet service provider knows or has reason to believe that material infringes copyright in a work, must take account of all relevant matters, including whether the Internet service provider has received a notice of infringement in relation to the infringement.

(4) An Internet service provider who deletes a user's material or prevents access to it because the Internet service provider knows or has reason to believe that it infringes copyright in a work must, as soon as possible, give notice to the user that the material has been deleted or access to it prevented.

(5) Nothing in this section limits the right of the copyright owner to injunctive relief in relation to a user's infringement or any infringement by the Internet service provider.

Section 92C: inserted, on 31 October 2008, by section 53 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

92D Requirements for notice of infringement

A notice referred to in section 92C(3) must—

(a) contain the information prescribed by regulations made under this Act; and

(b) be signed by the copyright owner or the copyright owner's duly authorised agent.

Section 92D: inserted, on 31 October 2008, by section 53 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

92E Internet service provider does not infringe copyright by caching infringing material

(1) An Internet service provider does not infringe copyright in a work by caching material if the Internet service provider—

(a) does not modify the material; and

(b) complies with any conditions imposed by the copyright owner of the material for access to that material; and

(c) does not interfere with the lawful use of technology to obtain data on the use of the material; and

(d) updates the material in accordance with reasonable industry practice.

(2) However, an Internet service provider does infringe copyright in a work by caching material if the Internet service provider does not delete the material or prevent access to it by users as soon as possible after the Internet service provider became aware that—

(a) the material has been deleted from its original source; or

(b) access to the material at its original source has been prevented; or

(c) a court has ordered that the material be deleted from its original source or that access to the material at its original source be prevented.

(3) Nothing in this section limits the right of the copyright owner to injunctive relief in relation to a user's infringement or any infringement by the Internet service provider.

(4) In this section,—

cache means the storage of material by an Internet service provider that is—

(a) controlled through an automated process; and

(b) temporary; and

(c) for the sole purpose of enabling the Internet service provider to transmit the material more efficiently to other users of the service on their request

original source means the source from which the Internet service provider copied the material that is cached.

Section 92E: inserted, on 31 October 2008, by section 53 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Subsequent dealings

93 Subsequent dealings with copies made under this Part

(1) Where a copy that would otherwise be an infringing copy—

(a) is either—

(i) made in accordance with any of the provisions of this Act referred to in subsection (2); or

(ii) made in accordance with any of the provisions of this Act referred to in subsection (2) and, where the provision in accordance with which the copy is made allows the copy to be dealt with, is dealt with; and

(b) is subsequently dealt with,—

it shall be treated as an infringing copy—

(c) for the purposes of the dealing referred to in paragraph (b), unless that dealing is an authorised dealing; and

(d) for the purposes of any dealing that is subsequent to the dealing referred to in paragraph (b), unless the first-mentioned dealing is an authorised dealing.

(2) The provisions referred to in subsection (1) are as follows:

(a) section 43A (which relates to transient reproduction of work):

(b) section 44 (which relates to copying for educational purposes of literary, dramatic, musical, or artistic works or typographical arrangements):

(c) section 44A (which relates to storing for educational purposes):

(d) section 45 (which relates to copying for educational purposes of films and sound recordings):

(e) section 48 (which relates to recording by educational establishments of communication works):

(f) section 49 (which relates to things done for the purposes of an examination):

(g) section 51 (which relates to copying by librarians of parts of published works):

(h) section 52 (which relates to copying by librarians of articles in periodicals):

(i) section 53 (which relates to copying by librarians for users of other libraries):

(j) section 55 (which relates to copying by librarians or archivists to replace copies of works):

(k) section 56 (which relates to copying by librarians or archivists of certain unpublished works):

(l) sections 56A to 56C (which relate to access to and copying of works in digital format):

(m) section 58 (which relates to copying by the Parliamentary Library for members of Parliament):

(n) sections 69A and 69B (which relate to accessible format copies):

(o) section 80A (which relates to the decompilation of computer programs):

(p) section 80B (which relates to copying or adapting computer programs if necessary for lawful use):

(q) section 81A (which relates to copying sound recordings for private and domestic use):

(r) section 83 (which relates to recording for the purposes of complaining):

(s) section 84 (which relates to recording for the purposes of time shifting):

(t) section 90 (which relates to recording for archival purposes):

(u) section 92C (which relates to Internet service provider liability for storing infringing material):

(v) section 92E (which relates to Internet service provider liability for caching infringing material).

(3) In subsection (1), the term **dealt with** means—

(a) sold or let for hire in the course of a business or otherwise; or

(b) offered or exposed for sale or hire in the course of a business.

Compare: Copyright, Designs and Patents Act 1988 ss 32(5), 35(3), 36(5) (UK)

Section 93(2): substituted, on 31 October 2008, by section 54 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 93(2)(n): replaced, on 4 January 2020, by section 6 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

Part 4
Moral rights

Right to be identified as author or director

94 Right to be identified as author or director

(1) Subject to section 97,—

(a) the author of a literary, dramatic, musical, or artistic work that is a copyright work has the right to be identified as the author of the work; and

(b) the director of a film that is a copyright work has the right to be identified as the director of the work,—

in the circumstances described in this section, but the right is not infringed unless it has been asserted in accordance with section 96.

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

(a) the work is published commercially, performed in public, or communicated to the public; or

(b) copies of a film or sound recording including the work are issued to the public.

(3) The author of—

(a) a literary work (other than words intended to be sung or spoken with music); or

(b) a dramatic work—

from which an adaptation is made has the right to be identified as the author of the work from which the adaptation is made whenever any of the events described in subsection (2) occurs in relation to the adaptation of the work.

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

(a) the work is published commercially; or

(b) copies of a sound recording of the work are issued to the public; or

(c) a film whose soundtrack includes the work is shown in public; or

(d) copies of such a film are issued to the public.

(5) The author of—

(a) a musical work; or

(b) a literary work consisting of words intended to be sung or spoken with music—

from which an adaptation is made has the right to be identified as the author of the work from which the adaptation is made whenever any of the events described in subsection (4) occurs in relation to the adaptation of the work.

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

(a) the work is published commercially or exhibited in public; or

(b) a visual image of the work is communicated to the public; or

(c) a film including a visual image of the work is shown in public; or

(d) copies of such a film are issued to the public; or

(e) in the case of a sculpture, a work of architecture in the form of a building or a model for a building, or a work of artistic craftsmanship, copies of a graphic work representing the work, or of a photograph of the work, are issued to the public.

(7) The author of a work of architecture in the form of a building has the right to be identified as such on the building as constructed or, where more than 1 building is constructed to the design, on the first to be constructed.

(8) The director of a film has the right to be identified as the director of the film whenever—

(a) the film is shown in public or communicated to the public; or

(b) copies of the film are issued to the public.

Compare: Copyright, Designs and Patents Act 1988 s 77(1)–(6), (9) (UK)

Section 94(2)(a): amended, on 31 October 2008, by section 55(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 94(6)(b): amended, on 31 October 2008, by section 55(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 94(8)(a): substituted, on 31 October 2008, by section 55(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

95 Content of right to be identified

(1) The right conferred by section 94 on an author or director is as follows:

(a) in the case of commercial publication, or the issue to the public of copies of a film or sound recording, to be identified clearly and reasonably prominently—

(i) in or on each copy published commercially or issued, as the case may be; or

(ii) if identification in or on each copy is not appropriate, in some other manner likely to bring his or her identity to the attention of a person acquiring a copy:

(b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building:

(c) in any other case, to be identified clearly and reasonably prominently in a manner likely to bring his or her identity to the attention of a person seeing or hearing the performance, exhibition, showing, communication work, graphic work, or photograph.

(2) For the purposes of subsection (1), if the author or director, in asserting his or her right to be identified, specifies a pseudonym, initials, or some other particular form of identification, that form shall be used, but, in any other case, any reasonable form of identification may be used.

Compare: Copyright, Designs and Patents Act 1988 s 77(7), (8) (UK)

Section 95(1)(c): amended, on 31 October 2008, by section 56 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

96 Right must be asserted

(1) A person does not infringe the right conferred by section 94 by failing, in the circumstances described in that section, to identify the author as the author of the work or to identify the director as the director of the work, as the case may be, unless the right has been asserted under this section in such a way as to require that person to so identify the author or director.

(2) The right may be asserted generally, or in relation to any specified circumstances,—

(a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his or her right to be identified as the author or director, as the case may be; or

(b) at any time, by instrument in writing signed by the author or director.

(3) The right may be asserted in relation to the public exhibition of an artistic work—

(a) by ensuring that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or her or under his or her direction or control, the author is identified as the author on the original or copy, or on a frame, mount, or other thing to which it is attached; or

(b) by including in any licence by which the author or other first owner of copyright authorises the making of copies of the work a statement signed by or on behalf of the author or other first owner of the copyright that the author asserts his or her right to be identified as the author in the event of the public exhibition of a copy made in pursuance of the licence.

(4) The persons bound by an assertion of the right under subsection (2) or subsection (3) are,—

(a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through the assignee, whether or not the person claiming through the assignee has notice of the assertion; and

(b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought; and

(c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible; and

(d) in the case of an assertion under subsection (3)(b), the person to whom the licence is granted and any person into whose hands a copy made in pursuance of the licence comes, whether or not the person has notice of the assertion.

(5) In an action for infringement of the right, the court shall, in considering remedies, take into account any delay in asserting the right.

Compare: Copyright, Designs and Patents Act 1988 s 78 (UK)

97 Exceptions to right to be identified

(1) The right conferred by section 94 is subject to the exceptions set out in this section.

(2) The right does not apply in relation to—

(a) a computer program; or

(b) a computer-generated work; or

(c) the design of a typeface.

(3) The right is not infringed by an act that, under any of the following provisions of this Act, would not infringe copyright in the work:

(a) section 41 (which relates to incidental copying of a work):

(b) section 42 (which relates to criticism, review, and news reporting):

(c) section 43A (which relates to transient reproduction of work):

(d) section 49 (which relates to things done for the purposes of an examination):

(e) section 59 (which relates to parliamentary and judicial proceedings):

(f) section 60 (which relates to Royal commissions and statutory inquiries):

(g) section 67 (which relates to acts permitted on assumptions as to expiry of copyright or death of author in relation to anonymous or pseudonymous works):

(h) section 81A (which relates to copying sound recordings for private and domestic use).

(4) The right does not apply in relation to any work made for the purpose of reporting current events.

(5) The right does not apply in relation to the publication, in—

(a) a newspaper, magazine, or similar periodical; or

(b) an encyclopaedia, dictionary, yearbook, or other collective work of reference,—

of a literary, dramatic, musical, or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

(6) The right does not apply to any act done by or with the licence of the copyright owner in relation to a work in which copyright first vested in the author's employer under section 21(2) or in the director's employer under section 5(2)(b), if—

(a) the author or director cannot readily be identified at the time of the act; or

(b) in the case of a literary, dramatic, musical, or artistic work—

(i) more than 2 persons were involved in the creation of the work and it is impracticable at the time of the act to identify the respective contributions of each person to the work; and

(ii) the authors have not previously been identified in or on published copies of the work.

(7) The right does not apply in relation to—

(a) a work in which Crown copyright exists under section 26; or

(b) a work in which copyright first vested in an international organisation under section 28,—

unless the author or director has previously been identified as such in or on published copies of the work.

(8) The right does not apply in relation to—

(a) a film that is an advertisement; or

(b) a part of a film, if that part—

(i) appears incidentally in another film, or is included in a communication work; and

(ii) is not a substantial part of the film.

Compare: Copyright, Designs and Patents Act 1988 s 79 (UK)

Section 97(3): substituted, on 31 October 2008, by section 57(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 97(8)(b): substituted, on 31 October 2008, by section 57(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Right to object to derogatory treatment of work

98 Right to object to derogatory treatment of work

(1) For the purposes of this section and section 99,—

(a) the term **treatment** of a work means any addition to, deletion from, alteration to, or adaptation of the work, other than—

(i) a translation of a literary or dramatic work; or

(ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and

(b) the treatment of a work is derogatory if, whether by distortion or mutilation of the work or otherwise, the treatment is prejudicial to the honour or reputation of the author or director;—

and in the following provisions of this section any reference to a **derogatory treatment** of a work shall be construed accordingly.

(2) Subject to section 100 and 101,—

(a) the author of a literary, dramatic, musical, or artistic work that is a copyright work; and

(b) the director of a film that is a copyright work—

has the right not to have his or her work subjected to a derogatory treatment.

Compare: Copyright, Designs and Patents Act 1988 s 80(1), (2), (8) (UK)

99 Content of right to object to derogatory treatment

(1) In the case of a literary, dramatic, or musical work, the right conferred by section 98(2) is infringed by a person who—

(a) publishes commercially, performs in public, or communicates to the public a derogatory treatment of the work; or

(b) issues to the public copies of—

(i) a film or sound recording of; or

(ii) a film or sound recording that includes—

a derogatory treatment of the work.

(2) In the case of an artistic work, the right conferred by section 98(2) is infringed by a person who—

(a) publishes commercially or exhibits in public a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work; or

(b) shows in public a film that includes a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or

(c) in the case of—

(i) a sculpture; or

(ii) a work of architecture in the form of a model for a building; or

(iii) a work of artistic craftsmanship,—

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

(3) Subsection (2) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment the author has the right to require the identification to be removed.

(4) In the case of a film, the right conferred by section 98(2) is infringed by a person who—

(a) shows in public, or communicates to the public, a derogatory treatment of the film; or

(b) issues to the public copies of a derogatory treatment of the film; or

(c) along with the film,—

(i) plays in public or communicates to the public; or

(ii) issues to the public copies of—

a derogatory treatment of the film soundtrack.

(5) The right conferred by section 98(2) extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director of the work, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

(6) The right conferred by section 98(2) is infringed by a person who, in the course of a business,—

(a) possesses; or

(b) sells or lets for hire; or

(c) offers or exposes for sale or hire; or

(d) exhibits in public or distributes—

an object that is, and that the person knows or has reason to believe is, a work or a copy of a work that—

(e) has been subjected to derogatory treatment; and

(f) has been, or is likely to be, the subject of any of the acts described in this section in circumstances infringing the right conferred by section 98(2).

(7) The right conferred by section 98(2) is infringed by a person who does an act described in subsection (1) or subsection (2) or subsection (4) or subsection (6) or who authorises another person to do such an act.

Compare: Copyright, Designs and Patents Act 1988 ss 80(3)–(7), 83 (UK)

Section 99(1)(a): amended, on 31 October 2008, by section 58(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 99(2)(a): amended, on 31 October 2008, by section 58(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 99(4)(a): substituted, on 31 October 2008, by section 58(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 99(4)(c)(i): substituted, on 31 October 2008, by section 58(4) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

100 Exceptions to right to object to derogatory treatment of literary, dramatic, musical, or artistic work

(1) The right conferred by section 98(2) is, in relation to literary, dramatic, musical, or artistic works, subject to the exceptions set out in this section.

(2) The right does not apply to—

(a) a computer program; or

(b) a computer-generated work; or

(c) the design of a typeface.

(3) The right does not apply in relation to the publication, in—

(a) a newspaper, magazine, or similar periodical; or

(b) an encyclopaedia, dictionary, yearbook, or other collective work of reference,—

of a literary, dramatic, musical, or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

(4) The right does not apply in relation to any subsequent exploitation elsewhere, without any modification of the published version, of a work to which subsection (3) applies.

(5) The right is not infringed by an act that, under section 67, would not infringe copyright.

(6) The right does not apply in relation to any work made for the purpose of reporting current events.

(7) The right is not infringed by any act done for the purpose of—

(a) avoiding the commission of an offence; or

(b) complying with a duty imposed by or under any enactment—

if,—

(c) where the author is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the work has been subjected to treatment to which the author has not consented; or

(d) where the author has previously been identified in or on published copies of the work, there is a clear and reasonably prominent indication, given at the time of the act, that the work has been subjected to treatment to which the author has not consented.

(8) The right does not apply to any act done, by or with the licence of the copyright owner, in relation to—

(a) a work in which copyright first vested in the author's employer under section 21(2); or

(b) a work in which Crown copyright exists under section 26; or

(c) a work in which copyright first vested in an international organisation under section 28—

unless the author—

(d) is identified at the time of the act; or

(e) has previously been identified in or on published copies of the work.

(9) Where the right applies under subsection (8), the right is not infringed if,—

(a) where the author is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the work has been subjected to treatment to which the author has not consented; or

(b) where the author has previously been identified in or on published copies of the work, there is a clear and reasonably prominent indication, given at the time of the act, that the work has been subjected to treatment to which the author has not consented.

101 Exceptions to right to object to derogatory treatment of films

(1) The right conferred by section 98(2) is, in relation to films, subject to the exceptions set out in this section.

(2) The right does not apply in relation to any film made for the purpose of reporting current events.

(3) The right is not infringed by any act done for the purpose of,—

(a) in relation to the communication of a film,—

(i) complying with a duty imposed under section 4 of the Broadcasting Act 1989; or

(ii) maintaining standards that are consistent with the observance of good taste and decency and the maintenance of law and order; or

(iii) avoiding the commission of an offence; or

(iv) complying with a duty imposed by or under any enactment—

(b) *[Repealed]*

if,—

(c) where the director is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the film has been subjected to treatment to which the director has not consented; or

(d) where the director has previously been identified in or on published copies of the work, there is a clear and reasonably prominent indication, given at the time of the act, that the film has been subjected to treatment to which the director has not consented.

(4) The right does not apply to any act done, by or with the licence of the copyright owner, in relation to—

(a) a film in which copyright first vested in the director's employer under section 5(2)(b); or

(b) a film in which Crown copyright exists under section 26; or

(c) a film in which copyright first vested in an international organisation under section 28—

unless the director—

(d) is identified at the time of the act; or

(e) has previously been identified in or on published copies of the film.

(5) Where the right applies under subsection (4), the right is not infringed if,—

(a) where the director is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the film has been subjected to treatment to which the director has not consented; or

(b) where the director has previously been identified in or on published copies of the work, there is a clear and reasonably prominent indication, given at the time of the act, that the film has been subjected to treatment to which the director has not consented.

(6) The right is not infringed, in relation to the communication of a film to the public, if the person (**A**) communicating the film—

(a) makes a deletion or any deletions from the film that is or are reasonably required to enable A to—

(i) follow guidelines as to the programmes that may be shown in particular time periods; or

(ii) fit the film into the time scheduled to show it; or

(b) communicates the film in separate parts because of its length; or

(c) uses a clip of a film in an advertisement for the showing of the film.

Compare: Copyright, Designs and Patents Act 1988 ss 81, 82 (UK)

Section 101(3)(a): substituted, on 31 October 2008, by section 59(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 101(3)(b): repealed, on 31 October 2008, by section 59(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 101(6): substituted, on 31 October 2008, by section 59(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

False attribution

102 False attribution of identity of author or director

(1) In this section, the term **attribution**, in relation to a literary, dramatic, musical, or artistic work or a film, means an express or implied statement as to the identity of the author of the work or the director of the film.

(2) A person has the right—

(a) not to have a literary, dramatic, musical, or artistic work falsely attributed to him or her as author; and

(b) not to have a film falsely attributed to him or her as director.

(3) The right conferred by subsection (2) is infringed by a person who—

(a) issues to the public copies of—

(i) a literary, dramatic, musical, or artistic work; or

(ii) a film—

in or on which there is a false attribution; or

(b) exhibits in public—

(i) an artistic work; or

(ii) a copy of an artistic work,—

in or on which there is a false attribution,—

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

(4) A person (**A**) infringes a right under subsection (2) if—

(a) A performs a literary, dramatic, or musical work in public, or shows a film to the public, or communicates the work or film to the public; and

(b) the work or film is accompanied by a false attribution; and

(c) A knows or has reason to believe that the attribution is false.

(5) The right conferred by subsection (2) is infringed by—

(a) the issue to the public; or

(b) the public display—

of material containing a false attribution in connection with any of the acts referred to in subsection (3) or subsection (4).

(6) The right conferred by subsection (2) is infringed by a person who, in the course of a business,—

(a) possesses a copy of—

(i) a literary, dramatic, musical, or artistic work; or

(ii) a film—

in or on which there is a false attribution; or

(b) sells or lets for hire, offers or exposes for sale or hire, exhibits in public, or distributes a copy of—

(i) a literary, dramatic, musical, or artistic work; or

(ii) a film—

in or on which there is a false attribution; or

(c) in the case of an artistic work, possesses the work when there is a false attribution in or on the work; or

(d) sells, or lets for hire, offers or exposes for sale or hire, distributes, or exhibits in public an artistic work in or on which there is a false attribution,—

knowing, or having reason to believe, that there is such an attribution and that the attribution is false.

(7) The right conferred by subsection (2) is infringed by a person who does an act described in this section or who authorises another person to do such an act.

Compare: 1962 No 33 s 62(1), (2); Copyright, Designs and Patents Act 1988 s 84(1)–(5), (7) (UK)

Section 102(4): substituted, on 31 October 2008, by section 60 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

103 False representation as to literary, dramatic, or musical work

(1) In this section, the term **representation**, in relation to a literary, dramatic, or musical work, means an express or implied statement as to the work being an adaptation of a work by a particular author.

(2) A person has the right not to have a literary, dramatic, or musical work falsely represented as being an adaptation of a work of which the person is the author.

(3) The right conferred by subsection (2) is infringed by a person who issues to the public copies of a literary, dramatic, or musical work in or on which there is a false representation, knowing or having reason to believe that the representation is false.

(4) A person (**A**) infringes the right conferred by subsection (2) if A performs in public, or communicates to the public, a literary, dramatic, or musical work, accompanied by a false representation, and A knows or has reason to believe that the representation is false.

(5) The right conferred by subsection (2) is infringed by—

(a) the issue to the public; or

(b) the public display—

of material containing a false representation in connection with any of the acts mentioned in subsection (3) or subsection (4).

(6) The right conferred by subsection (2) is infringed by a person who, in the course of a business,—

(a) possesses a copy of a literary, dramatic, or musical work in or on which there is a false representation; or

(b) sells or lets for hire, offers or exposes for sale or hire, distributes, or exhibits in public a copy of a literary, dramatic, or musical work in or on which there is a false representation,—

knowing, or having reason to believe, that there is such a representation and that the representation is false.

(7) The right conferred by subsection (2) is infringed by a person who does an act described in this section or who authorises another person to do such an act.

Compare: 1962 No 33 s 62(3); Copyright, Designs and Patents Act 1988 s 84(8)(a) (UK)

Section 103(4): substituted, on 31 October 2008, by section 61 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

104 False representations as to artistic work

(1) In this section, the term **representation** means an express or implied statement as to a matter referred to in paragraph (a) or paragraph (b) or paragraph (c) of subsection (2).

(2) The author of an artistic work has the right—

(a) not to have the work falsely represented as the unaltered work of the author if the work has been altered after the author parted with possession of the work; and

(b) not to have a copy of a work that has been altered after the author parted with possession of the work falsely represented as a copy of an unaltered work of the author; and

(c) not to have a copy of an artistic work falsely represented as being a copy made by the author of the artistic work.

(3) The right conferred by subsection (2) is infringed by a person who exhibits in public an artistic work, or a copy of an artistic work, as the case may be, in or on which there is a false representation, knowing or having reason to believe that the representation is false.

(4) The right conferred by subsection (2) is infringed by—

(a) the issue to the public; or

(b) the public display—

of material containing a false representation in connection with any act referred to in subsection (3).

(5) The right conferred by subsection (2) is infringed by a person who, in the course of a business,—

(a) possesses an artistic work or a copy of an artistic work, as the case may be, in or on which there is a false representation or when there is a false representation in or on the work or copy; or

(b) sells or lets for hire, offers or exposes for sale or hire, distributes, or exhibits in public an artistic work or a copy of an artistic work, as the case may be, in or on which there is a false representation or when there is a false representation in or on the work or copy,—

knowing or having reason to believe there is such a representation and that the representation is false.

(6) The right conferred by subsection (2) is infringed by a person who does an act described in this section or who authorises another person to do such an act.

Compare: 1962 No 33 s 62(4), (6); Copyright, Designs and Patents Act 1988 s 84(6), (8)(b) (UK)

Right to privacy of certain photographs and films

105 Right to privacy of certain photographs and films

(1) A person who, for private and domestic purposes, commissions the taking of a photograph or the making of a film has, where copyright exists in the resulting work but is owned by some other person, the right—

(a) not to have copies of the work issued to the public; and

(b) not to have the work exhibited or shown in public; and

(c) not to have the work communicated to the public.

(2) Subject to subsection (3), the right conferred by subsection (1) is infringed by a person who does an act of the kind described in paragraph (a) or paragraph (b) or paragraph (c) of subsection (1).

(3) The right conferred by subsection (1) is not infringed by an act that, under any of the following provisions of this Act, would not infringe copyright in the work:

(a) section 41 (which relates to the incidental copying of a work in an artistic work, film, or communication work):

(b) section 59 (which relates to parliamentary and judicial proceedings):

(c) section 60 (which relates to Royal commissions and statutory inquiries):

(d) section 66 (which relates to acts done under statutory authority):

(e) section 67 (which relates to acts permitted on assumptions as to expiry of copyright or death of the author in relation to anonymous or pseudonymous works).

(4) The right conferred by subsection (1) is infringed by a person who does an act described in subsection (2) or who authorises another person to do such an act.

Compare: Copyright, Designs and Patents Act 1988 s 85 (UK)

Section 105(1)(c): substituted, on 31 October 2008, by section 62(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 105(3)(a): amended, on 31 October 2008, by section 62(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Supplementary provisions

106 Duration of rights

(1) The rights conferred by the following provisions of this Act expire when the copyright in any work that is the subject of the right expires:

(a) section 94 (which relates to the right to be identified as author or director):

(b) section 98 (which relates to the right to object to derogatory treatment of a work):

(c) section 105 (which relates to the right to privacy of certain photographs and films).

(2) The rights conferred by the following provisions of this Act expire at the end of the period of 20 years from the end of the calendar year in which the person who is entitled to the right dies:

(a) section 102 (which relates to false attribution of the identity of an author or director):

(b) section 103 (which relates to a false representation as to literary, dramatic, or musical works):

(c) section 104 (which relates to false representations as to artistic works).

Compare: 1962 No 33 s 62(5); Copyright, Designs and Patents Act 1988 s 86 (UK)

107 Consent and waiver of rights

(1) It is not an infringement of any of the rights conferred by this Part to do any act to which the person who is entitled to the right has consented.

(2) Any of the rights conferred by this Part may be waived by instrument in writing signed by the person waiving the right.

(3) A waiver given pursuant to subsection (2)—

(a) may relate to a specific work, or to works of a specified description that are in existence, in progress, or about to be commenced; and

(b) shall state the rights to which the waiver relates; and

(c) may be expressed to be subject to revocation; and

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

Compare: Copyright, Designs and Patents Act 1988 s 87 (UK)

108 Application of provisions to joint works other than films

(1) This section does not apply to a film.

(2) A consent or waiver under section 107 by one joint author does not affect the rights of the other joint authors.

(3) The right conferred by section 94 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author, and must be asserted in accordance with section 96 by each joint author in relation to himself or herself.

(4) The right conferred by section 98 is, in the case of a work of joint authorship, a right of each joint author.

(5) The right conferred by section 102 is infringed, in the circumstances described in that section,—

(a) by any false statement as to the authorship of a work of joint authorship; and

(b) by the false attribution of joint authorship in relation to a work of sole authorship;—

and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(6) The right conferred by section 103 is infringed, in the circumstances described in that section, by any false representation as to an adaptation of a work of joint authorship, and such a false representation infringes the right of each joint author.

(7) The right conferred by section 104 is infringed, in the circumstances described in that section, by any false representation as to a matter referred to in paragraph (a) or paragraph (b) or paragraph (c) of subsection (2) of that section, and such a false representation infringes the right of each joint author.

(8) The right conferred by section 105 is, in the case of a photograph made in pursuance of a joint commission, a right of each person who commissioned the taking of the photograph, so that—

(a) the right of each person is satisfied if he or she consents to the act in question; and

(b) a waiver under section 107 by one person does not affect the rights of the other persons.

Compare: Copyright, Designs and Patents Act 1988 s 88(1)–(4), (6) (UK)

109 Application of provisions to joint works that are films

(1) Where a film was, or is alleged to have been, jointly directed,—

(a) a consent or waiver under section 107 by one joint director does not affect the rights of the other joint directors; and

(b) the right conferred by section 94 is a right of each joint director to be identified as a joint director, and must be asserted in accordance with section 96 by each joint director in relation to himself or herself; and

(c) the right conferred by section 98 is a right of each joint director; and

(d) the right conferred by section 102 is infringed, in the circumstances described in that section,—

(i) by any false statement as to the directorship of the film; or

(ii) by the false attribution of joint directorship in relation to a film of sole directorship;—

and such a false attribution infringes the right of every person to whom directorship of any description is, whether rightly or wrongly, attributed.

(2) For the purposes of subsection (1), a film is **jointly directed** if the film is made by the collaboration of 2 or more directors and the contribution of each director is not distinct from that of the other director or directors.

(3) The right conferred by section 105 is, in the case of a film made in pursuance of a joint commission, a right of each person who commissioned the making of the film, so that—

(a) the right of each person is satisfied if he or she consents to the act in question; and

(b) a waiver under section 107 by one person does not affect the rights of the other persons.

Compare: Copyright, Designs and Patents Act 1988 s 88(5) (UK)

110 Application of provisions to parts of works

(1) The rights conferred by section 94 or section 105 apply in relation to the whole or any substantial part of a work.

(2) The rights conferred by the following provisions of this Act apply in relation to the whole or any part of a work:

(a) section 98 (which relates to the right to object to derogatory treatment of a work):

(b) section 102 (which relates to false attribution of the identity of an author or director):

(c) section 103 (which relates to a false representation as to literary, dramatic, or musical works):

(d) section 104 (which relates to false representations as to artistic works).

Compare: Copyright, Designs and Patents Act 1988 s 89 (UK)

Part 5
Dealing with rights in copyright works

Licences to deal with copyright works

111 Licences

(1) A licence granted by a copyright owner is binding on every successor in title to that person's interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act to doing anything—

(a) with, or without, the licence of the copyright owner; or

(b) other than pursuant to a copyright licence—

shall be construed accordingly.

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as that licensee has against the copyright owner.

Compare: 1962 No 33 s 56(4); Copyright, Designs and Patents Act 1988 ss 90(4), 92(2) (UK)

112 Warranty implied in certain licences

(1) This section applies to a licence that has been granted for—

(a) the performance or communication to the public of a copyright work that is a literary, dramatic, or musical work or a sound recording or film; or

(b) the inclusion of a copyright work that is an artistic work in a performance or a communication work.

(2) A warranty is implied in the licence that the person by whom or on whose behalf the licence is granted is—

(a) the owner of the copyright in the work, sound recording, or film that is the subject of the licence; or

(b) authorised to grant the licence by the copyright owner.

Section 112: substituted, on 31 October 2008, by section 63 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

112A Damages for falsely claiming copyright ownership or licence

(1) This section applies if—

(a) a person (**A**) falsely claims to be, or to have been granted a licence by or on behalf of, the owner of the copyright in a literary, dramatic, musical, or an artistic work or a sound recording or film; and

(b) A has threatened or commenced proceedings for preventing, or claiming damages in respect of, a performance or communication to the public of the work, sound recording, or film (which in this section is called the **event**); and

(c) as a result of the threat or commencement of proceedings, the event has not taken place.

(2) A court may award damages to compensate any of the following persons for any loss sustained because the event did not take place:

(a) in the case of a threat of proceedings, the person to whom A made the threat:

(b) in the case of the commencement of proceedings, a defendant:

(c) any other person interested in the event.

Section 112A: inserted, on 31 October 2008, by section 63 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

112B Provisions of sections 112 and 112A to have effect no matter what licence says

The provisions of sections 112 and 112A have effect no matter what any licence may say, and extend to all licences whether granted before or after the commencement of this Act.

Section 112B: inserted, on 31 October 2008, by section 63 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Transmission of copyright

113 Transmission of copyright

(1) Copyright is transmissible, as personal or moveable property, by—

(a) assignment; or

(b) testamentary disposition; or

(c) operation of law.

(2) A transmission of copyright may be partial, that is, limited so as to apply—

(a) to 1 or more, but not all, of the things the copyright owner has the exclusive right to do:

(b) to part, but not the whole, of the period for which the copyright is to exist.

Compare: 1962 No 33 s 56(1), (2); Copyright, Designs and Patents Act 1988 s 90(1), (2) (UK)

114 Assignment

An assignment of copyright is not effective unless it is in writing signed by or on behalf of the assignor.

Compare: 1962 No 33 s 56(3); Copyright, Designs and Patents Act 1988 s 90(3) (UK)

115 Copyright to pass under will with unpublished works

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

(a) an original document or other material thing recording or embodying a literary, dramatic, musical, or artistic work that was not published before the death of the testator; or

(b) an original material thing containing a sound recording or film that was not published before the death of the testator,—

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

Compare: 1962 No 33 s 59; Copyright, Designs and Patents Act 1988 s 93 (UK)

116 Future copyright

(1) Future copyright shall be capable of being assigned, wholly or partially, in the same manner and in all respects as if the copyright were then in existence, and on coming into existence the copyright shall vest in the assignee or the assignee's successor in title accordingly.

(2) Sections 111(1), 113(2), and 114 apply to future copyright in the same manner as they apply to existing copyright.

(3) A licence granted by a person to whom future copyright has been assigned is binding on every successor in title to that person's interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act to doing anything—

(a) with, or without, the licence of the copyright owner; or

(b) other than pursuant to a copyright licence—

shall be construed accordingly.

Compare: 1962 No 33 s 57; Copyright, Designs and Patents Act 1988 s 91 (UK)

117 Right to make conditions in respect of certain unpublished works

(1) This section applies where the owner of the copyright in an unpublished literary, dramatic, or musical work, or an unpublished artistic work other than a photograph, has, whether before or after the commencement of this Act, transferred or bequeathed to an institution—

(a) the property in or possession of the manuscript of the literary, dramatic, or musical work or a copy of the manuscript; or

(b) the property in or possession of the artistic work,—

subject to any conditions prohibiting, restricting, or regulating publication of the work for a specified period or without any limit on the period.

(2) While the manuscript, copy, or work is in the possession of the institution, any publication of the work in breach of such a condition by—

(a) the institution owning the manuscript, copy, or work; or

(b) the institution having possession of the manuscript, copy, or work; or

(c) any other person—

shall, notwithstanding that the copyright in the work may have expired, be actionable as if copyright continued to exist in the work and the publication were an infringement of the copyright.

(3) Nothing in this section applies to any publication with the consent of the person who would be the owner of the copyright in the work if the copyright had not expired.

(4) In this section, the term **institution** means the Crown, a local body, a prescribed library or archive within the meaning of section 50, an institution

within the meaning of section 159 of the Education Act 1989, or any other institution prescribed by regulations made under this Act.

Compare: 1962 No 33 s 58

Moral rights

118 Moral rights not assignable

The rights conferred by Part 4 are not assignable.

Compare: Copyright, Designs and Patents Act 1988 s 94 (UK)

119 Transmission of moral rights on death

(1) On the death of a person entitled to the right conferred by section 94 or section 98 or section 105,—

(a) the right passes to such person as he or she may by testamentary disposition specifically direct; or

(b) if there is no such direction but the copyright in the work in question forms part of the estate, the right passes to the person to whom the copyright passes; or

(c) if or to the extent that the right does not pass under paragraph (a) or paragraph (b), the right is exercisable by the personal representatives.

(2) Where—

(a) under subsection (1)(b) any right passes to the person to whom the copyright passes; and

(b) the copyright passes in part to one person and in part to another,—

the right shall pass in the same manner as the copyright.

(3) Where under paragraph (a) or paragraph (b) of subsection (1) a right becomes exercisable by more than 1 person,—

(a) in the case of the right conferred by section 94, the right may be asserted by any of those persons; and

(b) in the case of the right conferred by section 98 or section 105, the right is exercisable by each of those persons and is satisfied in relation to any of those persons if one of them consents to the treatment or act in question; and

(c) any waiver of the right in accordance with section 107 by one of those persons does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passes under subsection (1).

(5) Any infringement after a person's death of the right conferred by section 102 or section 103 or section 104 is actionable by his or her personal representatives.

(6) Any damages recovered by personal representatives in respect of an infringement after the death of a person entitled to a right conferred by Part 4 shall devolve as part of the estate as if the right of action had existed and been vested in the person immediately before his or her death.

Compare: Copyright, Designs and Patents Act 1988 s 95 (UK)

Part 6
Remedies for infringement

Rights and remedies of copyright owner

120 Infringement actionable by copyright owner

(1) An infringement of copyright is actionable by the copyright owner.

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

(3) This section has effect subject to the following provisions of this Part.

Compare: 1962 No 33 s 24(1); Copyright, Designs and Patents Act 1988 s 96 (UK)

121 Provisions as to damages in infringement proceedings

(1) Where, in proceedings for infringement of copyright, it is proved or admitted that at the time of the infringement the defendant did not know, and had no reason to believe, that copyright existed in the work to which the proceedings relate, the plaintiff is not entitled to damages but, without prejudice to the award of any other remedy, is entitled to an account of profits.

(2) In proceedings for infringement of copyright, the court may, having regard to all the circumstances and in particular to—

(a) the flagrancy of the infringement; and

(b) any benefit accruing to the defendant by reason of the infringement,—

award such additional damages as the justice of the case may require.

(3) In proceedings for infringement of copyright in respect of the construction of a building, no injunction or other order shall be made—

(a) after the construction of the building has been begun, so as to prevent the building from being completed; or

(b) so as to require the building, in so far as it has been constructed, to be demolished.

Compare: 1962 No 33 s 24(2)–(4); Copyright, Designs and Patents Act 1988 s 97 (UK)

122 Order for delivery up in civil proceedings

(1) Where a person—

(a) has an infringing copy of a work in that person's possession, custody, or control in the course of a business; or

(b) has in that person's possession, custody, or control an object specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that the object has been or is to be used to make infringing copies,—

the owner of the copyright in the work may apply to the court for an order that the infringing copy or object be delivered up to the copyright owner or such other person as the court may direct.

(2) No order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 134.

(3) A person to whom an infringing copy or other object is delivered up in pursuance of an order under this section shall, if an order under section 134 is not made, retain the copy or object pending the making of an order, or the decision not to make an order, under that section.

(4) Notwithstanding any rule of court, an order may be made pursuant to this section on an *ex parte* application by the copyright owner where service of notice of the application would cause undue delay or other serious detriment to the copyright owner.

(5) Nothing in this section affects any other power of the court.

Compare: Copyright, Designs and Patents Act 1988 s 99 (UK)

Infringing file sharing

Heading: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122A Interpretation for sections 122B to 122U

(1) In this section and sections 122B to 122U, unless the context otherwise requires,—

account holder, in relation to an IPAP, means a person who has an account with the IPAP

detection notice means a detection notice issued by an IPAP to an account holder in respect of an alleged infringement against a rights owner (*see* section 122D)

enforcement notice means an enforcement notice issued by an IPAP to an account holder in respect of at least 3 alleged infringements against a rights owner (*see* section 122F)

file sharing is where—

(a) material is uploaded via, or downloaded from, the Internet using an application or network that enables the simultaneous sharing of material between multiple users; and

(b) uploading and downloading may, but need not, occur at the same time

infringement means an incidence of file sharing that involves the infringement of copyright in a work by a user

infringement notice means a detection notice, a warning notice, or an enforcement notice that—

(a) is issued to an account holder by an IPAP; and

(b) identifies a particular infringement that triggers the notice; and

(c) in the case of a warning notice or an enforcement notice, identifies any other infringements that have occurred since the date of the detection notice

IP address means an Internet protocol address

IPAP, or **Internet protocol address provider**, means a person that operates a business that, other than as an incidental feature of its main business activities,—

(a) offers the transmission, routing, and providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing; and

(b) allocates IP addresses to its account holders; and

(c) charges its account holders for its services; and

(d) is not primarily operated to cater for transient users

on-notice period means the period of 28 days beginning on the date of a detection notice or a warning notice

Example

(1) A detection notice is issued on Monday, 1 March. The on-notice period ends with the close of Sunday, 28 March.

(2) A warning notice is issued on Friday, 16 April. The on-notice period ends with the close of Thursday, 6 May.

quarantine period means a period of 35 days beginning on the date of an enforcement notice

Example

(1) An enforcement notice is issued on Monday, 1 March. The quarantine period ends with the close of Sunday, 4 April.

(2) An enforcement notice is issued on Saturday, 18 December. The quarantine period ends with the close of Friday, 21 January.

rights owner means—

(a) a copyright owner; or

(b) a person acting as agent for 1 or more copyright owners

warning notice means a warning notice issued by an IPAP to an account holder in respect of at least 2 alleged infringements against a rights owner (*see* section 122E).

(2) If a rights owner acts as agent for 1 or more copyright owners,—

(a) a reference to the copyright of a rights owner is to be taken as a reference to the copyright of any of the copyright owners for whom the rights owner acts as agent; and

(b) a reference to infringement against a rights owner is to be taken as a reference to infringement against the copyright of any of the copyright owners for whom the rights owner acts as agent.

(3) In this section and sections 122B to 122U, a reference to the date of an infringement, an infringement notice, a challenge, or a response to a challenge is a reference to,—

(a) in the case of an infringement, the date on which it is recorded by a rights owner as having occurred:

(b) in the case of an infringement notice, the date on which it is issued by the IPAP:

(c) in the case of a challenge made under section 122G, the date on which it is received from an account holder by an IPAP:

(d) in the case of a response to a challenge, the date on which the IPAP receives the response from the rights owner.

(4) Despite section 35(6) of the Interpretation Act 1999, for the purposes of this section and sections 122B to 122U, periods of time end on the day calculated, whether or not that day is a working day.

(5) Examples used in this section and sections 122B to 122U are illustrative only. If an example is inconsistent with any provision, the provision prevails.

Section 122A: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122B Overview of infringing file sharing regime

(1) Sections 122A to 122U provide rights owners with a special regime for taking enforcement action against people who infringe copyright through file sharing.

(2) The regime provides that, at the instigation of rights owners, IPAPs must issue infringement notices to alleged infringers.

(3) The 3 kinds of infringement notices, in the order in which they are given, are a detection notice, a warning notice, and an enforcement notice.

(4) After an enforcement notice is issued to an alleged infringer, the rights owner may take enforcement action by seeking the following orders against the alleged infringer:

(a) an order from the Tribunal for a sum of up to $15,000:

(b) an order from the District Court requiring the IPAP to suspend the account holder's Internet account for up to 6 months.

(5) Time limits apply to all stages of the regime.

(6) This section is by way of explanation only. If any provision is inconsistent with it, the other provision prevails.

Section 122B: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122B(4)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

122C IPAPs to send infringement notices

(1) If a rights owner provides an IPAP with information that identifies an IP address at which an infringement of its copyright is alleged to have occurred as a result of file sharing, the IPAP must—

(a) match the IP address with the account holder to whom it related at the time of the infringement; and

(b) issue the appropriate infringement notice to the account holder no later than 7 days after receiving the information.

Example

An IPAP receives infringement information on Monday, 1 March. The IPAP must issue the infringement notice before the close of Monday, 8 March.

(2) If information from a rights owner indicates that more than 1 infringement against the rights owner has occurred, any infringement notice sent to the account holder must identify the infringement that triggers that infringement notice, which must be the earliest recorded infringement for which the infringement notice could be issued.

(3) An IPAP need not comply with the obligation in subsection (1)(a) to match IP addresses if—

(a) the alleged infringement occurred more than 21 days before the IPAP received the relevant information from the rights owner; or

(b) the alleged infringement occurred after an infringement that triggered a detection notice but before the date of that detection notice; or

(c) the alleged infringement occurred during a quarantine period applying to the account holder with respect to the rights owner; or

(d) the rights owner has not complied with regulations made under section 234 that impose requirements on the information, or form of information, to be provided for the purposes of subsection (1); or

(e) the rights owner has not paid, or has not agreed to pay, a fee required by the IPAP, as permitted by section 122U.

(4) An IPAP need not comply with the obligation in subsection (1)(b) to issue notices if—

(a) any of subsection (3)(a) to (e) applies; or

(b) the alleged infringement occurred within an on-notice period applying to the account holder with respect to the rights owner; or

(c) the rights owner agrees, or asks, that a notice not be issued.

(5) Notices issued to account holders must be sent by whatever method the IPAP uses to communicate with the account holder for billing purposes, unless the account holder and IPAP agree in writing to use a different method.

Section 122C: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122D Detection notices

(1) An IPAP must issue a detection notice in relation to a rights owner to an account holder—

(a) the first time the IPAP matches the account holder with an IP address at which an infringement is alleged by the rights owner to have occurred; and

(b) the first time, following the end of a quarantine period, the IPAP matches the account holder with an IP address at which an infringement is alleged by the rights owner to have occurred.

(2) A detection notice must be in the prescribed form (if a form is prescribed) and must—

(a) identify the rights owner; and

(b) identify the alleged infringement that has triggered the issue of the notice; and

(c) identify the date of that alleged infringement; and

(d) state the date of the detection notice; and

(e) explain the consequences to the account holder if further infringing occurs; and

(f) explain how the account holder may challenge the notice; and

(g) comply with any other requirements that may be prescribed in regulations.

(3) A detection notice expires 9 months after the date of the detection notice, unless the notice expires earlier under section 122F(4).

Section 122D: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122E Warning notices

(1) An IPAP must issue a warning notice in relation to a rights owner to an account holder if—

(a) the IPAP matches the account holder with an IP address at which an infringement is alleged by the rights owner to have occurred; and

(b) the infringement occurred at least 28 days after the date of a detection notice issued to the account holder in relation to the same rights owner, but before that detection notice expires.

Example

A detection notice is issued on Monday, 1 March. It will expire with the close of Wednesday, 1 December. A warning notice can be issued on Monday, 29 March, and at any time up to and including Wednesday, 1 December.

(2) A warning notice must be in the prescribed form (if a form is prescribed) and must—

(a) identify the rights owner; and

(b) identify the infringement that has triggered the issue of the warning notice; and

(c) identify the date of that alleged infringement; and

(d) identify the most recent detection notice issued to the account holder in relation to the rights owner (the **preceding detection notice**); and

(e) identify any other alleged infringements by the account holder against that rights owner that have occurred since the date of the preceding detection notice; and

(f) state the date of the warning notice; and

(g) explain the consequences to the account holder if further infringing occurs; and

(h) explain how the account holder may challenge the notice; and

(i) comply with any other requirements that may be prescribed in regulations.

(3) A warning notice expires 9 months after the date of the preceding detection notice, unless the notice expires earlier under section 122F(4).

Section 122E: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122F Enforcement notices

(1) An IPAP must issue an enforcement notice in relation to a rights owner to an account holder if—

(a) the IPAP matches the account holder with an IP address at which an infringement is alleged by the rights owner to have occurred; and

(b) the infringement occurred at least 28 days after the date of a warning notice issued to the account holder in relation to the same rights owner, but before that warning notice expires.

(2) An enforcement notice must be in the prescribed form (if a form is prescribed) and must—

(a) identify the rights owner; and

(b) identify the infringement that has triggered the issue of the enforcement notice; and

(c) identify the date of that alleged infringement; and

(d) identify the most recent warning notice issued to the account holder in relation to the rights owner, and the preceding detection notice; and

(e) identify any other alleged infringements against the rights owner that have occurred since the date of the preceding detection notice; and

(f) state the date of the enforcement notice; and

(g) explain that enforcement action may now be taken against the account holder; and

(h) explain that, unless the enforcement notice is cancelled, no further infringement notices may be issued in respect of infringements against the rights owner until the end of the quarantine period; and

(i) explain how the account holder may challenge the notice; and

(j) comply with any other requirements that may be prescribed in regulations.

(3) An enforcement notice expires at the end of a period of 35 days beginning on the date of the enforcement notice.

(4) On the date that an enforcement notice expires under subsection (3), the preceding detection notice and warning notice also expire.

(5) On issuing an enforcement notice to an account holder, the IPAP must send a copy of the notice to the relevant rights owner, but must omit any information that discloses the name or contact details of the account holder.

Section 122F: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122G Challenging infringement notices

(1) An account holder may challenge an infringement notice by sending a challenge, in the prescribed form, to the IPAP that issued the infringement notice.

(2) A challenge is not valid if it is received more than 14 days after the date of the infringement notice to which it relates.

(3) An IPAP that receives a valid challenge to an infringement notice must immediately forward it to the relevant rights owner.

Example

A warning notice is issued on Monday, 1 March. A challenge sent before the close of Monday, 15 March is valid and must be forwarded to the rights owner. A challenge received on or after Tuesday, 16 March is not valid.

(4) If the rights owner rejects the challenge,—

(a) it must send to the IPAP a response setting out the rejection and the reasons for it; and

(b) the IPAP must immediately forward the response to the account holder.

(5) If a challenge is rejected, it may be raised again by the account holder in any enforcement proceedings.

Section 122G: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122H Effect of challenge to, and cancellation of, infringement notice

(1) A challenge is deemed to be accepted if it has not been rejected by the relevant rights owner before the close of the 28th day after the date of the infringement notice to which it relates.

Example

A detection notice is issued on Monday, 1 March. A challenge is received by the IPAP on Monday, 15 March. If the challenge is not rejected before the close of Monday, 29 March, it is deemed to be accepted.

(2) If a challenge to a detection notice is accepted or deemed to be accepted,—

(a) the detection notice is cancelled and treated as if it had not been issued; and

(b) no infringements against that rights owner that occurred between the date of the infringement, that triggered the detection notice, and the date on which the detection notice is cancelled may be included in an infringement notice relating to that rights owner.

(3) If a challenge to a warning notice or an enforcement notice is accepted or deemed to be accepted,—

(a) the notice is cancelled and treated as if it had not been issued; but

(b) if the challenge related only to an infringement that was not an infringement that triggered a notice, the notice is not cancelled but the infringement is treated as if it were not included in the notice.

Section 122H: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122I Enforcement action after issue of enforcement notice

(1) A rights owner may take enforcement action against an account holder who has been issued with an enforcement notice in respect of infringements against the rights owner by doing either or both of the following:

(a) applying to the Tribunal for an order under section 122O against the account holder:

(b) applying to the District Court for an order under section 122P against the account holder.

(2) Nothing in sections 122A to 122U affects the rights and remedies of rights owners under any other provision of this Part in relation to any infringement of copyright, whether or not the infringement has been included in an infringement notice.

Section 122I: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122I(1)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

122J Application to Tribunal

(1) After an enforcement notice is issued, any application to the Tribunal for an order under section 122O must be made—

(a) before the end of the quarantine period for the enforcement notice; but

(b) after either—

(i) the last day on which a valid challenge to the enforcement notice could be made; or

(ii) if a valid challenge has been made to the enforcement notice, the last day on which the challenge could be rejected.

Example

An enforcement notice is issued on Monday, 1 March, and—

(1) by the close of Monday, 15 March, no challenges have been received. The rights owner can apply to the Tribunal at any time after that, up until the close of Sunday, 4 April (end of quarantine period); or

(2) on Monday, 15 March, a valid challenge is received. Whether or not the challenge is rejected, the rights owner cannot apply to the Tribunal until after Monday, 29 March (last day on which challenge could be rejected) and must do so before the close of Sunday, 4 April (end of quarantine period).

(2) The application must be in a form approved by the chief executive of the Ministry of Justice after consultation with the chairperson of the Tribunal, and include or be accompanied by—

(a) a copy of the enforcement notice as forwarded to the rights owner; and

(b) evidence that the rights owner is the owner, or acts as agent for the owner, of the material in which copyright is alleged to be infringed; and

(c) a statement of which of the alleged infringements identified in the enforcement notice the rights owner is seeking to enforce; and

(d) a copy of any challenges received by the rights owner in respect of any of those alleged infringements, along with any responses to those challenges; and

(e) a statement of the amount that the rights owner is seeking from the account holder; and

(f) the prescribed fee for the application.

(3) If the Tribunal is satisfied that an enforcement notice has been sent to the account holder in accordance with this Act, the Tribunal must order the relevant IPAP to produce to the Tribunal—

(a) the name and contact details of the account holder; and

(b) copies of the detection and warning notices sent to the account holder.

(4) The IPAP must provide those contact details and notices to the Tribunal as soon as practicable.

(5) If an infringement notice expires, and the notice relates to an application made in accordance with subsection (1), the expiry does not affect the continuation and completion of any proceedings.

Section 122J: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122J(2): amended, on 29 October 2019, by section 6 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

122K Notice of proceedings

(1) The Tribunal must give notice of the proceedings, in a form approved by the chief executive of the Ministry of Justice after consultation with the chairperson of the Tribunal, to the account holder and any parties that the Tribunal directs to be joined.

(2) The notice of proceedings must—

(a) identify all the infringements in relation to which the rights owner seeks an order; and

(b) specify the amount sought; and

(c) set out the account holder's right to make submissions and request a hearing.

(3) The parties to proceedings before the Tribunal for an order under section 122O are—

(a) the applicant rights owner; and

(b) the account holder identified in the enforcement notice; and

(c) any other party that the Tribunal directs be added as a party in accordance with section 212(2).

Section 122K: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122K(1): amended, on 29 October 2019, by section 7 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

122L Decisions generally made on papers and without hearing

(1) Proceedings before the Tribunal for an order under section 122O must be determined on the papers unless—

(a) any party to the proceedings requests a hearing; or

(b) the Tribunal considers that a hearing should be held.

(2) The papers on which the proceedings are determined are—

(a) the rights owner's application to the Tribunal; and

(b) copies of the infringement notices sent to the account holder; and

(c) copies of challenges to any infringement notice, and any responses to those challenges; and

(d) any additional information provided by the rights owner; and

(e) any submissions by the account holder made within the time specified by the Tribunal.

(3) The Tribunal may determine its own procedure for determining an application that is dealt with on the papers, subject to any regulations.

(4) The Tribunal must make all reasonable efforts to ensure that, unless it orders otherwise or an order is made against the account holder, the identity and contact details of the account holder are not disclosed to the rights owner.

Section 122L: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122M If hearing is held

(1) If a hearing is held, sections 211 to 224 apply, other than sections 213(2) and 214(1).

(2) Every party to the proceedings may appear personally and be heard.

(3) A party may not be represented at a hearing by a representative, except as follows:

(a) a corporation or unincorporated body of persons may be represented by an officer, employee, or member of the corporation or body, or a person who holds a majority interest in it:

(b) a person jointly liable or entitled with another or others may be represented by one of the persons jointly liable or entitled:

(c) a partnership may be represented by an employee of a partnership:

(d) a minor, or a person under a disability, may be represented by another person:

(e) if the Tribunal is satisfied that, for sufficient cause, a party is unable to appear in person or is unable to present his or her case adequately, the party may be represented by a representative approved by the Tribunal:

(f) if it appears to the Tribunal to be proper in all the circumstances to allow the party to be represented, the party may be represented by a representative approved by the Tribunal.

(4) A representative may not be a lawyer, unless the Tribunal gives leave.

Compare: 1988 No 110 s 38

Section 122M: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122N Infringement notice as evidence of copyright infringement

(1) In proceedings before the Tribunal, in relation to an infringement notice, it is presumed—

(a) that each incidence of file sharing identified in the notice constituted an infringement of the rights owner's copyright in the work identified; and

(b) that the information recorded in the infringement notice is correct; and

(c) that the infringement notice was issued in accordance with this Act.

(2) An account holder may submit evidence that, or give reasons why, any 1 or more of the presumptions in subsection (1) do not apply with respect to any particular infringement identified in an infringement notice.

(3) If an account holder submits evidence or gives reasons as referred to in subsection (2), the rights owner must satisfy the Tribunal that, in relation to the relevant infringement or notice, the particular presumption or presumptions are correct.

Section 122N: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122O Tribunal order requiring payment to rights owner

(1) The Tribunal must order an account holder to pay a rights owner a sum if the Tribunal is satisfied that—

(a) each of the 3 alleged infringements that triggered the infringement notices issued to the account holder—

(i) was an infringement of the rights owner's copyright; and

(ii) occurred at an IP address of the account holder; and

(b) the 3 notices were issued in accordance with this Act.

(2) The sum specified in the Tribunal order must be determined in accordance with regulations made under this Act and must include a sum in relation to every infringement identified in the enforcement notice that the Tribunal is satisfied was committed against the rights owner at an IP address of the account holder.

(3) If the Tribunal makes an order under subsection (1), it may also make an order requiring the account holder to pay to the rights owner either or both of the following:

(a) a sum representing a contribution towards the fee or fees paid by the rights owner to the IPAP under section 122U:

(b) reimbursement of the application fee paid by the rights owner to the Tribunal.

(4) The total amount ordered by the Tribunal to be paid by the account holder must not exceed $15,000.

(5) Despite subsection (1), the Tribunal may decline to make the order required by that subsection if, in the circumstances of the case, the Tribunal is satisfied that making the order would be manifestly unjust to the account holder.

(6) An order made under this section may be enforced as if it were a judgment for a sum of money made by the District Court.

(7) The Tribunal may award costs against a party to the proceedings only if the Tribunal is satisfied that the party has engaged in conduct intended to impede the prompt determination of the proceedings.

Section 122O: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122O(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

122P Court order suspending account holder's account

(1) The District Court may make a suspension order requiring an IPAP to suspend the Internet account of an account holder.

(2) A suspension order may be for any period up to 6 months.

(3) The court may make an order under this section only if it is satisfied that—

(a) at least 1 enforcement notice has been issued to the account holder in accordance with this Act; and

(b) the account holder has, by way of file sharing (whether as recorded in that enforcement notice or otherwise), infringed the copyright of the rights owner; and

(c) suspension of the account holder's account is justified and appropriate in the circumstances, given the seriousness of the infringing.

(4) When considering the circumstances, and in determining the duration of a proposed suspension, the matters that the court may consider include, but are not limited to,—

(a) the degree of the account holder's reliance on access to the Internet; and

(b) the identity (if known) of the user who engaged in the infringements identified in the notices; and

(c) any other matter that may be specified in regulations; and

(d) whether it would be manifestly unjust to suspend the account holder's account.

(5) An application to the District Court for an order under this section must be made—

(a) by the rights owner whose copyright is alleged to have been infringed; and

(b) no later than 1 month after the rights owner receives the contact details of an account holder from an IPAP following an order made under section 122Q(2).

Section 122P: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122P(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 122P(5): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

122Q Order requiring IPAP to disclose account holder details

(1) This section applies if a rights owner wishes to apply for an order under section 122P against an account holder, but does not know the identity of the account holder.

(2) The District Court may make an order requiring an IPAP to disclose to a rights owner, as soon as practicable, the name and contact details of an account holder if—

(a) the rights owner applies to the District Court for an order under this section; and

(b) the District Court is satisfied, on the basis of information included in the application, that an enforcement notice has been sent to the account holder in accordance with this Act in relation to infringements against the rights owner; and

(c) the rights owner has given an undertaking to the court that, if the account holder's details are released to it, it will use that information only for the purpose of seeking and enforcing an order made under section 122P.

Section 122Q: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122Q(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

122R Suspension orders and orders under section 122Q not available until date set by Order in Council

(1) No person may apply to the District Court for a suspension order under section 122P, or for an order under section 122Q, until after the date set by Order in Council under this section.

(2) The Governor-General may, by Order in Council made on the recommendation of the Minister, set a date after which applications for orders under sections 122P and 122Q may be made.

Section 122R: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122R(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

122S Application of section 122C to cellular mobile networks

(1) An IPAP need not comply with either of the obligations in section 122C(1) in respect of the services it provides by way of a cellular mobile network.

(2) *[Repealed]*

(3) The Governor-General may, by Order in Council made on the recommendation of the Minister, do all or any of the following:

(a) repeal this section:

(b) repeal subsection (2):

(c) amend subsection (2) by replacing the date specified in that subsection with any other date, whether that date is earlier or later than the one it replaces:

(d) revoke or amend any Order in Council made under this section (the **principal order**), but only if the repeal, amendment, or revocation effected by the principal order has not taken effect.

(4) The powers in subsection (3) may be exercised more than once.

Section 122S: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 122S(2): repealed, on 30 September 2015, by clause 3 of the Copyright (Infringing File Sharing and Cellular Mobile Networks) Order 2015 (LI 2015/208).

122T Obligations of IPAPs

(1) Every IPAP must retain, for a minimum of 40 days, information on the allocation of IP addresses to each account holder.

(2) Every IPAP must retain, for a minimum of 12 months, the following information:

(a) any information about infringements that is sent by rights owners to the IPAP for the purpose of matching infringements to account holders:

(b) in relation to each of the IPAP's account holders,—

(i) any infringement notices issued to the account holder; and

(ii) any challenges to infringement notices and any responses to them; and

(iii) which infringement notices (if any) have been cancelled or have expired; and

(iv) any orders made under section 122P suspending an account holder's account.

(3) No IPAP may release the name or contact details of an account holder to a rights owner unless—

(a) authorised to do so by the account holder; or

(b) required to do so by the Tribunal or a court.

(4) On or before 31 December 2012, and annually thereafter, every IPAP must publish on its Internet site a report on its compliance with this section during the period starting on 1 October in the previous year and ending on 30 September in the year of the report.

Section 122T: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

122U Fees payable by rights owners to IPAPs

(1) An IPAP may charge a rights owner for performing the functions required of IPAP under sections 122A to 122T.

(2) If regulations are made that prescribe a rate or rates, or a method or methods for calculating the rate or rates, that may be charged by an IPAP, an IPAP must not charge more than the rate or rates prescribed by, or calculated in accordance with, the regulations.

Section 122U: inserted, on 1 September 2011, by section 6 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Rights and remedies of exclusive licensee

123 Rights and remedies of exclusive licensee

(1) An exclusive licensee has, except against the copyright owner, the same rights and remedies under any of sections 120 to 122P in respect of matters occurring after the grant of the licence as if the licence were an assignment.

(2) The rights and remedies of the exclusive licensee under any of sections 120 to 122P are concurrent with those of the copyright owner.

(3) In proceedings brought by an exclusive licensee pursuant to this section, a defendant may avail himself or herself or itself of any defence that would have been available if the proceedings had been brought by the copyright owner.

Compare: 1962 No 33 s 26(2)(a), (b), (4); Copyright, Designs and Patents Act 1988 s 101 (UK)

Section 123(1): amended, on 1 September 2011, by section 7(1) of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 123(2): amended, on 1 September 2011, by section 7(2) of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

124 Exercise of concurrent rights

(1) Where proceedings for infringement of copyright brought by the copyright owner or an exclusive licensee relate (wholly or partly) to an infringement in

respect of which the copyright owner and the exclusive licensee have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed unless the other is either joined as a plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is joined as a plaintiff or added as a defendant pursuant to subsection (1) is not liable for any costs in the proceedings unless that person takes part in the proceedings.

(3) Subsections (1) and (2) do not affect the granting of interlocutory relief on an application by a copyright owner or exclusive licensee alone.

(4) Whether or not the copyright owner and the exclusive licensee are both parties to proceedings for infringement of copyright that relate (wholly or partly) to an infringement in respect of which they have or had concurrent rights of action,—

(a) the court shall, in assessing damages, take into account—

(i) the terms of the licence; and

(ii) any pecuniary remedy already awarded or available to either the copyright owner or the exclusive licensee in respect of the infringement; and

(b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of either the copyright owner or the exclusive licensee in respect of the infringement; and

(c) the court shall, if an account of profits is directed, apportion the profits between the copyright owner and the exclusive licensee in such manner as the court considers just, subject to any agreement between them.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 122; and the court may on the application of the licensee make such order under that section as it thinks fit having regard to the terms of the licence.

Compare: 1962 No 33 s 26(3)–(8); Copyright, Designs and Patents Act 1988 s 102 (UK)

Rights and remedies in relation to moral rights

125 Infringement of moral rights actionable

(1) An infringement of a right conferred by Part 4 is actionable by the person entitled to the right.

(2) In proceedings for infringement of a right conferred by Part 4, relief by way of damages and injunction is available to the plaintiff.

(3) In proceedings for infringement of the right conferred by section 98(2), the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is

made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

Compare: 1962 No 33 s 62(8); Copyright, Designs and Patents Act 1988 s 103 (UK)

Presumptions

126 Presumptions relevant to literary, dramatic, musical, or artistic works

(1) The presumptions set out in subsections (2) to (5) apply in proceedings brought under this Act with respect to a literary, dramatic, musical, or artistic work.

(2) Where a name purporting to be that of the author appeared on copies of a literary, dramatic, or musical work as published or on an artistic work when it was made, the person whose name appeared shall be presumed, until the contrary is proved,—

(a) to be the author of the work; and

(b) to have made the work in circumstances not falling within subsections (2) and (3) of section 21, or section 26, or section 28.

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.

(4) Where no name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, but—

(a) the work qualifies for copyright under section 19; and

(b) a name purporting to be that of the publisher appeared on copies of the work as first published,—

the person whose name appeared shall be presumed, until the contrary is proved, to represent the author and shall be entitled to protect and enforce the author's rights.

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

(a) that the work is an original work; and

(b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

Compare: 1962 No 33 s 27(2)–(5); Copyright, Designs and Patents Act 1988 s 104 (UK)

127 Presumptions relevant to certain artistic works

(1) This section applies to any proceedings for infringement of copyright in any artistic work of which copies in 3 dimensions have been issued to the public by or with the licence of the owner of the copyright in that artistic work.

(2) In any proceedings to which this section applies, where copies as issued to the public, whether in New Zealand or in any other country, bear a clear and legible label or other mark indicating the following claims, namely,—

(a) that copyright existed in the artistic work of which the copy was made; and

(b) that a named person was the owner of the copyright in the artistic work at the time the copy was issued to the public; and

(c) that a named person was the exclusive licensee of the copyright owner at the time the copy was issued to the public; and

(d) that the copy was first issued to the public in a specified year,—

it shall be presumed until the contrary is proved—

(e) that at all material times the defendant had knowledge of each of the claims specified in paragraphs (a) to (d); and

(f) that the copy was first made available to the public in the year specified.

(3) For the purposes of subsection (2), the symbol "©" on a label or other mark shall be taken to indicate that copyright is claimed to exist in the artistic work of which the copy so labelled or marked is made.

(4) Nothing in this section limits or affects section 126.

Compare: 1962 No 33 s 27A; 1985 No 134 s 7(1)

128 Presumptions relevant to computer programs, sound recordings, and films

(1) In proceedings brought under this Act with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement—

(a) that a named person was the owner of copyright in the program at the date of the issue of the copies in electronic form; or

(b) that copies of the program were first issued to the public in electronic form in a specified year or that the program was first published in a specified country,—

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

(2) In proceedings brought under this Act with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—

(a) that a named person was the owner of copyright in the recording at the date of the issue of the copies; or

(b) that the recording was first published in a specified year or in a specified country,—

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

(3) In proceedings brought under this Act with respect to a film, where copies of the film as issued to the public bear a statement—

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

(b) that a named person was the owner of copyright in the film at the date of the issue of the copies; or

(c) that the film was first published in a specified year or in a specified country,—

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

(4) The presumptions created in subsections (1) to (3) apply in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public in the same manner as they apply in proceedings relating to an infringement alleged to have occurred after the date on which the copies were issued to the public.

(5) In proceedings brought under this Act with respect to a film, where the film as shown in public or communicated to the public bears a statement—

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

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

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

(6) The presumption created by subsection (5) applies in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public or communicated to the public in the same manner as it applies in proceedings relating to an infringement alleged to have occurred after the date on which the film was shown in public or communicated to the public.

Compare: 1962 No 33 s 27(7); Copyright, Designs and Patents Act 1988 s 105 (UK)

Section 128(5): amended, on 31 October 2008, by section 64(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 128(6): amended, on 31 October 2008, by section 64(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

129 Presumptions relevant to works subject to Crown copyright

In proceedings brought under this Act with respect to a literary, dramatic, or musical work in which Crown copyright exists, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.

Compare: Copyright, Designs and Patents Act 1988 s 106 (UK)

130 Unjustified proceedings

(1) Where a person brings proceedings alleging an infringement of copyright or a contravention of section 226A, a court may, on the application of any person against whom the proceedings are brought,—

(a) make a declaration that the bringing of proceedings was unjustified:

(b) make an order for the payment of damages for any loss suffered by the person against whom the proceedings are brought.

(2) A court shall not grant relief under this section if the person who brought the proceedings proves that the acts in respect of which proceedings were brought constituted, or would have constituted if they had been done, an infringement of the copyright concerned.

(3) Nothing in this section makes a barrister or solicitor of the High Court of New Zealand liable to any proceedings under this section in respect of any act done in his or her professional capacity on behalf of a client.

Compare: 1994 No 116 s 40; Copyright, Designs and Patents Act 1988 s 253 (UK)

Section 130(1): amended, on 31 October 2008, by section 65 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Offences

131 Criminal liability for making or dealing with infringing objects

(1) Every person commits an offence against this section who, other than pursuant to a copyright licence,—

(a) makes for sale or hire; or

(b) imports into New Zealand otherwise than for that person's private and domestic use; or

(c) possesses in the course of a business with a view to committing any act infringing the copyright; or

(d) in the course of a business,—

(i) offers or exposes for sale or hire; or

(ii) exhibits in public; or

(iii) distributes; or

(e) in the course of a business or otherwise, sells or lets for hire; or

(f) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner—

an object that is, and that the person knows is, an infringing copy of a copyright work.

(2) Every person commits an offence against this section who—

(a) makes an object specifically designed or adapted for making copies of a particular copyright work; or

(b) has such an object in that person's possession,—

knowing that the object is to be used to make infringing copies for sale or hire or for use in the course of a business.

(3) Subject to subsection (4), every person commits an offence against this section who—

(a) causes a literary, dramatic, or musical work to be performed, where that performance infringes copyright in that work; or

(b) causes a sound recording or film to be played in public or shown in public, where that playing or showing infringes copyright in that sound recording or film,—

knowing that copyright in the work or, as the case requires, the sound recording or film would be infringed by that performance or, as the case requires, that playing or that showing.

(4) Nothing in subsection (3) applies in respect of infringement of copyright by the reception of a communication work.

(5) Every person who commits an offence against this section is liable on conviction—

(a) in the case of an offence against subsection (1), to a fine not exceeding $10,000 for every infringing copy to which the offence relates, but not exceeding $150,000 in respect of the same transaction, or to imprisonment for a term not exceeding 5 years:

(b) in the case of an offence against subsection (2) or subsection (3), to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 5 years.

(6) Where any person is convicted of an offence against this section in circumstances where that offence involves the making of profit or gain, that offence shall be deemed to have caused a loss of property for the purposes of section 32(1)(a) of the Sentencing Act 2002, and the provisions of that Act relating to the imposition of the sentence of reparation shall apply accordingly.

(7) Sections 126 to 129 (which relate to presumptions) do not apply to proceedings for an offence against this section.

(8) *[Repealed]*

Compare: 1962 No 33 s 28(1)–(3), (5); 1990 No 71 s 3; Copyright, Designs and Patents Act 1988 s 107 (UK)

Section 131(4): amended, on 31 October 2008, by section 66 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 131(5): substituted, on 19 May 1998, by section 6(1) of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20).

Section 131(5): amended, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Section 131(5)(a): amended, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Section 131(5)(b): amended, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Section 131(6): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 131(8): repealed, on 19 May 1998, by section 6(2) of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20).

131A Time for laying information

[Repealed]

Section 131A: repealed, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

132 Order for delivery up in criminal proceedings

(1) The court before which proceedings are brought against a person for an offence against section 131 may, if it is satisfied that, at the time of the defendant's arrest or charge,—

(a) the defendant had in the defendant's possession, custody, or control in the course of a business an infringing copy of a copyright work; or

(b) the defendant had in the defendant's possession, custody, or control an object specifically designed or adapted for making copies of a particular copyright work, knowing that the object had been or was to be used to make infringing copies,—

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

(2) An order may be made under subsection (1) by the court of its own motion or on the application of the prosecution, and may be made whether or not the person is convicted of the offence, but shall not be made—

(a) after the end of the period of 6 years from the date on which the infringing copy or object in question was made; or

(b) if it appears to the court unlikely that any order will be made under section 134 in the proceedings.

(3) Sections 126 to 129 (which relate to presumptions) apply in proceedings for an order under this section.

(4) A person to whom an infringing copy or other object is delivered up pursuant to an order made under this section shall retain the copy or object pending the making of an order, or the decision not to make an order, under section 134.

Compare: 1962 No 33 s 28(4); Copyright, Designs and Patents Act 1988 s 108(1), (3), (5) (UK)

133 Liability of officers of body corporate

Where any body corporate is convicted of an offence against section 131, every director and every person concerned in the management of the body corporate shall be guilty of the offence if it is proved—

(a) that the act that constituted the offence took place with his or her authority, permission, or consent; and

(b) that he or she—

(i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and

(ii) failed to take all reasonable steps to prevent or stop it.

Compare: 1991 No 69 s 340

133A Evidence in proceedings

(1) In proceedings for an offence against section 131, whether by way of a hearing in the first instance or by way of appeal or otherwise, the court may receive an affidavit as evidence of the existence and ownership of copyright.

(2) A party to the proceedings may apply to the court to require a person whose evidence has been given by affidavit to attend the proceedings for the purposes of cross-examination; and the court may make an order accordingly.

Section 133A: inserted, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Disposal of infringing copy or other object

134 Order as to disposal of infringing copy or other object

(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 122 or section 132 shall be—

(a) forfeited to the copyright owner; or

(b) destroyed or otherwise dealt with as the court thinks fit.

(2) In considering what order (if any) should be made under subsection (1), the court shall have regard to—

(a) whether other remedies available in proceedings for infringement of copyright would be adequate to compensate the copyright owner and to protect the interests of the copyright owner; and

(b) the need to ensure that no infringing copy is disposed of in a manner that would adversely affect the copyright owner.

(3) The court shall issue directions as to the service of notice on persons having an interest in the copy or other object.

(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;—

and an order made under subsection (1) shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than 1 person interested in a copy or other object, the court may direct that the object be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.

(6) If the court decides that no order should be made under this section, the person in whose possession, custody, or control the copy or other object was before being delivered up is entitled to its return.

Compare: 1962 No 33 s 28(4); Copyright, Designs and Patents Act 1988 s 114 (UK)

Part 6A
Enforcement officers

Part 6A: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Appointment and functions of enforcement officers

Heading: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134A Chief executive may appoint enforcement officers

The chief executive may appoint enforcement officers, on a permanent or temporary basis, to perform the functions set out in section 134C and exercise the powers conferred on an enforcement officer by this Act.

Section 134A: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134B Authority to act as enforcement officer

(1) The chief executive must issue a warrant of appointment to every person appointed as an enforcement officer.

(2) A warrant of appointment must—

(a) be in the prescribed form; and

(b) bear the photograph and signature of the holder; and

(c) contain a statement of the power conferred by section 134D; and

(d) contain any other prescribed particulars.

(3) A warrant of appointment is, in the absence of evidence to the contrary, sufficient proof that the holder of the warrant may exercise the powers conferred on an enforcement officer.

(4) A person who ceases to be an enforcement officer must return the person's warrant of appointment.

(5) A person who fails to comply with subsection (4) commits an offence and is liable on conviction to a fine not exceeding $1,000.

Section 134B: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Section 134B(5): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

134C Functions of enforcement officer

An enforcement officer must, to the extent that is reasonably practicable, promote compliance with this Act by carrying out the following functions:

(a) gathering information relating to offences under this Act:

(b) investigating offences under this Act:

(c) reporting to the chief executive on any matters relating to the enforcement officer's functions.

Section 134C: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Enforcement officer's power of entry and examination without warrant

Heading: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134D Enforcement officer's power of entry and examination without warrant

(1) For the purpose of carrying out his or her functions, an enforcement officer may enter and examine any place (**place A**) where goods are being offered for sale, exposed for sale, or publicly displayed if—

(a) place A is in a public place and the entry is made when place A is open to the public; or

(b) place A is a place of business and the entry is made—

(i) when it is open for carrying on business; and

(ii) only to those parts of it that are open to the public; or

(c) the occupier of place A consents to the entry and examination after the enforcement officer has informed the occupier—

(i) of the purpose of the entry and examination; and

(ii) that the occupier may refuse to give consent to the entry and examination; and

(iii) that the occupier may revoke his or her consent at any time; and

(iv) that any thing seized during the examination may be used in evidence in proceedings.

(2) In subsection (1),—

place A—

(a) includes (without limitation)—

(i) a structure or tent, whether fully or partly erected; and

(ii) a stand or stall; and

(iii) a vehicle; and

(iv) a caravan, trailer, or other conveyance; but

(b) does not include a private dwellinghouse

public place means any place that is open to or being used by the public, with or without payment by the public of a charge.

(3) For the purposes of this section, any person who appears to be under 14 years of age may not be treated as the occupier.

Section 134D: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134E What enforcement officer and person assisting may do when exercising power of entry and examination without warrant

(1) The power of entry and examination conferred by section 134D authorises an enforcement officer to do any of the following:

(a) examine the place and all things, including any document:

(b) seize any thing that he or she has reasonable grounds to believe is evidence of, or of significant relevance to the investigation of, an offence under this Act:

(c) bring and use in or on the place equipment for the purposes of carrying out the examination:

(d) take photographs or sound or video recordings of the place, and of any thing found in that place, if the enforcement officer has reasonable grounds to believe that the photographs or sound or video recordings may be relevant in any proceedings (including future proceedings) related to the entry and examination:

(e) take any person to the place to assist him or her with the examination.

(2) A person who assists an enforcement officer exercising the power of entry and examination may, under the direction of the enforcement officer,—

(a) exercise any of the powers described in subsection (1)(a), (c), and (d); and

(b) seize any thing that the enforcement officer determines may lawfully be seized.

(3) If an enforcement officer enters and examines a place under section 134D(1)(c) and the occupier revokes his or her consent, the officer and any person assisting the enforcement officer must immediately stop the examination and leave the place.

(4) Subsection (3) is subject to subsection (5).

(5) The enforcement officer may, before leaving the place, seize any thing already identified by him or her before the revocation of consent as a thing that he or

she has reasonable grounds to believe is evidence of, or of significant relevance to the investigation of, an offence under this Act.

(6) If a member of the Police assists an enforcement officer, nothing in this section prevents that member of the Police from exercising any power ordinarily exercisable by him or her.

(7) Sections 134P to 134S contain further provisions that apply to an enforcement officer's power of entry and examination.

Section 134E: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Entry and search under search warrant

Heading: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134F Enforcement officer or member of Police may apply for search warrant

(1) An enforcement officer or a member of the Police may apply for a search warrant to search a place or thing.

(2) Any District Court Judge, Justice of the Peace, Community Magistrate, or any Registrar of the District Court (not being a member of the Police) (the **issuing officer**) may, on an application by an enforcement officer or a member of the Police, issue a search warrant to search a place or thing if the issuing officer is satisfied that there are reasonable grounds for believing that—

(a) an offence under this Act has been, or is being, committed at the place or involving the thing; or

(b) there is at, in, on, over, or under the place or thing, any thing that is—

(i) evidence of an offence under this Act; or

(ii) intended to be used for the purpose of committing an offence under this Act.

(3) Sections 134G to 134S apply in respect of every search warrant applied for and issued under this section.

Section 134F: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Section 134F(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

134G Application for search warrant

(1) An application for a search warrant must contain, in reasonable detail, the following particulars:

(a) the name of the applicant:

(b) the provision of this Act authorising the making of the application:

(c) the grounds on which the application is made:

(d) the address or other description of the place or thing proposed to be searched:

(e) a description of the item or items believed to be at, in, on, over, or under the place or thing that are sought by the applicant:

(f) the period for which the warrant is sought:

(g) if the applicant wants to be able to execute the warrant on more than 1 occasion, the grounds on which execution on more than 1 occasion is believed to be necessary.

(2) The issuing officer may require the applicant to supply further information concerning the grounds on which the search warrant is sought.

(3) The applicant must disclose in the application—

(a) details of any other application for a search warrant that the applicant knows to have been made within the previous 3 months in respect of the place or thing proposed to be searched:

(b) the result of that application or those applications.

(4) The applicant must, before making an application for a search warrant, make reasonable inquiries within the agency in which the applicant is employed or engaged for the purpose of complying with subsection (3).

(5) The issuing officer may authorise the search warrant to be executed on more than 1 occasion during the period in which the warrant is in force if he or she is satisfied that this is required for the purposes for which the warrant is being issued.

Section 134G: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134H Mode of application for search warrant

(1) Unless subsection (3) applies, an application for a search warrant—

(a) must be in writing; and

(b) must be in the prescribed form (if any); and

(c) may be transmitted to the issuing officer electronically.

(2) The applicant must appear in person before the issuing officer, unless subsection (3) applies.

(3) An issuing officer may allow an application for a search warrant to be made verbally (for example, by telephone call) and excuse the applicant from making a personal appearance if the issuing officer is satisfied that—

(a) the delay that would be caused by requiring an applicant to appear in person would compromise the effectiveness of the search; and

(b) the question of whether the warrant should be issued can properly be determined on the basis of a verbal communication (including the information described in paragraph (c)); and

(c) the information required by section 134G(1) to (3) has been supplied to the issuing officer.

(4) An issuing officer who allows an application for a search warrant to be made verbally must record the grounds for the application as soon as practicable.

Section 134H: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134I Form and content of search warrant

(1) Every search warrant issued must be in the prescribed form.

(2) Every search warrant issued must be directed generally to every enforcement officer and every member of the Police.

(3) A search warrant—

(a) may be executed by any of the persons to whom it is directed:

(b) may be subject to any conditions specified in the warrant that the issuing officer considers reasonable:

(c) may be executed only once, unless execution on more than 1 occasion is authorised.

(4) Every search warrant must contain, in reasonable detail, the following particulars:

(a) the name of the issuing officer and the date of issue:

(b) the provision of this Act authorising the issue of the warrant:

(c) that the person executing the warrant may use any assistance that is reasonable in the circumstances:

(d) that the person executing the warrant may use any force that is reasonable in the circumstances to enter or break open or access any place being searched, or any area within that place, or any thing being searched or thing found:

(e) the address or description of the place or thing that may be searched:

(f) a description of what may be seized:

(g) the period during which the warrant may be executed, being—

(i) a period specified by the issuing officer not exceeding 14 days from the date of issue; or

(ii) if the issuing officer is satisfied that a period of longer than 14 days is necessary for execution, a period specified by the issuing officer not exceeding 30 days from the date of issue:

(h) any conditions specified by the issuing officer under subsection (3)(b):

(i) if the warrant may be executed on more than 1 occasion, the number of times that the warrant may be executed.

Section 134I: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134J Transmission of search warrant

If it is not possible for the person charged with executing the warrant to have it in his or her possession at the time of execution, 1 of the following documents (which is deemed for all purposes to constitute the warrant) may be executed:

(a) a facsimile or other electronic copy of a warrant issued by the issuing officer:

(b) a copy of the text of a warrant, made at the direction of the issuing officer, and endorsed to that effect by the person who made the copy.

Section 134J: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134K Retention of documents

(1) A copy of every written application for a search warrant or, in the case of a verbal application, the written record of the application made by the issuing officer must be retained at the District Court at which, or the District Court that is closest to the place at which, the application was made, until,—

(a) in a case where a search warrant is issued, the completion of any proceedings in respect of which the search warrant may be in issue; and

(b) in any other case, the expiry of 2 years after the documents were first retained by the District Court.

(2) An applicant to whom a search warrant is issued must retain the warrant, a copy of the application (if made in written form), and all documents tendered by the applicant in support of the application until,—

(a) in the case of a warrant that is executed, the completion of any proceedings in respect of which the validity of the warrant may be in issue; and

(b) in any other case, the destruction or transfer of the warrant and other documents is required by the Public Records Act 2005 or any other enactment or rule of law.

Section 134K: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134L When search warrant is executed

A search warrant is executed when the person executing the warrant—

(a) has seized all the items specified in the warrant; or

(b) leaves the place or thing being searched and does not return within 4 hours.

Section 134L: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134M Powers of entry and search under warrant

(1) Every search warrant authorises the person executing it to do any of the following:

(a) to enter and search the place or thing that the person is authorised to enter and search, and any item or items found in that place, at any time that is reasonable in the circumstances:

(b) to request any person to assist with the entry and search (including, without limitation, a member of a hapū or an iwi if the place to be entered is of cultural or spiritual significance to that hapū or iwi):

(c) to use any force that is reasonable for the purposes of the entry and search:

(d) to seize any thing authorised to be seized:

(e) to bring and use in or on the place or thing searched any equipment, to use any equipment found on the place or thing, and to extract any electricity from the place or thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search:

(f) to copy any document, or part of a document, that may lawfully be seized:

(g) to take photographs or sound or video recordings of the place or thing searched, and of any thing found in that place, if the person exercising the power has reasonable grounds to believe that the photographs or sound or video recordings may be relevant in any proceedings related to the entry and search.

(2) The person executing the warrant may, in a manner and for the duration that is reasonable for the purposes of carrying out the search,—

(a) secure the place or thing searched, any area within that place or thing, or any thing found within that place or thing; and

(b) exclude any person from the place or thing searched, or from any area within the place or thing, or give any other reasonable direction to such a person, if the person carrying out the search has reasonable grounds to believe that the person will obstruct or hinder the exercise of the power.

(3) The powers conferred by this section are subject to any conditions imposed under section 134I(3)(b).

(4) Section 198B of the Summary Proceedings Act 1957 applies with all necessary modifications as if for each reference to a constable there were substituted a reference to the person authorised to execute the search warrant.

Section 134M: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134N Powers of persons called to assist

(1) Every person called on to assist a person executing a warrant is subject to the control of the person executing the warrant.

(2) Every person called on to assist a person executing a warrant may do any of the following:

(a) enter the place or thing to be searched:

(b) while in the company and under the direction of the person executing the warrant, use reasonable force in respect of any property for the purposes of carrying out the entry and search:

(c) search areas within the place or thing that the person executing the warrant determines may lawfully be searched:

(d) seize any thing that the person executing the warrant determines may lawfully be seized:

(e) take photographs and sound and video recordings of the place or thing and things found in the place or thing if the person executing the warrant determines that those things may lawfully be done:

(f) bring in or on to the place or thing and use any equipment, make use of any equipment found on the place or thing, or extract electricity from the place or thing for the purposes of operating the equipment that the person executing the warrant determines may lawfully be used:

(g) copy any document, or part of a document, that the person executing the warrant determines may lawfully be copied.

(3) If a member of the Police is assisting another person executing the warrant, that member of the Police may exercise any power ordinarily exercisable by him or her.

(4) The person executing the warrant must—

(a) accompany any assistant on the first occasion when the assistant enters the place or thing to be searched; and

(b) provide such other supervision of any assistant as is reasonable in the circumstances.

Section 134N: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

General provisions that apply to powers of entry and search and entry and examination

Heading: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134O Application of sections 134P to 134S

(1) Sections 134P to 134S apply in respect of every search warrant issued under this Act.

(2) Sections 134P(1) and 134Q to 134S apply in respect of the power of entry and examination conferred by section 134D.

(3) In sections 134P to 134S—

(a) **power of entry and search** means the power of entry and search under a search warrant issued under this Act; and

(b) **power of entry and examination** means the power of entry and examination under section 134D.

Section 134O: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134P Powers and duties of person exercising power of entry and search or power of entry and examination

(1) A person exercising a power of entry and search or a power of entry and examination must,—

(a) before initial entry into or onto the place or thing to be searched or examined,—

(i) announce his or her intention to enter and search or to enter and examine the place or thing under a statutory power; and

(ii) identify himself or herself; and

(b) before or on initial entry into or onto the place or thing to be searched or examined,—

(i) give the occupier of the place or thing a copy of the search warrant or, in the case of an examination, a copy of section 134D, (the **authority**) that authorises him or her to conduct the entry and search or entry and examination; and

(ii) produce to the occupier of the place or thing evidence of his or her identity (which may include details of a unique identifier instead of a name).

(2) The person exercising a power of entry and search is not required to comply with subsection (1) if he or she believes on reasonable grounds that—

(a) no person is lawfully present in or on the place or thing to be searched; or

(b) compliance with subsection (1) would—

(i) endanger the safety of any person; or

(ii) prejudice the successful exercise of the power of entry and search; or

(iii) prejudice ongoing investigations under this Act.

(3) The person exercising a power of entry and search may use reasonable force in order to effect entry into or onto the place or thing if—

(a) subsection (2) applies; or

(b) following a request, the person present refuses entry or does not allow entry within a reasonable time.

(4) If the occupier is not present at any time during the exercise of a power of entry and search, the person carrying out the search must,—

(a) on completion of the search, leave a copy of the authority referred to in subsection (1)(b)(i) and the notice referred to in subsection (5) in a prominent position at the place or on the thing; or

(b) if this is not reasonably practicable, provide the copy of the authority referred to in subsection (1)(b)(i) and the notice referred to in subsection (5) to the occupier no later than 7 days after the execution of the warrant.

(5) The notice required by subsection (4) is a written notice containing the following particulars:

(a) the date and time of the commencement and completion of the search:

(b) the name or unique identifier of the person who had overall responsibility for that search:

(c) the address of the office to which inquiries should be made:

(d) if nothing is seized, the fact that nothing was seized:

(e) if any thing was seized, the fact that seizure occurred and, if an inventory is not provided at the same time under section 134Q, that an inventory of the things seized will be provided to the occupier or person in charge of the place or thing no later than 7 days after the seizure.

(6) For the purposes of this section and section 134Q, any person who appears to be under 14 years of age may not be treated as the occupier.

(7) Subsections (4) and (5) are subject to sections 134R and 134S.

Section 134P: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134Q Inventory of things seized

(1) A person who exercises a power of entry and search or a power of entry and examination must, at the time he or she seizes any thing, or as soon as practicable after the seizure of any thing, and in any case not later than 7 days after that seizure, provide to the occupier, and to every other person whom the person who carried out the search or examination has reason to believe is the owner of the thing that was seized,—

(a) written notice specifying what was seized; and

(b) a copy of the authority referred to in section 134P(1)(b)(i).

(2) A written notice referred to in subsection (1)(a)—

(a) must contain information about the extent to which a person from whom a thing was seized or the owner of the thing has a right—

(i) to have access to the thing; and

(ii) to have access to any document relating to the application for a search warrant or the exercise of the power of entry and examination that led to the seizure; and

(b) must contain information about the right to bring a claim that any privileged or confidential information has been seized; but

(c) need not be provided to the occupier if the person who carries out the search or examination is satisfied that none of the things seized are owned by the occupier.

(3) If the occupier is not present at the time of seizure, the written notice referred to in subsection (1)(a) and a copy of the authority referred to in section 134P(1)(b)(i) may be provided to the occupier by leaving the notice in a prominent position at the place or on the thing.

(4) A person who exercises a power of entry and search or a power of entry and examination must make reasonable inquiries for the purposes of complying with subsections (1) and (2).

(5) Subsection (1) is subject to subsections (2) and (3).

(6) This section is subject to sections 134R and 134S.

Section 134Q: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134R Compliance with certain provisions may be deferred in certain circumstances

(1) A person exercising a power of entry and search or a power of entry and examination may apply to a District Court Judge for an order postponing the obligation to comply with section 134P(4) or (5) (in the case of a power of entry and search) or 134Q on the grounds that compliance would—

(a) endanger the safety of any person; or

(b) prejudice ongoing investigations under this Act or exercises of the power of entry and search or the power of entry and examination on subsequent occasions.

(2) An application may be made under subsection (1),—

(a) in the case of a search warrant, at the time of the initial application or until the expiry of 7 days after the warrant is finally executed; and

(b) in the case of the power of entry and examination, until the expiry of 7 days after the power of entry and examination is exercised.

(3) On an application under subsection (1), the District Court Judge may make an order postponing for a specified period not exceeding 12 months the obligation to comply with section 134P(4) or (5) or 134Q, if the Judge is satisfied on either ground set out in subsection (1).

Section 134R: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134S Further extension to, or dispensation from, obligation to comply with certain provisions

(1) A person who has obtained an order under section 134R(3) may, before the expiry of that order, apply to a District Court Judge for a further order for postponement of, or dispensation from, the obligation to comply with section 134P(4) or (5) or 134Q on the grounds set out in section 134R(1).

(2) An application for a further postponement may only be made on 1 occasion.

(3) On an application under subsection (1), the District Court Judge may postpone for a further specified period not exceeding 12 months, or order a permanent dispensation from, the obligation to comply with section 134P(4) or (5) or 134Q, if the Judge is satisfied on either ground set out in section 134R(1).

(4) A District Court Judge may not grant, under subsection (3), any postponement of, or dispensation from, an obligation in respect of any thing that has been seized, unless the thing seized is a copy of any information taken or made.

Section 134S: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Provisions relating to things seized

Heading: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134T Period things seized may be retained

(1) A thing seized under this Act may be retained by the Commissioner of Police or by the chief executive while it is required for the purposes of investigating or prosecuting an offence under this Act.

(2) Subsection (1) is subject to—

(a) any order of the court under section 134U; and

(b) section 134W.

(3) If a thing seized is no longer required for the purposes of investigating or prosecuting an offence under this Act, the Commissioner of Police or chief executive must return it to the person he or she believes is entitled to it.

(4) The Commissioner of Police or chief executive may apply to the court for an order for directions as to the disposal of the thing if—

(a) the person who is entitled to it cannot be found; or

(b) the Commissioner of Police or chief executive is in doubt about who is entitled to it.

(5) On an application under subsection (4), the court may make such order concerning the disposal of the thing that it thinks appropriate in the circumstances.

Section 134T: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134U Application for order to return things seized

(1) A person who claims to be entitled to a thing seized may apply to the court for an order that the thing be delivered to him or her.

(2) On an application under subsection (1), the court may make an order for delivery of the thing to the applicant if it is satisfied—

(a) that the applicant is the person entitled to it; and

(b) that it would be contrary to the interests of justice for the thing to be retained, having regard to—

(i) the gravity of the alleged offence in respect of which the thing is being retained; and

(ii) any loss or damage to the applicant caused, or likely to be caused, by retention of the thing; and

(iii) the likely evidential value of the thing, having regard to any other evidence held by the Commissioner of Police or the chief executive, as the case may be; and

(iv) whether the evidential value of the thing can be adequately preserved by means other than its retention.

Section 134U: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134V Disposal of things seized

(1) In any proceedings for an offence relating to a thing seized, the court may, either at the trial or on an application, order—

(a) that the thing be delivered to the person who appears to the court to be entitled to it; or

(b) that the thing be destroyed or otherwise disposed of in the manner that the court thinks appropriate; or

(c) if a person is convicted of an offence to which the thing relates,—

(i) that the thing be forfeited to the copyright owner; or

(ii) that the thing be destroyed or otherwise disposed of as the court directs at the expense of the convicted person.

(2) In considering what order, if any, should be made under subsection (1)(c)(ii), the court must consider the need to ensure that no infringing goods are disposed of in a manner that would adversely affect the copyright owner.

(3) If the court makes an order under subsection (1)(c), it may order that the convicted person pay any reasonable costs incurred by the Commissioner of Police or chief executive in retaining the thing for the purpose of the proceedings.

(4) If no order for delivery, forfeiture, destruction, or other disposal is made in respect of a thing seized and retained for the purpose of proceedings, it must,

on completion of the proceedings, be returned by the Commissioner of Police or chief executive to the person entitled to it.

(5) The Commissioner of Police or chief executive may apply to the court for an order for directions as to the disposal of the thing if—

(a) the person who is entitled to it cannot be found; or

(b) the Commissioner of Police or chief executive is in doubt about who is entitled to it.

(6) On an application under subsection (5), the court may make any order concerning the disposal of the thing that it thinks appropriate in the circumstances.

Section 134V: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134W Disposal of perishable things

If, in the opinion of the Commissioner of Police or chief executive, a thing seized may rot, spoil, deteriorate, or otherwise perish, he or she may dispose of it in the way and at the price (if any) or the cost he or she may determine.

Section 134W: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Other powers of enforcement officers

Heading: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134X Enforcement officer may apply for production order

(1) If an enforcement officer believes on reasonable grounds that a person has in his or her possession, custody, or control, 1 or more documents that are evidence of, or may be of significant relevance to the investigation of, an offence against any of sections 131, 198, or 226C, the enforcement officer may apply to a District Court Judge for an order requiring the person to produce the documents for inspection by an enforcement officer.

(2) An application by an enforcement officer for an order under subsection (1) must—

(a) be in writing; and

(b) be in the prescribed form (if any); and

(c) be made on oath; and

(d) set out, in reasonable detail, the grounds for the application; and

(e) provide details of the documents in respect of which the order is sought.

Section 134X: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134Y Judge may order documents to be produced

(1) If an application is made under section 134X and the District Court Judge is satisfied that there are reasonable grounds to believe that the person in respect of whom the order is sought has in that person's possession, custody, or control, 1 or more documents that are evidence of, or may be of significant relevance to the investigation of, an offence against any of sections 131, 198, or 226C, the District Court Judge may order the person to produce those documents for inspection by an enforcement officer.

(2) An order under subsection (1)—

(a) must be in the prescribed form (if any); and

(b) must specify—

(i) when the documents are to be produced for inspection; and

(ii) the place where the documents are to be produced for inspection; and

(iii) the enforcement officer to whom the documents are to be produced for inspection; and

(c) may be subject to any further terms and conditions the District Court Judge thinks fit.

Section 134Y: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134Z Powers of enforcement officer to whom documents produced

An enforcement officer to whom any document is produced for inspection under an order under section 134Y may do 1 or more of the following:

(a) inspect the document:

(b) take extracts from the document:

(c) make copies of the document.

Section 134Z: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134ZA Offence of failing to comply with order to produce documents

(1) No person may, without reasonable excuse, fail to comply with an order under section 134Y.

(2) Every person who breaches subsection (1) commits an offence and is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding $10,000; and

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Section 134ZA: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Section 134ZA(2): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Powers of Police

Heading: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134ZB Powers of Police

Every member of the Police has all, and may exercise any, of the powers of an enforcement officer under this Part.

Section 134ZB: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Miscellaneous

Heading: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134ZC Privilege against self-incrimination

(1) An order under section 134Y does not affect the privilege against self-incrimination that an individual may have under section 60 of the Evidence Act 2006.

(2) Any assertion of a privilege against self-incrimination must be based on section 60 of the Evidence Act 2006.

(3) If any individual refuses to produce a document on the ground that it is a privileged communication under section 60 of the Evidence Act 2006, an enforcement officer or a member of the Police may apply to a District Court Judge for an order determining whether the claim of privilege is valid; and, in respect of any such application, the individual must offer sufficient evidence to enable the District Court Judge to assess whether self-incrimination would be reasonably likely if the individual produced the document.

(4) To avoid doubt, nothing in this section affects the application of section 65 of the Evidence Act 2006 (which relates to waiver of privilege) in respect of the privilege against self-incrimination that a person may have under section 60 of that Act.

(5) Section 63 of the Evidence Act 2006 does not apply to an order made under section 134Y.

Section 134ZC: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134ZD Other privileges

(1) If, in a criminal proceeding, a person could assert a privilege under section 54 or 56 of the Evidence Act 2006 in respect of a communication or information, that person has the same privilege for the purposes of an examination under

section 134D, a search warrant issued under section 134F, and an order made under section 134Y.

(2) Subsection (3) applies to documents that are books of account or accounting records referred to in section 55(1) of the Evidence Act 2006.

(3) The application, by subsection (1), of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—

(a) the issue or execution of a search warrant under section 134F; or

(b) the making of an order under section 134Y; or

(c) the admissibility, in a criminal proceeding under this Act, of any evidence that relates to the contents of a document to which this subsection applies obtained as a result of a search warrant issued under section 134F or an order made under section 134Y.

(4) A person who has a privilege under this section has the right—

(a) to prevent the examination under section 134D, or the search under a warrant issued under section 134F, or to refuse production under an order made under section 134Y of any communication or information to which the privilege would apply if it were sought to be disclosed in a criminal proceeding; and

(b) to require the return of any such communication or information if it is seized by a person exercising the power of examination under section 134D or search under a warrant issued under section 134F pending determination of the claim to privilege.

(5) If a person asserts a claim to privilege under this section in respect of any communication or information, an enforcement officer or a member of the Police may apply to a District Court Judge for an order determining whether or not the claim to privilege is valid; and, for the purpose of determining any such application, the District Court Judge may require the communication or information to be produced to him or her.

(6) A District Court Judge may, on the application of an enforcement officer or a member of the Police, disallow a privilege claimed under this section if the Judge is satisfied that the claim to privilege would, under section 67(1) of the Evidence Act 2006, be disallowed in a proceeding.

(7) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this section.

Section 134ZD: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134ZE Disclosure of information

(1) The chief executive (or any employee of the Ministry authorised in that behalf), the chief executive of the New Zealand Customs Service (or any

employee of the New Zealand Customs Service authorised in that behalf), and the Commissioner of Police (or any member of the Police authorised in that behalf) may disclose information to each other, on request, for the purpose of investigating and prosecuting offences under this Act.

(2) Information obtained under subsection (1) must not be disclosed except—

(a) to the persons authorised under that subsection; or

(b) for the purpose of any proceedings that have been commenced or that are reasonably in contemplation and that are connected with a matter in relation to which those persons perform their duties.

(3) No obligation as to secrecy or other restriction on the disclosure of information imposed by any enactment or otherwise prevents a disclosure under this section.

Section 134ZE: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

134ZF No liability if functions performed or powers exercised in good faith

(1) This section applies to—

(a) an enforcement officer:

(b) a person who assists an enforcement officer or a member of the Police under this Part:

(c) a member of the Police who exercises any power of an enforcement officer under this Part.

(2) No person to whom this section applies is liable for any act done or omitted to be done by the person in the performance or intended performance of his or her functions or the exercise or intended exercise of his or her powers under this Act if the person acted—

(a) in good faith; and

(b) in a reasonable manner; and

(c) in the reasonably held belief that the prerequisites for the performance of any function or the exercise of any power had been satisfied.

Section 134ZF: inserted, on 7 October 2011, by section 6 of the Copyright Amendment Act 2011 (2011 No 72).

Part 7
Border protection measures

135 Definitions

In this Part, unless the context otherwise requires,—

accepted notice means a notice given under section 136(1) that has been accepted by the chief executive under section 136(3)

chief executive has the meaning given to it by section 5(1) of the Customs and Excise Act 2018

claimant means a person who gives a notice under section 136(1)

control of the Customs is to be read in accordance with the definition of subject to the control of Customs in section 6 of the Customs and Excise Act 2018

court means the High Court

Customs means the New Zealand Customs Service

Customs officer has the meaning given to it in section 5(1) of the Customs and Excise Act 2018

exporter has the meaning given to it in section 5(1) of the Customs and Excise Act 2018

importer has the meaning given to it in section 5(1) of the Customs and Excise Act 2018

pirated copy—

(a) means any copy of a copyright work that is a literary, dramatic, musical, or artistic work or the typographical arrangement of a published edition or a sound recording or a film, where the copy is made—

(i) directly or indirectly from the copyright work; and

(ii) without the licence of the person who owns, in the country where the copy is made, the copyright in the work; and

(iii) in circumstances in which the making of the copy—

(A) constitutes an infringement of copyright under this Act; or

(B) would, if it had been done in New Zealand, have constituted an infringement of copyright under this Act; and

(b) includes any illicit recording within the meaning of section 169, including any illicit recording that is a copyright work sold in a country other than New Zealand by or with the licence of the owner of the copyright in the work in that country; but

(c) does not include—

(i) any other copyright work sold in a country other than New Zealand by or with the licence of the owner of the copyright in the work in that country; or

(ia) any other work that is not an infringing copy within the meaning of section 12.

(ii) *[Repealed]*

specified item means an item imported, or to be exported, other than for private and domestic use

Section 135 **accepted notice**: inserted, on 16 September 2011, by section 7 of the Copyright Amendment Act 2011 (2011 No 72).

Section 135 **chief executive**: inserted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 135 **chief executive**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 135 **collector**: repealed, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 135 **Comptroller**: repealed, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 135 **control of the Customs**: substituted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 135 **control of the Customs**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 135 **Customs**: inserted, on 16 September 2011, by section 7 of the Copyright Amendment Act 2011 (2011 No 72).

Section 135 **Customs officer**: inserted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 135 **Customs officer**: amended, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 135 **exporter**: inserted, on 30 December 2018, by section 9(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 135 **importer**: inserted, on 30 December 2018, by section 9(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 135 **officer of Customs**: repealed, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 135 **pirated copy** paragraph (a)(iii): replaced, on 30 December 2018, by section 9(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 135 **pirated copy** paragraph (c)(ia): inserted, on 19 May 1998, by section 7 of the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20).

Section 135 **pirated copy** paragraph (c)(ii): repealed, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Section 135 **specified item**: inserted, on 30 December 2018, by section 9(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

135A Detention of items suspected of being pirated copies

(1) Any item in the control of the Customs may be detained in the custody of the chief executive or a Customs officer if a Customs officer has reasonable cause to suspect that the item is a pirated copy.

(2) The chief executive must, as soon as is reasonably practicable after the item is detained, take reasonable steps to notify the detention to—

(a) the owner of the copyright (to enable that person to consider whether to give a notice under section 136(1)); and

(b) the importer or exporter from whom the item has been detained, if that person is identified but was not present when the detention took place.

(3) The detention of an item under subsection (1) is not rendered illegal by a failure to serve notice under subsection (2)(a) or (b).

Section 135A: inserted, on 30 December 2018, by section 10 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

135B Notice

(1) The chief executive may give notice to a person under section 135A(2)(a) or (b)—

(a) by personal delivery to the person; or

(b) by posting it to the last known address of the person; or

(c) by sending it by fax to the last known fax number of the person; or

(d) if the person has a known email address, by sending it to the person at that address by email.

(2) A notice that is posted to a person must be treated as received by the person when it would have been delivered in the ordinary course of post and, in proving delivery,—

(a) it is sufficient to prove that the letter was properly addressed and posted; and

(b) in the absence of proof to the contrary, the notice must be treated as having been posted on the day on which it was dated.

(3) A notice that is sent to a person at a fax number must, in the absence of proof to the contrary, be treated as received by the person on the day after the date on which it is sent, and in proving sending, it is sufficient to prove that a fax machine generated a record of the transmission of the notice to the fax number.

(4) A notice that is sent to a person by email must, in the absence of proof to the contrary, be treated as received by the person not later than 2 days after the date on which it is sent.

Section 135B: inserted, on 30 December 2018, by section 10 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

135C Release of items

(1) The item is no longer detained under section 135A(1) if—

(a) no notice under section 136(1) is given in respect of the item within 3 working days after the date on which the notice was given under section 135A(2)(a); or

(b) a notice under section 136(1) is given in respect of the item within 3 working days after the date on which the notice was given under section 135A(2)(a) and—

(i) the notice given under section 136(1) is subsequently accepted under section 136(3) and the item is subsequently detained under section 140; or

(ii) the notice given under section 136(1) is subsequently declined under section 136(3); or

(c) the chief executive considers that it is not reasonably practicable for notice to be given under section 135A(2)(a); or

(d) the chief executive considers that there is no longer a reason to detain the item.

(2) The chief executive must release any item no longer detained under section 135A(1) to the person entitled to it.

(3) However, the chief executive may release an item under subsection (2) only if the item is not detained under section 140 and if—

(a) any other legal requirements as to importation or exportation of the item are satisfied; and

(b) any requirements, made pursuant to any regulations made under this Act, requiring the deposit of a security have been satisfied; and

(c) the release of the item is not otherwise contrary to law.

Section 135C: inserted, on 30 December 2018, by section 10 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

136 Notice may be given to chief executive

(1) A person who owns the copyright in any 1 or more literary, dramatic, musical, or artistic works, or 1 or more typographical arrangements of a published edition, or 1 or more sound recordings or films may give a notice in writing to the chief executive—

(a) claiming that an item is a work, or items are works, as the case may be, in which the person owns the copyright; and

(b) requesting the chief executive to detain any pirated copies of the item or items, as the case may be, that are in, or at any time come into, the control of the Customs.

(2) A notice under subsection (1) shall—

(a) contain such particulars in support of the claim that the item is a pirated copy, or items are pirated copies, as the case may be, as may be prescribed in regulations made under this Act; and

(b) specify the period for which the notice is to be in force, which period shall be—

(i) not longer than 5 years from the date of the notice; or

(ii) if the copyright in the work or any of the works to which the notice relates will expire within the period of 5 years from the date of the notice, not longer than the period for which that copyright will last.

(3) The chief executive shall, in relation to any notice given under subsection (1),—

(a) accept the notice if the claimant and the notice given by the claimant comply with the requirements of this section and any regulations made under this Act:

(b) decline the notice if the claimant or the notice given by the claimant does not comply with the requirements of this section and any regulations made under this Act,—

and shall within a reasonable period of receiving the notice advise the claimant whether the notice has been accepted or declined.

(4) *[Repealed]*

Section 136: substituted, on 1 October 1996, by section 2 of the Copyright Amendment Act 1996 (1996 No 28).

Section 136(4): repealed, on 16 September 2011, by section 8 of the Copyright Amendment Act 2011 (2011 No 72).

136A Chief executive may suspend accepted notice

(1) The chief executive may suspend an accepted notice if the chief executive is satisfied that—

(a) the information held in respect of the accepted notice is not correct or is no longer current; or

(b) there has been a failure to comply with a requirement concerning the giving of security or indemnity or both; or

(c) there has been a failure to comply with an obligation under an indemnity given for an amount in respect of the accepted notice.

(2) Before suspending an accepted notice, the chief executive must—

(a) give written advice of the chief executive's intention to suspend the accepted notice to—

(i) the person who gave the notice under section 136; or

(ii) if the chief executive has received notification of an assignment or transmission of the copyright to which the notice relates, the person notified as the current owner of the copyright; and

(b) include in or with the advice a statement of the chief executive's reasons; and

(c) give the person to whom the advice is given not less than 20 working days to respond; and

(d) consider any response made by that person to the chief executive within the time allowed.

(3) The written advice under subsection (2) may be given—

(a) by delivering it to that person; or

(b) by posting it to the most recent address for that person that has been notified to the chief executive; or

(c) by emailing it to the person at an email address that is used by the person.

(4) In the absence of proof to the contrary, written advice that is emailed to a person must be treated as received by the person on the second working day after the date on which it is emailed, and, in proving that the advice was emailed, it is sufficient to prove that the advice was properly addressed and sent to the email address.

Section 136A: inserted, on 16 September 2011, by section 9 of the Copyright Amendment Act 2011 (2011 No 72).

Section 136A(3)(b): amended, on 16 December 2017, by section 52(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 136A(3)(c): inserted, on 16 December 2017, by section 52(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 136A(4): inserted, on 16 December 2017, by section 52(3) of the Electronic Interactions Reform Act 2017 (2017 No 50).

136B Notice of suspension

(1) If the chief executive decides to suspend an accepted notice, the chief executive must give written notice of the suspension to the person referred to in section 136A(2)(a).

(2) The notice of suspension may be given—

(a) by delivering it to that person; or

(b) by posting it to the most recent address for that person that has been notified to the chief executive; or

(c) by emailing it to the person at an email address that is used by the person.

(3) In the absence of proof to the contrary, a notice of suspension that is emailed to a person must be treated as received by the person on the second working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that the notice was properly addressed and sent to the email address.

Section 136B: inserted, on 16 September 2011, by section 9 of the Copyright Amendment Act 2011 (2011 No 72).

Section 136B(2)(b): amended, on 16 December 2017, by section 53(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 136B(2)(c): inserted, on 16 December 2017, by section 53(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 136B(3): inserted, on 16 December 2017, by section 53(3) of the Electronic Interactions Reform Act 2017 (2017 No 50).

136C Chief executive may reinstate accepted notice

The chief executive may reinstate an accepted notice suspended under section 136A if the chief executive is satisfied that the grounds for the suspension no longer apply.

Section 136C: inserted, on 16 September 2011, by section 9 of the Copyright Amendment Act 2011 (2011 No 72).

136D Duration of accepted notice

(1) An accepted notice remains in force for the period specified in the notice unless—

(a) it is revoked by the claimant by notice in writing; or

(b) the court orders, in proceedings under section 141(1), that the notice be discharged.

(2) However, an accepted notice is not in force during the period of any suspension under section 136A.

Section 136D: inserted, on 16 September 2011, by section 9 of the Copyright Amendment Act 2011 (2011 No 72).

137 Determination whether item is pirated copy

(1) Where—

(a) a notice that has been accepted under section 136(3)(a) is in force; and

(b) the chief executive forms the opinion that any item that is in the control of the Customs may be a pirated copy to which the notice relates,—

the chief executive may conduct such investigation as he or she considers necessary in order to establish whether or not the item appears to be a pirated copy to which the notice relates.

(2) Where the chief executive conducts an investigation, he or she may, subject to section 138, require—

(a) the claimant; or

(b) any other person appearing to the chief executive to have an interest in the item—

to supply such information as the chief executive may specify for the purpose of the investigation, within 10 working days of being required to do so.

(3) Whether or not the chief executive conducts any investigation, he or she must, within a reasonable period of forming an opinion under subsection (1), make a determination whether or not the item appears to be a pirated copy to which the notice relates.

(4) This section applies only to a specified item.

Section 137: substituted, on 28 July 1997, by section 2 of the Copyright Amendment Act 1997 (1997 No 38).

Section 137(1)(b): amended, on 30 December 2018, by section 11(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 137(4): replaced, on 30 December 2018, by section 11(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

138 Limitations on requirement to supply information

(1) The chief executive must not require any person to supply any information under section 137(2) unless the chief executive believes that the information is reasonably necessary for the purposes of an investigation under section 137(1).

(2) Every person who is required to supply information to the chief executive under section 137(2) has the same privileges in relation to the giving of the information as witnesses have in any court.

(3) Where any person refuses or fails to supply information required by the chief executive under section 137(2), the chief executive may, subject to subsection (2), take that refusal or failure into account in forming any opinion under section 137(1) or in making any determination under section 137(3).

Section 138: substituted, on 28 July 1997, by section 2 of the Copyright Amendment Act 1997 (1997 No 38).

139 Notice of determination

(1) Where the chief executive makes a determination under section 137(3), the chief executive must cause written notice of the determination to be served on—

(a) the claimant; and

(b) any other person appearing to the chief executive to have an interest in the item—

within such period as may reasonably be necessary to effect service.

(2) Every notice required to be served on the claimant or other person under subsection (1) may be given to the claimant or other person—

(a) by personal delivery to the claimant or other person; or

(b) by posting it to the last known address of the claimant or other person; or

(c) by faxing it to the last known fax number of the claimant or other person; or

(d) by emailing it to the claimant or other person at an email address that is used by the claimant or other person.

(2A) A notice that is posted to a claimant or any other person must be treated as served on the claimant or other person at the time when it would have been delivered in the ordinary course of post, and, in proving the delivery,—

(a) it is sufficient to prove that the letter was properly addressed and posted; and

(b) in the absence of proof to the contrary, the notice must be treated as having been posted on the day on which it was dated.

(2B) A notice that is faxed to a claimant or any other person must, in the absence of proof to the contrary, be treated as served on the claimant or other person on the day after the date on which it is faxed, and, in proving that it was faxed, it is sufficient to prove that a fax machine generated a record of the transmission of the notice to the fax number.

(2C) In the absence of proof to the contrary, a notice that is emailed to a claimant or any other person must be treated as served on the claimant or other person on the second working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that the notice was properly addressed and sent to the email address.

(3) The detention of any item under section 140 is not rendered illegal by a failure to serve notice under subsection (1).

Section 139(1): substituted, on 28 July 1997, by section 3 of the Copyright Amendment Act 1997 (1997 No 38).

Section 139(2)(b): replaced, on 16 December 2017, by section 54(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 139(2)(c): replaced, on 16 December 2017, by section 54(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 139(2)(d): inserted, on 16 December 2017, by section 54(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 139(2A): inserted, on 16 December 2017, by section 54(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 139(2B): inserted, on 16 December 2017, by section 54(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 139(2C): inserted, on 16 December 2017, by section 54(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

140 Detention of pirated copy

(1) Where the chief executive has formed an opinion that an item that is in the control of the Customs may be a pirated copy to which a notice accepted under section 136(3)(a) relates, that item shall be detained in the custody of the chief executive or any Customs officer until—

(a) the chief executive is served with an order made in proceedings under section 141(1) that the notice be discharged; or

(b) the chief executive is served with an order made in proceedings under section 141(2) that the item be released; or

(c) any proceedings under section 141(3) in respect of that item (including any appeal) are determined by a decision that the item is not a specified item that is a pirated copy; or

(d) any proceedings under section 141(3) in respect of that item, including any appeal, are abandoned; or

(e) 10 working days have elapsed since notice was served under section 139 and the chief executive has not been served with notice of proceedings brought under section 141(3) by a person other than the importer or exporter;—

whereupon the item shall, subject to subsection (3), be released to the person entitled to it.

(2) The chief executive may in any particular case extend the period referred to in subsection (1)(e) to 20 working days if he or she considers it appropriate to do so in all the circumstances.

(3) The chief executive or any Customs officer shall not release any item under subsection (1) unless—

(a) any other legal requirements as to importation or exportation of the item are satisfied; and

(b) any requirements made pursuant to any regulations made under this Act requiring the deposit of a security have been satisfied; and

(c) the release of the item is not otherwise contrary to law.

Section 140: substituted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 140(1): amended, on 30 December 2018, by section 12(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 140(1)(c): replaced, on 30 December 2018, by section 12(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 140(1)(e): amended, on 30 December 2018, by section 12(3) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 140(3)(a): amended, on 30 December 2018, by section 12(4) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

141 Proceedings

(1) Any person may apply to the court for an order that a notice accepted under section 136(3)(a) be discharged, and the court may make such an order accordingly.

(2) Any person may apply to the court for an order that an item detained under section 140 be released, and the court may make such an order accordingly.

(3) Any person may apply to the court for a decision on whether an item that is the subject of a determination made under section 137(3) is a specified item that is a pirated copy, and the court must make a decision accordingly.

(4) Notice of proceedings under subsection (3) shall be served on the chief executive.

(5) In proceedings under subsection (3), the court shall issue directions as to the service of notice on persons having an interest in the item that is the subject of proceedings, and any such person is entitled—

(a) to appear in those proceedings, whether or not that person was served with notice under section 139; and

(b) to appear against any order made in those proceedings, whether or not that person appeared in the proceedings.

(6) No order made in proceedings under subsection (3) shall 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.

Section 141(3): replaced, on 30 December 2018, by section 13 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 141(4): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

141A Forfeiture of goods by consent

If any pirated copies have been detained in the custody of the chief executive or any Customs officer, the importer or exporter of the copies may, by notice in writing to the chief executive, consent to the copies being forfeited to the Crown and, on the giving of such notice, the copies will be forfeited to the Crown.

Section 141A: inserted, on 20 August 2003, by section 201 of the Trade Marks Act 2002 (2002 No 49).

Section 141A: amended, on 30 December 2018, by section 14 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

142 Powers of court

(1) If, in proceedings under section 141(3), the court decides that an item that is the subject of a determination made under section 137(3) is a specified item that is a pirated copy, the court must make an order that the item be—

(a) forfeited to the Crown; or

(b) destroyed; or

(c) otherwise dealt with as the court thinks fit.

(2) In considering what order should be made under subsection (1), the court shall have regard to—

(a) whether other remedies available in proceedings for infringement of copyright would be adequate to compensate the claimant and to protect that person's interests; and

(b) the need to ensure that no pirated copy is disposed of in a manner that would adversely affect the claimant.

(3) Where more than 1 person is interested in an item, the court may direct that the item be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.

(4) If, in proceedings under section 141(3), the court decides that an item that is the subject of a determination made under section 141(3) is a specified item but that it is not a pirated copy, the court may make an order that any person who is a party to the proceedings pay compensation in such amount as the court thinks fit to the importer, exporter, or owner of the item.

Section 142(1): replaced, on 30 December 2018, by section 15(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 142(4): replaced, on 30 December 2018, by section 15(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

143 Inspection of item

(1) The chief executive or a Customs officer shall, in respect of any item in his or her possession that is or may be the subject of—

(a) a notice given under section 136(1); or

(b) an investigation under section 137; or

(c) proceedings under section 141,—

allow any person claiming to have an interest in—

(d) the item; or

(e) any investigation under section 137, or any proceedings under section 141, in relation to the item—

to inspect that item.

(2) A person referred to in subsection (1) may—

(a) inspect the item during normal office hours; or

(b) with the approval of the chief executive or a Customs officer, remove the item or an example of the item to such place, for such period, and on such conditions as the chief executive or Customs officer may specify, for the purpose of inspecting it.

(3) Any person who intends to inspect any item under this section shall give the chief executive or Customs officer not less than 72 hours' notice of his or her intention to inspect that item.

Section 143(1): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 143(2): substituted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 143(3): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Enforcement powers of Customs officers

Heading: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

144 Customs officer may seize goods in control of Customs

(1) A Customs officer may seize any imported goods that are in the control of the Customs if the officer has reasonable cause to believe that they are evidence of, or of significant relevance to the investigation of, an offence against section 131(1)(b), 198(1)(b), or 226C(1).

(2) The provisions of sections 134T to 134W apply with all necessary modifications in respect of any imported goods seized under this section and in applying those provisions every reference to the chief executive must be read as a reference to the chief executive of the New Zealand Customs Service.

Section 144: substituted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

144A Chief executive may require person to produce documents concerning goods in control of Customs

(1) If a Customs officer believes on reasonable grounds that goods in the control of the Customs have been imported in breach of this Act, the chief executive may, by notice in writing, require any person whom the Customs officer believes to have imported the goods, or any person whom the Customs officer believes to have acted as agent of that person, to produce to a Customs officer for inspection any specified document or class of documents in the person's possession or control that the Customs officer considers relevant to determining whether the goods should be seized under section 144 or released.

(2) A notice under this section requiring a person to produce any document must—

(a) be in the prescribed form; and

(b) specify the Customs officer to whom the person must produce the document; and

(c) specify a reasonable time and place at which the document must be produced; and

(d) be served on the person by—

(i) delivering it to him or her in person; or

(ii) posting it to the person's address or delivering it to a box at a document exchange that the person is using at the time; or

(iii) sending it by fax machine to a telephone number used by the person for the transmission of documents by fax; or

(iv) if the person is a registered user of a registered user system (within the meaning of section 322 of the Customs and Excise Act 2018), transmitting it by electronic means to the person in accord-

ance with the normal procedure of operation of the registered user system in relation to that person.

(v) emailing it to the person at an email address that is used by the person.

(2A) In the absence of proof to the contrary, a notice that is emailed to a person must be treated as served on the person on the second working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that the notice was properly addressed and sent to the email address.

(3) A Customs officer to whom a document is produced for inspection may do 1 or more of the following:

(a) inspect the document:

(b) take extracts from the document:

(c) make copies of the document.

Section 144A: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

Section 144A(2)(d)(iv): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 144A(2)(d)(v): inserted, on 16 December 2017, by section 55(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 144A(2A): inserted, on 16 December 2017, by section 55(3) of the Electronic Interactions Reform Act 2017 (2017 No 50).

144B Chief executive may require person to appear and answer questions concerning goods in control of Customs

(1) If a Customs officer believes on reasonable grounds that goods in the control of the Customs have been imported in breach of this Act, the chief executive may, by notice in writing, require any person whom the Customs officer believes to have imported the goods, or any person whom the Customs officer believes to have acted as agent of that person, to appear before a Customs officer and to answer questions that the Customs officer considers relevant to determining whether the goods should be seized under section 144 or released.

(2) A notice under this section requiring a person to appear before a Customs officer and to answer questions must—

(a) be in the prescribed form; and

(b) specify the Customs officer before whom the person must appear; and

(c) specify a reasonable time and place at which the person must appear; and

(d) be served on the person by—

(i) delivering it to him or her in person; or

(ii) posting it to the person's address or delivering it to a box at a document exchange that the person is using at the time; or

(iii) sending it by fax machine to a telephone number used by the person for the transmission of documents by fax; or

(iv) if the person is a registered user of a registered user system (within the meaning of section 322 of the Customs and Excise Act 2018), transmitting it by electronic means to the person in accordance with the normal procedure of operation of the registered user system in relation to that person.

(v) emailing it to the person at an email address that is used by the person.

(3) In the absence of proof to the contrary, a notice that is emailed to a person must be treated as served on the person on the second working day after the date on which it is emailed, and, in proving that the notice was emailed, it is sufficient to prove that the notice was properly addressed and sent to the email address.

Section 144B: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

Section 144B(2)(d)(iv): replaced, on 1 October 2018, by section 443(3) of the Customs and Excise Act 2018 (2018 No 4).

Section 144B(2)(d)(v): inserted, on 16 December 2017, by section 56(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 144B(3): inserted, on 16 December 2017, by section 56(3) of the Electronic Interactions Reform Act 2017 (2017 No 50).

144C Customs officer may apply for production order

(1) If a Customs officer believes on reasonable grounds that a person has in his or her possession, custody, or control, 1 or more documents that are evidence of, or may be of significant relevance to the investigation of, an offence against section 131, 198, or 226C in respect of imported goods, the Customs officer may apply to a District Court Judge for an order requiring the person to produce the documents for inspection by a Customs officer.

(2) An application by a Customs officer for an order under subsection (1) must—

(a) be in writing; and

(b) be in the prescribed form (if any); and

(c) be made on oath; and

(d) set out, in reasonable detail, the grounds for the application; and

(e) provide details of the documents in respect of which the order is sought.

Section 144C: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

144D Judge may order documents to be produced

(1) If an application is made under section 144C and the District Court Judge is satisfied that there are reasonable grounds to believe that the person in respect of whom the order is sought has in that person's possession, custody, or control, 1 or more documents that are evidence of, or may be of significant rele-

vance to the investigation of, an offence against section 131, 198, or 226C in respect of imported goods, the District Court Judge may order the person to produce those documents for inspection by a Customs officer.

(2) An order under subsection (1)—

(a) must be in the prescribed form (if any); and

(b) must specify—

(i) when the documents are to be produced for inspection; and

(ii) the place where the documents are to be produced for inspection; and

(iii) the Customs officer to whom the documents are to be produced for inspection; and

(c) may be subject to any further terms and conditions the District Court Judge thinks fit.

Section 144D: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

144E Powers of Customs officer to whom documents produced

A Customs officer to whom any document is produced for inspection under an order under section 144D may do 1 or more of the following:

(a) inspect the document:

(b) take extracts from the document:

(c) make copies of the document.

Section 144E: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

144F Issue of search warrants to Customs officers

(1) A Customs officer may apply for a search warrant to search a place or thing.

(2) Any District Court Judge, Justice of the Peace, Community Magistrate, or Registrar of the District Court (the **issuing officer**) may, on an application by a Customs officer, issue a warrant if the issuing officer is satisfied that there are reasonable grounds for believing that there is in, on, over, or under the place or thing any thing that is evidence of, or of significant relevance to the investigation of, an offence against section 131, 198, or 226C in respect of imported goods.

(3) Sections 134G to 134S apply with all necessary modifications in respect of every search warrant applied for and issued under this section.

(4) Sections 134T to 134W apply with all necessary modifications in respect of any thing seized under a search warrant issued under this section, and in applying those provisions every reference to the chief executive must be read as a reference to the chief executive of the New Zealand Customs Service.

Section 144F: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

Section 144F(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

144G Privilege against self-incrimination

(1) A notice under section 144A or 144B, or an order under section 144D, does not affect the privilege against self-incrimination that an individual may have under section 60 of the Evidence Act 2006.

(2) Any assertion of a privilege against self-incrimination must be based on section 60 of the Evidence Act 2006.

(3) If any individual refuses to produce any information or document or to answer any question on the ground that it is a privileged communication under section 60 of the Evidence Act 2006, a Customs officer or a member of the Police may apply to a District Court Judge for an order determining whether the claim of privilege is valid; and, in respect of any such application, the individual must offer sufficient evidence to enable the District Court Judge to assess whether self-incrimination would be reasonably likely if the individual produced the information or the document or answered the question.

(4) To avoid doubt, nothing in this section affects the application of section 65 of the Evidence Act 2006 (which relates to waiver of privilege) in respect of the privilege against self-incrimination that a person may have under section 60 of that Act.

(5) Section 63 of the Evidence Act 2006 does not apply to an order under section 144D.

Section 144G: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

144H Other privileges

(1) If, in a criminal proceeding, a person could assert a privilege under section 54 or 56 of the Evidence Act 2006 in respect of a communication or information, that person has the same privilege for the purposes of a notice issued under section 144A or 144B, an order made under section 144D, and a search warrant issued under section 144F.

(2) Subsection (3) applies to documents that are books of account or accounting records referred to in section 55(1) of the Evidence Act 2006.

(3) The application, by subsection (1), of section 54 of the Evidence Act 2006 (which relates to the privilege for communications with legal advisers) does not prevent, limit, or affect—

(a) the issue of a notice under section 144A in respect of a document to which this subsection applies or the obligation to comply with such a notice; or

(b) the making of an order under section 144D in respect of a document to which this subsection applies or the obligation to comply with such an order; or

(c) the issue of a search warrant under section 144F in respect of a document to which this subsection applies; or

(d) the admissibility, in a criminal proceeding under this Act, of any evidence that relates to the contents of a document to which this subsection applies obtained under a notice issued under section 144A, an order made under section 144D, or a search warrant issued under section 144F.

(4) A person who has a privilege under this section has the right—

(a) to refuse to disclose a communication or information to which the privilege would apply if it were sought to be disclosed in a criminal proceeding; and

(b) to prevent the search of any such communication or information; and

(c) to require the return of any such communication or information if it is seized by a person exercising a power of search pending determination of the claim to privilege.

(5) If a person asserts a claim to privilege under this section in respect of any communication or information, a Customs officer or a member of the Police may apply to a District Court Judge for an order determining whether the claim to privilege is valid; and, for the purpose of determining any such application, the District Court Judge may require the communication or information to be produced to him or her.

(6) A District Court Judge may, on the application of a Customs officer or a member of the Police, disallow a privilege claimed under this section if the Judge is satisfied that the claim to privilege would, under section 67(1) of the Evidence Act 2006, be disallowed in a proceeding.

(7) Section 65 of the Evidence Act 2006 (which relates to waiver of privilege) applies in respect of any privilege under this section.

Section 144H: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

144I Offences

(1) No person may, without reasonable excuse, refuse or fail to comply with a notice given under section 144A.

(2) No person who is required by a notice given under section 144B to appear before a Customs officer and to answer questions may, without reasonable excuse,—

(a) refuse or fail to appear before the Customs officer in accordance with the notice; or

(b) refuse to answer any question.

(3) No person may, without reasonable excuse, refuse or fail to comply with an order made under section 144D.

(4) Every person who breaches any of subsections (1) to (3) commits an offence and is liable on conviction,—

(a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding $10,000; and

(b) in the case of a body corporate, to a fine not exceeding $50,000.

Section 144I: inserted, on 7 October 2011, by section 10 of the Copyright Amendment Act 2011 (2011 No 72).

Section 144I(4): amended, on 4 October 2013, by regulation 3(1) of the Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409).

Miscellaneous matters

Heading: inserted, on 16 September 2011, by section 11 of the Copyright Amendment Act 2011 (2011 No 72).

145 Delegation of powers, duties, and functions

(1) With the written consent of the Minister of Customs, the chief executive may from time to time, either generally or particularly, by writing under his or her hand, delegate to any Customs officer all or any of the powers, duties, and functions conferred or imposed on the chief executive by or under this Part.

(2) No delegation under subsection (1) shall include the power to delegate under that subsection.

(3) Subject to any general or special directions given or conditions imposed from time to time by the Minister of Customs or the chief executive, as the case may be, the officer to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on that officer directly by this Act and not by delegation.

(4) Every Customs officer purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(5) Any delegation under this section may be made to any specified person or to the holder or holders for the time being of any specified office or class of offices.

(6) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the chief executive.

(7) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the chief executive by whom it was made has ceased to hold office, and shall continue to have effect as if made by the successor in office of the chief executive.

Section 145: substituted, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

146 Protection of persons acting under authority of Act

Neither the Crown nor the chief executive nor any Customs officer nor any person who assists a Customs officer shall be liable for any loss or damage occasioned by anything done or omitted to be done or purporting to have been done in the exercise of any power, duty, or function under this Part or any regulations made under this Act for the purposes of this Part, unless the chief executive or any Customs officer or any person who assists a Customs officer has not acted in good faith.

Compare: 1966 No 19 s 228A; 1971 No 42 s 10

Section 146: amended, on 7 October 2011, by section 12(1) of the Copyright Amendment Act 2011 (2011 No 72).

Section 146: amended, on 7 October 2011, by section 12(2) of the Copyright Amendment Act 2011 (2011 No 72).

Section 146: amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Part 8
Copyright licensing

147 Works of more than 1 author

(1) References in this Part to licences or licensing schemes covering works of more than 1 author do not include licences or licensing schemes covering only—

(a) a single collective work or collective works of which the authors are the same; or

(b) works made by or by employees of, or commissioned by, a single individual, firm, company, or group of companies.

(2) In subsection (1), **group of companies** means a holding company and its subsidiaries as defined in sections 5 and 6 of the Companies Act 1993.

Compare: Copyright, Designs and Patents Act 1988 s 116(4) (UK)

Section 147(2): substituted, on 31 October 2008, by section 67 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

References and applications with respect to licensing schemes

148 Licensing schemes to which sections 149 to 155 apply

Sections 149 to 155 apply to—

(a) licensing schemes that—

(i) are operated by licensing bodies; and

(ii) relate to copyright in literary, dramatic, musical, or artistic works, or films, or film soundtracks when accompanying a film; and

(iii) cover works of more than 1 author; and

(iv) relate to licences for copying the work or performing, showing, or playing the work in public or communicating the work to the public:

(b) all licensing schemes in relation to copyright in sound recordings (other than film soundtracks when accompanying a film), communication works, or the typographical arrangement of published editions:

(c) all licensing schemes that—

(i) relate to copyright in computer programs, sound recordings, or films; and

(ii) relate to licences for the rental of copies of works of those descriptions to the public:

(d) all licensing schemes that authorise—

(i) copying of literary, dramatic, musical, or artistic works or the typographical arrangements of published editions by or on behalf of educational establishments; or

(ii) copying in the circumstances set out in section 45(4); or

(iii) recording in the circumstances set out in sections 48(1) and 91(2);—

(iv) *[Repealed]*

and in those sections the term **licensing scheme** means a licensing scheme of any of those descriptions.

Compare: Copyright, Designs and Patents Act 1988 s 117 (UK)

Section 148(a)(iv): substituted, on 31 October 2008, by section 68(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 148(b): amended, on 31 October 2008, by section 68(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 148(d)(iii): substituted, on 31 October 2008, by section 68(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 148(d)(iv): repealed, on 31 October 2008, by section 68(3) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

References with respect to licensing schemes

149 Reference of proposed licensing scheme to Tribunal

(1) The terms of a licensing scheme that—

(a) is proposed to be operated by a licensing body; and

(b) is proposed to apply generally or in relation to any description of cases—

may be referred to the Tribunal by—

(c) the operator of the proposed scheme; or

(d) an organisation claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply.

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

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

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

Compare: Copyright, Designs and Patents Act 1988 s 118 (UK)

150 Reference of licensing scheme to Tribunal

(1) If, while a licensing scheme is in operation, a dispute arises between the operator of the scheme and—

(a) a person claiming that he or she requires a licence in a case of a description to which the scheme applies; or

(b) an organisation claiming to be representative of such persons,—

the operator or that person or organisation may refer the scheme, in so far as it relates to cases of that description, to the Tribunal.

(2) A scheme that has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

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

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

Compare: 1962 No 33 s 39(1), (3)–(5)(a); Copyright, Designs and Patents Act 1988 s 119 (UK)

151 Further reference of scheme to Tribunal

(1) Where the Tribunal has on a previous reference of a licensing scheme (whether under this section or section 149 or section 150), made an order with respect to the scheme, then, subject to subsection (2), while the order remains in force,—

(a) the operator of the scheme; or

(b) a person claiming that he or she requires a licence in a case of the description to which the order applies; or

(c) an organisation claiming to be representative of such persons—

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

(2) Except with the special leave of the Tribunal, a licensing scheme shall not be referred again to the Tribunal under subsection (1) in respect of the same description of cases at a time earlier than—

(a) the end of the period of 12 months from the date of the order on the previous reference; or

(b) if the order was made so as to be in force for 15 months or less, the beginning of the period of 3 months immediately before the expiry of the order,—

whichever occurs first.

(3) A scheme that has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.

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

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

Compare: 1962 No 33 s 40; Copyright, Designs and Patents Act 1988 s 120 (UK)

152 Effect of order of Tribunal made on reference

(1) A licensing scheme that has been confirmed or varied by an order of the Tribunal made under section 149 or section 150 or section 151 shall be in force or, as the case may be, remain in operation so far as it relates to cases of the description in respect of which the order was made, so long as the order remains in force.

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

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay the charges when ascertained; and

(b) complies with the other terms applicable to such a licence under the scheme—

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

(3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, has effect from a date before that on which the order is made, but not

earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

(4) If such a direction is made,—

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and

(b) the reference in subsection (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable under the order.

Compare: 1962 No 33 ss 39(5)(b), 45(1)–(3); Copyright, Designs and Patents Act 1988 s 123(1)–(3) (UK)

Applications with respect to licensing schemes

153 Application for grant of licence in connection with licensing scheme

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

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

(a) that the operator of the scheme has refused to grant to that person or procure the grant to that person of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted; or

(b) that the operator of the scheme proposes terms for a licence that are unreasonable—

may apply to the Tribunal.

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

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or

(b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

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

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

Compare: 1962 No 33 ss 36(3), 38(1)–(4); Copyright, Designs and Patents Act 1988 s 121 (UK)

154 Application for review of order as to entitlement to licence

(1) Where the Tribunal has made an order under section 153 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may from time to time apply to the Tribunal to review the order.

(2) Except with the special leave of the Tribunal, an application shall not be made under subsection (1) at a time earlier than—

(a) the end of the period of 12 months from the date of the order, or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, the beginning of the period of 3 months immediately before the expiry date,—

whichever occurs first.

(3) The Tribunal shall on an application for review under this section confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

Compare: Copyright, Designs and Patents Act 1988 s 122 (UK)

155 Effect of order of Tribunal made on application

Where the Tribunal has made an order under section 153 and the order remains in force, the person in whose favour the order is made shall, if that person—

(a) pays to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and

(b) complies with the other terms specified in the order,—

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

Compare: 1962 No 33 s 45(1)–(3); Copyright, Designs and Patents Act 1988 s 123(5) (UK)

References and applications with respect to licensing by licensing bodies

156 Licences to which sections 157 to 160 apply

Sections 157 to 160 apply to the following descriptions of licences granted by a licensing body otherwise than under a licensing scheme:

(a) licences that—

(i) relate to copyright in literary, dramatic, musical, or artistic works, or films, or film soundtracks when accompanying a film; and

(ii) cover works of more than 1 author; and

(iii) authorise the copying of the work or the performance, showing, or playing of the work in public or the communication of the work to the public:

(b) any licence relating to copyright in a sound recording (other than a film soundtrack when accompanying a film), communication work, or the typographical arrangement of a published edition:

(c) all licences relating to copyright in computer programs, sound recordings, or films, so far as the licences relate to the rental of copies to the public:

(d) licences that authorise the copying of literary, dramatic, musical, or artistic works or the typographical arrangements of published editions by or on behalf of educational establishments;—

and in those sections the term **licence** means a licence of any of those descriptions.

Compare: Copyright, Designs and Patents Act 1988 s 124 (UK)

Section 156(a)(iii): substituted, on 31 October 2008, by section 69(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 156(b): amended, on 31 October 2008, by section 69(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

157 Reference to Tribunal of proposed licence

(1) The terms on which a licensing body proposes to grant a licence may be referred to the Tribunal by the licensing body or the prospective licensee.

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

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

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

Compare: Copyright, Designs and Patents Act 1988 s 125 (UK)

158 Reference to Tribunal of expiring licence

(1) A licensee under a licence that is due to expire, either by effluxion of time or as a result of notice given by the licensing body, may refer the licence to the Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such a reference may not be made earlier than the beginning of the period of 3 months immediately before the licence is due to expire.

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

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

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

Compare: Copyright, Designs and Patents Act 1988 s 126 (UK)

159 Application for review of order as to licence

(1) Where the Tribunal has made an order under section 157 or section 158, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review the order.

(2) Except with the special leave of the Tribunal, an application shall not be made under subsection (1) at a time earlier than—

(a) the end of the period of 12 months from the date of the order or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, the beginning of the period of 3 months immediately before the expiry date,—

whichever occurs first.

(3) The Tribunal shall on an application for review under this section confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

Compare: Copyright, Designs and Patents Act 1988 s 127 (UK)

160 Effect of order of Tribunal as to licence

(1) Where the Tribunal has made an order under section 157 or section 158 and the order remains in force, the person entitled to the benefit of the order shall, if that person—

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

(b) complies with the other terms specified in the order,—

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

(2) The benefit of the order may be assigned,—

(a) in the case of an order made under section 157, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) In the case of an order made under section 158, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order made under section 157 or section 158, or an order made under section 159 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which the order is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

(4) If such a direction is made,—

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and

(b) the reference in subsection (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable under the later order.

Compare: Copyright, Designs and Patents Act 1988 s 128 (UK)

Factors to be taken into account in certain classes of cases

161 Unreasonable discrimination

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

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

(b) the terms of those schemes or licences;—

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

Compare: Copyright, Designs and Patents Act 1988 s 129 (UK)

162 Licences for reprographic copying

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

(a) the extent to which published editions of the works in question are otherwise available; and

(b) the proportion of the work to be copied; and

(c) the nature of the use to which the copies are likely to be put.

Compare: Copyright, Designs and Patents Act 1988 s 130 (UK)

163 Licences for educational establishments in respect of works included in communication works

(1) This section applies to references or applications made under this Part in relation to licences for—

(a) the recording, for educational purposes, by or on behalf of educational establishments, of communication works that include copyright works; or

(b) making copies of those recordings for educational purposes.

(2) When this section applies, the Tribunal must, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of the copyright in the works included in the communication work have already received, or are entitled to receive, payment in respect of their inclusion.

Section 163: substituted, on 31 October 2008, by section 70 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

164 Licences to reflect conditions imposed by promoters of events

(1) Where a reference or application is made under this Part in respect of a licence relating to a sound recording, film, or communication work that includes, or is to include, any entertainment or other event, the Tribunal—

(a) shall have regard to any conditions imposed by the promoters of the entertainment or other event; and

(b) shall not hold a refusal or failure to grant a licence to be unreasonable if the licence could not have been granted consistently with any such conditions.

(2) Nothing in this section shall require the Tribunal to have regard to any such conditions in so far as they—

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

(b) relate to payments to be made to the promoters of any entertainment or other event in consideration of the grant of facilities for making the recording, film, or communication work.

Compare: Copyright, Designs and Patents Act 1988 s 132 (UK)

Section 164(1): amended, on 31 October 2008, by section 71(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 164(2)(b): amended, on 31 October 2008, by section 71(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

165 Licences to reflect payments in respect of underlying rights

(1) In considering what charges (if any) should be paid for a licence on a reference or application made under this Part in relation to licences for the rental to the public of copies of computer programs, sound recordings, or films, the Tribunal shall take into account any reasonable payments that the owner of copyright in the computer program, sound recording, or film is liable to make, in consequence of the granting of the licence or of the acts authorised by the licence, to owners of copyright in works included in the program, recording, or film.

(2) On any reference or application made under this Part in relation to licensing in respect of copyright in sound recordings, films, or communication works, the Tribunal shall take into account, in considering what charges (if any) should be paid for a licence, any reasonable payments that the copyright owner is liable to make, in consequence of the granting of the licence or of the acts authorised by the licence, in respect of any performance included in the recording, film, or communication work.

Compare: Copyright, Designs and Patents Act 1988 s 133 (UK)

Section 165(2): amended, on 31 October 2008, by section 72(a) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 165(2): amended, on 31 October 2008, by section 72(b) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

166 Licences in respect of works included in retransmissions

(1) This section applies to applications under this Part in relation to licences to include literary, dramatic, musical, or artistic works or sound recordings or films in a communication work when one communication work (in this section referred to as the **first transmission**) is, by reception and immediate retransmission, to be further communicated to the public (in this section referred to as the **further transmission**).

(2) So far as the further transmission is to the same area as the first transmission, the Tribunal shall, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission that adequately remunerates the copyright owner in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission is made, the Tribunal shall not take the further transmission into account in considering what charges (if any) should be paid for licences for the first transmission.

Compare: Copyright, Designs and Patents Act 1988 s 134 (UK)

Section 166(1): substituted, on 31 October 2008, by section 73 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Implied indemnity in schemes or licences for reprographic copying

167 Implied indemnity in certain schemes and licences for reprographic copying

(1) This section applies to—

(a) schemes for licensing reprographic copying of published literary, dramatic, musical, or artistic works, or the typographical arrangements of published editions; and

(b) licences granted by licensing bodies for such copying,—

where the scheme or licence does not specify the works to which it applies with such particularity as to enable licensees to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied—

(a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and

(b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee—

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

(3) For the purposes of this section, the circumstances of a case are within the apparent scope of a licence if—

(a) it is not apparent from inspection of the licence and the work in question that the work does not fall within the description of works to which the licence applies; and

(b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

(4) In this section, the term **liability** includes liability to pay costs; and this section applies in relation to costs reasonably incurred by a licensee in connection with actual or contemplated proceedings against the licensee for infringement of copyright and to sums that the licensee is liable to pay in respect of such infringement.

(5) A scheme or licence to which this section applies may contain reasonable provision—

(a) with respect to the manner in which, and time within which, claims under the undertaking implied by this section are to be made:

(b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount

of the operator's or, as the case may be, the licensing body's liability to indemnify under such an undertaking.

Compare: Copyright, Designs and Patents Act 1988 s 136 (UK)

168 Determination of equitable remuneration

(1) Where—

(a) a copyright owner and a librarian cannot agree as to the remuneration to be paid to the copyright owner under section 54(2)(d); or

(b) a copyright owner and the Crown cannot agree as to the remuneration to be paid to the copyright owner under section 63(2); or

(c) an exclusive licensee and the Crown cannot agree as to the remuneration to be paid to the exclusive licensee under section 64(2); or

(d) a licensee and the copyright owner or the exclusive licensee, as the case may be, cannot agree on the part of the payment to be paid to the licensee under section 64(3); or

(e) a copyright owner and a person who makes a recording of a communication work cannot agree as to the remuneration to be paid to the copyright owner under section 91(2)(d),—

either party may apply to the Tribunal to determine the remuneration to be paid.

(2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.

(3) Either party to an order made under this section may apply to the Tribunal to review its order.

(4) Except with the special leave of the Tribunal, an application under subsection (3) shall not be made earlier than the end of the period of 12 months from the date of the original order or of the order on a previous application under that subsection.

(5) The Tribunal shall on an application for review under this section confirm or vary its original order as the Tribunal may determine to be reasonable in the circumstances of the case.

(6) An order under subsection (5) has effect from the date on which it is made or such later date as may be specified by the Tribunal.

Section 168(1)(e): amended, on 31 October 2008, by section 74 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Part 9
Performers' rights

169 Interpretation

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

commercial exploitation means—

(a) issuing recordings or copies of recordings to the public; or

(b) playing recordings or copies of recordings in public; or

(c) showing recordings or copies of recordings in public; or

(d) communicating recordings or copies of recordings to the public

convention country means an entity (whether a State, part of a State, a territory for whose international relations a State is responsible, a political union, an international organisation, or any other entity) that is a party to an international agreement or arrangement relating to performers' rights

copy, in relation to a recording,—

(a) means a copy of a recording made directly from that recording; and

(b) includes a copy of a recording made indirectly from that recording

exclusive performer's rights licence means a licence in writing signed by or on behalf of the person entitled to exercise a performer's property rights that authorises the licensee to the exclusion of all other persons, including the person granting the licence, to do anything requiring the consent of the person entitled to exercise the rights

exclusive recording contract means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons (including the performer), to make recordings or copies of recordings for the purposes of commercial exploitation

illicit recording—

(a) means a recording of the whole or any substantial part of a performance made without the performer's consent and otherwise than for private and domestic use; and

(b) includes a copy, made without the performer's consent and otherwise than for private and domestic use, of a recording where—

(i) the recording was made without the performer's consent; or

(ii) the copy is made for purposes different from those for which the performer gave his or her consent to the recording; or

(iii) the recording was made in accordance with any of the exemptions contained in sections 175 to 179 or sections 181 to 191, and the copy is made for different purposes

performance—

(a) means—

(i) a dramatic performance, including a dance, a mime, and a performance given with the use of puppets; or

(ii) a musical performance; or

(iii) a reading or recitation of a literary work; or

(iv) a performance of a variety act or any similar presentation,—

being in each case either—

(v) a live performance given in any country by a New Zealand citizen or a person domiciled or resident in New Zealand, or by a citizen or subject of or a person domiciled or resident in a convention country; or

(vi) a live performance given in New Zealand or a convention country; or

(vii) a performance to which this Part applies pursuant to section 170(2) or section 203 or pursuant to an Order in Council made under section 204; but

(b) does not include—

(i) a performance referred to in section 47(1); or

(ii) a reading, recital, or delivery of any item of news and information; or

(iii) a performance of a sporting activity; or

(iv) participation in a performance as a member of an audience

performers' property rights means the rights conferred by subpart 4

person having recording rights includes—

(a) any person who is a party to, and has the benefit of, an exclusive recording contract to which the performance is subject; or

(b) any person to whom the benefit of an exclusive recording contract has been assigned; or

(c) any person who is authorised to make recordings or copies of recordings for the purposes of commercial exploitation by a person to whom paragraph (a) or paragraph (b) applies

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

(a) made directly from the performance; or

(b) made from a communication work that includes the performance.

(2) In sections 197 and 199, **illicit recording** includes the following:

(a) a copy of a recording referred to in section 174C that is used in relation to the infringement of a performer's rights under that section:

(b) a recording referred to in section 198(1A)(b).

Compare: Copyright Act 1968 s 248A(2) (Aust); Copyright, Designs and Patents Act 1988 s 180(2) (UK)

Section 169(1) **commercial exploitation** paragraph (d): substituted, on 31 October 2008, by section 75(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 169(1) **convention country**: substituted, on 14 October 1999, by section 2(2) of the Copyright Amendment Act 1999 (1999 No 124).

Section 169(1) **exclusive performer's rights licence**: inserted, on 30 December 2018, by section 16(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 169(1) **performers' property rights**: inserted, on 30 December 2018, by section 16(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 169(1) **recording** paragraph (b): amended, on 31 October 2008, by section 75(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 169(2): inserted, on 30 December 2018, by section 16(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170 General provisions relating to performers' rights

(1) *[Repealed]*

(2) *[Repealed]*

(3) *[Repealed]*

(4) The rights conferred by this Part are independent of—

(a) any copyright in, or moral rights conferred by Part 4 and relating to, any work performed or any sound recording or film of, or communication work that includes, the performance; and

(b) any other right or obligation arising otherwise than under this Part.

(5) The rights conferred by this Part on a performer are conferred only in relation to performances by that performer, whether alone or with others.

Compare: Copyright, Designs and Patents Act 1988 s 180(3), (4) (UK)

Section 170 heading: replaced, on 30 December 2018, by section 17(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 170(1): repealed, on 30 December 2018, by section 17(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 170(2): repealed, on 30 December 2018, by section 17(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 170(3): repealed, on 30 December 2018, by section 17(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 170(4)(a): amended, on 30 December 2018, by section 17(3) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 170(4)(a): amended, on 31 October 2008, by section 76 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Subpart 1—Performers' moral rights

Subpart 1: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Right to be identified

Heading: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170A Right to be identified as performer

(1) A performer's rights are infringed by a person referred to in subsection (2) if the performer is not identified in accordance with section 170B.

(2) The person is a person who—

(a) produces or puts on a performance that is given in public; or

(b) communicates live to the public a performance; or

(c) communicates to the public a recording of a performance; or

(d) issues to the public copies of a recording of a performance.

(3) Subsection (2)(c) and (d) applies only to a recording that is a sound recording.

(4) Subsection (1) is subject to sections 170B to 170D and 170H.

Section 170A: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170B Content of right to be identified as performer

(1) For the purposes of section 170A, the performer has the right to,—

(a) in the case of a performance given in public, be identified in any programme accompanying the performance or in some other manner likely to bring the performer's identity to the notice of a person seeing or hearing the performance:

(b) in the case of a performance that is communicated live, be identified in a manner likely to bring the performer's identity to the notice of a person seeing or hearing the communication:

(c) in the case of a recording referred to in section 170A(2)(c), be identified in a manner likely to bring the performer's identity to the notice of a person hearing the communication:

(d) in the case of a recording referred to in section 170A(2)(d), be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring the performer's identity to the notice of a person acquiring a copy.

(2) In any of the cases in subsections (1)(a) to (d), the performer and the person may agree that, for the purposes of section 170A, the person may instead identify the performer in any other manner.

(3) If the assertion under section 170C specifies a pseudonym, initials, or some other particular form of identification, that form must be used, but, in any other case, any reasonable form of identification may be used.

(4) A performer's rights are not infringed as referred to in section 170A, in relation to a performance given by a group, if,—

(a) in a case to which any of paragraphs (a) to (c) of subsection (1) apply, the group itself is identified in the manner referred to in those paragraphs or in subsection (2) (applied in each case with all necessary modifications); or

(b) in a case to which subsection (1)(d) applies,—

(i) the group itself is identified in the manner referred to in that paragraph or in subsection (2) (applied in each case with all necessary modifications); and

(ii) it is not reasonably practicable for each member of the group to be identified.

(5) In this section, **group** means 2 or more performers who have a particular name by which they may be identified collectively.

Section 170B: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170C Right to be identified as performer must be asserted

(1) A person does not infringe a performer's rights by failing to identify the performer in the circumstances described in section 170A unless the right to be identified has been asserted under this section in such a way as to require that person to so identify the performer.

(2) The right may be asserted generally, or in relation to any specified circumstances,—

(a) on an assignment of the performer's property rights, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance the performer's right to be identified as the performer; or

(b) at any time, by instrument in writing signed by the performer.

(3) The persons bound by an assertion of the right under subsection (2) are,—

(a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through the assignee, whether or not the person claiming through the assignee has notice of the assertion; and

(b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought.

(4) In an action for infringement of the right, the court must, in considering remedies, take into account any delay in asserting the right.

Section 170C: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170D Exceptions to right to be identified as performer

A performer's rights are not infringed as referred to in section 170A in any of the following cases:

(a) if it is not reasonably practicable to identify the performer (or, if applicable, the group) in accordance with section 170B:

(b) in relation to any performance given for the purposes of reporting current events:

(c) in relation to any performance given for the purposes of advertising any goods or services:

(d) by an act that, under any of sections 175 to 176, 177(2), 181, and 182, would not infringe the performer's rights conferred by subpart 4.

Section 170D: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Right relating to derogatory treatment of performance

Heading: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170E Right relating to derogatory treatment of performance

(1) A performer's rights are infringed by a person if the person subjects a performance to derogatory treatment.

(2) Subsection (1) is subject to sections 170F to 170H.

Section 170E: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170F Content of right relating to derogatory treatment of performance

(1) For the purpose of section 170E, a person subjects a performance to derogatory treatment if the person,—

(a) with any distortion, mutilation, or other modification that is prejudicial to the honour or reputation of the performer,—

(i) communicates live to the public the performance; or

(ii) by means of a recording, plays in public, or communicates to the public, the performance; or

(b) in the course of a business, possesses, sells, lets for hire, offers or exposes for sale or hire, or distributes a recording of the performance with any distortion, mutilation, or other modification that is prejudicial to the honour or reputation of the performer.

(2) Subsection (1) applies only to a recording that is a sound recording.

Section 170F: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170G Exceptions to right relating to derogatory treatment of performance

A performer's rights are not infringed as referred to in section 170E in any of the following cases:

(a) in relation to any performance given for the purposes of reporting current events:

(b) where modifications have been made to a performance that are consistent with reasonable editorial or production practice:

(c) where any act is done for the purpose of avoiding the commission of an offence, or complying with a duty imposed by or under any enactment, if,—

(i) where the performer is identified at the time of the act, there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the performance has been subjected to treatment to which the performer has not consented; or

(ii) where the performer has previously been identified in relation to the performance, there is a clear and reasonably prominent indication, given at the time of the act, that the performance has been subjected to treatment to which the performer has not consented.

Section 170G: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Other provisions relating to moral rights

Heading: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170H Consent and waiver of rights

(1) A performer's rights are not infringed as referred to in sections 170A and 170E—

(a) by any act to which the person who is entitled to the right has consented; or

(b) if the person who is entitled to the right has waived the right by instrument in writing signed by the person.

(2) A waiver—

(a) may relate to a specific performance, or to performances of a specified description that are in existence, in progress, or about to be commenced; and

(b) must state the rights to which the waiver relates; and

(c) may be expressed to be subject to revocation; and

(d) if made in favour of the person entitled (or prospectively entitled) to exercise the performer's property rights in the performance to which the

waiver relates, is presumed to extend to the person's licensees and successors in title unless a contrary intention is expressed.

Section 170H: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

170I Application to parts of performances

(1) The right conferred by section 170A applies in relation to the whole or any substantial part of a performance.

(2) The right conferred by section 170E applies in relation to the whole or any part of a performance.

Section 170I: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Subpart 2—Consent required for recording, live transmission, or use of recording of performance

Subpart 2 heading: inserted, on 30 December 2018, by section 18 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Performers' rights

[Repealed]

Heading: repealed, on 30 December 2018, by section 19 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

171 Consent required for recording or live transmission of performance

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

(a) makes, otherwise than for his or her private and domestic use, a recording of the whole or any substantial part of a performance; or

(b) communicates live to the public the whole or any substantial part of a performance.

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

Compare: Copyright, Designs and Patents Act 1988 s 182 (UK)

Section 171(1)(b): substituted, on 31 October 2008, by section 77 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

172 Infringement by use of recording made without performer's consent

A person (**A**) infringes a performer's rights if,—

(a) without the performer's consent and by means—

(i) of a recording that is a sound recording, A shows in public or plays in public the whole or a substantial part of a performance; or

(ii) of a recording that is a film, A shows in public, plays in public, or communicates to the public the whole or a substantial part of a performance; and

(b) the recording was made without the performer's consent; and

(c) A knows or has reason to believe that the recording was made without the performer's consent.

Section 172: substituted, on 31 October 2008, by section 78 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 172: amended, on 30 December 2018, by section 20(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 172(a): replaced, on 30 December 2018, by section 20(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Subpart 3—Performers' rights relating to film

Subpart 3 heading: heading, on 30 December 2018, by section 21 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

173 Copying of film recordings

(1) A performer's rights are infringed by a person who, without the performer's consent and otherwise than for that person's private and domestic use, copies a recording that is a film if the person knows or has reason to believe that the recording was made without the performer's consent.

(2) In proceedings for infringement of a performer's rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement the defendant believed on reasonable grounds that the performer's consent to the recording had been given.

(3) A performer's rights are infringed by a person who, without the performer's consent and otherwise than for that person's private and domestic use, copies a recording that is a film—

(a) if the copy is made for purposes different from those for which the performer gave his or her consent to the recording; or

(b) if the recording was made in accordance with any of the exemptions contained in any of sections 175 to 179 or sections 181 to 191 and the copy is made for different purposes.

(4) In proceedings for infringement of a performer's rights brought under this section, damages shall not be awarded against a defendant who shows that at the time of the infringement the defendant believed on reasonable grounds that the performer's consent to the copying of the recording had been given.

Section 173 heading: amended, on 30 December 2018, by section 22(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 173(1): amended, on 30 December 2018, by section 22(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 173(3): amended, on 30 December 2018, by section 22(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

174 Infringement by importing, possessing, or dealing with illicit recording

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

(a) imports into New Zealand otherwise than for that person's private and domestic use; or

(b) in the course of a business, possesses, sells, lets for hire, offers or exposes for sale or hire, or distributes—

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

(2) Where, in proceedings for infringement of a performer's rights brought under this section, a defendant shows that the recording was innocently acquired by the defendant or a predecessor in title of the defendant, the only remedy available against the defendant in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

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

Compare: Copyright, Designs and Patents Act 1988 s 184 (UK)

Section 174(1): amended, on 30 December 2018, by section 23 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Subpart 4—Performers' property rights relating to sound recordings

Subpart 4: inserted, on 30 December 2018, by section 24 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

174A Application

This subpart applies only to recordings that are sound recordings.

Section 174A: inserted, on 30 December 2018, by section 24 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

174B Consent required for making sound recording available to public

A performer's rights are infringed by a person who, without the performer's consent and by means of a recording, communicates to the public the whole or a substantial part of a performance.

Section 174B: inserted, on 30 December 2018, by section 24 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

174C Consent required for copying of sound recording

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

(2) Subsection (1) does not apply if—

(a) the recording is not a communication work or part of a communication work; and

(b) the copy is made from a recording that is not an illicit recording; and

(c) the recording is not borrowed or hired; and

(d) the copy is made by the owner of the recording; and

(e) that owner acquired the recording legitimately; and

(f) the copy is used only for that owner's personal use or the personal use of a member of the household in which the owner lives, or both; and

(g) no more than 1 copy is made for each device for playing recordings that is owned by the owner of the recording; and

(h) the owner of the recording retains the ownership of both the recording and of any copy that is made under this section.

(3) However, subsection (2) does not apply if the owner of the recording is bound by a contract that specifies the circumstances in which the recording may be copied.

Section 174C: inserted, on 30 December 2018, by section 24 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

174D Consent required for issue of copies to public

(1) A performer's rights are infringed by a person who, without the performer's consent, issues to the public a copy of a recording, including the original recording, of the whole or any substantial part of a performance.

(2) Subsection (1) does not apply to a copy of a recording if the copy is imported into New Zealand and—

(a) the copy was made in a foreign country with the consent of the person entitled, in that country, to exercise the property rights; or

(b) no person was entitled, in the foreign country in which the copy was made, to exercise the property rights, and any of the following applies:

(i) the property rights in that country had expired:

(ii) the person otherwise entitled, in that country, to exercise the property rights failed to take some step legally available to the person to secure, in that country, the property rights:

(iii) the copy was made in that country by or with the consent of the person entitled, in New Zealand, to exercise the performers' property rights related to the performance.

(3) In subsection (2) (other than paragraph (b)(iii)), **property rights** means intellectual property rights related to the performance that are equivalent to the performers' property rights conferred by this subpart.

Section 174D: inserted, on 30 December 2018, by section 24 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Subpart 5—Acts permitted in relation to performances

Subpart 5 heading: inserted, on 30 December 2018, by section 24 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Acts permitted in relation to performances

[Repealed]

Heading: repealed, on 30 December 2018, by section 25 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

175 Incidental copying of performance or recording

(1) The rights conferred by subparts 2 to 4 are not infringed by—

(a) the incidental inclusion of a performance or recording in a sound recording, film, or communication work; or

(b) the playing of a sound recording, the showing of a film, or the making of a communication work, where the performance or sound recording has been incidentally included in that sound recording, film, or communication work; or

(c) the issue to the public of copies of a sound recording, film, or communication work in which a performance or recording has been incidentally included.

(2) For the purposes of this section, a performance or recording, so far as it consists of—

(a) music; or

(b) words spoken or sung with music,—

shall not be regarded as incidentally copied in another work if the performance or recording is deliberately copied.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 3 (UK)

Section 175(1): substituted, on 31 October 2008, by section 79 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 175(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

175A Transient reproduction of recording of performance

A reproduction of a recording of a performance of a work does not infringe the rights conferred by subparts 2 to 4 in the recording if the reproduction—

(a) is transient or incidental; and

(b) is a necessary part of a technological process for the viewing of, or listening to, the recording by a member of the public to whom the recording is lawfully made available; and

(c) has no independent economic significance.

Section 175A: inserted, on 31 October 2008, by section 80 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 175A: amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

176 Permitted acts in relation to performances, criticism, reviews, and news reporting

Fair dealing with a performance or recording—

(a) for the purposes of criticism or review, of that or another performance or recording, or of a work; or

(b) for the purposes of reporting current events—

does not infringe any of the rights conferred by subparts 2 to 4.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 2 (UK)

Section 176: amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

177 Things done for purposes of instruction or examination

(1) The rights conferred by subparts 2 to 4 are not infringed by the copying of a recording of a performance if—

(a) the copying is done—

(i) in the course of preparation for instruction; or

(ii) for use in the course of instruction; or

(iii) in the course of instruction; or

(iv) after the course of instruction—

where the lesson is on how to make films or film soundtracks or relates to the learning of a language or is conducted by correspondence; and

(b) the copying is done by or on behalf of a person who is to give, is giving, or has given the lesson or by or on behalf of a person who is to receive, is receiving, or has received the lesson; and

(c) no charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received the lesson.

(2) The rights conferred by subparts 2 to 4 are not infringed—

(a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or

(b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 4(1), (2) (UK)

Section 177(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 177(2): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

178 Playing or showing sound recording, film, or communication work at educational establishment

(1) The playing or showing of a sound recording, film, or communication work at an educational establishment for the purposes of instruction before an audience consisting of persons who are students or staff members at the establishment or persons directly connected with the activities of the establishment does not infringe any of the rights conferred by subparts 2 to 4.

(2) For the purposes of this section, a person shall not be treated as a person directly connected with the activities of an educational establishment by reason only that the person is a parent or guardian of a student at that educational establishment.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 5 (UK)

Section 178 heading: amended, on 31 October 2008, by section 81(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 178(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 178(1): amended, on 31 October 2008, by section 81(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

179 Recording of communication works by educational establishment

A recording of a communication work, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing any of the rights conferred by subparts 2 to 4 in relation to any performance or recording included in the recording or copy.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 6(1) (UK)

Section 179 heading: amended, on 31 October 2008, by section 82(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 179: amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 179: amended, on 31 October 2008, by section 82(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

180 Subsequent dealings

(1) Where a recording, or a copy of a recording, that would otherwise be an illicit recording—

(a) is made in accordance with section 177, 179, or 192A(2); and

(b) is subsequently dealt with,—

it shall be treated as an illicit recording—

(c) for the purposes of the dealing referred to in paragraph (b), unless that dealing is authorised by the performer; and

(d) for the purposes of any dealing that is subsequent to the dealing referred to in paragraph (b), unless the first-mentioned dealing is authorised by the performer.

(2) In subsection (1), the term **dealt with** means sold or let for hire, or offered or exposed for sale or hire, in the course of a business.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 paras 4(3), 6(2) (UK)

Section 180(1)(a): amended, on 30 December 2018, by section 26(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

181 Parliamentary and judicial proceedings

The rights conferred by subparts 2 to 4 are not infringed by anything done for the purposes of parliamentary or judicial proceedings or for the purposes of reporting such proceedings.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 8 (UK)

Section 181: amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

182 Royal commissions and statutory inquiries

The rights conferred by subparts 2 to 4 are not infringed by anything done for the purposes of a Royal commission, a commission of inquiry, a ministerial inquiry, or a statutory inquiry.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 9 (UK)

Section 182: amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

183 Acts done under statutory authority

(1) Where the doing of a particular act is specifically authorised by an enactment, the doing of that act does not infringe the rights conferred by subparts 2 to 4 unless the enactment provides otherwise.

(2) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or pursuant to any enactment.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 11 (UK)

Section 183(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

184 Use of recordings of spoken works in certain cases

(1) It is not an infringement of the rights conferred by subparts 2 to 4 to use a recording of a reading or recitation of a literary work (or to copy the recording and use the copy) if—

(a) it was made for the purpose of—

(i) reporting current events; or

(ii) communicating all or part of the reading or recitation to the public; and

(b) the conditions in subsection (2) are complied with.

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

(a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a communication work; and

(b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation; and

(c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and

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

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 13 (UK)

Section 184(1): substituted, on 31 October 2008, by section 83(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 184(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 184(2)(a): amended, on 31 October 2008, by section 83(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

185 Recordings of folk songs

(1) A recording of a performance of a song may be made for the purpose of including the song in an archive maintained by a body prescribed by regulations made under this Act without infringing any of the rights conferred by subparts 2 to 4, if the conditions in subsection (2) are complied with.

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

(a) the words are unpublished and of unknown authorship at the time the recording is made; and

(b) the making of the recording does not infringe any copyright; and

(c) the making of the recording is not prohibited by any performer.

(3) Copies of a recording made in reliance on subsection (1) and included in an archive maintained by a body prescribed by regulations made under this Act may, if the condition contained in subsection (4) is complied with, be made and supplied by the archivist without infringing any of the rights conferred by subparts 2 to 4.

(4) The condition referred to in subsection (3) is that no person is furnished with more than 1 copy of the same recording.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 14 (UK)

Section 185(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 185(3): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

186 Playing of sound recordings for purposes of club, society, etc

(1) It is not an infringement of any right conferred by subparts 2 to 4 to play a sound recording as part of the activities of, or for the benefit of, a club, society, or other organisation, if the conditions contained in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are—

(a) that the club, society, or organisation is not established or conducted for profit; and

(b) that the main objects of the club, society, or organisation are charitable or are otherwise concerned with the advancement of religion, education, or social welfare; and

(c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the club, society, or organisation.

Compare: Copyright, Designs and Patents Act 1988 Schedule 2 para 15 (UK)

Section 186(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

187 Incidental recording for purposes of communication work

(1) A person who proposes to communicate a recording of a performance to the public in circumstances not infringing rights under subparts 2 to 4 does not require consent for the purposes of subparts 2 to 4 to the making of the further recording if the conditions in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are that the further recording—

(a) must only be used for communicating it to the public in circumstances not infringing rights under subparts 2 to 4; and

(b) must be destroyed within 6 months after first being communicated to the public, unless the Minister has authorised the preservation of the recording in the records of a government department or in the national archives because of its documentary character or exceptional importance.

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

(a) for the purposes of any use in breach of the condition in subsection (2)(a); and

(b) for all purposes after either of the conditions in subsection (2) is broken.

Section 187: substituted, on 31 October 2008, by section 84 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 187(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 187(2)(a): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

188 Free public playing or showing of communication work

(1) The free public playing or showing of a communication work (other than a communication work to which section 188A applies) does not infringe a right under subparts 2 to 4 in relation to a performance or recording included in—

(a) the communication work; or

(b) any sound recording or film that is played or shown in public by reception of the communication work.

(2) For the purposes of this section, the public playing or showing of a communication work is not free if—

(a) the audience has paid for admission to—

(i) the place where the communication work is played or shown (which in this section is called the **venue**); or

(ii) any place of which the venue is a part; or

(b) goods or services are supplied at the venue or a place of which it forms part at prices that—

(i) are substantially attributable to the facilities afforded for hearing or seeing the communication work; or

(ii) exceed those usually charged there and that are partly attributable to those facilities; or

(c) the venue is a hotel, motel, camping ground, or any other place that admits persons for a fee for the purposes of temporary accommodation, and the audience is made up of persons residing at that hotel, motel, camping ground, or other place.

(3) For the purposes of subsection (2)(a), the following persons must not be treated as having paid for admission to the venue:

(a) a person admitted as a resident or an inmate of a place (other than a hotel, motel, camping ground, or any other place to which subsection (2)(c) applies):

(b) a person admitted as a member of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing communication works is only incidental to the main purposes of the club or society.

Section 188: substituted, on 16 September 2011, by section 13(1) of the Copyright Amendment Act 2011 (2011 No 72).

Section 188(1): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

188A Free public playing or showing of communication work that is simultaneous with reception

(1) This section applies to the playing or showing of a communication work that—

(a) is made for reception in the area in which it is played or shown; and

(b) is not a communication work for which a subscription fee must be paid in order to receive it; and

(c) is played or shown simultaneously upon reception of the communication work.

(2) The free public playing or showing of a communication work to which this section applies does not infringe a right under subparts 2 to 4 in relation to a performance or recording included in—

(a) the communication work; or

(b) any sound recording or film that is played or shown in public by reception of the communication work.

(3) For the purposes of this section, the public playing or showing of a communication work is not free if—

(a) the audience has paid for admission to the place where the communication work is played or shown (which in this section is called the **venue**), including any place of which the venue is a part; or

(b) goods or services are supplied at the venue or a place of which it forms part at prices that—

(i) are substantially attributable to the facilities afforded for hearing or seeing the communication work; or

(ii) exceed those usually charged there and that are partly attributable to those facilities.

(4) For the purposes of subsection (3)(a), the following persons must not be treated as having paid for admission to the venue:

(a) a person admitted as a resident or an inmate of a place (including a person residing in a hotel, motel, camping ground, or any other place that admits persons for a fee) for the purpose of temporary accommodation:

(b) a person admitted as a member of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing communication works is only incidental to the main purposes of the club or society.

Section 188A: inserted, on 16 September 2011, by section 13(1) of the Copyright Amendment Act 2011 (2011 No 72).

Section 188A(2): amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

188B Assessment of damages for infringement of rights under subparts 2 to 4 in relation to performance or recording

Where the making of a communication work is an infringement of rights under subparts 2 to 4 in relation to a performance or recording, the fact that the work

was heard or seen in public by the reception of the communication work must be taken into account in assessing the damages for the infringement.

Section 188B: inserted, on 16 September 2011, by section 13(1) of the Copyright Amendment Act 2011 (2011 No 72).

Section 188B heading: amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 188B: amended, on 30 December 2018, by section 26(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

189 Reception and retransmission of broadcast in cable programme service

[Repealed]

Section 189: repealed, on 31 October 2008, by section 86 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

190 Provision of subtitled copies of communication work

(1) A prescribed body that makes a recording of a communication work for the purpose of providing people who are deaf or hard of hearing or physically or mentally disabled in any other way with copies that are subtitled or otherwise modified for their special needs, does not infringe any right under this Part in relation to a performance or recording included in that communication work.

(2) A body must not be prescribed for the purposes of subsection (1) if it is established or conducted for profit.

Section 190: substituted, on 31 October 2008, by section 87 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

191 Recording of communication work for archival purposes

(1) Any person (**A**) who records, or makes a copy of a recording of, a communication work does not infringe any right under this Part in relation to a performance or recording included in the communication work if—

(a) the communication work falls within a prescribed class; and

(b) A makes the recording or the copy for the purpose of it being placed in an archive maintained by a prescribed body.

(2) A body must not be prescribed for the purposes of subsection (1) if it is established or conducted for profit.

Section 191: substituted, on 31 October 2008, by section 88 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

192 Power of Tribunal to give consent on behalf of performer

(1) Where a person wishes to make a copy of a recording but—

(a) the consent of a performer to the making of such a copy is required; and

(b) either—

(i) the identity or whereabouts of the performer cannot be ascertained by reasonable inquiry; or

(ii) the performer unreasonably withholds his or her consent,—

the person may apply to the Tribunal for consent to make the copy.

(2) The Tribunal may, subject to the provisions of this section, make an order giving consent to the making of the copy and may impose such conditions on the order as it thinks fit.

(3) The consent given by the Tribunal under subsection (2) has effect as the consent of the performer for the purposes of the provisions of this Part relating to performers' rights.

(4) The Tribunal shall not give consent under subsection (2) unless satisfied that such directions as to the service or publication of notices as the Tribunal may give have been complied with.

(5) The Tribunal shall not give consent under subsection (2) unless satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interests of the performer; but it shall be for the performer to show what his or her reasons are for withholding consent, and in default of evidence as to his or her reasons the Tribunal may draw such inferences as it thinks fit.

(6) In any case the Tribunal shall take into account the following factors:

(a) whether the recording of which the applicant seeks to make a copy was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the copy:

(b) whether the making of the copy is consistent with the obligations of the parties to the arrangements under which the recording was made, or is otherwise consistent with the purposes for which the recording was made.

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

Compare: Copyright, Designs and Patents Act 1988 s 190 (UK)

192A Other acts permitted in relation to performers' property rights

(1) The purpose of this section is to allow certain acts to be done without infringing a performer's property rights.

(2) For the purposes of subpart 4, sections 53, 55, 56, 56A, 57, 58, 79, 82, 83, and 90 apply with all necessary modifications as if—

(a) references to infringing copyright in any work (or any similar reference) were to infringing the rights conferred by subpart 4 in relation to a recording (that is a sound recording); and

(b) references to a work, a literary, dramatic, musical, artistic, or communication work, or a typographical arrangement of a published edition, or a

transcript of a recording of a communication work were to a recording (that is a sound recording); and

(c) references in sections 53 and 58 to a published edition were to a recording (that is a sound recording); and

(d) references in section 55 to an item were to a recording (that is a sound recording); and

(e) references in sections 56 and 79 to a copyright owner were to the person entitled to exercise the rights conferred by subpart 4.

Section 192A: inserted, on 30 December 2018, by section 27 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Subpart 6—Miscellaneous provisions

Subpart 6 heading: inserted, on 30 December 2018, by section 27 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Duration and transmission of rights

193 Duration of rights

The rights conferred by this Part exist in relation to a performance until the end of the period of 50 years from the end of the calendar year in which the performance takes place.

Compare: Copyright, Designs and Patents Act 1988 s 191 (UK)

194 Transmission of performers' rights

(1) The rights conferred by this Part are transmissible only in accordance with sections 194A to 194J.

(2) References in this Part to the performer, in the context of the person having rights conferred by this Part, must be construed as references to the person for the time being entitled to exercise those rights.

Section 194: replaced, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194A Moral rights not assignable

The rights conferred by sections 170A and 170E are not assignable.

Section 194A: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194B Transmission of moral rights on death

(1) On the death of a person entitled to the rights conferred by sections 170A and 170E,—

(a) the rights pass to the person that he or she may by testamentary disposition specifically direct; or

(b) if there is no such direction but the performer's property rights in the performance in question form part of the estate, the rights pass to the person to whom the property rights pass; or

(c) if or to the extent that the rights do not pass under paragraph (a) or (b), the rights are exercisable by his or her personal representatives.

(2) If, under subsection (1)(a) or (b), a right becomes exercisable by more than 1 person,—

(a) in the case of the right conferred by section 170A, the right may be asserted by any of those persons; and

(b) in the case of the right conferred by section 170E, the right is exercisable by each of those persons and is not infringed in relation to any of those persons if one of them consents to the treatment or act in question; and

(c) any waiver of the right in accordance with section 170H by one of those persons does not affect the rights of the others.

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

Section 194B: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194C Performers' rights relating to consent for recording or live transmission and to film recordings not assignable

The rights conferred by sections 171 to 174 are not assignable.

Section 194C: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194D Transmission of performers' rights relating to consent for recording or live transmission and to film recordings on death

(1) On the death of a person entitled to the rights conferred by sections 171 to 174,—

(a) the rights pass to the person that he or she may by testamentary disposition specifically direct; and

(b) if or to the extent that there is no such direction, the rights are exercisable by his or her personal representatives.

(2) If, under subsection (1)(a), a right becomes exercisable by more than 1 person, it is exercisable by each of them independently of the other or others.

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

Section 194D: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194E Transmission of performers' property rights

(1) A performer's property rights are transmissible, as personal or moveable property, by—

(a) assignment; or

(b) testamentary disposition; or

(c) operation of law.

(2) Transmission of a performer's property rights may be partial, that is, limited so as to apply—

(a) to 1 or more, but not all, of the things the person entitled to exercise the performer's property rights has the right to do:

(b) to part, but not the whole, of the period for which the performer's property rights are to exist.

(3) If a performer's property rights become exercisable by more than 1 person, the rights are not exercisable independently and must be exercised by all rights holders acting together.

Section 194E: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194F Assignment

An assignment of a performer's property rights is not effective unless it is in writing signed by or on behalf of the assignor.

Section 194F: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194G Performers' property rights to pass under will with unpublished original recording

(1) This section applies if, under a testamentary disposition (whether general or specific), a person is entitled beneficially or otherwise to any material thing containing an original recording of a performance that was not published before the death of the testator.

(2) The testamentary disposition must be construed as including any performers' property rights in relation to the recording in so far as the testator was the person entitled to exercise the performers' property rights immediately before the testator's death.

(3) Subsection (2) does not apply if a contrary intention is indicated in the testator's will or a codicil to it.

Section 194G: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194H Future property rights

(1) This section applies if a performer purports to assign future property rights (wholly or partially) to another person by an agreement signed by or on behalf of the performer.

(2) If, on the rights coming into existence, the assignee or the assignee's successor in title would be entitled as against all other persons to require the rights to be vested in the assignee or the assignee's successor in title, they vest in the assignee or the assignee's successor in title by virtue of this subsection.

(3) A licence granted by a person to whom future property rights have been assigned is binding on every successor in title to that person's interest in the rights, except—

(a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or

(b) a person deriving title from a purchaser referred to in paragraph (a).

(4) In this section, **future property rights** means a performer's property rights that will or may come into existence in respect of a future recording of a performance.

Section 194H: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Licences

Heading: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194I Licences

(1) A licence granted by a person entitled to exercise a performer's property rights is binding on every successor in title to that person's interest in the rights, except—

(a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or

(b) a person deriving title from a purchaser referred to in paragraph (a).

(2) The licensee under an exclusive performer's rights licence has the same rights against a successor in title who is bound by the licence as that licensee has against the person who granted the licence.

Section 194I: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194J Rights and remedies of exclusive licensee

(1) The licensee under an exclusive performer's rights licence has, except against the person granting the licence, the same rights and remedies under this Part in respect of matters occurring after the grant of the licence as if the licence were an assignment.

(2) The rights and remedies of the licensee under an exclusive performer's rights licence under this Part are concurrent with those of the person granting the licence.

(3) In proceedings brought by the licensee under an exclusive performer's rights licence under this section, a defendant may avail himself or herself or itself of any defence that would have been available if the proceedings had been brought by the person granting the licence.

Section 194J: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

194K Exercise of concurrent rights

(1) This section applies if—

(a) proceedings for infringement of a performer's rights are brought by the performer or a licensee; and

(b) those proceedings relate (wholly or partly) to an infringement in respect of which the performer and the licensee have concurrent rights of action.

(2) The performer or, as the case may be, the licensee may not, without the leave of the court, proceed with the proceedings unless the other is either joined as a plaintiff or added as a defendant.

(3) A performer or licensee who is joined as a plaintiff or added as a defendant under subsection (2) is not liable for any costs in the proceedings unless that person takes part in the proceedings.

(4) Subsections (2) and (3) do not affect the granting of interlocutory relief on an application by a performer or licensee alone.

(5) Whether or not the performer and the licensee are both parties to proceedings for infringement of a performer's rights that relate (wholly or partly) to an infringement in respect of which they have or had concurrent rights of action,—

(a) the court must, in assessing damages, take into account—

(i) the terms of the licence; and

(ii) any pecuniary remedy already awarded or available to either the performer or the licensee in respect of the infringement; and

(b) no account of profits may be directed if an award of damages has been made, or an account of profits has been directed, in favour of either the performer or the licensee in respect of the infringement; and

(c) the court must, if an account of profits is directed, apportion the profits between the performer and the licensee in the manner that the court considers just, subject to any agreement between them.

(6) The performer must notify any licensee who has concurrent rights before applying for an order under section 199, and the court may on the application

of the licensee make any order under that section that it thinks fit, having regard to the terms of the licence.

(7) In this section, **licensee** means a licensee under an exclusive performer's rights licence.

Section 194K: inserted, on 30 December 2018, by section 29 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Consent and waiver

Heading: replaced, on 30 December 2018, by section 30 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

195 Consent and waiver

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

(2) Where a right conferred by this Part passes to another person, any consent or waiver binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent or waiver had been given by him or her.

Compare: Copyright, Designs and Patents Act 1988 s 193 (UK)

Section 195 heading: replaced, on 30 December 2018, by section 31(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 195(2): amended, on 30 December 2018, by section 31(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Remedies for infringement

196 Proceedings for infringement of performers' rights

(1) An infringement of any of the rights conferred by this Part is actionable by the performer in whom the right is vested.

(2) An infringement of any of the rights conferred by this Part is also actionable, on behalf of the performer, by a person having recording rights, without any need to obtain the consent of the performer to the bringing of the proceedings, unless the performer expressly requires his or her consent to be obtained.

(3) In proceedings for infringement of any of the rights conferred by this Part, the relief that a court may grant includes—

(a) an injunction (subject to such terms, if any, as the court thinks fit); and

(b) either damages or an account of profits.

(4) Where, in proceedings under this Part,—

(a) the infringement is established; and

(b) the court is satisfied that it is proper to do so, having regard to—

(i) the flagrancy of the infringement; and

(ii) any benefit accruing to the defendant by reason of the infringement; and

(iii) all other relevant matters,—

the court may award such additional damages as the justice of the case may require.

(5) If, in proceedings for infringement of a performer's property rights, it is proved or admitted that at the time of the infringement the defendant did not know, and had no reason to believe, that the acts complained of infringed the performer's property rights, the plaintiff is not entitled to damages but, without prejudice to the award of any other remedy, is entitled to an account of profits.

Compare: Copyright Act 1968 s 248J (Aust)

Section 196(3)(b): amended, on 30 December 2018, by section 32(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 196(5): inserted, on 30 December 2018, by section 32(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

196A Proceedings against the Crown

If any employee or agent of the Crown infringes a performer's rights in a performance, and the infringement is committed with the authority of the Crown, civil proceedings in respect of the infringement lie against the Crown under the Crown Proceedings Act 1950 (subject to this Act).

Section 196A: inserted, on 30 December 2018, by section 33 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

197 Order for delivery up in civil proceedings

(1) Where a person has an illicit recording of a performance in that person's possession, custody, or control in the course of a business,—

(a) any person having performers' rights in relation to the performance under this Part; or

(b) any person having recording rights in relation to the performance under this Part—

may apply to the court for an order that the illicit recording be delivered up to him or her or such other person as the court may direct.

(2) No order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 202.

(3) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall, if an order under section 202 is not made, retain the illicit recording pending the making of an order, or the decision not to make an order, under that section.

(4) Notwithstanding any rule of court, an order may be made pursuant to this section on an *ex parte* application where service of notice of the application would cause undue delay or other serious detriment to the applicant.

(5) Nothing in this section affects any other power of the court.

Presumptions

Heading: inserted, on 30 December 2018, by section 34 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

197A Presumptions relevant to performances

(1) This section applies to proceedings brought under this Act with respect to—

(a) a recording that is a sound recording of a performance:

(b) a copy of a recording referred to in paragraph (a).

(2) If a person has previously been identified as the performer of a performance in accordance with section 170B(1)(c) or (d), it is presumed, until the contrary is proved,—

(a) that rights are conferred by this Part in relation to the performance; and

(b) that the person is the person entitled to exercise those rights.

Section 197A: inserted, on 30 December 2018, by section 34 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Offences

198 Criminal liability for making, dealing with, using, or copying illicit recordings

(1) Every person commits an offence against this section who, without the consent of the performer,—

(a) makes for sale or hire; or

(b) imports into New Zealand otherwise than for that person's private and domestic use; or

(c) possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part; or

(ca) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the performer; or

(d) In the course of a business,—

(i) offers or exposes for sale or hire; or

(ii) sells or lets for hire; or

(iii) distributes—

a specified recording.

(1A) In subsections (1) and (4), **specified recording** means—

(a) an illicit recording, if the person referred to in subsection (1) knows that the recording is an illicit recording; or

(b) a copy of a sound recording that is made without the performer's consent, if the person referred to in subsection (1) knows that the copy was made without that consent.

(2) Every person commits an offence against this section who causes a recording that is, and that the person knows is, an illicit recording, to be—

(a) played in public or shown in public; or

(b) communicated to the public.

(3) Every person commits an offence against this section who, otherwise than for that person's private and domestic use, copies a recording—

(a) without the consent of the performer, if the person knows that the recording was made without the performer's consent; or

(b) if the copy is made for purposes different from those for which the performer gave his or her consent, and the person knows that the performer has not consented to the copying of the recording for different purposes; or

(c) if the original recording was made in accordance with any of the exemptions contained in any of sections 175 to 179, 181 to 191, and 192A, and the copy is made for different purposes, and the person knows that the performer has not consented to the copying of the recording for those different purposes.

(4) Every person who commits an offence against subsection (1), (2), or (3) is liable on conviction,—

(a) in the case of an offence against subsection (1), to a fine not exceeding $10,000 for every specified recording to which the offence relates, but not exceeding $150,000 in respect of the same transaction, or to imprisonment for a term not exceeding 5 years:

(b) in the case of an offence against subsection (2), to a fine not exceeding $150,000 or to imprisonment for a term not exceeding 5 years:

(c) in the case of an offence against subsection (3), to a fine not exceeding $50,000 or to imprisonment for a term not exceeding 3 months.

(5) Where any person is convicted of an offence against this section in circumstances where that offence involves the making of profit or gain, that offence shall be deemed to have caused a loss of property for the purposes of section 32(1)(a) of the Sentencing Act 2002, and the provisions of that Act relating to the imposition of the sentence of reparation shall apply accordingly.

(6) Section 197A (which relates to presumptions) does not apply to proceedings for an offence against this section.

Compare: Copyright, Designs and Patents Act 1988 s 198(1), (2), (3)(a), (5), (6) (UK)

Section 198(1): amended, on 30 December 2018, by section 35(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 198(1)(ca): inserted, on 30 December 2018, by section 35(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 198(1A): inserted, on 30 December 2018, by section 35(3) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 198(2)(b): substituted, on 31 October 2008, by section 89 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 198(3)(c): amended, on 30 December 2018, by section 35(4) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 198(4): replaced, on 30 December 2018, by section 35(5) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 198(5): amended, on 30 June 2002, by section 186 of the Sentencing Act 2002 (2002 No 9).

Section 198(6): inserted, on 30 December 2018, by section 35(6) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

199 Order for delivery up in criminal proceedings

(1) The court before which proceedings are brought against a person for an offence against section 198 may, if satisfied that, at the time of the defendant's arrest or charge, the defendant had in his possession, custody, or control in the course of a business an illicit recording, order that the recording be delivered up to a person having performers' rights in relation to the performance or to such other person as the court may direct.

(2) An order may be made under subsection (1) by the court of its own motion or on the application of the prosecution, and may be made whether or not the person is convicted of the offence, but shall not be made if it appears to the court unlikely that any order will be made under section 202 in the proceedings.

(3) A person to whom an illicit recording is delivered up pursuant to an order made under this section shall retain the recording pending the making of an order, or the decision not to make an order, under section 202.

(4) Section 197A (which relates to presumptions) applies in proceedings for an order under this section.

Compare: Copyright, Designs and Patents Act 1988 s 199(1), (3), (5) (UK)

Section 199(4): inserted, on 30 December 2018, by section 36 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

200 False representation of authority to give consent

(1) Every person commits an offence against this section who represents falsely that he or she is authorised by any person to give consent for the purposes of this Part in relation to a performance, unless he or she believes on reasonable grounds that he or she is entitled to do so.

(2) A person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding $10,000.

Compare: Copyright, Designs and Patents Act 1988 s 201 (UK)

Section 200(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

201 Liability of officers of body corporate

Where any body corporate is convicted of an offence against section 198 or section 200, every director and every person concerned in the management of the body corporate shall be guilty of the offence if it is proved—

(a) that the act that constituted the offence took place with his or her authority, permission, or consent; and

(b) that he or she—

(i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and

(ii) failed to take all reasonable steps to prevent or stop it.

Compare: 1991 No 69 s 340

201A Evidence in proceedings

(1) In proceedings for an offence against section 198, whether by way of a hearing in the first instance or by way of appeal or otherwise, the court may receive an affidavit as evidence of—

(a) the existence of rights conferred by this Part in relation to a performance; and

(b) a person being entitled to exercise those rights.

(2) A party to the proceedings may apply to the court to require a person whose evidence has been given by affidavit to attend the proceedings for the purposes of cross-examination; and the court may make an order accordingly.

Section 201A: inserted, on 30 December 2018, by section 37 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

202 Order as to disposal of illicit recording

(1) An application may be made to the court for an order that an illicit recording delivered up pursuant to an order made under section 197 or section 199 shall be—

(a) forfeited to such person having performers' rights in relation to the performance as the court may direct; or

(b) destroyed or otherwise dealt with as the court thinks fit.

(2) In considering what order (if any) should be made under subsection (1), the court shall have regard to—

(a) whether other remedies available in proceedings for infringement of the rights conferred by this Part would be adequate to compensate the person or persons entitled to the rights and to protect the interests of that person or those persons; and

(b) the need to ensure that no illicit recording is disposed of in a manner that would adversely affect a person having performers' rights in the performance.

(3) The court shall issue directions as to the service of notice on persons having an interest in the recording.

(4) Any person having an interest in the recording is entitled—

(a) to appear in proceedings for an order under this section, whether or not he or she is served with notice; and

(b) to appeal against any order made, whether or not he or she appears in the proceedings;—

and an order made under subsection (1) shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than 1 person interested in a recording, the court may direct that the recording be sold, or otherwise dealt with, and the proceeds divided, and shall make any other order as it thinks just.

(6) If the court decides that no order should be made under this section, the person in whose possession, custody, or control the recording was before being delivered up is entitled to its return.

Compare: Copyright, Designs and Patents Act 1988 s 204 (UK)

Application to foreign countries

203 Application of this Part to convention countries

[Repealed]

Section 203: repealed, on 14 October 1999, by section 4 of the Copyright Amendment Act 1999 (1999 No 124).

204 Application of Part 9 to other entities

(1) On the recommendation of the Minister, the Governor-General may by Order in Council apply any provision or provisions of this Part to any entity specified in the order (whether a State, part of a State, a territory for whose international relations a State is responsible, a political union, an international organisation, or any other entity).

(2) An order—

(a) may apply a provision unconditionally, or subject to conditions, modifications, or both; and

(b) may apply a provision generally, or in relation to performances of a particular class or classes.

(3) The Minister must not recommend the making of an order applying any provision of this Part to any entity unless satisfied that—

(a) the entity is a convention country; or

(b) provision is or will be made under the law of or applicable to the entity giving reciprocal protection to performances generally or (as the case requires) performances of the class or classes to which the order applies that provision of this Part.

(4) If the Government of a State is responsible for the international relations of 1 or more territories, an order may apply a provision to—

(a) the State and the territory (or 1 or more of the territories) concerned; or

(b) just the State; or

(c) just the territory (or 1 or more of the territories) concerned.

Section 204: substituted, on 14 October 1999, by section 2(1) of the Copyright Amendment Act 1999 (1999 No 124).

Part 10
Copyright Tribunal

Constitution

205 Copyright Tribunal

The Tribunal constituted by section 30 of the Copyright Act 1962 and known as the Copyright Tribunal shall continue in being.

206 Membership of Tribunal

(1) The Tribunal consists of a chairperson and at least 2 other persons.

(2) The chairperson of the Tribunal—

(a) shall be appointed as chairperson by the Governor-General on the recommendation of the Minister made after consultation with the Minister of Justice; and

(b) shall be a barrister or solicitor of the High Court of not less than 7 years' practice, whether or not the barrister or solicitor holds or has held judicial office.

(3) The other persons shall be appointed as members of the Tribunal by the Governor-General on the recommendation of the Minister.

(4) No person shall be deemed to be employed in the service of the Crown for the purposes of the State Sector Act 1988 by virtue merely of his or her appointment to the Tribunal.

(5) For the purposes of this Part, except for the reference in subsection (3), a reference to a **member** or **members** includes the chairperson.

Compare: 1962 No 33 s 30(1), (2), (7)

Section 206(1): replaced, on 26 March 2015, by section 4(1) of the Copyright Amendment Act 2015 (2015 No 11).

Section 206(1): amended, on 14 November 2018, by section 8(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 206(2)(a): substituted, on 1 October 1995, by section 10(3) of the Department of Justice (Restructuring) Act 1995 (1995 No 39).

Section 206(3): amended, on 26 March 2015, by section 4(2) of the Copyright Amendment Act 2015 (2015 No 11).

Section 206(5): inserted, on 14 November 2018, by section 8(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

207 Term of office of members of Tribunal

(1) Every member of the Tribunal shall hold office for a term not exceeding 5 years.

(2) Any member of the Tribunal may hold that office concurrently with any other office held by him or her and may from time to time be reappointed.

(3) A member of the Tribunal continues in office despite the expiry of his or her term of office until—

(a) the member is reappointed; or

(b) the member's successor is appointed; or

(c) the member is notified that a replacement member will not be appointed; or

(d) the member vacates or is removed from office.

(3A) A member who continues in office for any period under subsection (3), unless he or she was removed from office, may act as a member during that period for the purpose of—

(a) completing any proceedings partly or wholly heard by the Tribunal before the expiry of his or her term of office:

(b) hearing any other proceedings.

(3B) A member who has resigned, or whose successor is appointed or who will not be replaced (unless he or she was removed from office), may continue in office for the purpose of completing any proceedings that are partly or wholly heard.

(4) The powers of the Tribunal shall not be affected by any vacancy in its membership.

Compare: 1962 No 33 s 30(3)–(6)

Section 207(3): replaced, on 14 November 2018, by section 9 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 207(3A): inserted, on 14 November 2018, by section 9 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 207(3B): inserted, on 14 November 2018, by section 9 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

208 Vacation of office

(1) Any member of the Tribunal may at any time resign his or her office by delivering a notice in writing to that effect to the Minister.

(2) Any member of the Tribunal shall be deemed to have vacated his or her office if he or she dies or is, under the Insolvency Act 2006, adjudged bankrupt.

(3) Any member of the Tribunal may at any time be removed from office by the Governor-General for disability affecting performance of duty, neglect of duty, or misconduct, proved to the satisfaction of the Governor-General.

Compare: 1962 No 33 ss 31, 32

Section 208(2): amended, on 3 December 2007, by section 445 of the Insolvency Act 2006 (2006 No 55).

209 Appointment of temporary acting chairperson or members

(1) If the chairperson or a member of the Tribunal becomes incapable of acting by reason of illness, absence, or other sufficient cause, or if the chairperson or a member considers it is not proper or not desirable that he or she should adjudicate on a specified matter, the Governor-General, on the recommendation of the Minister, made, in the case of an acting chairperson, after consultation with the Minister of Justice, may appoint a suitable person as the acting chairperson or an acting member for the period or purpose stated in the appointment.

(2) No person may be appointed as the acting chairperson or an acting member unless he or she is eligible for appointment to the relevant position.

(3) The acting chairperson or acting member is, while acting in the position, to be treated as the chairperson or a member of the Tribunal.

(4) No appointment of an acting chairperson or acting member, no act done by an acting chairperson or acting member, and no act done by the Tribunal may be questioned in any proceedings on the ground that the occasion for the appointment had not arisen or had ceased.

Section 209: replaced, on 14 November 2018, by section 10 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

209A Delegation by chairperson of Tribunal

(1) The chairperson of the Tribunal may delegate any of the chairperson's functions, duties, and powers to a member of the Tribunal who holds the qualifications set out in section 206(2)(b) and the chairperson is satisfied has the necessary capability, skills, and experience to perform or exercise those functions, duties, and powers.

(2) A delegation—

(a) must be in writing; and

(b) must be to a named person; and

(c) is revocable at any time, in writing; and

(d) does not prevent the performance or exercise of a function, duty, or power by the chairperson.

(3) A person to whom any functions, duties, or powers are delegated may perform or exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) A person who appears to act under a delegation is presumed to be acting in accordance with its terms in the absence of evidence to the contrary.

(5) A person to whom any functions, duties, or powers are delegated must be paid remuneration and expenses (if any) determined in accordance with section 210 for work undertaken in that capacity.

Section 209A: inserted, on 29 October 2019, by section 11 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

210 Remuneration and travelling allowances

(1) The Tribunal is hereby declared to be a statutory board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There shall be paid to members of the Tribunal, out of money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Compare: 1962 No 33 s 35

Jurisdiction and procedure

211 Jurisdiction of Tribunal

The Tribunal shall have such functions as are conferred on it by this Act or any other enactment.

Compare: 1962 No 33 s 37

211A Orderly and efficient operation

(1) The chairperson of the Tribunal is responsible for making such arrangements as are practicable to ensure that he or she and each member performs his or her functions—

(a) in an orderly and efficient manner; and

(b) in a way that achieves the purposes of this Act.

(2) The Ministry of Justice must provide the resources and administrative support necessary to enable the Tribunal to perform its functions.

Section 211A: inserted, on 14 November 2018, by section 12 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

212 Parties to proceedings

(1) The operator of the licensing scheme or the proposed licensing scheme shall be a party to any proceedings under section 149 or section 150 or section 151 or section 153 or section 154 or section 157 or section 158 or section 159.

(2) The Tribunal may direct that an organisation or person be added as a party to any proceedings before the Tribunal under this Act where the Tribunal is satisfied that the organisation or person has a substantial interest in the matter in dispute and either—

(a) the organisation or person applies to be made a party to those proceedings; or

(b) the Tribunal of its own motion considers it desirable.

(3) The Attorney-General, if in his or her opinion the public interest is or may be involved, may, on giving such notice to other parties as the Tribunal may direct, appear and be heard, or present submissions in writing on any proceedings before the Tribunal.

Compare: 1962 No 33 s 42

213 Hearing

(1) The Tribunal shall fix a time and place for the hearing of proceedings and shall cause notice to be given to the parties of the time and place so fixed.

(2) No sitting of the Tribunal shall take place, except for the purposes of interlocutory or other ancillary matters, unless at least 3 members are present.

(3) Every sitting of the Tribunal shall be held in such place as the Tribunal deems convenient.

(4) Every sitting of the Tribunal shall be held in public unless the Tribunal in any particular case, having regard to the interests of the parties and of all other persons concerned, considers that the sitting or any part of it should be held in private.

(5) The Tribunal may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings.

(6) Every person commits an offence and is liable on conviction to a fine not exceeding $3,000 who acts in contravention of any order made by the Tribunal under subsection (5).

(7) Any sitting of the Tribunal may be adjourned from time to time and from place to place.

(8) Despite anything in this Act to the contrary and except as provided in section 122L, the Tribunal may determine a proceeding on the papers if the Tribunal considers it appropriate.

(9) Before doing so, the Tribunal must give the parties a reasonable opportunity to comment on whether the proceeding should be dealt with in that manner.

(10) The hearing of a matter or any part of it may be conducted by telephone, audio-visual link, or other remote access facility if the chairperson or the Tribunal considers it appropriate and the necessary facilities are available.

Compare: 1962 No 33 s 43(1)–(4)

Section 213 heading: replaced, on 14 November 2018, by section 13(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 213(2): amended, on 1 September 2011, by section 9 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 213(6): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 213(8): inserted, on 14 November 2018, by section 13(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 213(9): inserted, on 14 November 2018, by section 13(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 213(10): inserted, on 14 November 2018, by section 13(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

214 Procedure of Tribunal

(1) Any party to proceedings before the Tribunal may appear personally or by the party's barrister, solicitor, or agent.

(2) The Tribunal may appoint a barrister or solicitor to appear and be heard in proceedings as counsel assisting the Tribunal.

(3) The decision of the majority of members shall be the decision of the Tribunal.

(3A) If the members are equally divided in opinion, the decision of the chairperson is the decision of the Tribunal.

(4) Every decision of the Tribunal shall be in writing and shall state the reasons for the decision.

(5) The Tribunal may regulate its procedures as it sees fit, subject to this Act, any regulations made under it, and any practice notes issued under section 224A.

Compare: 1962 No 33 s 43(5)–(8)

Section 214(3A): inserted, on 14 November 2018, by section 14(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 214(5): replaced, on 14 November 2018, by section 14(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

214A Tribunal may strike out, determine, or adjourn proceeding

(1) The Tribunal may strike out, in whole or in part, a proceeding if satisfied that it—

(a) discloses no reasonable cause of action; or

(b) is likely to cause prejudice or delay; or

(c) is frivolous or vexatious; or

(d) is otherwise an abuse of process.

(2) If a party is neither present nor represented at the hearing of a proceeding, the Tribunal may,—

(a) if the party is required to be present, strike out the proceeding; or

(b) determine the proceeding in the absence of the party; or

(c) adjourn the hearing.

Section 214A: inserted, on 14 November 2018, by section 15 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

215 Evidence in proceedings before Tribunal

(1) The Tribunal may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matters before it, whether or not the same would be admissible in a court of law.

(2) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.

(3) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.

(4) Subject to subsections (1) to (3), the Evidence Act 2006 applies to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.

Compare: 1962 No 33 s 44; 1993 No 82 s 106

Section 215(4): amended, on 1 August 2007, by section 216 of the Evidence Act 2006 (2006 No 69).

216 Witness summons

(1) The Tribunal may of its own motion, or on the application of any party to the proceedings, issue a witness summons to any person requiring that person to attend before the Tribunal to give evidence at the hearing of the proceedings.

(2) The witness summons shall state—

(a) the place where the person is to attend; and

(b) the date and time when the person is to attend; and

(c) the papers, documents, records, or things that that person is required to bring and produce to the Tribunal; and

(d) the entitlement to be tendered or paid a sum in respect of allowances and travelling expenses; and

(e) the penalty for failing to attend.

(3) The power to issue a witness summons may be exercised by the Tribunal or the chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal or the chairperson.

Compare: 1993 No 82 s 109

217 Service of summons

(1) A witness summons may be served—

(a) by delivering the summons personally to the person summoned, or if he or she refuses to accept it, by bringing it to his or her attention; or

(b) by sending it to the person summoned, at that person's usual place of residence, by a service that records delivery; or

(c) by emailing it to the person summoned at an email address that is used by that person.

(2) The summons shall,—

(a) where it is served under subsection (1)(a), be served at least 24 hours before the attendance of the witness is required; or

(b) where it is served under subsection (1)(b) or (c), be served at least 10 days before the date on which the attendance of the witness is required.

(3) A summons sent to a person in accordance with subsection (1)(b) must be treated as served on the person at the time when it would have been delivered in the ordinary course of business for the service it was sent by.

(4) In the absence of proof to the contrary, a summons emailed to a person in accordance with subsection (1)(c) must be treated as served on the person on the second working day after the date on which it is emailed, and, in proving that the summons was emailed, it is sufficient to prove that the summons was properly addressed and sent to the email address.

Compare: 1993 No 82 s 110

Section 217(1)(a): replaced, on 14 November 2018, by section 16 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 217(1)(b): replaced, on 16 December 2017, by section 57(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 217(1)(c): inserted, on 16 December 2017, by section 57(1) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 217(2)(b): amended, on 16 December 2017, by section 57(2) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 217(3): replaced, on 16 December 2017, by section 57(3) of the Electronic Interactions Reform Act 2017 (2017 No 50).

Section 217(4): inserted, on 16 December 2017, by section 57(3) of the Electronic Interactions Reform Act 2017 (2017 No 50).

218 Witnesses' allowances

(1) Every witness attending before the Tribunal to give evidence pursuant to a summons shall be entitled to be paid witnesses' fees, allowances, and travelling expenses according to the scales for the time being prescribed by regulations made under the Criminal Procedure Act 2011, and those regulations shall apply accordingly.

(2) On each occasion on which the Tribunal issues a summons under section 216, the Tribunal, or the person exercising the power of the Tribunal under subsection (3) of that section, shall fix an amount that, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, shall be paid or tendered to the witness.

(3) The amount fixed under subsection (2) shall be the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or person, the witness will be entitled according to the prescribed scales if the witness attends at the time and place specified in the summons.

(4) Where a party to the proceedings has requested the issue of the witness summons, the fees, allowances, and travelling expenses payable to the witness shall be paid by that party.

(5) Where the Tribunal has of its own motion issued the witness summons, the Tribunal may direct that the amount of those fees, allowances, and travelling expenses—

(a) form part of the costs of the proceedings; or

(b) be paid from money appropriated by Parliament for the purpose.

Compare: 1993 No 82 s 111

Section 218(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

219 Privileges and immunities

(1) Witnesses appearing before the Tribunal shall have the same privileges and immunities as witnesses have in proceedings in the District Court.

(2) Counsel and agents appearing before the Tribunal shall have the same privileges and immunities as counsel have in proceedings in the District Court.

(3) The Tribunal, the chairperson, and the members are not personally liable for any act done or omitted to be done by the Tribunal, the chairperson, or any member in good faith in the performance or exercise, or intended performance or exercise, of their functions, duties, or powers under this Act.

Compare: 1993 No 82 s 112

Section 219(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 219(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 219(3): inserted, on 14 November 2018, by section 17 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

220 Non-attendance or refusal to co-operate

(1) Every person commits an offence who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause,—

(a) fails to attend in accordance with the summons; or

(b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or

(c) fails to produce any such paper, document, record, or thing.

(2) Every person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding $1,500.

(3) No person summoned to attend before the Tribunal shall be convicted of an offence against subsection (1) unless there was tendered or paid to that person travelling expenses in accordance with section 218.

Compare: 1993 No 82 s 113

Section 220(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

221 Contempt of Tribunal

(1) Every person commits an offence and is liable on conviction to a fine not exceeding $1,000 who—

(a) threatens, intimidates, or intentionally insults the Tribunal or any member of it, a special adviser to the Tribunal, a witness before the Tribunal, or an officer of the Tribunal during a sitting of the Tribunal, or in going to, or returning from, any sitting; or

(b) intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or

(c) intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any proceedings before the Tribunal.

(2) A member of the Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in that member's opinion, constitutes an offence against subsection (1), whether or not such person is charged with the offence; and any constable or any officer of the Tribunal may take such steps as are reasonably necessary to enforce such an exclusion.

Section 221(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 221(1)(a): amended, on 14 November 2018, by section 18(1) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 221(2): amended, on 14 November 2018, by section 18(2) of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Section 221(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

222 Costs

(1) The Tribunal, in any proceedings before it under this Act, may make such order as to costs as it thinks fit.

(2) Any such order as to costs may be filed in the District Court and may be enforced as a judgment of that court.

Compare: 1962 No 33 s 46

Section 222(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

222A Power to award interest

(1) This section applies where the Tribunal makes an order under Part 8 for the payment of an amount of money (including money required to be repaid, or further money required to be paid, in respect of charges already paid).

(2) The Tribunal's order may include an award of interest on the whole or part of the money, payable for the period, ending not later than the date that the money is paid, that the Tribunal thinks appropriate, as compensation for delay in payment of the money.

(3) Interest awarded under this section must be calculated in accordance with (or on a basis that ensures it does not exceed interest calculated in accordance with) Schedule 2 of the Interest on Money Claims Act 2016.

Section 222A: inserted, on 1 January 2018, by section 4 of the Copyright Amendment Act 2016 (2016 No 59).

223 Stating case for High Court

(1) The Tribunal may, at any time, before or during the hearing or before delivering its decision, on the application of any party to the proceedings or of its own motion, state a case for the opinion of the High Court on any question of law arising in any proceedings before the Tribunal.

(2) The Tribunal shall give notice to the parties to the proceedings of the Tribunal's intention to state a case under this section, specifying the registry of the High Court in which the case is to be filed.

(3) Except where the Tribunal intends to state the case of its own motion, the question shall be in the form of a special case to be drawn up by the parties to the proceedings, and, if the parties do not agree, to be settled by the Tribunal.

(4) Where the Tribunal intends to state a case of its own motion, it shall itself state and sign a case setting forth the facts and questions of law arising for the determination of the High Court.

(5) Every case stated for the High Court under this section shall be dealt with in accordance with rules of court.

(6) The High Court shall hear and determine any question submitted to it under this section, and shall remit the case with its opinion to the Tribunal.

Compare: 1962 No 33 s 47; 1993 No 82 s 122

224 Appeal on question of law

(1) Where any party to any proceedings before the Tribunal under this Act is dissatisfied with any determination of the Tribunal as being erroneous in point of law, that party may appeal to the High Court on that question of law.

(2) Every appeal under this section shall be dealt with in accordance with rules of court.

Compare: 1993 No 94 s 58

Practice notes, procedural information, and publication of decisions

Heading: inserted, on 14 November 2018, by section 19 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

224A Practice notes

(1) The chairperson of the Tribunal may issue practice notes for any type of proceedings dealt with by the Tribunal as he or she thinks fit.

(2) The practice notes must not be inconsistent with this Act or any regulations made under it, and are for the guidance of other members of the Tribunal, officers of the Tribunal, and parties before the Tribunal.

Section 224A: inserted, on 14 November 2018, by section 19 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

224B Online publication of information about procedures, time frames, and progress of decisions

The following information must be published on an Internet site maintained by or on behalf of the chief executive of the Ministry of Justice:

(a) information about the purpose of the Tribunal and how to commence a proceeding:

(b) any requirements that must be met for a proceeding:

(c) guidelines on how and when parties may obtain information on the progress of their case and when a decision may be expected.

Section 224B: inserted, on 29 October 2019, by section 20 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

224C Online publication of final written decisions

(1) Every final written decision of the Tribunal must be published on an Internet site as soon as practicable unless there is good reason not to publish it.

(2) A final written decision may be published in part if there is good reason for not publishing the full decision.

(3) Subsections (1) and (2) are subject to section 213(5).

(4) Good reason not to publish a decision, or part of it, includes the following:

(a) non-publication is necessary because of a suppression order or statutory requirement that affects publication or continued publication:

(b) the decision falls into a category of decisions that are of limited public value:

(c) taking into account the presumption in subsection (1) in favour of publication, the Tribunal nevertheless determines that the decision or any part of it should not be published because publication or the effect of publication would be contrary to the interests of justice.

(5) In this section, **final written decision** means a written decision that determines, or substantially determines, the outcome of proceedings in the Tribunal and is either of the following:

(a) a written reserved decision following an oral hearing:

(b) a written decision in any case considered on the papers.

Section 224C: inserted, on 29 October 2019, by section 20 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Part 11
Miscellaneous provisions

225 Rights and privileges under other enactments or common law

(1) Nothing in this Act affects—

(a) any right or privilege of any person under any other enactment:

(b) any right or privilege of the Crown existing otherwise than under an enactment:

(c) any right or privilege of the House of Representatives:

(d) the right of the Crown or any person deriving title from the Crown to sell, use, or otherwise deal with objects forfeited under the laws relating to customs and excise:

(e) the operation of any rule of equity relating to breaches of trust or confidence.

(2) Subject to subsection (1), no copyright or right in the nature of copyright shall exist otherwise than under this Act or some other enactment in that behalf.

(3) Nothing in this Act affects any rule of law preventing or restricting the enforcement of copyright, on grounds of public interest or otherwise.

(4) Nothing in this Act affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Act in respect of acts infringing any of the rights conferred by Part 4.

Compare: 1962 No 33 ss 5, 67; Copyright, Designs and Patents Act 1988 s 171 (UK)

Technological protection measures

Heading: substituted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

226 Interpretation for sections 226A to 226E

In sections 226A to 226E, unless the context otherwise requires,—

issuer of the TPM work or **issuer of a TPM work** means—

(a) a copyright owner of a TPM work that—

(i) issued a copy of the TPM work to the public; or

(ii) communicated the TPM work to the public; or

(b) a person that, under licence from the copyright owner,—

(i) issued a copy of the TPM work to the public; or

(ii) communicated the TPM work to the public

permitted act means an act that—

(a) is permitted under Part 3 or otherwise does not infringe copyright in the TPM work; and

(b) does not infringe any specified performers' rights in the TPM work

specified performers' rights means the rights conferred by section 172, or subpart 4 of Part 9, in respect of a recording that is a sound recording and a TPM work

TPM or **technological protection measure**—

(a) means any process, treatment, mechanism, device, or system that in the normal course of its operation prevents or inhibits the infringement of copyright in a TPM work; but

(b) for the avoidance of doubt, does not include a process, treatment, mechanism, device, or system to the extent that, in the normal course of operation, it only controls any access to a work for non-infringing purposes (for example, it does not include a process, treatment, mechanism, device, or system to the extent that it controls geographic market segmentation by preventing the playback in New Zealand of a non-infringing copy of a work)

TPM circumvention device means a device or means that—

(a) is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of a technological protection measure; and

(b) has only limited commercially significant application except for its use in circumventing a technological protection measure

TPM work means a copyright work that is protected by a technological protection measure.

Section 226: substituted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226 heading: replaced, on 30 December 2018, by section 37A(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226 **issuer of the TPM work** or **issuer of a TPM work**: inserted, on 30 December 2018, by section 37A(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226 **permitted act**: inserted, on 30 December 2018, by section 37A(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226 **specified performers' rights**: inserted, on 30 December 2018, by section 37A(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

226A Prohibited conduct in relation to technological protection measure

(1) A person (**A**) must not make, import, sell, distribute, let for hire, offer or expose for sale or hire, or advertise for sale or hire, a TPM circumvention device that applies to a technological protection measure if A knows or has reason to believe that it will, or is likely to, be used to infringe copyright in a TPM work.

(2) A person (**A**) must not provide a service to another person (**B**) if—

(a) A intends the service to enable or assist B to circumvent a technological protection measure; and

(b) A knows or has reason to believe that the service will, or is likely to, be used to infringe copyright in a TPM work.

(3) A person (**A**) must not publish information enabling or assisting another person to circumvent a technological protection measure if A intends that the information will be used to infringe copyright in a TPM work.

Section 226A: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

226B Rights of issuer of TPM work

(1) *[Repealed]*

(2) The issuer of the TPM work has the same rights and remedies against a person who contravenes section 226A as a copyright owner has in respect of an infringement of copyright.

(3) The issuer of the TPM work has the same rights under section 122 (order for delivery up in civil proceedings) or 132 (order for delivery up in criminal proceedings) in relation to a TPM circumvention device as a copyright owner has in relation to an infringing copy.

(4) Sections 126 to 129 and 197A (which relate to certain presumptions) apply in relation to proceedings under this section.

(5) Section 134 (order as to disposal of infringing copy or other object) applies, with all necessary modifications, in relation to the disposal of anything that is delivered up under subsection (3).

(6) A performer (**A**) must be treated as an issuer of the TPM work for the purposes of this section if—

(a) the performance is fixed in a sound recording; and

(b) the TPM work is the sound recording; and

(c) A issued a copy of the TPM work to the public or communicated the TPM work to the public.

Section 226B: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226B(1): repealed, on 30 December 2018, by section 40(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226B(2): amended, on 30 December 2018, by section 40(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226B(4): amended, on 30 December 2018, by section 40(5) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226B(6): inserted, on 30 December 2018, by section 40(6) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

226C Offence of contravening section 226A

(1) A person (**A**) commits an offence who, in the course of business, makes, imports, sells, distributes, lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, a TPM circumvention device that applies to a technological protection measure if A knows that it will, or is likely to, be used to infringe copyright in a TPM work.

(2) A person (**A**) commits an offence who, in the course of business, provides a service to another person (**B**) if—

(a) A intends the service to enable or assist B to circumvent a technological protection measure; and

(b) A knows that the service will, or is likely to, be used to infringe copyright in a TPM work.

(3) A person (**A**) commits an offence who, in the course of business, publishes information enabling or assisting another person to circumvent a technological protection measure if A intends that the information will be used to infringe copyright in a TPM work.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding $150,000 or a term of imprisonment not exceeding 5 years or both.

Section 226C: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226C(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

226D When rights of issuer of TPM work do not apply

(1) The rights that the issuer of a TPM work has under section 226B do not prevent or restrict the exercise of a permitted act.

(2) The rights that the issuer of a TPM work has under section 226B do not prevent or restrict the making, importation, sale, or letting for hire of a TPM circumvention device to enable—

(a) a qualified person to exercise a permitted act using a TPM circumvention device on behalf of the user of a TPM work; or

(b) a person referred to in section 226E(3) to undertake encryption research.

(3) In this section and in section 226E, **qualified person** means—

(a) the librarian of a prescribed library; or

(b) the archivist of an archive; or

(c) an educational establishment; or

(d) any other person specified by the Governor-General by Order in Council on the recommendation of the Minister.

(4) A qualified person must not be supplied with a TPM circumvention device on behalf of a user unless the qualified person has first made a declaration to the supplier in the prescribed form.

(5) In this section,—

archive has the same meaning as in section 50(1)

archivist includes a person acting on behalf of the archivist

encryption technology means the scrambling and descrambling of information using mathematical formulae or algorithms

librarian includes a person acting on behalf of the librarian

prescribed library has the same meaning as in section 50(1).

(6) In this section and in section 226E, **encryption research** means identifying and analysing flaws and vulnerabilities of encryption technology.

Section 226D: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226D(2)(a): amended, on 30 December 2018, by section 37B of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

226E User's options if prevented from exercising permitted act by TPM

(1) Nothing in this Act prevents any person from using a TPM circumvention device to exercise a permitted act.

(2) The user of a TPM work who wishes to exercise a permitted act but cannot practically do so because of a TPM may do either or both of the following:

(a) apply to the issuer of the TPM work for assistance enabling the user to exercise the permitted act:

(b) engage a qualified person (*see* section 226D(3)) to exercise the permitted act on the user's behalf using a TPM circumvention device, but only if the issuer of the TPM work has refused the user's request for assistance or has failed to respond to it within a reasonable time.

(3) Nothing in this Act prevents any person from using a TPM circumvention device to undertake encryption research if that research is a permitted act and if that person—

(a) is either—

(i) engaged in a course of study at an educational establishment in the field of encryption technology; or

(ii) employed, trained, or experienced in the field of encryption technology; and

(b) has either—

(i) obtained permission from the issuer of the TPM work to use a TPM circumvention device for the purpose of the research; or

(ii) has taken, or will take, all reasonable steps to obtain that permission.

(4) A qualified person who exercises a permitted act on behalf of the user of a TPM work must not charge the user more than a sum consisting of the total of the cost of the provision of the service and a reasonable contribution to the qualified person's general expenses.

Section 226E: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226E(1): amended, on 30 December 2018, by section 37C(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226E(2): amended, on 30 December 2018, by section 37C(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226E(2)(a): amended, on 30 December 2018, by section 37C(3) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226E(2)(b): amended, on 30 December 2018, by section 37C(3) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226E(3): amended, on 30 December 2018, by section 37C(4) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226E(3)(b)(i): amended, on 30 December 2018, by section 37C(5) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Copyright management information

Heading: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

226F Meaning of copyright management information

In sections 226G, 226H, and 226J, **CMI** or **copyright management information** means information attached to, or appearing in connection with communicating or making available, a copy of a copyright work that—

(a) identifies 1 or more of the following:

(i) the work:

(ii) the author of the work:

(iii) the copyright owner:

(iv) a performer:

(v) in the case of a film, the director of the film; or

(b) identifies or indicates some or all of the terms and conditions for using the work, or indicates that the use of the work is subject to terms and conditions; or

(c) is a number or code that represents any of the information referred to in paragraph (a) or (b).

Section 226F: replaced, on 30 December 2018, by section 37D of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

226G Interference with CMI prohibited

(1) A person (**A**) must not remove or modify any copyright management information attached to, or appearing in connection with communicating or making available, a copy of a work.

(2) However, subsection (1) does not apply if—

(a) A has the authority of the copyright owner or the exclusive licensee to remove or modify the copyright management information; or

(b) A does not know, and has no reason to believe, that the removal or modification will induce, enable, facilitate, or conceal an infringement of the copyright in the work.

Section 226G: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226G(1): amended, on 30 December 2018, by section 37E of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

226H Commercial dealing in work subject to CMI interference

(1) A person (**A**) must not, in the course of business, make, import, sell, let for hire, offer or expose for sale or hire, or advertise for sale or hire, a copy of a work if any copyright management information attached to, or appearing in connection with communicating or making available, the copy has been

removed or modified without the authority of the copyright owner or the exclusive licensee.

(2) However, subsection (1) does not apply if—

(a) A has the authority of the copyright owner or the exclusive licensee to remove or modify the copyright management information; or

(b) A does not know, and has no reason to believe, that the removal or modification will induce, enable, facilitate, or conceal an infringement of the copyright in the work; or

(c) A does not know, and has no reason to believe, that any copyright management information attached to, or appearing in connection with communicating or making available, the copy has been removed or modified without the authority of the copyright owner or the exclusive licensee.

Section 226H: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226H(1): amended, on 30 December 2018, by section 37F of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226H(2)(c): amended, on 30 December 2018, by section 37F of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

226I Contravention of section 226G or 226H

(1) A copyright owner or licensee of a work has the same rights in relation to a contravention of section 226G or 226H as a copyright owner has in respect of an infringement of copyright.

(2) If the copyright management information is or includes information that identifies an author, a director, or a performer (or is a number or code that represents information that identifies that person), the author, director, or performer (or a person entitled to exercise that person's rights under Part 4 or 9) has the same rights and remedies in relation to a contravention of either of sections 226G and 226H as an author, a director, or a performer has in respect of an infringement of the rights conferred by Part 4 or 9.

(3) Subsection (2) does not limit subsection (1).

Section 226I: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226I(2): inserted, on 30 December 2018, by section 37G of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Section 226I(3): inserted, on 30 December 2018, by section 37G of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

226J Offence of dealing in work subject to CMI interference

(1) A person (**A**) who contravenes section 226H commits an offence if—

(a) A knows that the copyright management information has been removed or modified without the authority of the copyright owner or exclusive licensee; and

(b) A knows that dealing in the work will induce, enable, facilitate, or conceal an infringement of the copyright in the work.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding $150,000 or a term of imprisonment not exceeding 5 years or both.

Section 226J: inserted, on 31 October 2008, by section 90 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 226J(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

227 Offence of fraudulently receiving programmes

(1) Every person commits an offence and is liable on conviction to a fine not exceeding $5,000 who, with intent to avoid payment of any charge applicable to the reception of a programme included in a communication work provided from a place in New Zealand, receives such a programme.

(2) Where any body corporate is convicted of an offence against this section, every director and every person concerned in the management of the body corporate shall be guilty of the offence if it is proved—

(a) that the act that constituted the offence took place with his or her authority, permission, or consent; and

(b) that he or she—

(i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and

(ii) failed to take all reasonable steps to prevent or stop it.

Compare: 1991 No 69 s 340; Copyright, Designs and Patents Act 1988 s 297 (UK)

Section 227(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 227(1): amended, on 31 October 2008, by section 91 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

228 Rights and remedies in respect of apparatus, etc, for unauthorised reception of transmissions

(1) A person who—

(a) makes charges for the reception of programmes included in a communication work provided from a place in New Zealand; or

(b) sends encrypted transmissions of any other description from a place in New Zealand—

is entitled to the rights and remedies in subsections (2) and (3).

(2) A person to whom subsection (1) applies—

(a) has the same rights and remedies against a person referred to in subsection (3) as a copyright owner has in respect of an infringement of copyright; and

(b) has the same rights under section 122 or section 132 in relation to any apparatus or device (of the kind referred to in subsection (3)(a)) as a copyright owner has in relation to an infringing copy.

(3) The person referred to in subsection (2) is a person who—

(a) makes, imports, sells, or lets for hire any apparatus or device designed or adapted to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so; or

(b) publishes any information that is calculated to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so.

(4) In section 121(1) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright existed in the work shall be construed as a reference to not knowing or having reason to believe that the acts complained of infringed the rights conferred by this section.

(5) Section 134 applies, with all necessary modifications, in relation to the disposal of anything delivered up under subsection (2)(b).

Compare: Copyright, Designs and Patents Act 1988 s 298 (UK)

Section 228(1)(a): amended, on 31 October 2008, pursuant to section 92 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Other countries

229 Supplementary provisions as to fraudulent reception

(1) The Governor-General may from time to time, by Order in Council,—

(a) provide that section 227 applies in relation to programmes included in services provided from a country or territory outside New Zealand; and

(b) provide that section 228 applies in relation to such programmes and to encrypted transmissions sent from such a country or territory.

(2) No such order shall be made unless it appears to the Governor-General that provision has been or will be made under the laws of that country or territory giving adequate protection to persons making charges for programmes included in communication works provided from New Zealand or, as the case may be, for encrypted transmissions sent from New Zealand.

(3) Where sections 227 and 228 apply in relation to a communication work, they also apply to any service run for the person providing that service, or a person providing programmes for that service, where the service so run consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

Compare: Copyright, Designs and Patents Act 1988 s 299 (UK)

Section 229(2): amended, on 31 October 2008, by section 93(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 229(3): amended, on 31 October 2008, by section 93(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

230 Application to convention countries

(1) Subject to subsection (2), the provisions of this Act, other than the provisions of Part 9, shall—

(a) apply in relation to persons who are citizens or subjects of any convention country or are domiciled or resident there, as they apply in relation to persons who are New Zealand citizens or are domiciled or resident in New Zealand:

(b) apply in relation to bodies incorporated under the law of any convention country as they apply in relation to bodies incorporated under the law of New Zealand:

(c) apply in relation to works first published in any convention country as they apply in relation to works first published in New Zealand:

(d) apply in relation to communication works communicated from any convention country as they apply in relation to communication works communicated from New Zealand,—

until the close of 31 December 1995 or, in relation to any particular convention country, the coming into force in respect of that convention country of an Order in Council made under section 232, whichever is the earlier.

(2) For the avoidance of doubt, it is hereby declared that subsection (1) applies, in relation to a state of affairs or an action referred to in that subsection as existing or taking place in a convention country, whether or not the country in which the state of affairs existed or the action was taken was, at the time the state of affairs existed or the action was taken, a convention country.

(3) No provision of this Act shall apply, pursuant to subsection (1), to a work made before the commencement of this Act unless—

(a) copyright existed in the work under the Copyright Act 1962 immediately before the commencement of this Act; or

(b) the work enjoyed protection in the nature of copyright in any convention country and, at the commencement of this Act, the term of that protection had not expired; or

(c) the work was first published in a convention country.

Section 230(1)(d): substituted, on 31 October 2008, by section 94 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

231 Expenditure or liability incurred in connection with copyright work

(1) This section applies in any case where—

(a) a work was made before the commencement of this Act; and

(b) copyright did not exist in the work under the Copyright Act 1962 when the work was made; and

(c) on the commencement of this Act, copyright exists in the work pursuant to section 230.

(2) Where, in any case to which subsection (1) applies, a person incurred any expenditure or liability relating to an act that, at the time the act was done, was not an act restricted by copyright in the work, the person does not do an act restricted by copyright by doing, or continuing to do, that act in respect of the work when copyright exists in the work.

(3) Notwithstanding subsection (2), an act that under that subsection is not an act restricted by copyright when copyright exists in the work may become an act restricted by copyright if the owner of the copyright or his or her exclusive licensee (if any) pays the person such compensation for the person's expenditure or liability as may be agreed upon or, in default of agreement, as shall be determined by arbitration in accordance with the provisions of the Arbitration Act 1908.

232 Application of Act (other than Part 9) to other entities

(1) On the recommendation of the Minister, the Governor-General may by Order in Council apply any provision or provisions of this Act (other than a provision of Part 9) to any entity specified in the order (whether a State, part of a State, a territory for whose international relations a State is responsible, a political union, an international organisation, or any other entity).

(2) To the extent that the nature of the entity permits, an order may apply a provision to an entity so that it has all or any of the following effects:

(a) it applies to persons who are citizens or subjects of, or domiciled or resident in, the entity as it applies to persons who are citizens or subjects of, or domiciled or resident in, New Zealand:

(b) it applies to bodies incorporated under the law of the entity as it applies to bodies incorporated under the law of New Zealand:

(c) it applies to works first published in the entity as it applies to works first published in New Zealand:

(d) it applies to communication works communicated from any convention country as it applies to communication works communicated from New Zealand.

(3) An order—

(a) may apply a provision unconditionally, or subject to conditions, modifications, or both; and

(b) may apply a provision generally, or in relation to works or cases of a particular class or classes.

(4) The Minister must not recommend the making of an order applying any provision of this Act to any entity unless satisfied that—

(a) the entity is a convention country; or

(b) provision is or will be made under the law of or applicable to the entity giving reciprocal protection to copyright owners in respect of works generally or (as the case requires) works or cases of the class or classes to which the order applies that provision of this Act.

(5) If the Government of a State is responsible for the international relations of 1 or more territories, an order may apply a provision to—

(a) both the State and the territory (or 1 or more of the territories) concerned; or

(b) just the State; or

(c) just the territory (or 1 or more of the territories) concerned.

(6) If—

(a) an unpublished work is of unknown authorship, but there are reasonable grounds to suppose that the author was at the material time a citizen or subject of, or domiciled or resident in, an entity other than New Zealand; and

(b) an order under this section has applied a provision of this Act to that entity so that it applies to persons who are citizens or subjects of the entity, or are domiciled or resident there, as it applies to persons who are citizens or subjects of, or domiciled or resident in, New Zealand; and

(c) a person is authorised under the law of or applicable to the entity to represent the author, or protect and enforce the rights of the author in relation to the work,—

the authorised person must be treated as if he or she were the author of the work for the purposes of the provision.

Section 232: substituted, on 14 October 1999, by section 3(1) of the Copyright Amendment Act 1999 (1999 No 124).

Section 232(2)(d): substituted, on 31 October 2008, by section 95 of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

233 Denial of copyright to persons connected with countries not giving adequate protection to New Zealand works

(1) Whenever it appears to the Governor-General that the law of a country, other than a convention country, fails to give adequate protection to copyright in New Zealand works, or to 1 or more classes of such works, the Governor-General may by Order in Council make provision in accordance with this section restricting the rights conferred by this Act in relation to that country.

(2) An Order in Council made under this section shall designate the country concerned and provide that, for the purposes specified in the order, works first

published after a date specified in the order shall not be treated as qualifying for copyright by virtue of such publication if at that time the authors are—

(a) citizens or subjects of that country (not domiciled or resident in New Zealand); or

(b) bodies incorporated under the law of that country;—

and the order may make such provision for all purposes of this Act or for such purposes as are specified in the order, and either generally or in relation to such classes of cases as are specified in the order, having regard to the nature and extent of the failure referred to in subsection (1).

(3) An Order in Council under this section may be so made as to apply generally to a country, or to any territories for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such territories.

(4) In this section,—

New Zealand works means works of which the author was at the material time a person to whom section 18 applied

works means literary, dramatic, musical, and artistic works, sound recordings, and films.

Compare: 1962 No 33 s 51; Copyright Act 1968 s 185 (Aust); Copyright, Designs and Patents Act 1988 s 160 (UK)

234 Regulations

The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

(a) prescribing a body as a judicial body for the purposes of this Act:

(b) prescribing classes of libraries for the purposes of section 50:

(c) prescribing institutions for the purposes of section 117:

(d) prescribing bodies for the purposes of section 72, 89, 90, 185, 190, or 191:

(e) prescribing classes of communication works for the purposes of section 90 or section 191:

(ea) prescribing the form of a notice of infringement for the purposes of section 92D:

(eb) prescribing the form, content, procedures, requirements, and any other matters relating to infringement notices:

(ec) prescribing the form of notice for challenging an infringement notice:

(ed) prescribing the fee payable by rights owners for applications to the Tribunal under section 122J:

(ee) prescribing the practices and procedures of the Tribunal in relation to determining applications under section 122J:

(ef) prescribing the sum, or a method or methods of calculating the sum, that the Tribunal may order an account holder to pay under section 122O:

(eg) prescribing any matters necessary or desirable in relation to an order, or an application for an order, under section 122P:

(eh) prescribing the rate or rates, or a method or methods for calculating the rate or rates, for the fees that may be charged by IPAPs to rights owners under section 122U:

(f) prescribing the form in which a notice is to be given under section 136(1):

(g) prescribing the particulars to be contained in a notice given under section 136(1):

(h) requiring a person giving a notice under section 136(1), either at the time of giving the notice or subsequently, to furnish evidence in support of the claim that an item is a work in which the person owns the copyright:

(i) requiring—

(i) a person giving a notice under section 136(1), either at the time of giving the notice or subsequently; or

(ii) a person to whom an item is to be or has been released from detention under section 140(1)—

to give security or an indemnity, or both, to such persons, of such amount, and on such terms and conditions as may be determined by the chief executive of the New Zealand Customs Service:

(j) providing for exceptions to any requirement to give security or an indemnity imposed by any regulations made under paragraph (i):

(k) providing for the disposition of any security given under any regulations made under paragraph (i):

(l) providing for the forfeiture to the claimant, by consent, of an item detained under section 140(1):

(m) prescribing forms for the purposes of this Act; and those regulations may require—

(i) the inclusion in, or attachment to, forms of specified information or documents:

(ii) forms to be signed by specified persons:

(n) imposing requirements in respect of licensing bodies or any specified class or classes of licensing body or any specified licensing body, in relation to all or any of the following matters:

(i) the contents of the constitution or other form of rules of the licensing body or bodies:

(ii) the representation of copyright owners in the management of the licensing body or bodies:

(iii) the collection, holding, and distribution of money by the licensing body or bodies:

(iv) the disclosure of the financial affairs of the licensing body or bodies:

(v) access to, and disclosure of, records held by the licensing body or bodies:

(vi) any other matter relating to the conduct or the operation of the licensing body or bodies:

(o) authorising, subject to such conditions as may be specified in the regulations, the rental to the public of copies of—

(i) any specified class or classes of computer programs; or

(ii) any specified class or classes of sound recordings; or

(iii) any film or specified class or classes of films,—

without the consent of the owner of the copyright in the work:

(p) regulating the making, importation, sale, hire, or use of decoding equipment:

(q) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under paragraph (p), and prescribing fines, not exceeding $5,000, that may, on conviction, be imposed in respect of any such offences:

(qa) prescribing fees in relation to licensing scheme disputes before the Tribunal:

(r) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Compare: 1962 No 33 ss 29(4), (5), 66

Section 234(d): replaced, on 4 January 2020, by section 7 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

Section 234(e): amended, on 31 October 2008, by section 96(1) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 234(ea): inserted, on 31 October 2008, by section 96(2) of the Copyright (New Technologies) Amendment Act 2008 (2008 No 27).

Section 234(eb): inserted, on 1 September 2011, by section 10 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 234(ec): inserted, on 1 September 2011, by section 10 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 234(ed): inserted, on 1 September 2011, by section 10 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 234(ee): inserted, on 1 September 2011, by section 10 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 234(ef): inserted, on 1 September 2011, by section 10 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 234(eg): inserted, on 1 September 2011, by section 10 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 234(eh): inserted, on 1 September 2011, by section 10 of the Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11).

Section 234(i): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 234(m): substituted, on 16 September 2011, by section 14 of the Copyright Amendment Act 2011 (2011 No 72).

Section 234(q): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 234(qa): inserted, on 14 November 2018, by section 21 of the Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51).

Transitional provisions and savings

235 Transitional provisions and savings

The transitional provisions in Schedule 1 shall have effect for the purposes of this Act.

Compare: 1962 No 33 s 68(1)

236 Consequential amendments and repeals

(1) The enactments specified in Schedule 2 are hereby amended in the manner indicated in that schedule.

(2) The enactments specified in Schedule 3 are hereby repealed.

(3) The regulations specified in Schedule 4 are hereby revoked.

Schedule 1
Transitional provisions and savings

s 235

Part 1
Provisions relating to Act as enacted

Schedule 1 Part 1 heading: inserted, on 30 December 2018, by section 44(1) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

1 Interpretation

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

the 1913 Act means the Copyright Act 1913

the 1962 Act means the Copyright Act 1962

the 1985 Amendment means the Copyright Amendment Act 1985

the new copyright provisions means the provisions of this Act

work means,—

(a) in relation to the 1913 Act, any thing recognised by that Act as a subject of copyright; and

(b) in relation to the 1962 Act, any thing recognised by that Act as a subject of copyright.

(2) References in this Part to **commencement**, without more, are to the date on which the new copyright provisions come into force.

(3) For the purposes of this Part, a work of which the making extended over a period shall be taken to have been made when its making was completed.

(4) Unless the context otherwise requires, provisions of the 1913 Act or the 1962 Act referred to in this Part shall be taken as continuing in force for the purposes of this schedule, notwithstanding the repeal of the 1913 Act and the 1962 Act.

Compare: 1962 No 33 Schedule 1 cl 47(2); Copyright, Designs and Patents Act 1988 Schedule 1 paras 1, 2(1) (UK)

Schedule 1 clause 1(1): amended, on 30 December 2018, by section 44(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Schedule 1 clause 1(2): amended, on 30 December 2018, by section 44(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Schedule 1 clause 1(3): amended, on 30 December 2018, by section 44(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Schedule 1 clause 1(4): amended, on 30 December 2018, by section 44(2) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

2 Continuity of the law

(1) A reference in an enactment, instrument, or other document to copyright that, apart from this Act, would be construed as referring to copyright under the

1962 Act or any corresponding earlier enactment, shall be construed, so far as may be required for continuing its effect, as being, or as the case may require including, a reference to copyright under this Act.

(2) A reference in an enactment, instrument, or other document to a work in which copyright exists that, apart from this Act, would be construed as referring to a work in which copyright exists under the 1962 Act or any corresponding earlier enactment, shall be construed, so far as may be required for continuing its effect, as being, or as the case may require including, a reference to a work in which copyright exists under this Act.

(3) Express or implied references in this Act or any other enactment, instrument, or document to any of the new copyright provisions shall, so far as the context permits, be construed as including, in relation to times, circumstances, and purposes before commencement, a reference to corresponding earlier provisions.

(4) An express or implied reference in an instrument or other document to a provision repealed by this Act shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of this Act.

(5) The provisions of this clause have effect subject to any specific transitional and savings provision and to any express amendment made by this Act.

Compare: 1962 No 33 Schedule 1 cl 46(1)(a), (b); Copyright, Designs and Patents Act 1988 Schedule 1 para 4(2), (4)–(6) (UK)

3 Copyright under new copyright provisions in works in which copyright exists at commencement

(1) Copyright exists under the new copyright provisions in any work in which copyright existed immediately before commencement.

(2) For the purposes of subclause (1), a work in which copyright existed immediately before commencement includes a work in which a right was conferred by section 32 of the 1913 Act in substitution for a right existing immediately before the commencement of the 1913 Act.

(3) Where copyright exists under the new copyright provisions in a work in which copyright existed immediately before commencement, the copyright in that work under the new provisions is subject to any modifications made by the provisions of this Part.

Compare: 1962 No 33 Schedule 1 cl 38(2); Copyright, Designs and Patents Act 1988 Schedule 1 paras 2(2)(a), 5(1) (UK)

Schedule 1 clause 3(3): amended, on 30 December 2018, by section 44(3) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

4 Application of new copyright provisions to works in which copyright exists at commencement

(1) The new copyright provisions—

(a) apply to any work in which copyright existed immediately before commencement; and

(b) are deemed to be satisfied, so far as they relate to qualification for copyright, by every work in which copyright existed immediately before commencement.

(2) For the purposes of subclause (1), a work in which copyright existed immediately before commencement includes a work in which a right was conferred by section 32 of the 1913 Act in substitution for a right existing immediately before the commencement of the 1913 Act.

(3) Where the new copyright provisions apply to a work in which copyright existed immediately before commencement, the new copyright provisions are subject, in their application to that work, to any modifications made by the provisions of this Part.

Compare: 1962 No 33 Schedule 1 cls 38(2), 47(1); Copyright, Designs and Patents Act 1988 Schedule 1 paras 3, 35 (UK)

Schedule 1 clause 4(3): amended, on 30 December 2018, by section 44(3) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

5 Works may qualify under new copyright provisions

(1) Subject to subclause (2), a work made before commencement may qualify for copyright after commencement—

(a) under section 19; or

(b) under section 230; or

(c) under an Order in Council made under section 232.

(2) A work first published in New Zealand before 1 April 1963 does not qualify for copyright under section 19(1)(a) if the work was published elsewhere more than 14 days before the publication in New Zealand.

Compare: 1962 No 33 Schedule 1 cl 2(1); Copyright, Designs and Patents Act 1988 Schedule 1 para 5(2) (UK)

6 No copyright under new copyright provisions in certain works

(1) No copyright exists, under the new copyright provisions, in the following works:

(a) a film, within the meaning of this Act, made before 1 April 1963:

(b) a broadcast made before 1 April 1963:

(c) the typographical arrangement of a published edition made before 1 April 1963.

(2) Section 28 does not confer copyright on a work that was, before 1 April 1963, made by an officer or employee of, or published by, an international organisation to which that section applies.

Compare: 1962 No 33 Schedule 1 cls 14, 17, 20, 33; Copyright, Designs and Patents Act 1988 Schedule 1 paras 7(1), 9 (UK)

Interpretation provisions

7 Meaning of author

The question of authorship of a work made before commencement shall be determined in accordance with—

(a) clause 11(3)(b) in relation to a soundtrack associated with a cinematograph film within the meaning of the 1962 Act:

(b) clause 12(1) in relation to a film made before 1 April 1963:

(c) the new copyright provisions for the purposes of the rights conferred by Part 4:

(d) the law in force at the time the work was made, for all other works and purposes.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 10 (UK)

8 Meaning of issue to the public

(1) Subsections (2) and (3) of section 9 do not apply in relation to a copy of a computer program, sound recording, or film acquired by any person before commencement for the purpose of renting the copy to the public.

(2) In subclause (1),—

film includes a film that was an original dramatic work within the meaning of the 1913 Act

sound recording includes a contrivance of the kind to which section 25 of the 1913 Act applied.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 paras 2(2)(b), 14(2) (UK)

9 Meaning of publication

Section 10(2) applies only where the construction of the building began after commencement.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 45 (UK)

10 Meaning of infringing copy

For the purposes of section 12, the question of whether the making of an object constituted an infringement of copyright, or would have constituted an infringement of copyright had the object been made in New Zealand, shall be determined,—

(a) in relation to an object made on or after 1 April 1963 and before commencement, by reference to the provisions of the 1962 Act:

(b) in relation to an object made before 1 April 1963, by reference to the provisions of the 1913 Act.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 14(3) (UK)

Description of copyright

11 Soundtracks to be treated as sound recordings

(1) In this clause,—

cinematograph film or **film** has the meaning that cinematograph film had in the 1962 Act

sound recording has the meaning it has in this Act.

(2) A soundtrack associated with a cinematograph film, being a soundtrack to which the 1962 Act applied before commencement, shall be treated for the purposes of the new copyright provisions not as part of the film, but as a sound recording.

(3) The following provisions apply to a soundtrack treated as a sound recording under subclause (2):

(a) copyright exists in the sound recording only if copyright existed in the film immediately before commencement, and it continues to exist until copyright in the film expires:

(b) the author and first owner of copyright in the film shall be treated as the author and first owner of the copyright in the sound recording:

(c) anything done before commencement under or in relation to the copyright in the film continues to have effect in relation to the sound recording.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 8 (UK)

12 Films

(1) The new copyright provisions have effect in relation to a film—

(a) that was made before 1 April 1963; and

(b) that was an original dramatic work within the meaning of the 1913 Act—

as if it were an original dramatic work within the meaning of the new copyright provisions, except that the person who was the author of the work for the purposes of the 1913 Act shall be taken to be the author for the purposes of the new copyright provisions.

(2) The new copyright provisions in relation to photographs apply in relation to photographs forming part of a film—

(a) that was made before 1 April 1963; and

(b) that was an original dramatic work within the meaning of the 1913 Act.

Compare: 1962 No 33 Schedule 1 cls 15, 16; Copyright, Designs and Patents Act 1988 Schedule 1 para 7(2), (3) (UK)

Acts restricted by copyright

13 Certain dramatic or musical works published before 1 April 1914

(1) Where—

(a) a dramatic or musical work was published before 1 April 1914; and

(b) the copyright that existed immediately before commencement (being the right conferred by section 32 of the 1913 Act in substitution for a right existing immediately before the commencement of the 1913 Act) did not include the sole right to perform the work in public,—

the acts restricted by the copyright under the new copyright provisions shall be treated as not including—

(c) performing the work in public:

(d) broadcasting the work or including it in a cable programme:

(e) doing any of the above in relation to an adaptation of the work.

(2) Where—

(a) a dramatic or musical work was published before 1 April 1914; and

(b) the copyright that existed immediately before commencement (being the right conferred by section 32 of the 1913 Act in substitution for a right existing immediately before the commencement of the 1913 Act) consisted only of the sole right to perform the work in public,—

the acts restricted by the copyright under the new copyright provisions shall be treated as consisting only of the acts of—

(c) performing the work in public:

(d) broadcasting the work or including it in a cable programme:

(e) doing any of the above in relation to an adaptation of the work.

Compare: 1962 No 33 Schedule 1 cls 38, 40; Copyright, Designs and Patents Act 1988 Schedule 1 para 17 (UK)

Ownership of copyright

14 First ownership

The question of first ownership of copyright in a work made before commencement shall be determined in accordance with the law in force at the time the work was made.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 11(1) (UK)

15 Certain literary works made before 1 April 1963

Where a literary work—

(a) was made before 1 April 1963; and

(b) was made in the course of the author's employment;—

the ownership of copyright in the work, under section 8(1)(b) of the 1913 Act, by the person by whom the author was employed shall be subject to a right in the author to restrain the publication of the work otherwise than as part of a newspaper, magazine, or similar periodical (being the right referred to in paragraph (b) of the proviso to section 8(1) of the 1913 Act).

Compare: 1962 No 33 Schedule 1 cl 7(2)

16 Certain literary works published before 1 April 1914

Where a literary work—

(a) was published before 1 April 1914; and

(b) consists of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature,—

any copyright in that work under the new copyright provisions is subject to the right of the author to publish the essay, article, or portion in a separate form at the end of the period of 28 years from its first publication in a review, magazine, or other periodical or work of a like nature (being the right referred to in section 18 of the Copyright Act 1842 (UK)).

Compare: 1962 No 33 Schedule 1 cl 41; Copyright, Designs and Patents Act 1988 Schedule 1 para 18 (UK)

Duration of copyright

17 Duration of copyright in works generally

(1) In this clause,—

dramatic work includes a film of the kind to which the definition of dramatic work in section 2(1) of the 1913 Act applied

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

sound recording includes a contrivance of the kind to which section 25 of the 1913 Act applied.

(2) In relation to—

(a) a literary, dramatic, musical, or artistic work that was generated by computer before commencement, section 22(2) applies; and

(b) a literary, dramatic, musical, or artistic work (other than a photograph) of joint authorship published before 1 April 1963, the period of the copyright is the longer of the periods of—

(i) the life of the author who died first and a term of 50 years after his or her death; and

(ii) the life of the author who died last; and

(c) a literary, dramatic, musical, or artistic work (other than a photograph) of joint authorship made before commencement but not published before 1 April 1963, section 22(6) applies; and

(d) a work of unknown authorship, being a literary, dramatic, musical, or artistic work (other than a photograph),—

(i) if the work was published before commencement, subsections (3) to (5) of section 22 apply; and

(ii) if the work was unpublished before commencement, copyright exists until the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force or, if during that period the work is first made available to the public within the meaning of subsection (4) of section 22, the date on which copyright expires under subsection (3) of that section; and

(e) a literary, dramatic, musical, or artistic work made before commencement, other than a work to which paragraphs (a) to (d) or clause 18 or clause 19 applies, section 22(1) applies.

(3) If, in any case to which subclause (2)(d)(ii) applies, the identity of the author becomes known before the date on which the copyright would otherwise have expired, copyright expires in accordance with section 22(1).

(4) In relation to—

(a) a sound recording made before commencement, section 23(1) applies; and

(b) a cinematograph film, within the meaning of the 1962 Act, made on or after 1 April 1963 and before the commencement, section 23(1) applies; and

(c) a broadcast made—

(i) on or after 1 April 1963 and before commencement, section 24(1) applies:

(ii) before 1 April 1963, section 24(2) applies as if such a broadcast had not been made; and

(d) the typographical arrangement of any published edition made on or after 1 April 1963 and before commencement, section 25 applies; and

(e) a work made by or under the direction or control of the Crown before commencement (other than a work to which section 27 applies), section 26(3) applies; and

(f) a work that was, on or after 1 April 1963 and before commencement, made by an officer or employee of, or published by, an international organisation to which section 28 applies, section 28(2) applies.

Compare: 1962 No 33 Schedule 1 cl 11; Copyright, Designs and Patents Act 1988 Schedule 1 paras 9, 12(3), (6) (UK)

18 Duration of copyright in certain works made on or after 1 April 1963 and before commencement

(1) In relation to a literary, dramatic, musical, or artistic work (other than a photograph)—

(a) made on or after 1 April 1963 and before commencement; and

(b) the author of which died before commencement; and

(c) that was not, after the death of the author and before commencement, published or performed in public or included in a broadcast, or offered for sale to the public on a record,—

copyright exists until the end of the period of 75 years from the end of the calendar year in which the author died.

(2) In relation to a literary, dramatic, musical, or artistic work (other than a photograph)—

(a) made on or after 1 April 1963 and before commencement; and

(b) the author of which died before commencement; and

(c) that was, after the death of the author and before commencement, published or performed in public or included in a broadcast, or offered for sale to the public on a record,—

copyright exists until the expiry of the shorter of the following periods:

(d) 50 years from the end of the calendar year in which an act referred to in paragraph (c) was first done:

(e) 75 years from the end of the calendar year in which the author died.

Compare: 1962 No 33 s 8(1)(b)

19 Duration of copyright in certain works made before 1 April 1963

In relation to a literary, dramatic, or musical work or an engraving—

(a) made before 1 April 1963; and

(b) the author of which died before 1 April 1963; and

(c) in which copyright existed immediately before the death of the author or, where the work was of joint authorship, at or before the death of the author who died last; and

(d) being a literary, dramatic, or musical work or an engraving that was published, or being a dramatic or musical work that was performed in public, or being a lecture that was delivered in public after the death of the author and before 1 April 1963,—

copyright exists until the end of the period of 50 years from the end of the year that includes the earliest occasion on which the work,—

(e) being a literary, dramatic, or musical work or an engraving, was published; or

(f) being a dramatic or musical work, was performed in public; or

(g) being a lecture, was delivered in public.

Compare: 1962 No 33 Schedule 1 cl 6

Crown copyright

20 Crown copyright

The provisions of section 26 apply to a work made before commencement if—

(a) section 52 of the 1962 Act applied to the work immediately before commencement; and

(b) the work is not one to which section 27 applies.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 40 (UK)

Infringement of copyright

21 Acts done before commencement

The provisions of the 1962 Act that specify acts constituting infringements of copyright continue to apply in relation to acts done before commencement.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 14(1) (UK)

22 Acts done after commencement

The provisions of this Act that specify acts constituting infringements of copyright apply only in relation to acts done after commencement.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 14(1) (UK)

23 Infringement by issue of copies to public

(1) Where a person gave the notice required under the proviso to section 6 of the 1913 Act before the repeal of that section, that proviso and section 22(1) of the 1913 Act shall, in relation to copies of the relevant work made by that person after commencement, have effect as if that proviso and section 22(1) had been re-enacted in this Act as a proviso to section 31.

(2) For the purposes of the operation of the proviso to section 6 of the 1913 Act,—

(a) any regulations made before the repeal of that section shall have effect as if they had been made under this Act; and

(b) the power of the Governor-General in Council to make further regulations under that section shall apply as if the proviso had been re-enacted in this Act as a proviso to section 31.

Compare: 1962 No 33 Schedule 1 cl 10

24 Importing infringing copy

For the purposes of section 35, if a person knows or has reason to believe that an object made before commencement and imported by that person into New Zealand after commencement would have been an infringing copy if the ques-

tion had fallen to be determined under the provisions of the 1962 Act or, as the case may be, the 1913 Act, that person shall be deemed to know or to have reason to believe that the object is an infringing copy under this Act.

Compare: 1962 No 33 Schedule 1 cls 8, 21

Acts permitted in relation to copyright works

25 Incidental copying of copyright work

Where the acts described in section 41(1)(b) or (c) are done after commencement, it shall be assumed that all the provisions of section 41 were in force at all material times.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 14(4) (UK)

26 Acts permitted on assumptions as to expiry of copyright or death of author in relation to anonymous or pseudonymous works

Section 67(1)(b)(ii) applies—

(a) to a work of unknown authorship that was unpublished before commencement, being a literary, dramatic, musical, or artistic work (other than a photograph), only after the end of the period of 50 years from the end of the calendar year in which the new copyright provisions come into force; and

(b) to a work referred to in clause 17, if the work is one to which, under that clause, a section of this Act applies.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 15(3) (UK)

27 Representation of certain artistic works on public display

Where the acts described in section 73(3) are done after commencement, it shall be assumed that all the provisions of section 73 were in force at all material times.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 14(4) (UK)

Special exceptions from protection of artistic works that have been applied industrially

28 Artistic works made before 1 April 1963

(1) No copyright exists in an artistic work that—

(a) was made before 1 April 1963; and

(b) at the time when the work was made, constituted a design capable of registration under the Designs Act 1953 or under the enactments repealed by that Act; and

(c) has been used as a model or pattern to be multiplied by an industrial process or is intended to be so used.

(2) For the purposes of subclause (1)(c), a design shall be deemed to have been used, or to be intended to be used, as a model or pattern to be multiplied by any industrial process—

(a) when the design is copied or is intended to be copied on more than 50 single objects, unless all the objects in which the design is copied or intended to be copied together form only a single set of articles as defined in section 2(1) of the Designs Act 1953; or

(b) when the design is applied to, or is intended to be applied to,—

(i) printed paper hangings; or

(ii) carpets, floorcloths, or oilcloths, manufactured or sold in lengths or pieces; or

(iii) textile-piece goods, or textile goods manufactured or sold in lengths or pieces; or

(iv) lace, not made by hand.

Compare: 1962 No 33 Schedule 1 cl 9; Copyright, Designs and Patents Act 1988 Schedule 1 para 6 (UK)

29 Literary and artistic works made on or after 1 April 1963

(1) Nothing in section 74(1) shall apply to or affect—

(a) the settlement of any action or claim made before the commencement of the 1985 Amendment; or

(b) any proceedings completed before the commencement of the 1985 Amendment; or

(c) any proceedings instituted or commenced before the commencement of the 1985 Amendment in which the trial of the substantive matters in issue had commenced on or before that commencement.

(2) Where, at commencement, a copy of a literary or artistic work exists, and the making of that copy is excluded by section 74(2) from being authorised by section 74(1), that copy is not an infringing object for the purposes of this Act.

(3) Where, at commencement, a copy of an artistic work exists, and the making of that copy is excluded by section 75(3) from being authorised by section 75(1), that copy is not an infringing object for the purposes of this Act.

(4) Where—

(a) an object or reproduction made pursuant to section 20B of the 1962 Act exists at commencement; and

(b) that object is a copy in 3 dimensions of—

(i) a work of artistic craftsmanship; or

(ii) a sculpture that is not a cast or pattern for an object that has a primarily utilitarian function; or

(iii) a work of architecture, being a building or a model for a building;—

and that reproduction is a reproduction in 2 dimensions reasonably required for the making of the object,—

that object or copy is not an infringing object for the purposes of this Act.

Compare: 1985 No 134 s 4(3)

30 Models made before the commencement of the 1985 Amendment

Copyright does not exist by virtue of any amendment made to the 1962 Act by the 1985 Amendment in any model made before the commencement of the 1985 Amendment.

Compare: 1985 No 134 s 10

31 Reconstruction of buildings

In section 78, the reference to the owner of the copyright in the drawings or plans is, in relation to buildings constructed before commencement, to the person who at the time of the construction was the owner of the copyright in the drawings or plans under the 1962 Act, the 1913 Act, or any enactment repealed by the 1913 Act.

Compare: 1962 No 33 Schedule 1 cl 23(2); Copyright, Designs and Patents Act 1988 Schedule 1 para 14(7) (UK)

32 Incidental recording for purposes of broadcast or cable programme

Section 85 does not apply where the authority to broadcast a work or include it in a cable programme was given before 1 April 1963.

Compare: 1962 No 33 Schedule 1 cl 22

Moral rights

33 Moral rights

(1) No act done before commencement is actionable under any provision of Part 4.

(2) Section 62 of the 1962 Act continues to apply in relation to acts done on or after 1 April 1963 and before commencement.

Compare: 1962 No 33 Schedule 1 cl 37; Copyright, Designs and Patents Act 1988 Schedule 1 para 22 (UK)

34 Application of moral rights

(1) Subject to subclause (5), the following provisions of this clause have effect in relation to—

(a) the rights conferred by section 94; and

(b) the rights conferred by section 98.

(2) The rights described in subclause (1) do not apply—

(a) in relation to a literary, dramatic, musical, or artistic work of which the author died before commencement; or

(b) in relation to a film made before commencement.

(3) The rights described in subclause (1) in relation to a literary, dramatic, musical, or artistic work made before commencement do not apply,—

(a) where copyright first vested in the author, to anything that by virtue of an assignment of copyright made or licence granted before commencement may be done without infringing copyright; or

(b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

(4) The rights described in subclause (1) do not apply to anything done in relation to a record made in pursuance of sections 22 and 23 of the 1962 Act.

(5) The rights conferred by section 94 do not apply in respect of any work in which, before commencement, the copyright vested in the employer of the author or director, unless the author or director has previously been identified as such in or on published copies of the work.

(6) In this clause, the term **dramatic work** includes a film of the kind to which the definition of dramatic work in section 2(1) of the 1913 Act applied.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 23 (UK)

35 Right to privacy of certain photographs and films

The right conferred by section 105 does not apply to photographs taken or films made before commencement.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 24 (UK)

Dealing with rights in copyright works

36 Licences

Section 111(2) does not apply in relation to an exclusive licence granted before commencement.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 29 (UK)

37 Documents or events before commencement

(1) Where copyright exists in a work under the new copyright provisions, any document that—

(a) was made before commencement; and

(b) had any operation affecting the title to copyright in the work under the 1913 Act, or would have had such an operation if the 1913 Act had continued in force; or

(c) had any operation affecting the title to copyright in the work under the 1962 Act or would have had such an operation if the 1962 Act had continued in force,—

shall, subject to subclause (2), have the corresponding operation in relation to copyright in the work under the new copyright provisions.

(2) If the operation of any such document was or would have been limited to a period specified in the document, it shall not have any operation in relation to the copyright under the new copyright provisions, except in so far as that period extends beyond commencement.

(3) For the purposes of the operation of a document in accordance with subclause (1),—

(a) expressions used in the document shall be construed in accordance with their effect immediately before commencement, notwithstanding that a different meaning is assigned to them for the purposes of this Act; and

(b) section 116 shall not apply in respect of any agreement made before 1 April 1963.

(4) Where copyright exists in a work under the new copyright provisions, any event that—

(a) occurred before commencement; and

(b) had any operation affecting the title to copyright in the work under the 1913 Act, or would have had such an operation if the 1913 Act had continued in force; or

(c) had any operation affecting the title to copyright in the work under the 1962 Act or would have had such an operation if the 1962 Act had continued in force,—

shall have the corresponding operation in relation to copyright in the work under the new copyright provisions.

(5) In this clause,—

copyright in the work under the 1913 Act includes, in relation to a film, any copyright under the 1913 Act in the film in so far as it constituted a dramatic work for the purposes of the 1913 Act and any copyright under the 1913 Act in photographs forming part of the film

operation affecting the title means any operation affecting the ownership of that copyright, or creating, transferring, or terminating an interest, right, or licence in respect of that copyright.

Compare: 1962 No 33 Schedule 1 cl 36(1), (2), (4)(b), (5); Copyright, Designs and Patents Act 1988 Schedule 1 paras 25, 26(1) (UK)

38 Certain assignments or licences on or after 1 April 1914 and before 1 April 1963

(1) Where a document to which clause 37(1) applies is an assignment made or a licence granted—

(a) on or after 1 April 1914 and before 1 April 1963; and

(b) by the author of a literary, dramatic, musical, or artistic work, where the author is the first owner of copyright in the work; and

(c) otherwise than by will,—

the assignment or licence shall not be operative to vest in the assignee or licensee any rights with respect to copyright in the work beyond the expiration of 25 years from the death of the author.

(2) After commencement and during the life of the author, the author may assign the reversionary interest in the copyright expectant on the termination of the period specified in subclause (1).

(3) If the author does not make an assignment as permitted by subclause (2), the reversionary interest in the copyright expectant on the termination of the period specified in subclause (1) shall, on the author's death, devolve on his or her legal personal representatives as part of his or her estate.

(4) Nothing in this clause affects—

(a) an assignment of the reversionary interest by a person to whom it has been assigned; or

(b) an assignment of the reversionary interest after the death of the author by his or her personal representatives or any person becoming entitled to it; or

(c) any assignment of the copyright after the reversionary interest has fallen in.

(5) Nothing in this clause applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

(6) In subclause (5), the term **collective work** means—

(a) any encyclopaedia, dictionary, yearbook, or similar work:

(b) a newspaper, review, magazine, or similar periodical:

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

Compare: 1962 No 33 Schedule 1 cl 36(3); Copyright, Designs and Patents Act 1988 Schedule 1 para 27 (UK)

39 Assignments or grants made before 1 April 1914

(1) This clause applies where the author of a literary, dramatic, musical, or artistic work published before 1 April 1914 assigned or granted, before 1 April 1914, an interest in the copyright or performing right in the work for the full term of that right under the law in force before the 1913 Act (being such an assignment or grant as was mentioned in paragraph (a) of the proviso to section 32(1) of the 1913 Act).

(2) If, before commencement, any thing was done in relation to the copyright in the work under paragraph (a) of the proviso to section 32(1) of the 1913 Act, that thing has a corresponding operation under the new copyright provisions.

(3) Any right that, before commencement,—

(a) was exercisable in relation to the work or copyright in it under paragraph (a) of the proviso to section 32(1) of the 1913 Act; or

(b) would have been exercisable in relation to the work or copyright in it under paragraph (a) of the proviso to section 32(1) of the 1913 Act, if that provision had continued in force—

is exercisable in relation to the work or copyright in it under the new copyright provisions.

(4) If, in accordance with paragraph (a) of the proviso to section 32(1) of the 1913 Act, copyright would have reverted to the author or his or her personal representatives on the date referred to in that paragraph, and that date falls after commencement, then, on that date—

(a) the copyright in the work shall revert to the author or his or her personal representatives, as the case may be; and

(b) any interest of any other person in the copyright that exists on that date by virtue of any document made before the commencement of the 1913 Act shall cease to exist.

Compare: 1962 No 33 Schedule 1 cl 42; Copyright, Designs and Patents Act 1988 Schedule 1 para 28 (UK)

40 Copyright to pass under will with unpublished works

(1) Section 115—

(a) does not apply where the testator died before 1 April 1963; and

(b) where the testator died on or after that date and before commencement, applies only in relation to an original document embodying a work.

(2) In the case of an author who died before 1 April 1963, the ownership after the author's death of a manuscript of the author, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work that has not been published or performed in public, is prima facie proof of the copyright being with the owner of the manuscript.

Compare: Copyright, Designs and Patents Act 1988 Schedule 1 para 30 (UK)

Remedies for infringement

41 Remedies for infringement

(1) The following provisions apply in relation to an infringement of copyright:

(a) in relation to an infringement of copyright committed after commencement, sections 120 to 122 apply:

(b) in relation to an infringement of copyright committed on or after 1 April 1963 and before commencement, sections 24 and 25 of the 1962 Act and section 6(2) of the 1985 Amendment continue to apply:

(c) in relation to an infringement of copyright committed before 1 April 1963, sections 9(1) and (2) and 10 to 13 of the 1913 Act continue to apply.

(2) The following provisions apply in relation to the rights and remedies of an exclusive licensee:

(a) sections 123 and 124 apply where sections 120 to 122 apply:

(b) section 26 of the 1962 Act continues to apply where sections 24 and 25 of that Act continue to apply:

(c) sections 123 and 124 of this Act and section 26 of the 1962 Act do not apply to a licence granted before 1 April 1963.

(3) The following provisions apply in relation to presumptions:

(a) sections 126 to 129 apply only in proceedings brought under this Act:

(b) sections 27 and 27A of the 1962 Act continue to apply to proceedings brought under that Act:

(c) section 9(3) of the 1913 Act continues to apply to proceedings brought under that Act.

(4) The following provisions apply in relation to criminal liability for making or dealing with infringing objects:

(a) in relation to acts done after commencement, section 131 applies:

(b) in relation to acts done before commencement, including acts done before 1 April 1963, section 28 of the 1962 Act continues to apply.

Compare: 1962 No 33 Schedule 1 cls 25–28; Copyright, Designs and Patents Act 1988 Schedule 1 paras 31–33 (UK)

Effect of notices given under section 22 or section 29 of the Copyright Act 1962

42 Records of musical works

(1) Where, before commencement, a person gave notice under section 22(1)(b) of the 1962 Act of his or her intention to make or import a record of a musical work, any making or importing of the record by that person after commencement shall not be an infringement of any copyright in the musical work if the conditions set out in section 22 of the 1962 Act are fulfilled.

(2) The provisions of—

(a) sections 22 and 23 of the 1962 Act; and

(b) regulations 3(2) and 4 to 7 of the Copyright (Record Royalties) Regulations 1963—

that are in force immediately before commencement shall continue to apply for the purpose of completing or perfecting any matter in progress immediately before commencement.

Compare: 1962 No 33 Schedule 1 cl 24; Copyright, Designs and Patents Act 1988 Schedule 1 para 21 (UK)

43 Notice may be given to Comptroller of Customs

(1) Subject to subclause (2), where, before commencement, a notice was given in respect of a work under section 29 of the 1962 Act, and that notice had not been withdrawn and had not otherwise ceased to have effect before commencement, the notice shall have effect after commencement as if it had been accepted under section 136, and section 136 shall apply with any necessary modifications.

(2) The notice shall, upon commencement, cease to have any effect in respect of—

(a) any items sold in another country by or with the consent of the owner of the copyright in that country; and

(b) any items in transit to a country other than New Zealand.

Compare: 1962 No 33 Schedule 1 cl 29

Part 2
Provisions relating to Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018

Schedule 1 Part 2: inserted, on 30 December 2018, by section 44(9) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Subpart 2—Performers' rights

Schedule 1 subpart 2: inserted, on 30 December 2018, by section 44(9) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Interpretation

Heading: inserted, on 30 December 2018, by section 44(9) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

47 Interpretation

In this subpart, unless the context otherwise requires,—

commencement means the date on which the WIPO performers' rights provisions come into force

performer's rights means the rights of a performer conferred by Part 9 of this Act

WIPO performers' rights provisions means the provisions of Part 1 of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018.

Schedule 1 clause 47: inserted, on 30 December 2018, by section 44(9) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Application

Heading: inserted, on 30 December 2018, by section 44(9) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

48 Application

(1) If a performance is given on or after commencement, Part 9 (as amended by the WIPO performers' rights provisions) applies to any act done on or after commencement in relation to that performance.

(2) If a performance is given before commencement, Part 9 (as in force immediately before commencement) continues to apply to any act done on or after commencement in relation to that performance.

(3) Despite subclause (2), if Part 9 (as in force immediately before commencement) would not have applied to an act done, or a performance given, before commencement, subclause (2) and Part 9 do not apply to the act or the performance.

(4) This clause is subject to clauses 49 and 50.

Schedule 1 clause 48: inserted, on 30 December 2018, by section 44(9) of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90).

Part 3
Provisions relating to Copyright (Marrakesh Treaty Implementation) Amendment Act 2019

Schedule 1 Part 3: inserted, on 4 January 2020, by section 8 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

51 Interpretation

In this Part,—

commencement date means the date on which this Part comes into force

former section 69 means section 69 as in force immediately before the commencement date

prescribed body means a body declared in regulation 5 to be a prescribed body for the purposes of former section 69

regulation 5 means regulation 5 of the Copyright (General Matters) Regulations 1995 as in force immediately before the commencement date.

Schedule 1 clause 51: inserted, on 4 January 2020, by section 8 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

52 Braille or otherwise modified copies made under former section 69 treated as if made under Act as amended

A copy or an adaptation made or communicated by a prescribed body before the commencement date in compliance with the conditions of the former section 69 is to be treated on and after the commencement date as an accessible format copy that was made or provided in compliance with sections 69A and 69B.

Schedule 1 clause 52: inserted, on 4 January 2020, by section 8 of the Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43).

Schedule 2
Enactments amended

s 236(1)

Antiquities Act 1975 (1975 No 41) (RS Vol 26, p 31)
Amendment(s) incorporated in the Act(s).

Archives Act 1957 (1957 No 13) (RS Vol 1, p 127)
Amendment(s) incorporated in the Act(s).

Commerce Act 1986 (1986 No 5) (RS Vol 31, p 71)
Amendment(s) incorporated in the Act(s).

Disputes Tribunals Act 1988 (1988 No 110)
Amendment(s) incorporated in the Act(s).

Enemy Property Act 1951 (1951 No 48) (RS Vol 6, p 317)
Amendment(s) incorporated in the Act(s).

Films, Videos, and Publications Classification Act 1993 (1993 No 94)
Amendment(s) incorporated in the Act(s).

Layout Designs Act 1994 (1994 No 116)
Amendment(s) incorporated in the Act(s).

Ministry of Agriculture and Fisheries Act 1953 (1953 No 7) (RS Vol 18, p 509)
Amendment(s) incorporated in the Act(s).

National Library Act 1965 (1965 No 136) (RS Vol 11, p 225)
Amendment(s) incorporated in the Act(s).

Public Works Act 1981 (1981 No 35)
Amendment(s) incorporated in the Act(s).

Survey Act 1986 (1986 No 123)
Amendment(s) incorporated in the Act(s).

Schedule 3
Enactments repealed

s 236(2)

Broadcasting Act 1989 (1989 No 25)
Amendment(s) incorporated in the Act(s).

Copyright Act 1962 (1962 No 33)

Copyright Amendment Act 1967 (1967 No 65)

Copyright Amendment Act 1971 (1971 No 91)

Copyright Amendment Act 1985 (1985 No 134)

Copyright Amendment Act 1986 (1986 No 81)

Copyright Amendment Act 1989 (1989 No 112)

Copyright Amendment Act 1990 (1990 No 71)

Decimal Currency Act 1964 (1964 No 27)
Amendment(s) incorporated in the Act(s).

Summary Proceedings Act 1957 (1957 No 87)
Amendment(s) incorporated in the Act(s).

Schedule 4
Regulations revoked

s 236(3)

Copyright Amending Regulations 1946 (SR 1946/142)

Copyright Amending Regulations 1955 (SR 1955/45)

Copyright (Customs) Regulations 1963 (SR 1963/85)

Copyright (International Conventions) Order 1964 (SR 1964/53)

Copyright (International Conventions) Order 1964, Amendment No 1 (SR 1979/64)

Copyright (Record Royalties) Regulations 1963 (SR 1963/84)

Copyright Regulations 1913 (*Gazette* Vol I 1914, p 1325)

Works the Importation of which is prohibited under the Copyright Act 1913 (*Gazette* Vol I 1925, p 16)

Reprints notes

1 General

This is a reprint of the Copyright Act 1994 that incorporates all the amendments to that Act as at the date of the last amendment to it.

2 Legal status

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 Editorial and format changes

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also http://www.pco.parliament.govt.nz/editorial-conventions/.

4 Amendments incorporated in this reprint

Copyright (Marrakesh Treaty Implementation) Amendment Act 2019 (2019 No 43): Part 1

Tribunals Powers and Procedures Legislation Act 2018 (2018 No 51): Part 1 subpart 2

Customs and Excise Act 2018 (2018 No 4): section 443(3)

Electronic Interactions Reform Act 2017 (2017 No 50): Part 3 subpart 3

Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018 (2016 No 90): Part 1 (as amended by Trans-Pacific Partnership Agreement (CPTPP) Amendment Act 2018)

Copyright Amendment Act 2016 (2016 No 59)

District Court Act 2016 (2016 No 49): section 261

Standards and Accreditation Act 2015 (2015 No 91): section 44

Copyright (Infringing File Sharing and Cellular Mobile Networks) Order 2015 (LI 2015/208)

Copyright Amendment Act 2015 (2015 No 11)

Copyright (Parallel Importing of Films) Amendment Act 2013 (2013 No 86)

Criminal Procedure (Consequential Amendments) Regulations 2013 (SR 2013/409): regulation 3(1)

Patents Act 2013 (2013 No 68): section 249

Inquiries Act 2013 (2013 No 60): section 39

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Legislation Act 2012 (2012 No 119): section 77(3)

Criminal Procedure Act 2011 (2011 No 81): section 413

Copyright Amendment Act 2011 (2011 No 72)

Television New Zealand Amendment Act 2011 (2011 No 52): section 14

Copyright (Infringing File Sharing) Amendment Act 2011 (2011 No 11)

Copyright Amendment Act 2010 (2010 No 55)

Designs Amendment Act 2010 (2010 No 15): section 8

Copyright (New Technologies) Amendment Act 2008 Commencement Amendment Order (No 2) 2009 (SR 2009/51)

Copyright (New Technologies) Amendment Act 2008 Commencement Order (No 2) 2008 (SR 2008/411)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Copyright (New Technologies) Amendment Act 2008 (2008 No 27)

Evidence Act 2006 (2006 No 69): section 216

Insolvency Act 2006 (2006 No 55): section 445

Education Amendment Act 2006 (2006 No 19): section 60(1)

Lawyers and Conveyancers Act 2006 (2006 No 1): section 348

Public Records Act 2005 (2005 No 40): section 67(1)

Copyright Amendment Act 2005 (2005 No 33)

Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003 (2003 No 111)

Trade Marks Act 2002 (2002 No 49): section 201

Sentencing Act 2002 (2002 No 9): section 186

Public Trust Act 2001 (2001 No 100): section 170(1)

Public Audit Act 2001 (2001 No 10): section 53

Copyright Act Commencement Order 2000 (SR 2000/245)

Copyright Amendment Act 1999 (1999 No 124)

Copyright (Removal of Prohibition on Parallel Importing) Amendment Act 1998 (1998 No 20)

Copyright Amendment Act 1997 (1997 No 38)

Copyright Amendment Act 1996 (1996 No 28)

Customs and Excise Act 1996 (1996 No 27): section 289(1)

Department of Justice (Restructuring) Act 1995 (1995 No 39): section 10(3)

Copyright Act 1994 (1994 No 143): section 35(5)

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