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Consejo de los Aspectos de los Derechos de
Propiedad Intelectual relacionados con el Comercio

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PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO

Irlanda

En el presente documento se reproducen¹ las leyes y reglamentos siguientes, notificados por Irlanda en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo:

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¹En inglés solamente.

NATIONAL LEGISLATION

IRELAND

Copyright Act

(No. 10, of 1963)¹⁾

(First Part)

An Act to make new provision in respect of copyright and related matters, in substitution for the provisions of Parts VI and VII of the Industrial and Commercial Property (Protection) Act, 1927, and other enactments relating thereto, and to provide for matters connected with the matters aforesaid (8th April, 1963)

Be it enacted by the *Oireachtas* as follows:

PART I

Preliminary and General

Short title and commencement

1. — (1) This Act may be cited as the Copyright Act, 1963.

(2) This Act shall come into operation on such day as the Minister may by order appoint; and different days may be appointed for the purposes of different provisions of this Act, and, for the purposes of any provision of this Act whereby enactments are repealed, different days may be appointed for the operation of the repeal in relation to different enactments, including different enactments in the same Act.

Interpretation generally

2. — (1) In this Act, except in so far as the context otherwise requires:

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

"adaptation" in relation to a literary, dramatic or musical work, has the meaning assigned to it by section 8 of this Act;

"artistic work" has the meaning assigned to it by section 9 of this Act;

"building" includes any structure;

"cinematograph film" has the meaning assigned to it by section 18 of this Act;

"construction" includes erection, and references to reconstruction shall be construed accordingly;

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

"dramatic work" includes a choreographic work or entertainment in dumb show if reduced to writing in the form in which the work or entertainment is to be presented, but does not include a cinematograph film, as distinct from a scenario or script for a cinematograph film;

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

"engraving" includes any etching, lithograph, woodcut, print or similar work not being a photograph;

"future copyright" and "prospective owner" have the meanings assigned to them by section 49 of this Act;

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

"literary work" includes any written table or compilation;

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

"the Minister" means the Minister for Industry and Commerce;

"performance" includes delivery, in relation to lectures, addresses, speeches and sermons, and in general, subject to the provisions of subsection (5) of this section, includes any mode of visual or acoustic presentation, including any such presentation by the operation of wireless telegraph apparatus, or by the exhibition of a cinematograph film, or by the use of a record, or by any other means, and references to performing a work or an adaptation of a work shall be construed accordingly;

"photograph" means any product of photography or of any process akin to photography, other than a part of a cinematograph film, and "author", in relation to a photograph, means the person who, at the time when the photograph is taken, is the owner of the material on which it is taken;

"qualified person" has the meaning assigned to it by section 7 of this Act;

"Radio Éireann" means the broadcasting authority established by virtue of section 3 of the Broadcasting Authority Act, 1960;

"record" means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable (with or without the aid of some other instrument) of being automatically reproduced therefrom, and references to a record of a work or other subject-matter are references to a record (as herein defined) by means of which it can be performed;

"reproduction", in the case of a literary, dramatic or musical work, includes a reproduction in the form of a record or of a cinematograph film, and, in the case of an artistic

¹⁾ Official communication from the Administration of Ireland.

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work includes a version produced by converting the work into a three-dimensional form, or, if it is in three dimensions, by converting it into a two-dimensional form, and references to reproducing a work shall be construed accordingly;

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

"sound recording" has the meaning assigned to it by section 17 of this Act;

"sufficient acknowledgement" has the meaning assigned to it by section 12 of this Act;

"television broadcast" and "sound broadcast" have the meanings assigned to them by section 19 of this Act;

"wireless telegraphy apparatus" has the same meaning as "apparatus for wireless telegraphy" has in the Wireless Telegraphy Act, 1926, as amended by the Broadcasting Authority Act, 1960;

"work of joint authorship" has the meaning assigned to it by section 16 of this Act;

"writing" includes any form of notation, whether by hand or by printing, typewriting or other process.

(2) References in this Act to broadcasting are references to broadcasting by wireless telegraphy (within the meaning of the Wireless Telegraphy Act, 1926, as amended by the Broadcasting Authority Act, 1960) whether by way of sound broadcasting or by television.

(3) References in this Act to the transmission of a work or other subject-matter to subscribers to a diffusion service are references to the transmission thereof in the course of a service of distributing broadcast programmes, or other programmes (whether provided by the person operating the service or other persons), over wires, or other paths provided by a material substance, to the premises of subscribers to the service; and for the purposes of this Act where a work or other subject-matter is so transmitted:

(a) the person operating the service (that is to say, the person who, in the agreements with the subscribers to the service, undertakes to provide them with the service, whether he is the person who transmits the programmes or not) shall be taken to be the person causing the work or other subject-matter to be so transmitted, and

(b) no person, other than the person operating the service, shall be taken to be causing it to be so transmitted, notwithstanding that he provides any facilities for the transmission of the programmes.

Provided that, for the purposes of this subsection, and of references to which this subsection applies, no account shall be taken of a service of distributing broadcast or other programmes, where the service is only incidental to a business of keeping or letting premises where persons reside or sleep, and is operated as part of the amenities provided exclusively or mainly for residents or inmates therein.

(4) References in this Act to the doing of any act by the reception of a television broadcast or sound broadcast made by Radio Éireann are references to the doing of that act by means of receiving the broadcast either:

(a) from the transmission whereby the broadcast is made by Radio Éireann, or

(b) from a transmission made by Radio Éireann otherwise than by way of broadcasting, but simultaneously with the transmission mentioned in the preceding paragraph,

whether (in either case) the reception of the broadcast is directly from the transmission in question or from a re-transmission thereof made by any person from any place, whether in the State or elsewhere; and in this subsection "re-transmission" means any re-transmission whether over paths provided by a material substance or not, including any re-transmission made by making use of any record, print, negative, tape or other article on which the broadcast in question has been recorded.

(5) For the purposes of this Act, broadcasting, or the causing of a work or other subject-matter to be transmitted to subscribers to a diffusion service, shall not be taken to constitute performance, or to constitute causing visual images or sounds to be seen or heard; and where visual images or sounds are displayed or emitted by any receiving apparatus, to which they are conveyed by the transmission of electromagnetic signals (whether over paths provided by a material substance or not):

(a) the operation of any apparatus whereby the signals are transmitted, directly or indirectly, to the receiving apparatus shall not be taken to constitute performance or to constitute causing the visual images or sounds to be seen or heard; but

(b) in so far as the display or emission of the images or sounds constitutes a performance, or causes them to be seen or heard, the performance, or the causing of the images to be seen or heard, as the case may be, shall be taken to be effected by the operation of the receiving apparatus.

(6) (a) Without prejudice to the last preceding subsection, where a work or an adaptation of a work is performed, or visual images or sounds are caused to be seen or heard, by the operation of any apparatus to which this subsection applies, being apparatus provided by or with the consent of the occupier of the premises where the apparatus is situated, the occupier of those premises shall, for the purposes of this Act, be taken to be the person giving the performance, or causing the images or sounds to be seen or heard, whether he is the person operating the apparatus or not.

(b) This subsection applies to any such receiving apparatus as is mentioned in the last preceding subsection, and to any apparatus for reproducing sounds by the use of a record.

(7) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended or extended by or under any other enactment.

Supplementary provisions as to interpretation

3. — (1) Except in so far as the context otherwise requires, any reference in this Act to the doing of an act in relation to a work or other subject-matter shall be taken to include a reference to the doing of that act in relation to a

substantial part thereof, and any reference to a reproduction, adaptation or copy of a work, or a record embodying a sound recording, shall be taken to include a reference to a reproduction, adaptation or copy of a substantial part of the work, or a record embodying a substantial part of the sound recording, as the case may be.

Provided that, for the purposes of the following provisions of this Act, namely, subsections (1) and (2) of section 8, subsections (2) and (3) of section 9, subsections (2) and (3) of section 44, section 50, and subsections (3) to (5) of section 51, this subsection shall not affect the construction of any reference to the publication, or absence of publication, of a work.

(2) With regard to publication, the provisions of this subsection shall have effect for the purposes of this Act, that is to say:

- (a) the performance, or the issue of records, of a literary, dramatic or musical work, the exhibition of an artistic work, the construction of a work of architecture, and the issue of photographs or engravings of a work of architecture or of a sculpture, do not constitute publication of the work;
- (b) except in so far as it may constitute an infringement of copyright, or a contravention of any restriction imposed by section 54 of this Act, a publication which is merely colourable, and not intended to satisfy the reasonable requirements of the public shall be disregarded;
- (c) subject to the preceding paragraphs of this subsection, a literary, dramatic or musical work, or an edition of such a work, or an artistic work, shall be taken to have been published if, but only if, reproductions of the work or edition have been issued to the public;
- (d) a publication in the State, or outside the State, shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days;

and in determining for the purposes of paragraph (c) of this subsection, whether reproductions of a work have been issued to the public, subsection (1) of this section shall not apply.

(3) In determining for the purposes of any provision of this Act:

- (a) whether a work or other subject-matter has been published, or
- (b) whether a publication of a work or other subject-matter was the first publication thereof, or
- (c) whether a work or other subject-matter was published or otherwise dealt with in the lifetime of a person,

no account shall be taken of any unauthorised publication or of the doing of any other unauthorised act; and a publication or other act shall for the purposes of this subsection be taken to have been unauthorised:

- (i) if copyright subsisted in the work or other subject-matter and the act in question was done otherwise than by, or with the licence of, the owner of the copyright, or
- (ii) if copyright did not subsist in the work or subject-matter, and the act in question was done otherwise than by, or

with the licence of, the author (or, in the case of a sound recording or a cinematograph film, or an edition of literary, dramatic or musical work, the maker or publisher, as the case may be) or persons lawfully claiming under him:

so, however, that nothing in this subsection shall affect any provisions of this Act as to the acts restricted by any copyright or as to acts constituting infringements of copyright or any provisions of section 54 of this Act.

(4) References in this Act to the time at which, or the period during which, a literary, dramatic or musical work was made are references to the time or period at or during which it was first reduced to writing or some other material form.

(5) In the case of any copyright to which (whether in consequence of a partial assignment or otherwise) different persons are entitled in respect of the application of the copyright:

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

the owner of the copyright, for any purpose of this Act, shall be taken to be the person who is entitled to the copyright in respect of its application to the doing of the particular act or class of acts, or, as the case may be, to the doing thereof in the particular country or at the particular time, which is relevant to the purpose in question; and in relation to any future copyright to which different persons are prospectively entitled, references in this Act to the prospective owner shall be construed accordingly.

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

(7) Where the doing of anything is authorised by the grantee of a licence, or a person deriving title from the grantee, and it is within the terms (including any implied terms) of the licence for him to authorise it, it shall for the purposes of this Act be taken to be done with the licence of the grantor and of every other person (if any) upon whom the licence is binding.

(8) References in this Act to deriving title are references to deriving title either directly or indirectly.

(9) Where, in the case of copyright of any description:

- (a) provisions contained in this Act specify certain acts as being restricted by the copyright, or as constituting infringements thereof, and
- (b) other provisions of this Act specify certain acts as not constituting infringements of the copyright,

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the omission or exclusion of any matter from the latter provisions shall not be taken to extend the operation of the former provisions.

(10) References in this Act to copyright include references to copyright under the Act of 1927.

(11) References in the Act of 1927 to that Act shall, in so far as they are or include references to Part VI or VII of that Act, be deemed to include references to this Act.

Orders, rules and regulations

4. — (1) Where a power to make orders, rules or regulations is conferred by any provision of this Act, such orders, rules or regulations may be made either as respects all, or as respects any one or more, of the matters to which the provision relates; and different provisions may be made by any such orders, rules or regulations as respects different classes of cases to which the orders, rules or regulations apply.

(2) Every order, rule or regulation made under this Act shall be laid before each House of the *Oireachtas* as soon as may be after it is made and if a resolution annulling the order, rule or regulation is passed by either House within the next subsequent twenty-one days on which that House has sat after the order, rule or regulation is laid before it, the order, rule or regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Expenses

5. — The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the *Oireachtas*.

Transitional provisions and repeals

6. — (1) The transitional provisions contained in the First Schedule to this Act shall have effect for the purposes of this Act.

(2) Subject to the said transitional provisions, the enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(3) The repeal of section 163 of the Act of 1927 shall not enable any action which was barred before the commencement of this section to be brought.

PART II

Copyright in Original Works

Nature of copyright

7. — (1) In this Act, except where the context otherwise requires, "copyright" in relation to a work of any description means the exclusive right, by virtue and subject to the provisions of this Act, to do, and to authorise other persons to do, certain acts in the State in relation to that work which, in the relevant provision of this Act, are designated as the acts restricted by the copyright in a work of that description.

(2) In the preceding subsection of this section "the relevant provision of this Act" means, in relation to a work of

any description, any provision of this Act which provides that, subject to compliance with the conditions specified in that provision, copyright shall subsist in works of that description.

(3) Copyright in a work is infringed by any person who, not being the owner of the copyright, and without the licence of the owner thereof, does, or authorises another person to do, in the State any of the acts referred to in subsection (1) of this section.

(4) The preceding subsections of this section shall apply, in relation to any subject-matter (other than a work) of a description to which any provision of Part III of this Act relates as they apply in relation to a work.

(5) For the purposes of any provision of this Act which specifies the conditions under which copyright may subsist in any description of work or other subject-matter "qualified person":

- (a) in the case of an individual, means a person who is an Irish citizen or is domiciled or resident within the State, and
- (b) in the case of a body corporate, means a body incorporated under the laws of the State.

Copyright in literary, dramatic and musical works

8. — (1) Copyright shall, subject to the provisions of this Act, subsist in every original literary, dramatic or musical work which is unpublished and of which the author was a qualified person:

- (a) at the time at which the work was made, or
- (b) where the making of the work extended over a period, for a substantial part of that period.

(2) Copyright shall, subject to the provisions of this Act, subsist in every original literary, dramatic or musical work which is published if:

- (a) the work was first published within the State, or
- (b) the author of the work was a qualified person at the time when the work was first published, or
- (c) the author had died before that time but was a qualified person immediately before his death.

(3) Where copyright subsisted in an original literary, dramatic or musical work immediately before its first publication, the copyright shall continue to subsist in that work after the first publication if, but only if, that publication complies with the provisions of the immediately preceding subsection of this section relating to copyright in a published work.

(4) The term of copyright subsisting in a work under this section shall, subject to the provisions of subsection (5) of this section, be the lifetime of the author of the work and a period of fifty years from the end of the year in which the author died.

(5) (a) If before the death of the author none of the following acts had been done:

- (i) the publication of the work,
- (ii) the performance of the work in public,

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(iii) the offer for sale to the public of records of the work, and

(iv) the broadcasting of the work, the copyright shall continue to subsist for a period of fifty years from the end of the year during which the first of those acts to be done is done.

(b) In paragraph (a) of this subsection, references to the doing of any act in relation to a work include references to the doing of that act in relation to an adaptation of that work.

(6) The acts restricted by the copyright in a literary, dramatic or musical work are:

- (a) reproducing the work in any material form,
- (b) publishing the work,
- (c) performing the work in public,
- (d) broadcasting the work,
- (e) causing the work to be transmitted to subscribers to a diffusion service,
- (f) making any adaptation of the work,
- (g) doing in relation to an adaptation of the work any of the acts mentioned in paragraphs (a) to (e) of this subsection.

(7) In this Act "adaptation":

(a) in relation to a literary or dramatic work, means any of the following:

- (i) in the case of a non-dramatic work, a version of the work, whether in its original language or a different language, in which it is converted into a dramatic work;
- (ii) in the case of a dramatic work, a version of the work, whether in its original language or a different language, in which it is converted into a non-dramatic work;
- (iii) a translation of the work;
- (iv) 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; and

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

(8) The mention of any matter in the definition of "adaptation" in subsection (7) of this section shall not affect the generality of paragraph (a) of subsection (6) of this section.

Copyright in artistic works

9. — (1) In this Act "artistic work" means a work of any of the following descriptions:

- (a) paintings, sculptures, drawings, engravings and photographs, irrespective of their artistic quality,
- (b) works of architecture, being either buildings or models for buildings, and
- (c) works of artistic craftsmanship not falling within the descriptions contained in paragraph (a) or paragraph (b) of this subsection.

(2) Copyright shall subsist, subject to the provisions of this Act, in every original artistic work which is unpublished and the author of which was a qualified person:

(a) when the work was made, or

(b) if the making of the work extended over a period, for a substantial part of that period.

(3) Copyright shall subsist, subject to the provisions of this Act, in every original artistic work which is published, if:

- (a) the first publication of the work took place in the State, or
- (b) the author of the work was a qualified person at the time when it was first published, or
- (c) the author had died before that time but was a qualified person immediately before his death.

(4) Where copyright subsisted in an original artistic work immediately before its first publication, the copyright shall continue to subsist in that work after its first publication if, but only if, that publication complies with the provisions of the immediately preceding subsection of this section relating to copyright in a published work.

(5) The term of copyright subsisting in a work under this section shall, subject to the provisions of subsection (6) and subsection (7) of this section, be the lifetime of the author of the work and a period of fifty years from the end of the year in which the author died.

(6) In the case of an engraving which was not published before the death of the author, the copyright shall continue to subsist for a period of fifty years from the end of the year in which it is first published.

(7) In the case of a photograph, the copyright shall continue to subsist for a period of fifty years from the end of the year in which the photograph is first published.

(8) The acts restricted by the copyright in an artistic work are:

- (a) reproducing the work in any material form,
- (b) publishing the work,
- (c) including the work in a television broadcast,
- (d) causing a television programme which includes the work to be transmitted to subscribers to a diffusion service.

Ownership of copyright in literary, dramatic, musical and artistic works

10. — (1) Subject to the provisions of this section, the author of an original literary, dramatic, musical or artistic work shall be entitled to any copyright subsisting in the work by virtue of this Part of this Act.

(2) Where a literary, dramatic or artistic work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall be entitled to the copyright in the work in so far, but only in so far, as it relates to publication of the work in a newspaper, magazine or similar periodical, or to its reproduction for the purpose of its being so published; but in all other respects the author shall be entitled to the copyright.

(3) Subject to the provisions of subsection (2) of this section, where a person commissions the taking of a photograph, or the painting or drawing of a portrait, or the making

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of an engraving, and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the person who commissioned the work shall be entitled to any copyright subsisting therein by virtue of this Part of this Act.

(4) Where, in any case other than that mentioned either in subsection (2) or (3) of this section, a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be entitled to any copyright subsisting therein by virtue of this Part of this Act.

(5) Each of the subsections (2), (3) and (4) of this section shall have effect subject, in any particular case, to any agreement excluding the operation thereof in that case.

(6) The preceding provisions of this section shall have effect subject to the provisions of Part VII of this Act.

Infringements by importation, sale and other dealings

11. — (1) Without prejudice to the general provisions of section 7 of this Act as to infringements of copyright, the provisions of this section shall have effect in relation to copyright subsisting by virtue of this Part of this Act.

(2) The copyright in a literary, dramatic, musical or artistic work is infringed by any person who, without the licence of the owner of the copyright:

- (a) imports an article (otherwise than for his private and domestic use) into the State, or
 - (b) sells, lets for hire, or by way of trade offers or exposes for sale or hire any article, or
 - (c) by way of trade exhibits any article in public,
- if to his knowledge the making of that article constituted an infringement of that copyright, or (in the case of an imported article) would have constituted such an infringement if the article had been made in the State.

(3) The provisions of subsection (2) of this section which relate to the sale of an article shall apply in relation to the distribution of any articles either:

- (a) for the purposes of trade, or
 - (b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright in question,
- as those provisions apply in relation to the sale of an article.

(4) Subject to the provisions of subsection (5) of this section, the copyright in a literary, dramatic or musical work is also infringed by any person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work.

(5) Subsection (4) of this section shall not apply in a case where the person permitting the place of public entertainment to be used as mentioned in that subsection:

- (a) was not aware, and had not reasonable grounds for suspecting that the performance would be an infringement of the copyright, or
- (b) gave the permission gratuitously, or for a consideration which:
 - (i) was only nominal, or

- (ii) if more than nominal, did not exceed a reasonable estimate of the expenses to be incurred by him in consequence of the use of the place for the performance.

(6) In this section "place of public entertainment" includes any premises which are occupied mainly for other purposes, but are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment.

General exceptions from protection of literary, dramatic or musical works

12. — (1) No fair dealing with a literary, dramatic or musical work for purposes of:

- (a) research or private study, or
 - (b) criticism or review, whether of that work or another work, which is accompanied by a sufficient acknowledgment,
- shall constitute an infringement of the copyright in the work.

(2) No fair dealing with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for the purpose of reporting current events:

- (a) in a newspaper, magazine or similar periodical, which is accompanied by a sufficient acknowledgment, or
- (b) by means of broadcasting, or in a cinematograph film.

(3) The copyright in a literary, dramatic or musical work is not infringed by reproducing it for the purposes of a judicial proceeding or of a report of any such proceeding.

(4) The reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary or dramatic work, if accompanied by a sufficient acknowledgment, shall not constitute an infringement of copyright in the work.

(5) The copyright in a published literary or dramatic work is not infringed by the inclusion of a short passage from it in a collection intended for use in schools, if:

- (a) the collection is described in its title, and in any advertisements thereof by or on behalf of the publisher, as being so intended,
- (b) the work in question was not published for use in schools,
- (c) the collection consists mainly of material in which no copyright subsists,
- (d) the inclusion of the passage is accompanied by a sufficient acknowledgment, and
- (e) not more than one other excerpt from works by the author of the passage, being works in which copyright subsists when the collection is published, is contained in that collection or in that collection taken together with every similar collection (if any) published by the same publisher within the period of five years immediately preceding the publication of that collection.

(6) Where, at a time more than fifty years from the end of the year in which the author of a literary, dramatic or musical work died, and more than one hundred years after the time, or the end of the period, at or during which the work was made:

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- (a) copyright subsists in the work, but
- (b) the work has not been published, and
- (c) the manuscript or a copy of the work is kept in a library, or museum or other institution where (subject to any provisions regulating the institution in question) it is open to inspection,

the copyright in the work is not infringed by a person who publishes the work in accordance with regulations in that behalf made by the Minister.

(7) Where, by virtue of an assignment or licence or otherwise, Radio Éireann is authorised to broadcast a literary, dramatic or musical work but (apart from this subsection) would not be entitled to make a reproduction of it in the form of a record or cinematograph film, the copyright in the work is not infringed if Radio Éireann by means of its own facilities makes such reproduction for the purpose of the authorised broadcast.

(8) The general exception mentioned in the immediately preceding subsection of this section shall not apply if, without the consent of the owner of the relevant rights in the work:

- (a) the reproduction or any copy thereof is used for any purpose except that of making the broadcast in accordance with the authorisation, if any, or
- (b) the reproduction or any copy thereof is not destroyed before the end of the period of six months next following the making of the reproduction, or such longer period as may be agreed between Radio Éireann and the person who, in relation to the making of reproductions of the description in question, is the owner of the copyright subsisting in the work.

(9) Any reproduction of a work made under subsection (7) of this section which is of an exceptional documentary character may be preserved in the archives of Radio Éireann, which are hereby designated official archives for the purpose, but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant rights in the work.

(10) The preceding provisions of this section shall apply to the doing of any act in relation to the adaptation of a work as they apply to the doing of that act in relation to the work itself.

(11) The provisions of this section shall apply where a work, or an adaptation of a work, is caused to be transmitted to subscribers to a diffusion service as they apply where a work or adaptation is broadcast.

(12) In this Act "sufficient acknowledgment" means an acknowledgment identifying the work in question by its title or other description and, unless the work is anonymous or the author has previously agreed or required that no acknowledgment of his name should be made, also identifying the author.

Special exception in respect of records of musical works

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

- (a) records of the work or, as the case may be, of a similar adaptation of the work, have previously been made in or imported into the State for the purposes of retail sale, and were so made or imported by, or with the licence of, the owner of the copyright in the work;
- (b) before making the record, the manufacturer gave to the owner of the copyright the prescribed notice of his intention to make it;
- (c) the manufacturer intends to sell the record by retail, or to supply it for the purpose of being sold by retail by another person, or intends to use it for making other records which are to be so sold or supplied; and
- (d) in the case of a record which is sold by retail, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, a fair royalty.

(2) Where:

- (a) either party to a dispute in relation to the amount of a royalty payable under paragraph (d) of subsection (1) of this section undertakes to refer the dispute to the Controller under section 31 of this Act, and
- (b) the manufacturer pays to the owner of the copyright a sum on account of the amount of the royalty equal to five per cent of the ordinary retail selling price of the record in respect of which the royalty is payable and gives to such owner an undertaking to pay to him the amount of the royalty determined under the said section 31 less the sum aforesaid and such owner gives to the manufacturer an undertaking to repay to the manufacturer the amount (if any) by which the sum aforesaid exceeds the amount of the royalty determined under the said section 31,

the copyright in the work is not infringed on the ground of non-fulfilment of the condition specified in paragraph (d) of subsection (1) of this section by the making of a record by the manufacturer.

(3) In the case of a record:

- (a) which comprises (with or without other material, and either in their original form or in the form of adaptations) two or more musical works in which copyright subsists, and
- (b) the owners of the copyright in the works are different persons,

the royalty shall be apportioned between or among the owners as they may agree.

(4) Where a record comprises (with or without other material) a performance of a musical work, or of an adaptation of a musical work, in which words are sung, or are spoken incidentally to or in association with the music, and either no copyright subsists in that work, or if such copyright subsists, the conditions specified in subsection (1) of this section are fulfilled in relation to that copyright, then if:

- (a) the words consist or form part of a literary or dramatic work in which copyright subsists, and
- (b) such previous records as are referred to in paragraph (a) of subsection (1) of this section were made or imported by, or with the licence of, the owner of the copyright in that literary and dramatic work, and

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(c) the conditions specified in paragraphs (b), (c) and (d) of the said subsection (1) are fulfilled in relation to the owner of that copyright, the making of the record shall not constitute an infringement of the copyright in the literary or dramatic work.

(5) The provisions of subsection (4) of this section shall not be construed as requiring more than one royalty to be paid in respect of a record; and if copyright subsists both in the musical work and in the literary or dramatic work, and their owners are different persons, the royalty shall be apportioned between or among them (or among them and any other person entitled to a share thereof in accordance with subsection [3] of this section) as they may agree.

(6) For the purposes of this section an adaptation of a work shall be taken to be similar to an adaptation thereof contained in previous records if the two adaptations do not substantially differ in their treatment of the work either in respect of style or (apart from any difference in numbers) in respect of the performers required for performing them.

(7) Where, for the purposes of paragraph (a) of subsection (1) of this section, the manufacturer requires to know whether such previous records as are mentioned in that paragraph were made or imported as therein mentioned, the manufacturer may make the prescribed enquiries; and if the owner of the copyright fails to reply to those enquiries within the prescribed period, the previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

(8) Nothing in this section shall be construed as authorising the importation for sale by retail of records which could not lawfully be imported apart from this section; and accordingly, for the purposes of any provision of this Act relating to imported articles where the question arises in relation to a record made outside the State and so imported whether the making of the record would have constituted an infringement of copyright if the record had been made in the State, that question shall be determined as if subsection (1) of this section had not been enacted.

(9) The preceding provisions of this section shall apply in relation to records of part of a work or adaptation as they apply in relation to records of the whole of it save that subsection (1) of this section:

- (a) shall not apply to a record of the whole of a work or adaptation unless the previous records referred to in paragraph (a) of that subsection were records of the whole of the work or of a similar adaptation, and
- (b) shall not apply to a record of part of a work or adaptation unless those previous records were records of, or comprising, that part of the work or of a similar adaptation.

(10) The Minister may make regulations for the purposes of this section and in this section "prescribed" means prescribed by regulations made by the Minister.

General exceptions from protection of artistic works

14. — (1) No fair dealing with an artistic work for purposes of:

(a) research or private study, or

(b) criticism or review, whether of that work or another work, if accompanied by a sufficient acknowledgment, shall constitute an infringement of the copyright in the work.

(2) No fair dealing with an artistic work for the purpose of reporting current events by means of broadcasting or in a cinematograph film shall constitute an infringement of the copyright in the work.

(3) (a) The making of a painting, drawing, engraving or photograph of a work to which this subsection applies, or the inclusion of the work in a cinematograph film or a television broadcast shall not constitute an infringement of the copyright in the work.

(b) This subsection applies to works of sculpture, and the works of artistic craftsmanship referred to in paragraph (c) of subsection (1) of section 9 of this Act, which are permanently situated in a public place or in premises open to the public and to works of architecture.

(4) Without prejudice to the immediately preceding subsection of this section, the inclusion of an artistic work in a cinematograph film or a television broadcast, if its inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film or broadcast, shall not constitute an infringement of the copyright in the work.

(5) The publication of a painting, drawing, engraving, photograph or cinematograph film of an artistic work, the making of which, by virtue of subsection (3) of this section did not constitute an infringement of the copyright in the work, shall not constitute an infringement of that copyright.

(6) The reproduction of an artistic work for the purposes of a judicial proceeding or a report of any such proceedings shall not constitute an infringement of the copyright in the work.

(7) The making of an object of any description which is in three dimensions shall not be taken to constitute an infringement of the copyright in an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work.

(8) Where the author of an artistic work (in this subsection referred to as the earlier work) makes another such work (in this subsection referred to as the subsequent work) and part of the earlier work:

- (a) is reproduced in the subsequent work, and
- (b) is so reproduced by the use of a mould, cast, sketch, plan, model or study made for the purposes of the earlier work, the making of the subsequent work shall not constitute an infringement of the copyright in the earlier work unless the author of the subsequent work in the making of that work repeats or imitates the main design of the earlier work.

(9) Where copyright subsists in a building as a work of architecture, any reconstruction of the building shall not constitute an infringement of that copyright.

(10) Where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists, and has been so constructed by, or with the licence

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of, the owner of that copyright, any subsequent reconstruction of the building by reference to those drawings or plans shall not constitute an infringement of that copyright.

(11) Where by virtue of an assignment or licence or otherwise, Radio Éireann is authorised to include an artistic work in a television broadcast but (apart from this subsection) would not be entitled to make a reproduction of it, the copyright in the work is not infringed if Radio Éireann by means of its own facilities makes a reproduction, in any form, for the purpose of the authorised broadcast.

(12) The general exception mentioned in the immediately preceding subsection of this section shall not apply if without the consent of the owner of the relevant rights in the work:

- (a) the reproduction so made or any copy thereof is used for any purpose except that of making the broadcast in accordance with the authorisation, if any, or
- (b) the reproduction or any copy thereof is not destroyed before the end of the period of six months next following the making of the reproduction, or such longer period as may be agreed between Radio Éireann and the person who, in relation to the making of reproductions of the description in question, is the owner of the copyright subsisting in the work.

(13) A reproduction of an artistic work made by virtue of subsection (11) of this section which is of exceptional documentary character may be preserved in the archives of Radio Éireann, which are hereby designated official archives for the purpose but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant rights in the work.

(14) The provisions of this section shall apply in relation to a television programme which is caused to be transmitted to subscribers to a diffusion service as they apply in relation to a television broadcast.

Anonymous and pseudonymous works

15. — (1) The preceding provisions of this Part of this Act shall, in the case of works published anonymously or pseudonymously, have effect subject to the provisions of this section.

(2) (a) Where the first publication of a literary, dramatic or musical work, or of an artistic work other than a photograph, is anonymous or pseudonymous, any copyright subsisting in the work by virtue of section 8 or 9 of this Act shall continue to subsist until the end of the period of fifty years from the end of the year in which the work was first published.

(b) This subsection shall not apply to any work as respects which, at any time before the end of the period mentioned in the subsection, it is possible for a person without previous knowledge of the facts to ascertain the identity of the author of the work by reasonable enquiry.

(3) The publisher of a work which is published anonymously or pseudonymously may be authorised by the author of the work to grant any assignment or licence in the copyright subsisting in the work and owned by the author without disclosing the identity of the author to the assignee or licensee.

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

Works of joint authorship

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

(2) In relation to a work of joint authorship, the references to the author in subsections (1) and (2) of section 8, in subsections (2) and (3) of section 9, and in paragraph (b) of subsection (2) of section 15 of this Act shall be construed as references to any one or more of the authors.

(3) In relation to a work of joint authorship, other than a work to which the next following section applies, references to the author in subsection (4) of section 8 and in subsection (5) of section 9 of this Act shall be construed as references to the author who died last.

(4) (a) This subsection applies to any work of joint authorship which was first published under two or more names:

- (i) of which one or more (but not all) were pseudonyms, or
- (ii) all of which were pseudonyms, if, at any time within the period of fifty years from the end of the calendar year in which the work was first published, it is possible for a person without previous knowledge of the facts to ascertain the identity of any one or more (but not all) of the authors by reasonable enquiry.

(b) In relation to a work to which this subsection applies, references to the author in subsection (4) of section 8 and in subsection (5) of section 9 of this Act shall be construed as references to the author whose identity was disclosed, or, if the identity of two or more of the authors was disclosed, to that one of those authors who died last.

(c) For the purposes of this subsection the identity of an author shall be taken to have been disclosed if either:

- (i) in his case, the name under which the work was published was not a pseudonym, or
- (ii) it is possible to ascertain his identity as mentioned in subparagraph (ii) of paragraph (a) of this subsection.

(5) (a) This subsection applies, in the case of a work, to any person such that, if he had been the sole author of the work, copyright would not have subsisted in the work under this Part of this Act.

(b) In relation to a work of joint authorship of which one or more of the authors are persons to whom this subsection applies, subsection (1) of section 10 of this Act shall have effect as if the author or authors, other than persons to whom this subsection applies, had been the sole author or (as the case may be) sole authors of the work.

(6) In paragraph (e) of subsection (5) of section 12 of this Act, the reference to not more than one other excerpt from works by the author of the passage in question:

- (a) shall be taken to include a reference to excerpts from works by the author of that passage in collaboration with any other person, or

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(b) if the passage in question is from a work of joint authorship, shall be taken to include a reference to excerpts from works by any one or more of the authors of that passage, or by any one or more of those authors in collaboration with any other person.

(7) Subject to the provisions of this section of this Act, any reference in this Act to the author of a work shall (unless it is otherwise expressly provided) be construed, in relation to a work of joint authorship as a reference to all the authors of the work.

PART III

Copyright in Sound Recordings, Cinematograph Films, Broadcasts, etc.

Copyright in sound recordings

17. — (1) Copyright shall subsist, subject to the provisions of this Act:

- (a) in every sound recording of which the maker was a qualified person at the time the recording was made, and
- (b) without prejudice to the preceding paragraph of this subsection, in every published sound recording the first publication of which took place in the State.

(2) Copyright subsisting in a sound recording by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the year in which the recording is first published.

(3) Subject to the provisions of this Act, the maker of a sound recording shall be entitled to any copyright subsisting in the recording by virtue of this section, save, however, that where a person commissions the making of a sound recording, and pays or agrees to pay for it in money or money's worth, and the recording is made in pursuance of that commission, that person, in the absence of an agreement to the contrary, shall be entitled to any copyright subsisting in the recording by virtue of this section.

(4) The acts restricted by the copyright in a sound recording are:

- (a) making a record embodying the recording;
- (b) in the case of a published recording, causing the recording or any reproduction thereof to be heard in public, or to be broadcast, or to be transmitted to subscribers to a diffusion service, without the payment of equitable remuneration to the owner of the copyright subsisting in the recording;
- (c) in the case of an unpublished recording, causing the recording or any reproduction thereof to be heard in public, or to be broadcast, or to be transmitted to subscribers to a diffusion service.

(5) Where:

- (a) either party to a dispute in relation to the amount of remuneration payable under paragraph (b) of subsection (4) of this section undertakes to refer the dispute to the Controller under section 31 of this Act, and
- (b) an undertaking has been given to the owner of the copyright subsisting in the recording by the other party to the dispute to pay to him the amount of remuneration determined under the said section 31,

the copyright in the recording is not infringed on the ground of non-fulfilment of the condition specified in the said paragraph (b).

(6) The copyright in a sound recording is not infringed by a person who does any of the acts mentioned in subsection (4) of this section in the State in relation to a sound recording, or part of a sound recording, if:

- (a) records embodying that recording, or that part of the recording, as the case may be, have previously been issued to the public in the State, and
- (b) at the time when those records were so issued, neither the records nor the containers in which they were issued bore a label or other mark indicating the year in which the recording was first published.

(7) The immediately preceding subsection of this section shall not apply if it is shown:

- (a) that the records in question were not issued by or with the licence of the owner of the copyright, or
- (b) that the owner of the copyright had taken all reasonable steps for securing that records embodying the recording, or part thereof, would not be issued to the public in the State without a label or mark either on the records themselves or on their containers indicating the year in which the recording was first published.

(8) Where a published sound recording is caused to be heard in public:

- (a) at any premises where persons reside or sleep, as part of the amenities provided exclusively or mainly for residents or inmates therein, or
- (b) as part of the activities of, or for the benefit of, a club, society or other organisation which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare,

the act of causing the sound recording to be so heard without the payment of equitable remuneration to the owner of the copyright subsisting in the recording shall not, subject to the provisions of the next following subsection of this section, constitute an infringement of the copyright subsisting therein.

(9) The immediately preceding subsection of this section shall not apply:

- (a) in the case of the premises mentioned in paragraph (a) of that subsection, if a special charge is made for admission to the part of the premises where the recording is to be heard, or
- (b) in the case of any such organisation as is mentioned in paragraph (b) of that subsection, if a charge is made for admission to the place where the recording is to be heard, and any of the proceeds of the charge are applied otherwise than for the purposes of the organisation.

(10) For the purposes of this Act, a sound recording shall be taken to be made at the time when the first record embodying the recording is made, and the maker of a sound recording is the person who owns that record at the time when the recording is made.

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(11) Where, by virtue of an assignment or licence or otherwise, Radio Éireann is authorised to broadcast a sound recording, but (apart from this subsection) would not be entitled to make a record of it, the copyright in the recording is not infringed if Radio Éireann by means of its own facilities makes a record of the recording for the purpose of the authorised broadcast.

(12) The general exception mentioned in the immediately preceding subsection of this section shall not apply if, without the consent of the owner of the relevant rights in the sound recording:

- (a) the record or any copy thereof is used for any purpose except that of making the broadcast in accordance with the authorisation, if any, or,
- (b) the record or any copy thereof is not destroyed before the end of the period of six months next following the making of the record, or such longer period as may be agreed between Radio Éireann and the person who, in relation to the making of records of the description in question, is the owner of the copyright subsisting in the recording.

(13) Any record of a recording made under subsection (11) of this section which is of an exceptional documentary character may be preserved in the archives of Radio Éireann, which are hereby designated official archives for the purpose, but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant rights in the recording.

(14) In this Act:

- “sound recording” means the aggregate of the sounds embodied in, and capable of being reproduced by means of, a record of any description, other than a sound-track associated with a cinematograph film; and
- “publication”, in relation to a sound recording, means the issue to the public of records embodying the recording or any part thereof.

Copyright in cinematograph films

18. — (1) Copyright shall subsist, subject to the provisions of this Act:

- (a) in every cinematograph film the maker of which was a qualified person for the whole or a substantial part of the period during which the film was made, and
- (b) without prejudice to the provision contained in paragraph (a) of this subsection, in every published cinematograph film the first publication of which took place in the State.

(2) Copyright subsisting in a cinematograph film by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the year in which the film is first published.

(3) Subject to the provisions of this Act the maker of a cinematograph film shall be entitled to any copyright subsisting in the film by virtue of this section, except, however, that where a person commissions the making of a cinematograph film, and pays or agrees to pay for it in money or money's

worth, and the film is made in pursuance of that commission, that person, in the absence of an agreement to the contrary, shall be entitled to any copyright subsisting in the film by virtue of this section.

(4) The acts restricted by the copyright in a cinematograph film are:

- (a) making a copy of the film;
- (b) causing the film, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public;
- (c) broadcasting the film;
- (d) causing the film to be transmitted to subscribers to a diffusion service.

(5) The making of a copy of a cinematograph film for the purposes of a judicial proceeding, or causing it to be seen or heard in public for those purposes, shall not constitute an infringement of any copyright subsisting therein by virtue of this section.

(6) Where copyright has subsisted in a cinematograph film by virtue of this section and has ceased to so subsist, a person who, after such cesser, causes the film to be seen, or to be seen and heard, in public, or to be broadcast, does not thereby infringe any copyright subsisting by virtue of Part II of this Act in any literary, dramatic, musical or artistic work presented in the film.

(7) In the case of a cinematograph film which is a news-reel, the causing of the film to be seen, or seen and heard, in public, or to be broadcast, after the end of the period of fifty years from the end of the year in which the principal events depicted in the film occurred, shall not constitute an infringement of the copyright subsisting by virtue of this section in the film.

(8) For the purposes of this Act, a cinematograph film shall be taken to include the sounds embodied in any sound-track associated with the film, and references to a copy of a cinematograph film shall be construed accordingly.

(9) Where the sounds embodied in any sound-track associated with a cinematograph film are also embodied in a record not derived from that sound-track, any use made of that record shall not constitute an infringement of the copyright in the film.

(10) In this Act:

- “cinematograph film” means any sequence of visual images recorded on material of any description (whether translucent or not) so as to be capable, by use of that material:
 - (a) of being shown as a moving picture, or
 - (b) of being recorded on other material (whether translucent or not) by the use of which it can be shown;
- “maker”, in relation to a cinematograph film, means the person by whom the arrangements necessary for the making of the film are undertaken;
- “publication”, in relation to a cinematograph film, means the sale, letting on hire, or offer for sale or hire, of copies of the film to, or for showing by any means to, the public;
- “copy”, in relation to a cinematograph film, means any print,

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negative, tape or other article on which the film or part of it is recorded.

(11) References in this Act to a sound-track associated with a cinematograph film are references to any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded, or which is issued by the maker of the film for use in conjunction with such an article.

Copyright in television broadcasts and sound broadcasts

19. — (1) Copyright shall, subject to the provisions of this Act, subsist in every television broadcast and in every sound broadcast made by Radio Éireann from a place in the State.

(2) Copyright in a television broadcast and copyright in a sound broadcast shall continue to subsist until the end of the period of fifty years from the end of the year in which the broadcast is first made.

(3) Subject to the provisions of this Act, Radio Éireann shall be entitled to any copyright subsisting in a television broadcast and to any copyright subsisting in a sound broadcast made by Radio Éireann from a place in the State.

(4) In so far as a television broadcast or a sound broadcast is a repetition (whether the first or any subsequent repetition) of a television broadcast or a sound broadcast previously made by Radio Éireann from a place in the State, and is made by broadcasting material recorded on film, records or otherwise:

- (a) copyright shall not subsist therein by virtue of this section if it is made after the end of the period of fifty years from the end of the year in which the previous broadcast was made; and
- (b) if it is made before the end of that period, any copyright subsisting therein by virtue of this section shall cease to subsist therein at the end of that period.

(5) The acts restricted by the copyright in a television broadcast or a sound broadcast are:

- (a) in the case of a television broadcast in so far as it consists of visual images, making, otherwise than for private purposes, a cinematograph film of it or part of it or a photograph of part of it or a copy of such film or photograph;
- (b) in the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds, making, otherwise than for private purposes, a sound recording of it, or a record embodying such a recording;
- (c) in the case of a television broadcast, causing it, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public, if it is seen or heard by a paying audience;
- (d) in the case either of a television broadcast or a sound broadcast, rebroadcasting it.

(6) The restrictions imposed by virtue of subsection (5) of this section in relation to a television broadcast or a sound

broadcast made by Radio Éireann shall apply whether the act in question is done by:

- (a) the reception of the broadcast, or
- (b) making use of any record, print, negative, tape, or other article on which the broadcast has been recorded.

(7) In relation to copyright in television broadcasts, in so far as they consist of visual images, the restrictions imposed by virtue of subsection (5) of this section in relation to a cinematograph film or a copy of such a film shall apply to any sequence of images sufficient to be seen as a moving picture; and accordingly, for the purpose of establishing an infringement of such copyright, it shall not be necessary to prove that the act in question extended to more than a sequence of images.

(8) For the purposes of subsection (5) of this section, a cinematograph film or a copy thereof, a photograph or a copy thereof, or a sound recording or a record embodying a recording, shall be taken to be made otherwise than for private purposes if it is made for the purposes of the doing by any person of any of the following acts, that is to say:

- (a) the sale or letting for hire of any copy of the film or photograph, or, as the case may be, of any record embodying the recording;
- (b) broadcasting the film, recording or photograph;
- (c) causing the film, photograph or recording to be seen or heard in public.

(9) For the purposes of paragraph (c) of subsection (5) of this section, a television broadcast shall be taken to be seen or heard by a paying audience if it is seen or heard by persons who either:

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

(10) For the purposes of paragraph (a) of the immediately preceding subsection of this section no account shall be taken:

- (a) of persons admitted to the place in question as residents or inmates therein, or
- (b) of persons admitted to that place as members of a club or society, where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing television broadcasts is only incidental to the main purposes of the club or society.

(11) Anything done in relation to a television broadcast or a sound broadcast for the purposes of a judicial proceeding does not constitute an infringement of the copyright subsisting in the broadcast.

(12) In this Act:

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

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

(13) For the purposes of this Act, a television broadcast or a sound broadcast shall be taken to be made by the body by whom, at the time when, and from the place from which, the visual images or sounds in question, or both, as the case may be, are broadcast.

Copyright in published editions of works

20. — (1) Subject to the provisions of this Act, copyright shall subsist in every published edition of any one or more literary, dramatic or musical works where either:

- (a) the first publication of the edition took place in the State, or
- (b) the publisher of the edition was a qualified person at the date of the first publication thereof.

(2) Copyright shall not subsist in an edition which reproduces the typographical arrangement of a previous edition of the same work or works.

(3) Subject to the provisions of this Act, the publisher of an edition shall be entitled to any copyright subsisting therein by virtue of this section.

(4) Copyright subsisting in a published edition by virtue of this section shall continue to subsist until the end of the period of twenty-five years from the end of the year in which the edition is first published.

(5) The act restricted by the copyright subsisting in a published edition by virtue of this section is the making, by any photographic or similar process, of a reproduction of the typographical arrangement of the edition.

(6) The making, by any such process as aforesaid, of a reproduction of the typographical arrangement of the edition for the purposes of research or private study involving the work contained in the edition, shall not constitute an infringement of the copyright subsisting in the edition by virtue of this section.

Supplementary provisions for purposes of Part III

21. — (1) The provisions of this section shall have effect with respect to copyright subsisting by virtue of this Part of this Act in sound recordings, cinematograph films, television broadcasts and sound broadcasts, and in published editions of literary, dramatic and musical works; and in those provisions references to the relevant provision of this Part of this Act, in relation to copyright in a subject-matter of any of those descriptions, are references to the provision of this Part of this Act whereby it is provided that (subject to compliance with the conditions specified therein) copyright shall subsist in that description of subject-matter.

(2) Where copyright subsists by virtue of this Part of this Act in a sound recording, cinematograph film, broadcast or other subject-matter, nothing in this Part of this Act shall be construed as affecting the operation of Part II of this Act in relation to any literary, dramatic, musical or artistic work from which that subject-matter is wholly or partly derived; and copyright subsisting by virtue of this Part of this Act

shall be additional to, and independent of, any copyright subsisting by virtue of Part II of this Act.

(3) The immediately preceding subsection of this section shall have effect subject to the provisions of subsection (6) of section 18 of this Act.

(4) The subsistence of copyright under any of the preceding sections of this Part of this Act shall not affect the operation of any other of those sections under which copyright can subsist.

(5) Any copyright subsisting by virtue of this Part of this Act is infringed by any person who, without the licence of the owner of the copyright, imports an article (otherwise than for his private and domestic use) into the State, if to his knowledge the making of that article constituted an infringement of that copyright, or would have constituted such an infringement if the article had been made in the State.

(6) Any such copyright is also infringed by any person who, in the State, and without the licence of the owner of the copyright:

- (a) sells, lets for hire, or by way of trade offers or exposes for sale or hire any article, or
 - (b) by way of trade exhibits any article in public,
- if to his knowledge the making of the article constituted an infringement of that copyright, or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the State.

(7) The immediately preceding subsection of this section shall apply in relation to the distribution of articles either:

- (a) for purposes of trade, or
- (b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright in question, as it applies to the sale of an article.

(8) Subsections (5), (6) and (7) of this section shall have effect without prejudice to the general provisions of section 7 of this Act as to infringements of copyright.

PART IV

Remedies for Infringement of Copyright

Action by owner of copyright for infringement

22. — (1) Subject to the provisions of this Act infringements of copyright shall be actionable at the suit of the owner of the copyright.

(2) In any action by the owner of a copyright for an infringement thereof all such relief, by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

(3) Where in an action for infringement of copyright it is proved or admitted:

- (a) that an infringement was committed, but
 - (b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates,
- the plaintiff shall not be entitled under this section to any

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damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(4) Where in an action under this section an infringement of copyright is proved or admitted, and the court, having regard (in addition to all other material considerations) to:

- (a) the flagrancy of the infringement, and
- (b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(5) In an action 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 it from being completed, or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

(6) In this Part of this Act "action" includes a counter-claim, and references to the plaintiff and to the defendant shall be construed accordingly.

Limitation on amount of plaintiff's costs in certain actions for infringement of copyright

23. — (1) In any action for infringement of copyright commenced and heard in the High Court:

- (a) where any relief (other than damages) claimed is within the jurisdiction of the Circuit Court and, if damages are claimed, the amount of the damages recovered by the plaintiff is not more than six hundred pounds, the plaintiff shall not be entitled to recover more costs than he would have been entitled to recover if the action had been brought in the Circuit Court, unless the judge hearing the action grants a special certificate under this section, and
- (b) where the only relief claimed is damages and the amount of the damages recovered by the plaintiff is not more than fifty pounds, the plaintiff shall not be entitled to recover more costs than he would have been entitled to recover if the action had been brought in the District Court, unless the judge hearing the action grants a special certificate under this section.

(2) In any action referred to in subsection (1) of this section the judge hearing the action may, on the application of the plaintiff, grant a special certificate in writing that, in the opinion of the judge, it was reasonable, owing to the substantial or important nature of the action or the importance of any question of law involved therein that the action should have been commenced in the High Court.

(3) The reference in subsection (3) of section 12 (which limits the amount of plaintiffs' costs in certain actions in the High Court) of the Courts of Justice Act, 1936, to a restriction imposed by that section shall be construed as including

a reference to the restrictions imposed by this section on the amount of costs recoverable by plaintiffs in the actions referred to in subsection (1) of this section.

Rights of owner of copyright in respect of infringing copies

24. — (1) Subject to the provisions of this Act, the owner of any copyright shall be entitled to all such rights and remedies, in respect of the conversion or detention by any person of an infringing copy, or of any plate used or intended to be used for making infringing copies, as he would be entitled to if he were the owner of every such copy or plate and had been the owner thereof since the time when it was made.

(2) Where by virtue of subsection (2) of section 12 (which relates to successive conversions or detentions) of the Statute of Limitations, 1957, the title of the owner of the copyright to such a copy or plate as is mentioned in subsection (1) of this section would (if he had been the owner of the copy or plate) have been extinguished at the end of the period mentioned in the said subsection (2), he shall not be entitled to any rights or remedies under subsection (1) of this section in respect of anything done in relation to that copy or plate after the end of that period.

(3) A plaintiff shall not be entitled by virtue of this section to any damages or to any other pecuniary remedy (except costs) if it is proved or admitted that, at the time of the conversion or detention in question:

- (a) the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates, or
- (b) where the articles converted or detained were infringing copies, the defendant believed, and had reasonable grounds for believing, that they were not infringing copies, or
- (c) where the article converted or detained was a plate used or intended to be used for making any articles, the defendant believed, and had reasonable grounds for believing, that the articles so made or intended to be made were not, or (as the case may be) would not be, infringing copies.

(4) In this Part of this Act:

"infringing copy",

- (a) in relation to a literary, dramatic, musical or artistic work, or to such a published edition as is mentioned in section 20 of this Act, means a reproduction otherwise than in the form of a cinematograph film,
- (b) in relation to a sound recording, means a record embodying that recording,
- (c) in relation to a cinematograph film, means a copy of the film, and
- (d) in relation to a television broadcast or a sound broadcast, means a copy of a cinematograph film of it or of part of it or a photograph of part of it or a record embodying a sound recording of it,

being (in any such case) an article the making of which constituted an infringement of the copyright in the work, edition, recording, film or broadcast, or, in the case of an

imported article, would have constituted an infringement of that copyright if the article had been made in the State; "plate" includes any stereotype, stone, block, mould, matrix, transfer, negative or other appliance.

Proceedings in case of copyright subject to exclusive licence

25. — (1) The provisions of this section shall have effect as to proceedings in the case of any copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

(2) Subject to the following provisions of this section:

- (a) the exclusive licensee shall (except as against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section 22 of this Act as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section;
- (b) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, by virtue of section 24 of this Act as if the licence had been an assignment; and
- (c) the owner of the copyright shall not have any rights of action or be entitled to any remedies, by virtue of section 24 of this Act which he would not have had or been entitled to if the licence had been an assignment.

(3) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action in so far as it is brought under section 22 of this Act, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant.

(4) The immediately preceding subsection of this section shall not affect the granting of an interlocutory injunction on the application of either of the parties referred to in the subsection.

(5) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a defendant in the action, if this section had not been enacted and the action had been brought by the owner of the copyright, shall be available to that defendant as against the exclusive licensee.

(6) Where an action is brought in the circumstances mentioned in subsection (3) of this section, and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court, in assessing damages in respect of any such infringement as is mentioned in that subsection:

- (a) if the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or otherwise) to which the licence is subject, and
- (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary

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remedy already awarded to the other party under section 22 of this Act in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(7) Where an action, in so far as it is brought under section 22 of this Act, relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the court is aware, whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them as the court may consider just, and shall give such directions as the court may consider appropriate for giving effect to that apportionment.

(8) In an action brought either by the owner of the copyright or by the exclusive licensee:

- (a) no judgment or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 22 of this Act, if a final judgment or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and
- (b) no judgment or order for an account of profits in respect of an infringement of copyright shall be given or made under the said section 22, if a final judgment or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

(9) Where, in an action brought in the circumstances mentioned in subsection (3) of this section, whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of that action or subsequently), but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(10) In this section:

"exclusive licence" means a licence in writing, signed by or on behalf of an owner or prospective owner of copyright, authorising the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of the copyright, and "exclusive licensee" shall be construed accordingly;

"the other party" in relation to the owner of the copyright means the exclusive licensee, and, in relation to the exclusive licensee means the owner of the copyright; and

"if the licence had been an assignment" means if, instead of the licence, there had been granted (subject to terms and conditions corresponding as nearly as may be with those subject to which the licence was granted) an assignment of the copyright in respect of its application to the doing, at the places and times authorised by the licence, of the acts so authorised.

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Proof of facts in copyright actions

26. — (1) In any action brought by virtue of this Part of this Act:

- (a) copyright shall be presumed to subsist in the work or other subject-matter to which the action relates, if the defendant does not put in issue the question whether copyright subsists therein, and
- (b) where the subsistence of the copyright is proved or admitted, or is presumed in pursuance of the preceding paragraph, the plaintiff shall be presumed to be the owner of the copyright, if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership thereof.

(2) Subject to the preceding subsection of this section, where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author appeared on copies of the work as published, or in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared (if it was his true name or a name by which he was commonly known) shall, in any action brought by virtue of this Part of this Act be presumed, unless the contrary is proved:

- (a) to be the author of the work, and
- (b) to have made the work in circumstances not falling within subsection (2), subsection (3) or subsection (4) of section 10 of this Act.

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) of this section shall apply in relation to each person alleged to be one of the authors of the work, as if references in that subsection to the author were references to one of the authors.

(4) Where in an action brought by virtue of this Part of this Act with respect to a literary, dramatic, musical or artistic work, subsection (2) of this section does not apply, but it is established:

- (a) that the work was first published in the State, and was so published within the period of fifty years ending with the beginning of the year in which the action was brought, and
- (b) that a name purporting to be that of the publisher appeared on copies of the work as first published,

then, unless the contrary is shown, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.

(5) For the purposes of subsection (4) of this section a fact shall be taken to be established if it is proved or admitted, or if it is presumed in pursuance of the subsequent provisions of this section.

(6) Where in an action brought by virtue of this Part of this Act with regard to a literary, dramatic, musical or artistic work it is proved or admitted that the author is dead:

- (a) the work shall be presumed to be an original work unless the contrary is proved, and
- (b) if it is alleged by the plaintiff that a publication specified

in the allegation was the first publication of the work, and that it took place in a country and on a date so specified, that publication shall be presumed, unless the contrary is proved, to have been the first publication of the work, and to have taken place in that country and on that date.

(7) Paragraphs (a) and (b) of subsection (6) of this section shall apply where a work has been published, and:

- (a) the publication was anonymous, or was under a name alleged by the plaintiff to have been a pseudonym, and
- (b) it is not shown that the work has ever been published under the true name of the author or under a name by which he was commonly known, or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry,

as those paragraphs apply in a case where it is proved that the author is dead.

(8) In any action brought by virtue of this Part of this Act with respect to copyright in a sound recording, if records embodying that recording or part thereof have been issued to the public, and at the time when those records were so issued they or their containers bore a label or other mark comprising any one or more of the following statements, that is to say:

- (a) that a person named on the label or mark was the maker of the sound recording;
- (b) that the recording was first published in a year specified on the label or mark;
- (c) that the recording was first published in a country specified on the label or mark,

that label or mark shall be sufficient evidence of the facts as stated except in so far as the contrary is proved.

Penalties and summary proceedings in respect of dealings which infringe copyright

27. — (1) Any person who, at a time after the commencement of this section when copyright subsists in a work:

- (a) makes for sale or hire, or
- (b) sells or lets for hire, or by way of trade offers or exposes for sale or hire, or
- (c) by way of trade exhibits in public, or
- (d) imports into the State, otherwise than for his private and domestic use,

any article which he knows to be an infringing copy of the work, shall be guilty of an offence under this subsection.

(2) Any person who, at a time after the commencement of this section when copyright subsists in a work, distributes, either:

- (a) for purposes of trade, or
 - (b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright,
- articles which he knows to be infringing copies of the work, shall be guilty of an offence under this subsection.

(3) Any person who, at a time after the commencement of this section when copyright subsists in a work, makes or has in his possession a plate, knowing that it is to be used for making infringing copies of the work, shall be guilty of an offence under this subsection.

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(4) The District Court, upon the application of the owner of the copyright in any work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that infringing copies of the work are being hawked, carried about, sold, or offered for sale, may by order authorise a member of the *Garda Síochána* to seize the copies without warrant and to bring them before the court, and the court, on proof that the copies are infringing copies, may order them to be destroyed, or to be delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(5) If the District Court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under subsection (1), (2) or (3) of this section is being committed on any premises, the court may grant a search warrant authorising a member of the *Garda Síochána* not below the rank of Inspector, accompanied by such other members of the *Garda Síochána* as that member thinks proper, to enter the premises between the hours of 6 a. m. and 9 p. m., if need be by force, and to seize any copies of any work or any plates in respect of which he has reasonable ground for suspecting that an offence under any of the said subsections is being committed.

(6) All copies of any work and plates seized under subsection (5) of this section shall be brought before the District Court, and if proved to be infringing copies or plates intended to be used for the printing or reproduction of infringing copies shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court thinks fit.

(7) The preceding subsections of this section shall apply in relation to copyright subsisting in any subject-matter by virtue of Part III of this Act, as they apply in relation to copyright subsisting by virtue of Part II of this Act.

(8) Any person who after the commencement of this section causes a literary, dramatic or musical work to be performed in public, knowing that copyright subsists in the work and that the performance constitutes an infringement of the copyright, shall be guilty of an offence under this subsection.

(9) A person guilty of an offence under subsection (1) or subsection (2) of this section shall on summary conviction:

- (a) if it is his first conviction of an offence under this section, be liable to a fine not exceeding five pounds for each article to which the offence relates;
- (b) in any other case, be liable to such a fine, or to imprisonment for a term not exceeding six months:

so however, that a fine imposed by virtue of this subsection shall not exceed one hundred pounds in respect of articles comprised in the same transaction.

(10) A person guilty of an offence under subsection (3) or subsection (8) of this section shall, on summary conviction:

- (a) if it is his first conviction of an offence under this section, be liable to a fine not exceeding one hundred pounds;
- (b) in any other case, be liable to such a fine, or to imprisonment for a term not exceeding six months.

(11) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy, or to be a plate used or intended to be used for making infringing copies, shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.

(12) An appeal shall lie to the Circuit Court from any order under subsection (4), (5), (6) or (11) of this section.

Provision for restricting importation of infringing copies

28. — (1) The owner of the copyright in any published literary, dramatic or musical work or sound recording may give notice in writing to the Revenue Commissioners (in this section referred to as the Commissioners):

(a) that he is the owner of the copyright in the work or the recording, and

(b) that he requests the Commissioners, during a period specified in the notice, to treat as prohibited goods copies of the work or the recording to which this section applies; so, however, that the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright is to subsist.

(2) This section applies:

(a) in the case of a work, to any printed copy and

(b) in the case of a sound recording, to any copy, made outside the State which, if it had been made in the State, would be an infringing copy of the work or the recording.

(3) Where a notice has been given under this section in respect of a work or a recording, and has not been withdrawn, the importation into the State, at a time before the end of the period specified in the notice, of any copy of the work or the recording to which this section applies shall, subject to the subsequent provisions of this section, be prohibited.

(4) The immediately preceding subsection of this section shall not apply to the importation of any article by a person for his private and domestic use.

(5) The Commissioners may make regulations prescribing the form in which notices are to be given under this section, and requiring a person giving such a notice, either at the time of giving the notice or at the time when the goods in question are imported, or at both those times, to furnish the Commissioners with such evidence, or to comply with such other conditions (if any) as may be specified in the regulations: and any such regulations may include such incidental and supplementary provisions as the Commissioners may consider expedient for the purposes of this section.

(6) Without prejudice to the generality of the immediately preceding subsection of this section, regulations made under that subsection may include provision for requiring a person who has given a notice under subsection (1) of this section, or a notice purporting to be a notice under that subsection:

- (a) to pay to the Commissioners such fees in respect of the notice as may be prescribed by the regulations;

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- (b) to give to the Commissioners such security as may be so prescribed, in respect of any liability or expense which they may incur in consequence of the detention, at any time during the period specified in the notice, of any copy of the work or the recording to which the notice relates, or in consequence of anything done in relation to a copy so detained;
- (c) whether any such security is given or not, to keep the Commissioners indemnified against any such liability or expense as is mentioned in paragraph (b) of this subsection.
- (7) Any fees paid in pursuance of regulations under this section shall be accounted for in such manner as shall be prescribed by the Minister for Finance.
- (8) The Public Offices Fees Act, 1879, shall not apply in respect of any fees payable in pursuance of regulations under this section.
- (9) Notwithstanding anything contained in the Customs Acts, a person shall not be liable to any penalty under those Acts (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section.

(To be continued)

INTERNATIONAL UNION

Appointment of a new Vice-Director

The conditions referred to in Resolution No. 4 adopted on October 25th, 1962, by the Permanent Bureau of the Consultative Committee of the Paris Union and the Permanent Committee of the Berne Union (see *Industrial Property*, 1962, p. 236; *Le Droit d'Auteur [Copyright]*, 1962, p. 188) having been fulfilled, the Director of BIRPI appointed, on July 19th, 1963, Dr. Arpad Bogsch as Vice-Director of BIRPI.

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IRELAND

Copyright Act

(No. 10, of 1963)

(Second and Last Part)¹⁾

PART V

Jurisdiction of the Controller of Industrial and Commercial Property

Definitions for purposes of Part V

29. — (1) In this Part of this Act:

“licence” means a licence granted by or on behalf of the owner, or prospective owner, of the copyright in a literary, dramatic or musical work, or in a sound recording or a television broadcast, being:

- (a) in the case of a literary, dramatic or musical work, a licence to perform in public, or to broadcast, or to record for the purpose of broadcasting, the work or an adaptation thereof, or to cause the work or an adaptation thereof to be transmitted to subscribers to a diffusion service;
- (b) in the case of a sound recording, a licence to cause it to be heard in public, or to broadcast it, or to transmit it to subscribers to a diffusion service;
- (c) in the case of a television broadcast, a licence to cause it, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public.

(2) In this Part of this Act “licensing body”:

- (a) in relation to such licences as are mentioned in paragraph (a) of the preceding subsection of this section, means a society or other organisation which has as its main object, or one of its main objects, the negotiation or granting of such licences, either as owner or prospective owner of copyright or as agent for the owners or prospective owners thereof;
- (b) in relation to such licences as are mentioned in paragraph (b) of the preceding subsection of this section means any owner or prospective owner of copyright in sound recordings, or any person or body of persons acting as agent for any owners or prospective owners of copyright in relation to the negotiation or granting of such licences; and
- (c) in relation to such licences as are mentioned in paragraph (c) of the preceding subsection of this section, means Radio Éireann or any organisation appointed by Radio Éireann for the purposes of negotiating or granting licenses in respect of the copyright in television broadcasts in so far as the copyright relates to the acts specified in paragraph (c) of subsection (5) of section 19 of this Act.

(3) Paragraph (a) of subsection (2) of this section shall not apply to an organisation by reason that its objects include

¹⁾ See *Le Droit d'Auteur (Copyright)*, 1963, p. 115.

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the negotiation or granting of individual licences, each relating to a single work or the works of a single author, if they do not include the negotiation or granting of general licences, each extending to the works of several authors.

(4) In this Part of this Act "licence scheme", in relation to licences of any description, means a scheme made by one or more licensing bodies, setting out the classes of cases in which they, or the persons on whose behalf they act, are willing to grant licences of that description, and the charges (if any), and the terms and conditions, subject to which licences would be granted in those classes of cases; and in this subsection "scheme" includes anything in the nature of a scheme, whether described therein as a scheme or a tariff or by any other name.

(5) In this Part of this Act:

- (a) references to terms and conditions are references to terms and conditions other than those relating to the amount of a charge for a licence; and
- (b) references to giving an opportunity to a person of presenting his case are references to giving him an opportunity, at his option, of submitting representations in writing, or of being heard, or of submitting representations in writing and being heard.

General provisions as to jurisdiction of the Controller

30. — Subject to the provisions of this Part of this Act, the Controller shall have jurisdiction to determine disputes arising between licensing bodies and persons requiring licences, or organisations claiming to be representative of such persons, either:

- (a) on the reference of a licence scheme to the Controller, or
- (b) on the application of a person requiring a licence either in accordance with a licence scheme or in a case not covered by a licence scheme.

Determination by the Controller of certain matters relating to royalties under section 13 and remuneration under sections 17 and 48

31. — (1) Where a dispute arises between the manufacturer and the owner of the copyright in a musical work regarding the amount of the royalty payable by the manufacturer under paragraph (d) of subsection (1) of section 13 of this Act in respect of the recording of the work, the dispute may be referred by either party to the Controller who shall consider the case and either determine the amount of the royalty so payable, or refer the case to an arbitrator in pursuance of the provisions of section 41 of this Act, for such determination.

(2) Where a royalty payable under section 13 of this Act falls to be apportioned under subsection (3) or (5) of that section, the Controller shall, in default of agreement among the persons entitled to the royalty, consider the case and either determine the proportions in which the royalty shall be so apportioned, or refer the case to an arbitrator in pursuance of the provisions of section 41 of this Act, for such determination.

(3) Where a dispute arises between a person who causes a sound recording, or any reproduction thereof, to be heard in public, or to be broadcast, and the owner of the copyright subsisting in the recording regarding the equitable remuneration payable under paragraph (b) of subsection (4) of section 17 of this Act in respect of the recording, the dispute may be referred by either party to the Controller who shall consider the case and either determine the amount of the remuneration so payable, or refer the case to an arbitrator in pursuance of the provisions of section 41 of this Act, for such determination.

(4) Where a dispute arises between the owner of the right to broadcast a musical work incorporated in a cinematograph film and Radio Éireann, as to the equitable remuneration payable under subsection (2) of section 48 of this Act in respect of the work, the dispute may be referred by either party to the Controller who shall consider the case and either determine the amount of the remuneration so payable, or refer the case to an arbitrator in pursuance of the provisions of section 41 of this Act, for such determination.

Reference of licence schemes to the Controller

32. — (1) Where, at any time while a licence scheme is in operation, a dispute arises with respect to the scheme between the licensing body operating the scheme and:

- (a) an organisation claiming to be representative of persons requiring licences in cases of a class to which the scheme applies, or
- (b) any person claiming that he requires a licence in a case of a class to which the scheme applies,

the organisation or person in question may refer the scheme to the Controller in so far as it relates to cases of that class.

(2) The parties to a reference of a licence scheme to the Controller under this section shall be:

- (a) the organisation or person at whose instance the reference is made;
- (b) the licensing body operating the scheme to which the reference relates; and
- (c) such other organisations or persons (if any) as apply to the Controller to be made parties to the reference and, in accordance with the next following subsection of this section, are made parties thereto.

(3) Where an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the Controller to be made a party to a reference, and the Controller is satisfied that the organisation or person has a substantial interest in the matter in dispute, he may, if he thinks fit, make that organisation or person a party to the reference.

(4) The Controller shall not entertain a reference of a licence scheme to him under this section by an organisation unless he is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.

(5) Subject to the immediately preceding subsection of this section, the Controller, on any reference under this sec-

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tion, shall consider the matter in dispute, and, after giving to the parties to the reference an opportunity of presenting their cases respectively, shall make such order, either confirming or varying the scheme, in so far as it relates to cases of the class to which the reference relates, as the Controller may determine to be reasonable in the circumstances.

(6) An order of the Controller under this section may, notwithstanding anything contained in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the Controller may determine.

(7) Where a licence scheme has been referred to the Controller under this section, then, notwithstanding anything contained in the scheme, but subject to the next following subsection:

- (a) the scheme shall remain in operation until the Controller has made an order in pursuance of the reference, and
- (b) after such an order has been made, the scheme shall remain in operation, in so far as it relates to the class of cases in respect of which the order was made, so long as the order remains in force.

(8) The immediately preceding subsection of this section shall not apply in relation to a reference as respects any period after the reference has been withdrawn, or has been discharged by virtue of subsection (4) of this section.

Further reference of scheme to the Controller

33. — (1) Where the Controller has made an order under the immediately preceding section with respect to a licence scheme, then, subject to the next following subsection of this section, at any time while the order remains in force:

- (a) the licensing body operating the scheme, or
- (b) any organisation claiming to be representative of persons requiring licences in cases of the class to which the order applies, or
- (c) any person claiming that he requires a licence in a case of that class,

may refer the scheme again to the Controller in so far as it relates to cases of that class.

(2) A licence scheme shall not, except with the special leave of the Controller, be referred again to him under the immediately preceding subsection of this section at a time earlier than:

- (a) the end of the period of twelve months beginning with the date on which the order in question was made, in the case of an order made so as to be in force indefinitely or for a period exceeding fifteen months, or
- (b) the beginning of the period of three months ending with the date of expiry of the order, in the case of an order made so as to be in force for fifteen months or less.

(3) The parties to a reference under this section shall be:

- (a) the licensing body, organisation or person at whose instance the reference is made;
- (b) the licensing body operating the scheme to which the reference relates, if the reference is not made at their instance; and
- (c) such other organisation or persons (if any) as apply to the Controller to be made parties to the reference and,

in accordance with the provisions applicable in that behalf by virtue of subsection (5) of this section, are made parties thereto.

(4) Subject to the said subsection (5), the Controller, on any reference under this section, shall consider the matter in dispute, and, after giving to the parties to the reference an opportunity of presenting their cases respectively, shall make such order in relation to the scheme as previously confirmed or varied, in so far as it relates to cases of the class in question, either by way of confirming, varying, or further varying the scheme, as the Controller may determine to be reasonable in the circumstances.

(5) Subsections (3), (4), (6) and (7) of the immediately preceding section of this Act shall apply for the purposes of this section.

(6) The preceding provisions of this section shall have effect in relation to orders made under this section as they have effect in relation to orders made under the immediately preceding section of this Act.

(7) Nothing in this section shall be construed as preventing a licence scheme, in respect of which an order has been made under the immediately preceding section of this Act, from being again referred to the Controller under that section, either:

- (a) at any time, in so far as the scheme relates to cases of a class to which the order does not apply, or
- (b) after the expiration of the order, in so far as the scheme relates to cases of the class to which the order applied while it was in force.

Applications to the Controller

34. — (1) For the purposes of this Part of this Act a case shall, subject to the provisions of subsection (2) of this section, be taken to be covered by a licence scheme if, in accordance with a licence scheme for the time being in operation, licences would be granted in cases of the class to which that case belongs.

(2) Where, in accordance with the provisions of a licence scheme:

- (a) the licences which would be so granted would be subject to terms and conditions whereby particular matters would be excepted from the licences, and
 - (b) the case in question relates to one or more matters falling within such an exception,
- the case shall be taken not to be covered by the scheme.

(3) Any person who claims, in a case covered by a licence scheme, that the licensing body operating the scheme have refused or failed to grant him a licence in accordance with the provisions of the scheme, or to procure the grant to him of such a licence, may apply to the Controller under this section.

(4) Any person who claims that he requires a licence in a case not covered by a licence scheme, and either:

- (a) that a licensing body have refused or failed to grant the licence, or to procure the grant thereof, and that in the circumstances it is unreasonable that the licence should not be granted, or

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(b) that any charges, terms or conditions subject to which a licensing body propose that the licence should be granted are unreasonable,
may apply to the Controller under this section.

(5) Where an organisation (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the Controller to be made a party to an application under the preceding provisions of this section, and the Controller is satisfied that the organisation or person has a substantial interest in the matter in dispute, the Controller may, if he thinks fit, make that organisation or person a party to the application.

(6) On any application under subsection (3) or subsection (4) of this section the Controller shall give to the applicant and the licensing body in question and to every other party (if any) to the application an opportunity of presenting their cases respectively; and if the Controller is satisfied that the claim of the applicant is well-founded, the Controller 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 and conditions, and subject to the payment of such charges (if any) as:

- (a) in the case of an application under subsection (3) of this section, the Controller may determine to be applicable in accordance with the licence scheme, or
- (b) in the case of an application under subsection (4) of this section, the Controller may determine to be reasonable in the circumstances.

(7) Any reference in this section to a failure to grant or procure the grant of a licence shall be construed as a reference to a failure to grant it, or to procure the grant thereof, within a reasonable time after being requested to do so.

Rules of procedure

35. — (1) The Minister may make rules in relation to the proceedings before the Controller in the case of references and applications made to the Controller under this Act.

(2) Rules under this section may relate to such proceedings generally or to proceedings on a reference or application made to the Controller under any particular provision or provisions of this Act specified in the rules.

(3) The proceedings aforesaid shall be conducted in accordance with the relevant rules (if any) under this section.

Fees

36. — (1) There shall be charged by the Controller and paid in respect of references and applications made to him under any of the provisions of this Act, and in respect of other matters relating thereto, such fees as may from time to time be prescribed by rules made by the Minister with the consent of the Minister for Finance.

(2) All fees charged by the Controller under this section shall be collected and accounted for in such manner as shall be prescribed by rules made by the Minister, with the consent of the Minister for Finance.

(3) The Public Offices Fees Act, 1879, shall not apply in respect of any fees payable under this section.

Power of the Controller to award costs

37. — The Controller shall, in any proceedings before him under this Act, have power by order to award to any party or parties to the proceedings such costs thereof as he may consider reasonable and to direct how and by which party or parties they are to be paid and any such order may be made a rule of court.

Appointment of assessors

38. — (1) In any proceedings before him under this Act the Controller may, if he thinks fit, and shall, on the request of all the parties to the proceedings, appoint an assessor who is specially qualified in regard to all or any of the questions arising in the course of the proceedings to aid him in his consideration of those questions.

(2) There shall be paid by the Controller to an assessor appointed by him under this section such remuneration (if any) as the Minister may, with the consent of the Minister for Finance, prescribe.

Effects of orders of the Controller

39. — (1) Where an order made on a reference under this Part of this Act with respect to a licence scheme is for the time being in force, any person who, in a case covered by the scheme as confirmed or varied by the order, does anything which:

- (a) apart from this subsection would be an infringement of copyright, but
- (b) would not be such an infringement if he were the holder of a licence granted in accordance with the scheme, as confirmed or varied by the order, in so far as the scheme relates to cases comprised in the order, shall, if he has complied with the requirements specified in the next following subsection, be in the like position, in any proceedings for infringement of that copyright, as if he had at the material time been the holder of such a licence.

(2) The said requirements are:

- (a) that, at all material times, the said person had complied with the terms and conditions which, in accordance with the licence scheme as confirmed or varied by the order, would be applicable to a licence covering the case in question, and
- (b) if, in accordance with the scheme as so confirmed or varied, any charges are payable in respect of such a licence, that at the material time he had paid those charges to the licensing body operating the scheme, or, if at any time the amount payable could not be ascertained, he had given an undertaking to the licensing body to pay the charges when ascertained.

(3) Where the Controller has made an order under section 34 of this Act declaring that a person is entitled to a licence in respect of any matters specified in the order, then if:

- (a) that person has complied with the terms and conditions specified in the order, and
- (b) in a case where the order requires the payment of charges, he has paid those charges to the licensing body

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in accordance with the order, or, if the order so provides, has given to the licensing body an undertaking to pay the charges when ascertained,

he shall be in the like position, in any proceedings for infringement of copyright relating to any of those matters, as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms and conditions specified in the order.

(4) In the exercise of his jurisdiction in respect of licences relating to television broadcasts, the Controller shall have regard (among other matters) to any conditions imposed by the promoters of any entertainment or other event which is to be comprised in the broadcasts; and, in particular, the Controller shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(5) Nothing in the immediately preceding subsection of this section shall require the Controller to have regard to any such conditions as are mentioned in that subsection in so far as they purport to regulate the charges to be imposed in respect of the grant of licences, or in so far as they relate to payments to be made to the promoters of any event in consideration of the grant of facilities for broadcasting.

(6) Where, on a reference to the Controller under this Part of this Act:

- (a) the reference relates to licences in respect of copyright in sound recordings or in television broadcasts, and
- (b) the Controller is satisfied that any of the licences in question are required for the purposes of organisations such as are mentioned in paragraph (b) of subsection (8) of section 17 of this Act,

the Controller may, if he thinks fit, exercise his powers under this Part of this Act so as to reduce in the case of those organisations, to such extent as he thinks fit, the charges which he determines generally to be reasonable in relation to cases of the class to which the reference relates, or, if the Controller thinks fit, so as to exempt those organisations from the payment of any such charges.

(7) The immediately preceding subsection of this section shall have effect, with the necessary modifications, in relation to applications under this Part of this Act as it has effect in relation to references thereunder.

(8) In relation to copyright in a literary, dramatic or musical work, any reference in this section to proceedings for infringement of copyright includes a reference to proceedings brought by virtue of subsection (8) of section 27 of this Act.

Appeal to the High Court

40. — (1) An appeal shall lie to the High Court from any order or decision of the Controller on any reference or application made to him under any provision of this Act, and the High Court may make such order confirming, annulling or varying the order or decision of the Controller as it thinks fit.

(2) Subject to subsection (3) of this section, a decision of the High Court under this section shall be final and not appealable.

(3) By leave of the High Court, an appeal from a decision of the High Court under this section shall lie to the Supreme Court on a specified question of law.

Reference of cases of dispute to arbitration

41. — (1) In the case of any dispute referred to the Controller under section 13, section 17 or section 48 of this Act, the Controller may at any time:

- (a) if the parties to the dispute consent, or
- (b) if the case requires any prolonged examination of documents or other investigation which, in the opinion of the Controller, could not conveniently be made before him, order the case to be referred to an arbitrator agreed on by the parties, or, in the absence of such agreement, appointed by the Controller.

(2) The award made by an arbitrator in any case referred to him under this section shall, if the parties to the dispute consent to the reference, be final and binding on the parties.

(3) An appeal shall lie to the High Court from any award made by an arbitrator in pursuance of a reference under this section to which the parties to the dispute did not consent and the High Court may make such order confirming, annulling or varying the award of the arbitrator as it thinks fit.

(4) Subject to subsection (5) of this section, a decision of the High Court under this section shall be final and not appealable.

(5) By leave of the High Court, an appeal from a decision of the High Court under this section shall lie to the Supreme Court on a specified question of law.

Controller may consult the Attorney General

42. — The Controller may, in any case of doubt or difficulty arising in connection with the administration of any of the provisions of this Act, apply to the Attorney General for advice in the matter.

PART VI

Application of Act to other Countries

Power to extend benefit of Act to other countries

43. — (1) The Government may by order make provision for applying any of the provisions of this Act specified in the order for the benefit of another country, in any one or more of the following ways, so as to secure that those provisions:

- (a) apply in relation to literary, dramatic, musical or artistic works, sound recordings, cinematographic films or editions first published in that country as they apply in relation to literary, dramatic, musical or artistic works, sound recordings, cinematographic films or editions first published in the State;
- (b) apply in relation to persons who, at a material time, are citizens or subjects of that country as they apply in relation to persons who, at such a time are Irish citizens;
- (c) apply in relation to persons who, at a material time, are domiciled or resident in that country as they apply in relation to persons who, at such a time, are domiciled or resident in the State;

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(d) apply in relation to bodies incorporated under the laws of that country as they apply in relation to bodies incorporated under the laws of the State;

(e) apply in relation to television broadcasts and sound broadcasts made from places in that country by one or more organisations constituted in or under the laws of that country as they apply in relation to television broadcasts or sound broadcasts made from places in the State by Radio Éireann.

(2) An order under this section may:

(a) apply the provisions in question as mentioned in the preceding subsection, but subject to exceptions or modifications specified in the order;

(b) direct that the provisions in question shall so apply either generally or in relation to such classes of works or other subject matters or classes of cases as may be specified in the order.

(3) The Government shall not make an order under this section applying any of the provisions of this Act in respect of any country which is not a party to a Convention relating to copyright to which the State is also a party, unless the Government is satisfied that, in respect of the class of works or other subject matter to which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

(4) The Government may by order revoke or amend an order under this section including an order under this subsection.

Copyright in publications of certain international organisations

44. — (1) This section applies to the following organisations, namely, the United Nations and the organs thereof, and the specialised agencies in relationship therewith, the Organisation of American States and any other international organisation specified in an order made under subsection (6) of this section.

(2) Where a work which is an original literary, dramatic, musical or artistic work or a sound recording or cinematograph film is made by or under the direction or control of an organisation to which this section applies in such circumstances that:

(a) copyright would not subsist in the work apart from this subsection, but

(b) if the author or maker of the work had been an Irish citizen at the time when it was made, copyright would have subsisted in the work immediately after it was made and would thereupon have vested in the organisation, copyright shall subsist in the work as if the author or maker had been an Irish citizen when it was made, that copyright shall continue to subsist so long as the work remains unpublished, and the organisation shall, subject to the provisions of this Act, be entitled to that copyright.

(3) Where a work which is an original literary, dramatic, musical or artistic work or a sound recording or cinemato-

graph film is first published by or under the direction or control of an organisation to which this section applies in such circumstances that, apart from this subsection, copyright does not subsist in the work immediately after the first publication thereof, and either:

(a) the work is so published in pursuance of an agreement with the author or maker which does not reserve to the author or maker the copyright (if any) in the work, or

(b) the work was made in such circumstances that, if it had been first published within the State, the organisation would have been entitled to the copyright in the work, copyright shall subsist in the work (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) as if it had been first published within the State, that copyright shall subsist until the end of the period of fifty years from the end of the year in which they were first published and the organisation shall, subject to the provisions of this Act, be entitled to that copyright.

(4) The provisions of Parts II and III of this Act with the exception of those relating to the subsistence, duration or ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section as they apply in relation to copyright subsisting by virtue of the said provisions.

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

(6) The Government may, if it thinks fit, by order direct that the provisions of subsections (2), (3), (4) and (5) of this section shall apply to such international organisations as may be specified in the order.

(7) The Government may by order revoke or amend an order under this section including an order under this subsection.

Extended application of provisions relating to broadcasts

45. — (1) The Government may by order provide that, subject to such exceptions and modifications (if any) as may be specified in the order, such provisions of this Act relating to television broadcasts or to sound broadcasts as may be so specified shall apply in relation to the operation of wireless telegraphy apparatus by way of the emission (as opposed to reception) of electro-magnetic energy:

(a) by such persons or classes of persons, other than Radio Éireann, as may be specified in the order, and

(b) for such purposes (whether involving broadcasting or not) as may be so specified,

as they apply in relation to television broadcasts, or, as the case may be, to sound broadcasts made by Radio Éireann.

(2) The Government may by order revoke or amend an order under this section including an order under this subsection.

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Denial of copyright to citizens of countries not giving adequate protection to Irish works

46. — (1) If it appears to the Government that the laws of a country fail to give adequate protection to Irish works to which this section applies, or fail to give such protection in the case of one or more classes of such works (whether the lack of protection relates to the nature of the work or the country of its author or both), the Government may make an order designating that country and making such provision in relation thereto as is mentioned in the following provisions of this section.

(2) An order under this section shall provide that, either generally or in such classes of cases as are specified in the order, copyright under this Act shall not subsist in works to which this section applies which were first published after a date specified in the order, if at the time of their first publication the authors thereof were:

- (a) citizens or subjects of the country designated by the order, not being at that time persons domiciled or resident in the State, or
- (b) bodies incorporated under the laws of the country designated by the order.

(3) In making an order under this section the Government shall have regard to the nature and extent of the lack of protection for Irish works in consequence of which the order is made.

(4) This section applies to the following works, that is to say, literary, dramatic, musical and artistic works, sound recordings and cinematograph films.

(5) The Government may by order revoke or amend an order under this section including an order under this subsection.

(6) In this section:

- “Irish work” means a work of which the author, at the time when the work was made, was a qualified person for the purposes of the relevant provision of this Act;
- “author”, in relation to a sound recording or a cinematograph film, means the maker of the recording or film;
- “the relevant provision of this Act”, in relation to literary, dramatic and musical works means section 8, in relation to artistic works means section 9, in relation to sound recordings means section 17, and in relation to cinematograph films means section 18 of this Act.

PART VII

Miscellaneous and Supplementary Provisions

Assignments and licences in respect of copyright

47. — (1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law, as personal or moveable property.

(2) An assignment of copyright may be limited in any one of the following ways, or in any combination of two or more of those ways, that is to say:

- (a) so as to apply to one or more, but not all, of the classes of acts which by virtue of this Act the owner of the copy-

right has the exclusive right to do (including any one or more classes of acts not separately designated in this Act as being restricted by the copyright, but falling within any of the classes of acts so designated),

- (b) so as to apply to any one or more, but not all, of the countries in relation to which the owner of the copyright has by virtue of this Act that exclusive right,

- (c) so as to apply to part, but not the whole, of the period for which the copyright is to subsist,

and references in this Act to a partial assignment are references to an assignment so limited.

(3) No assignment of copyright (whether total or partial) shall have effect unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright shall be binding on every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act, in relation to any copyright, to the doing of anything with, or (as the case may be) without, the licence of the owner of the copyright shall be construed accordingly.

Broadcasting of works incorporated in a cinematograph film

48. — (1) Where the owner of the copyright in any literary, dramatic, musical or artistic work authorises a person to incorporate the work in a cinematograph film and Radio Éireann broadcasts the film, such broadcast shall not, in the absence of any agreement to the contrary, infringe such copyright.

(2) Where Radio Éireann broadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the work shall be entitled to receive an equitable remuneration from Radio Éireann.

Prospective ownership of copyright

49. — (1) Where by an agreement made in relation to any future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person (in this subsection referred to as the assignee), then if, on the coming into existence of the copyright, the assignee or a person claiming under him would, apart from this subsection, be entitled as against all other persons to require the copyright to be vested in him (wholly or partially, as the case may be), the copyright shall, on its coming into existence, vest in the assignee or his successor in title accordingly by virtue of this subsection and without further assurance.

(2) Where, at the time when any copyright comes into existence, the person who, if he were then living, would be entitled to the copyright is dead, the copyright shall devolve as if it had subsisted immediately before his death and he had then been the owner of the copyright.

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(3) Subsection (4) of section 47 of this Act shall apply in relation to a licence granted by a prospective owner of any copyright as it applies in relation to a licence granted by the owner of a subsisting copyright subject to the modification that any reference in that subsection to the owner's interest in the copyright shall be construed as including a reference to his prospective interest therein.

(4) In this Act "future copyright" means copyright which will or may come into existence in respect of any future work or class of works or other subject-matter, or on the coming into operation of any provisions of this Act, or in any other future event, and "prospective owner" shall be construed accordingly and, in relation to any such copyright, includes a person prospectively entitled thereto by virtue of such an agreement as is mentioned in subsection (1) of this section.

Copyright to pass under will with unpublished work

50. — Where under a bequest (whether specific or general) contained in the will or a codicil to the will of a person who dies after the commencement of this section a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Copyright in Government publications

51. — (1) In the case of every original literary, dramatic, musical or artistic work, sound recording and cinematograph film made by or under the direction or control of the Government or a Minister of State:

- (a) if apart from this section copyright would not subsist in the work, copyright shall subsist therein by virtue of this subsection, and
- (b) in any case, the Government shall, subject to the provisions of this Part of this Act, be entitled to the copyright in the work.

(2) The Government shall, subject to the provisions of this Part of this Act, be entitled to the copyright in every original literary, dramatic, musical or artistic work, sound recording or cinematograph film first published in the State if first published by or under the direction or control of the Government or a Minister of State.

(3) The copyright in any original literary, dramatic or musical work to which the Government is entitled by virtue of this section:

- (a) where the work is unpublished, shall continue to subsist so long as the work remains unpublished, and
- (b) where the work is published, shall subsist (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) until the end of the period of fifty years from the end of the year in which the work was first published.

(4) The copyright in an artistic work which belongs to the Government by virtue of this section:

(a) where the work is an engraving or a photograph, shall continue to subsist until the end of the period of fifty years from the end of the year in which the work is first published, and

(b) in the case of any other artistic work, shall continue to subsist until the end of the period of fifty years from the end of the year in which the work was made.

(5) In the case of every sound recording or cinematograph film made by or under the direction or control of the Government or a Minister of State:

- (a) if apart from this section copyright would not subsist in the recording or film, copyright shall subsist therein by virtue of this subsection, and
- (b) in any case, the Government shall, subject to the provisions of this Part of this Act, be entitled to the copyright in the recording or film, and it shall subsist for the same period as if it were copyright subsisting by virtue of, and owned in accordance with section 17 or, as the case may be, section 18 of this Act.

(6) The preceding provisions of this section shall have effect subject to any agreement made by or on behalf of the Government or any Minister of State with the author of the work, or the maker of the sound recording or cinematograph film, as the case may be, whereby it is agreed that the copyright in the work, recording or film shall vest in the author or maker, or in another person designated in that behalf in the agreement.

(7) In relation to copyright subsisting by virtue of this section:

- (a) in the case of a literary, dramatic, musical or artistic work, the provisions of Part II of this Act, with the exception of provisions thereof relating to subsistence, duration or ownership of copyright, and
- (b) in the case of a sound recording or cinematograph film, the provisions of Part III of this Act, with the exception of provisions thereof relating to the subsistence or ownership of copyright,

shall apply as those provisions apply in relation to copyright subsisting by virtue of Part II or, as the case may be, Part III of this Act.

Broadcasts of sound recordings and cinematograph films and diffusion of broadcast programmes

52. — (1) Where a sound broadcast or television broadcast is made by Radio Éireann, and a person, by the reception of that broadcast, causes a sound recording, whether made before or after the commencement of this section, to be heard in public or to be transmitted to subscribers to a diffusion service, he does not thereby infringe the copyright (if any) in that recording.

(2) Where a television broadcast or sound broadcast is made by Radio Éireann, and the broadcast is an authorised broadcast, any person who, by the reception of the broadcast, causes a cinematograph film to be seen or heard in public shall be in the like position, in any proceedings for the infringement of the copyright (if any) in the film under sec-

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tion 18 of this Act, as if he had been the holder of a licence granted by the owner of that copyright to cause the film to be seen or heard in public by the reception of the broadcast.

(3) Where a television broadcast or sound broadcast is made by Radio Éireann, and the broadcast is an authorised broadcast, any person who, by the reception of the broadcast, causes a programme to be transmitted to subscribers to a diffusion service, being a programme comprising a literary, dramatic or musical work, or an adaptation of such a work, or an artistic work, or a cinematograph film, shall be in the like position, in any proceedings for infringement of the copyright (if any) in the work or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation or film in any programme caused to be transmitted by him to subscribers to that service by the reception of the broadcast.

(4) If, in the circumstances mentioned in either of the two last preceding subsections, the person causing the cinematograph film to be seen or heard, or the programme to be transmitted, as the case may be, infringed the copyright in question, by reason that the broadcast was not an authorised broadcast:

- (a) no proceedings shall be brought against that person under this Act in respect of his infringement of that copyright, but
- (b) it shall be taken into account in assessing damages in any proceedings against Radio Éireann in respect of that copyright, in so far as that copyright was infringed by Radio Éireann in making the broadcast.

(5) For the purposes of this section, a broadcast shall be taken, in relation to a work or cinematograph film, to be an authorised broadcast if, but only if, it is made by, or with the licence of, the owner of the copyright in the work or film.

Use of copyright material for education

53. — (1) Where copyright subsists in a literary, dramatic, musical or artistic work, the copyright shall not be taken to be infringed by reason only that the work is reproduced, or an adaptation of the work is made or reproduced:

- (a) in the course of instruction, whether at a school or elsewhere, where the reproduction or adaptation is made by a teacher or pupil otherwise than by the use of a duplicating process, or
- (b) as part of the questions to be answered in an examination, or in an answer to such a question.

(2) Nothing in the preceding subsection of this section shall apply to the publication of a work; and, for the purposes of section 11 of this Act, the fact that to a person's knowledge the making of an article would have constituted an infringement of copyright but for the preceding subsection of this section shall have the like effect as if, to his knowledge, the making of it had constituted such an infringement.

(3) For the avoidance of doubt it is hereby declared that, where a literary, dramatic or musical work:

- (a) is performed in class, or otherwise in the presence of an audience, and

- (b) is so performed in the course of the activities of a school, by a person who is a teacher in, or a pupil in attendance at, the school,

the performance shall not be taken for the purposes of this Act to be a performance in public if the audience is limited to persons who are teachers in, or pupils in attendance at, the school, or are otherwise directly connected with the activities of the school.

(4) For the purposes of the last preceding subsection of this section a person shall not be taken to be directly connected with the activities of a school by reason only that he is a parent or guardian of a pupil in attendance at the school.

(5) Subsections (3) and (4) of this section shall apply in relation to sound recordings, cinematograph films and television broadcasts as they apply in relation to literary, dramatic and musical works, subject to the modification that any reference to performance shall be construed as a reference to the act of causing the sounds or visual images in question to be heard or seen.

(6) Nothing in this section shall be construed:

- (a) as extending the operation of any provision of this Act as to the acts restricted by copyright of any description, or
- (b) as derogating from the operation of any exemption conferred by any provision of this Act other than this section.

(7) In this section "duplicating process" means any process involving the use of an appliance for producing multiple copies.

(8) The Minister may, after consultation with the Minister for Education, make an order under this section designating any educational establishment or any type or description of educational establishment specified in the order to be a school for the purposes of this section.

(9) The Minister may at any time, after such consultation as aforesaid, revoke or amend an order under this section.

False attribution of authorship

54. — (1) The restrictions imposed by this section shall have effect in relation to literary, dramatic, musical or artistic works; and any reference in this section to a work shall be construed as a reference to such a work.

(2) A person (in this subsection referred to as the offender) contravenes those restrictions as respects another person if, without the licence of that other person, he does any of the following acts in the State, that is to say, he:

- (a) inserts or affixes that other person's name in or on a work of which that person is not the author, or in or on a reproduction of such a work, in such a way as to imply that the other person is the author of the work, or
- (b) publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, a work in or on which the other person's name has been so inserted or affixed, if to the offender's knowledge that person is not the author of the work, or
- (c) does any of the acts mentioned in the last preceding paragraph of this subsection in relation to, or distributes,

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reproductions of a work, being reproductions in or on which the other person's name has been so inserted or affixed, if to the offender's knowledge that person is not the author of the work, or

- (d) performs in public, or broadcasts, a work of which the other person is not the author, as being a work of which he is the author, if to the offender's knowledge that person is not the author of the work.

(3) The last preceding subsection of this section shall apply where, contrary to the fact, a work is represented as being an adaptation of the work of another person as it applies where a work is so represented as being the work of another person.

(4) In the case of an artistic work which has been altered after the author parted with the possession of it, the said restrictions are contravened, in relation to the author, by a person who in the State, without the licence of the author:

- (a) publishes, sells or lets for hire, or by way of trade offers or exposes for sale or hire the work as so altered, as being the unaltered work of the author, or
(b) publishes, sells or lets for hire, or by way of trade offers or exposes for sale or hire a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author,

if to his knowledge it is not the unaltered work, or as the case may be, a reproduction of the unaltered work, of the author.

(5) Subsections (2), (3) and (4) of this section shall apply with respect to anything done in relation to another person after that person's death as if any reference to that person's licence were a reference to a licence given by him or by his personal representatives, so, however, that nothing in those subsections shall apply to anything done in relation to a person more than twenty years after that person's death.

(6) In the case of an artistic work in which copyright subsists, the said restrictions are also contravened, in relation to the author of the work, by a person who in the State:

- (a) publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, a reproduction of the work, as being a reproduction made by the author of the work, or
(b) distributes reproductions of the work as being reproductions made by the author of the work,

if (in any such case) the reproduction or reproductions was or were to his knowledge not made by the author.

(7) The preceding provisions of this section shall apply with the necessary modifications) with respect to things done, in relation to two or more persons in connection with the same work.

(8) The restrictions imposed by this section shall not be enforceable by any criminal proceedings; but any contravention of those restrictions, in relation to a person, shall be actionable at his suit, or, if he is dead, at the suit of his personal representatives, as a breach of statutory duty.

(9) Any damages recovered under this section by personal representatives, in respect of a contravention committed in

relation to a person after his death, shall devolve as part of his estate, as if the right of action had subsisted and had been vested in him immediately before his death.

(10) Nothing in this section shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this section; so, however, that this subsection shall not be construed as requiring any damages recovered by virtue of this section to be disregarded in assessing damages in any proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

(11) In this section "name" includes initials or a monogram.

Register to be kept by proprietors of theatres, etc.

55. — (1) It shall be the duty of the proprietor of every theatre, hall, room or other place, in which dramatic works are performed to keep or cause to be kept in such theatre, hall, room, or place a register, in the form prescribed by the Minister by rules, of all dramatic works performed in such theatre, hall, room, or place in the presence of persons who have paid for admission to the performance, and within twelve hours after each performance to enter or cause to be entered in such register such particulars of the work and of the person presenting it as shall be prescribed by rules made by the Minister.

(2) Every register kept in pursuance of this section may be inspected at all reasonable times by any person who is the author of or owner of the copyright in any published work and copies of the register or of any part thereof may be made by the person.

(3) The Minister may make rules prescribing all or any of the following matters, that is to say:

- (a) the form of the register to be kept in pursuance of this section,
(b) the particulars to be entered in the register in respect of dramatic works, and of the person presenting them,
(c) defining the person who is to be deemed, in respect of any particular dramatic work, to be presenting it.

(4) If any person who is required by this section to keep, or cause to be kept, a register:

- (a) fails to keep the register or to cause it to be kept, or
(b) fails to make or cause to be made in the register within the time prescribed by this section any entry required by or under this section to be made therein, or
(c) fails to produce the register for the inspection of any person entitled under this section to inspect it or obstructs or impedes any such person in making such inspection, or
(d) wilfully or negligently makes or causes or permits to be made in the register any entry which is false or misleading in any material particular,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding ten pounds.

Delivery of books to certain libraries

56. — (1) The publisher of any book first published in the State after the commencement of this section shall, within

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one month after the publication, deliver, at his own expense, a copy of the book to the trustees of the National Library of Ireland, a copy of the book to the authority having control of the Library of Trinity College, Dublin, four copies of the book for or in accordance with the directions of the authority having control of the National University of Ireland for the use of the respective libraries of the three constituent Colleges of that University and of the library of St. Patrick's College, Maynooth, a recognised College of that University, and a copy of the book to the trustees of the British Museum, and such trustees and authorities respectively shall give a written receipt for every book so delivered to them.

Provided that the Minister may, on the application of the trustees of the National Library of Ireland, or of the authority having control of the Library of Trinity College, Dublin, or of any of the respective authorities having control of the three constituent Colleges of the National University of Ireland or St. Patrick's College, Maynooth, or of the trustees of the British Museum, make regulations excepting from the provisions of this subsection in regard to the trustees or authority making the application, publications wholly or mainly in the nature of trade advertisements, or such classes of such publications as may be specified in the regulations, and thereupon it shall not be necessary for the publisher of any publication so excepted to deliver the publication to such trustees or authority or for such trustees or authority to give a receipt therefor, unless as respects any particular publication a written demand for the delivery thereof is made by such trustees or authority.

(2) The publisher of any book first published in the State after the commencement of this section shall also, if written demand is made before the expiration of twelve months after publication, deliver within one month after receipt of that written demand or, if the demand was made before publication, within one month after publication, to some address in Dublin named in the demand a copy of that book for, or in accordance with the directions of, the authority having the control of each of the following libraries, namely: the Bodleian Library, Oxford, the University Library, Cambridge, the National Library of Scotland, and the National Library of Wales. In the case of an encyclopaedia, newspaper, review, magazine or work published in a series of numbers or parts, the written demand may include all numbers or parts of the work which may be subsequently published.

(3) A copy of a book delivered to the trustees of the National Library of Ireland or the trustees of the British Museum in pursuance of the provisions of this section shall be a copy of the whole book with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and shall be bound, sewed or stitched together, and be printed on the best paper on which the book is printed.

(4) A copy of a book delivered to any of the other authorities mentioned in this section in pursuance of the provisions of this section shall be printed on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.

(5) If a publisher fails to comply with this section, he shall be liable on summary conviction to a fine not exceeding twenty pounds and the value of the book, and the fine shall be paid to the trustees or authority to whom the book ought to have been delivered.

(6) For the purposes of this section, "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, prints, or other engravings belonging thereto.

Copyright in Irish legal tender notes, consolidated bank notes and in Irish coins

57. — (1) Notwithstanding anything contained in Part II of this Act, the copyright in legal tender notes issued whether before or after the commencement of this section by the Central Bank of Ireland (in this section referred to as the Bank) or issued before such commencement by the Currency Commission shall be perpetual and shall belong to the Bank.

(2) Notwithstanding anything contained in Part II of this Act, the copyright in consolidated bank notes issued before the commencement of this section by the Bank or by the Currency Commission shall be perpetual and shall belong to the Bank.

(3) Notwithstanding anything contained in Part II of this Act, the copyright in all coins to which this section applies and the copyright in the artistic work defining the design of any such coin shall be perpetual and shall belong to the Minister for Finance.

(4) (a) In the application of subsection (1) of section 3 of this Act to any such legal tender note or consolidated bank note or any coin to which this section applies references in the subsection to a substantial part of a work or other subject-matter shall be construed as references to any part of a work or other subject-matter.

(b) Sections 12 and 14 of this Act shall not apply in relation to the copyrights referred to in this section.

(5) Coins to which this section applies and the artistic work defining the design of any such coin shall, for the purposes of section 172 of the Act of 1927, be deemed not to be designs.

(6) This section applies to coins issued under the Coinage Act, 1926, or under that Act as amended, gold coins issued under the Currency Act, 1927, and coins issued under the Coinage Act, 1950.

Disposal of books of King's Inns Library, Dublin

58. — Notwithstanding anything contained in the King's Inns Library Act, 1945, or the enactments referred to therein or the Copyright Act, 1801, or the Copyright Act, 1836, the Benchers of the Honourable Society of King's Inns may sell or exchange any of the books of the King's Inns Library, Dublin, whether acquired before or after the commencement of this section.

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Amendment of section 70 of Act of 1927

59. — Section 70 of the Act of 1927 is hereby amended by:

- (a) the substitution in subsection (2) of “before the expiration of a period of five years and six months from the date of such registration” for “within the prescribed time before the expiration of the said five years”, and
- (b) the substitution in subsection (3) of “before the expiration of a period of ten years and six months from the date of such registration” for “within the prescribed time before the expiration of such second period of five years”.

Savings

60. — (1) Nothing in this Act shall affect any right or privilege of the Government subsisting otherwise than by virtue of an enactment, and nothing in this Act shall affect any right or privilege of the Government or of any other person under any enactment, except in so far as that enactment is expressly repealed, amended or modified by this Act.

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

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

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

FIRST SCHEDULE

Transitional Provisions

Part I

Provisions relating to Parts I and II of Act

1. — For the purposes of the application of subsection (3) of section 3 of this Act to an act done before the commencement of a provision of this Act to which that subsection applies, references to copyright include references to copyright under the Act of 1911 and the Act of 1927, and, in relation to copyright under those Acts, references to the licence of the owner are references to the consent or acquiescence of the owner.

2. — In the application of sections 8 and 9 of this Act to works first published before the commencement of those sections, subsection (2) of section 8, and subsection (3) of section 9 shall apply as if paragraphs (b) and (c) of subsection (2) of section 8 and of subsection (3) of section 9 were omitted.

3. — In relation to any photograph taken before the commencement of section 9 of this Act, subsection (7) of that section shall not apply, but, subject to subsection (3) of that section, copyright subsisting in the photograph by virtue of that section shall continue to subsist until the end of the period of fifty years from the end of the year in which the photograph was taken.

4. — (1) Subsections (2) to (4) of section 10 of this Act shall not apply:

- (a) to any work made as mentioned in subsection (2) or subsection (4) of that section, if the work was so made before the commencement of that section, or
- (b) to any work made as mentioned in subsection (3) of that section, if the work was or is so made in pursuance of a contract made before the commencement of that section.

(2) In relation to any work to which the preceding subparagraph of this paragraph applies, subsection (1) of the said section 10 shall have effect subject to the following proviso, namely, that:

- (a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and
- (b) where an author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

5. — For the purposes of section 11 of this Act, the fact that, to a person's knowledge, the making of an article constituted an infringement of copyright under the Act of 1927, or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if, to that person's knowledge, the making of the article had constituted an infringement of copyright under this Act.

6. — Subsection (7) of section 12 of this Act does not apply to assignments made or licences granted before the commencement of that section.

7. — References in section 13 of this Act to records previously made by, or with the licence of, the owner of the copyright in a work, include references to records previously made by, or with the consent of, the owner of the copyright in that work under the Act of 1927.

8. — (1) In relation to a painting, drawing, engraving, photograph or cinematograph film made before the commencement of section 14 of this Act, subsection (5) of that section shall apply, if by virtue of subsection (3) of that section, the making of the painting, drawing, engraving, photograph or film would not have constituted an infringement of copyright under this Act if this Act had been in operation at the time when it was made.

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(2) In subsection (10) of section 14 of this Act, the reference to construction by, or with the licence of, the owner of the copyright in any architectural drawings or plans includes a reference to construction by, or with the licence of, the person who, at the time of the construction, was the owner of the copyright in the drawings or plans under the Act of 1927 or under any enactment repealed by that Act.

Part II

Provisions relating to Part III of Act

9. — The repeal by this Act of Parts VI and VII of the Act of 1927 shall not affect the operation of subsections (1) and (8) of section 169 (which relates to copyright in mechanical musical instruments) of that Act as respects contrivances referred to in that section made before the commencement of section 17 of this Act.

10. — Subsection (6) of section 17 of this Act shall not apply to a sound recording made before the commencement of that section and subsection (11) of the said section 17 shall not apply to assignments made or licences granted before the commencement of that section.

11. — Section 18 of this Act shall not apply to cinematograph films made before the commencement of that section.

12. — The provisions of this Act, other than this paragraph, shall have effect in relation to a cinematograph film made before the commencement of section 18 of this Act as if it had been a dramatic work within the meaning of the Act of 1927; and the person who was the author of the work for the purposes of the Act of 1927 shall be taken to be the author thereof for the purposes of the said provisions as applied by this paragraph.

13. — The provisions of this Act shall have effect in relation to photographs forming part of a cinematograph film made before the commencement of section 18 of this Act as those provisions have effect in relation to photographs not forming part of a cinematograph film.

14. — Copyright shall not subsist by virtue of section 19 of this Act in any television broadcast or sound broadcast made before the commencement of that section.

15. — For the purposes of subsection (4) of section 19 of this Act, a previous television broadcast or sound broadcast shall be disregarded if it was made before the commencement of that section.

16. — For the purposes of subsections (5) to (7) of section 21 of this Act, the fact that, to a person's knowledge, the making of an article constituted an infringement of copyright under the Act of 1927, or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if, to that person's knowledge, the making of the article had constituted an infringement of copyright under this Act.

Part III

Provisions relating to Part IV of Act

17. — Nothing in section 22 of this Act shall apply to any infringement of copyright under the Act of 1927, or shall affect any proceedings under that Act, whether begun before or after the commencement of that section.

18. — Section 24 of this Act shall not apply with respect to any article made, or, as the case may be, imported, before the commencement of that section; but, notwithstanding the repeal by this Act of section 160 of the Act of 1927 (which contains provisions corresponding to subsections [1] and [2] of the said section 24), proceedings may (subject to the provisions of that Act) be brought or continued by virtue of the said section 160 in respect of any article made or imported before the repeal, although the proceedings relate to the conversion or detention thereof after the repeal took effect.

19. — Section 25 of this Act shall not apply to any licence granted before the commencement of that section, and shall not affect any proceedings under the Act of 1927, whether begun before or after the commencement of that section.

20. — For the purposes of section 27 of this Act the definition of "infringing copy" in section 24 of this Act shall apply as if any reference to copyright in that definition included a reference to copyright under the Act of 1927.

21. — Where before the commencement of section 28 of this Act a notice had been given under section 165 of the Act of 1927 (which contains provisions corresponding to the said section 28) and that notice had not been withdrawn and had not otherwise ceased to have effect before the commencement of the said section 28, the notice shall have effect after the commencement of that section as if it had been duly given thereunder; but a notice shall not continue to have effect by virtue of this paragraph after the end of the period of six months beginning with the commencement of the said section 28.

Part IV

Provisions relating to Part V of Act

22. — The provisions of Part V of this Act shall apply in relation to licence schemes made before the commencement of that Part as they apply in relation to licence schemes made thereafter, subject to the modification that references in the said Part V to copyright shall be deemed to include references to copyright under the Act of 1927.

23. — In section 34 of this Act, references to a refusal or failure to grant or procure the grant of a licence, or to a proposal that a licence should be granted, do not include a refusal or failure, or a proposal made, before the commencement of that section.

Part V

Provision relating to Part VI of Act

24. — Copyright shall not subsist by virtue only of section 44 of this Act in any sound recording published before the commencement of that section.

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Part VI

Provisions relating to Part VII of Act

25. — (1) Where by virtue of any provision of this Act copyright subsists in a work, any document or event which:

- (a) was made or occurred before the commencement of that provision, and
- (b) had any operation affecting the title to copyright in the work subsisting by virtue of the Copyright Act, 1911, and the Copyright (Preservation) Act, 1929, or the Act of 1927, or would have had such an operation if Parts VI and VII of the Act of 1927 had continued in force, shall have the corresponding operation in relation to the copyright in the work under this Act.

So, however, that, 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 this Act, except in so far as that period extends beyond the commencement of the provision of this Act by virtue of which copyright subsists in the work.

(2) For the purposes of the operation of a document in accordance with the preceding subparagraph of this paragraph:

- (a) expressions used in the document shall be construed in accordance with their effect immediately before the commencement of the provision in question, notwithstanding that a different meaning is assigned to them for the purposes of this Act; and
- (b) subsection (1) of section 49 of this Act shall not apply.

(3) Without prejudice to the generality of subparagraph (1) of this paragraph, the proviso to subsection (2) of section 158 of the Act of 1927 shall apply to assignments and licences having effect in relation to copyright under this Act in accordance with that subparagraph, as if that proviso had been re-enacted in this Act.

(4) In relation to copyright under this Act in a sound recording or in a cinematograph film, the preceding provisions of this paragraph shall apply subject to the following modifications, that is to say:

- (a) in the case of a sound recording, references to the copyright under the Act of 1911 or the Act of 1927 shall be construed as references to the copyright under the Act of 1911 or the Act of 1927, as the case may be, in records embodying the recording, and
- (b) in the case of a cinematograph film, references to the copyright under the Act of 1911 or the Act of 1927 shall be construed as references to any copyright under the Act of 1911 or the Act of 1927, as the case may be, in the film, in so far as it constituted a dramatic work for the purposes of the Act of 1911 or the Act of 1927, as the case may be, or in photographs forming part of the film.

(5) In this paragraph "operation affecting the title", in relation to copyright under the Act of 1911 or the Act of 1927, means any operation affecting the ownership of that copyright, or creating, transferring or terminating an interest, right or licence in respect of that copyright.

26. — (1) Section 50 of this Act shall not apply to a bequest contained in the will, or a codicil to the will, of a testator who died before the commencement of that section.

(2) In the case of an author who died before the commencement of the said section 50, subsection (2) of section 167 of the Act of 1927 shall have effect as if it had been re-enacted in this Act.

27. — Subsection (4) of section 51 of this Act shall apply in relation to photographs taken before the commencement of that section as if paragraph (a) and the words "in the case of any other artistic work" in paragraph (b) of that subsection were omitted.

28. — Notwithstanding the repeal of section 168 of the Act of 1927, the copyright belonging to the Government, immediately before the commencement of this paragraph, in any work by virtue of the said section 168 shall continue for the unexpired portion of the period of fifty years mentioned therein.

29. — (1) Paragraphs (b) and (c) of subsection (2) of section 54 of this Act shall apply to any such act as is therein mentioned, if done after the commencement of that section, notwithstanding that the name in question was inserted or fixed before the commencement of that section.

(2) Subject to the preceding subparagraph of this paragraph, no act done before the commencement of the said section 54 shall be actionable by virtue of that section.

(3) In this paragraph "name" has the same meaning as in the said section 54.

Part VII

Works made before 1st July, 1912

30. — (1) This Part of this Schedule applies to works made before the 1st day of July, 1912.

(2) In this Part of this Schedule "right conferred by the Act of 1911", in relation to a work, means such a substituted right as, by virtue of section 24 of the Act of 1911, was conferred in place of a right subsisting immediately before the commencement of that Act.

31. — Notwithstanding anything in Part I of this Schedule, neither subsection (1) or subsection (2) of section 8 of this Act, nor subsection (2) or subsection (3) of section 9 of this Act, shall apply to a work to which this Part of this Schedule applies, unless a right conferred by the Act of 1911 subsisted in the work immediately before the commencement of the said section 8 or section 9, as the case may be.

32. — (1) Where, in the case of a dramatic or musical work to which this Part of this Schedule applies, the right conferred by the Act of 1911 did not include the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as not including those specified in subparagraph (3) of this paragraph.

(2) Where, in the case of a dramatic or musical work to which this Part of this Schedule applies, the right conferred by

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the Act of 1911 consisted only of the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as consisting only of those specified in subparagraph (3) of this paragraph.

(3) The said acts are:

- (a) performing the work or an adaptation thereof in public;
- (b) broadcasting the work or adaptation thereof;
- (c) causing the work or an adaptation thereof to be transmitted to subscribers to a diffusion service.

33. — Where a work to which this Part of this Schedule applies 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, and immediately before the commencement of section 8 of this Act, a right of publishing the work in a separate form subsisted by virtue of the note appended to the First Schedule to the Act of 1911, that note shall have effect in relation to that work, as if it had been re-enacted in this Act with the substitution, for the word "right" where it first occurs, of the word "copyright".

34. — (1) Without prejudice to the generality of subparagraph (1) of paragraph 25 of this Schedule, the provisions of this paragraph shall have effect where:

- (a) the author of a work to which this Part of this Schedule applies had, before the commencement of the Act of 1911, made such an assignment or grant as is mentioned in paragraph (a) of the proviso to subsection (1) of section 24 of that Act (which relates to transactions whereby the author had assigned, or granted an interest in, the copyright or performing right in a work for the full term of that right under the law in force before the Act of 1911), and
- (b) copyright subsists in the work by virtue of any provision of this Act.

(2) If, before the commencement of that provision of this Act, any event occurred, or notice was given, which in accordance with paragraph (a) of the said proviso had any operation affecting the ownership of the right conferred by the Act of 1911 in relation to the work, or creating, transferring or terminating an interest, right or licence in respect of that right, that event or notice shall have the corresponding operation in relation to the copyright in the work under this Act.

(3) Any right which, at a time after the commencement of that provision of this Act, would, by virtue of paragraph (a) of the said proviso, have been exercisable in relation to the work, or to the right conferred by the Act of 1911, if this Act had not been passed, shall be exercisable in relation to the work or to the copyright therein under this Act, as the case may be.

(4) If, in accordance with paragraph (a) of the said proviso, the right conferred by the Act of 1911 would have reverted to the author or his personal representatives on the date referred to in that paragraph, and the said date falls after the commencement of the provision of this Act whereby copyright subsists in the work, then on that date:

- (a) the copyright in the work under this Act shall revert to the author or his personal representatives, as the case may be, and
- (b) any interest of any person in that copyright which subsists on that date by virtue of any document made before the commencement of the Act of 1911 shall thereupon determine.

Part VIII

General and Supplementary Provisions

35. — (1) The provisions of this paragraph shall have effect for the construction of any reference in any provision of this Act to qualified persons.

(2) Where, at any time after the commencement of any provisions of this Act, a provision which contains such a reference has not been applied in the case of a country under section 43 of this Act, then, with respect to any time before the provision is so applied, the reference shall be construed as if the provision did apply to that country.

(3) References in any order under section 175 of the Act of 1927 to works first published in the State shall, in relation to published works the authors of which were at the time of first publication subjects or citizens of a country to which the order relates be construed as references to works of which the authors were qualified persons at the time of such publication.

(4) In relation to photographs taken before the commencement of section 9 of this Act, and to sound recordings made before the commencement of section 17 of this Act the definition of "qualified person" in subsection (5) of section 7 of this Act shall apply as if, in paragraph (b) of that subsection, for the words "body incorporated under the laws of the State", there were substituted the words "body corporate which has established a place of business in the State".

36. — (1) The provisions of the two next following subparagraphs shall apply where:

- (a) immediately before the date on which Parts VI and VII of the Act of 1927 are repealed by this Act, provisions of the said Part VI have effect as applied by an order made in respect of a country under section 175 of the Act of 1927 as amended by section 11 of the Industrial and Commercial Property (Protection) (Amendment) Act, 1957; and
- (b) no order under section 43 of this Act applying any provisions of this Act in the case of that country, is made so as to come into force on or before that date.

(2) The provisions of Part VI of the Act of 1927 as applied to any country by an order under the said section 175 (as so amended as aforesaid) shall continue to have effect, notwithstanding the repeal of the said Part VI, until the occurrence of whichever of the following events first occurs, that is to say:

- (a) the revocation of the order made under section 175 (as amended) of the Act of 1927;
- (b) the coming into operation of an order under section 43 of this Act applying any of the provisions of this Act in the case of the foreign country in question.

INTERNATIONAL ACTIVITIES

(3) For the purposes of continuing, varying or terminating the operation of any of the provisions of Part VI of the Act of 1927 in accordance with the last preceding subparagraph, and for the purposes of any proceedings arising out of the operation of those provisions in accordance with that subparagraph, all the provisions of Parts VI and VII of the Act of 1927 (including the power to make orders under section 175 [as amended] of that Act) shall be treated as continuing in force as if none of those provisions had been repealed by this Act.

37. — Without prejudice to the operation of any of the preceding provisions of this Schedule:

- (a) any enactment or other document referring to an enactment repealed by this Act shall be construed as referring (or as including a reference) to the corresponding enactment of this Act;
- (b) any enactment or other document referring to copyright, or to works in which copyright subsists, if apart from this Act it would be construed as a reference to copyright under the Act of 1927, or to works in which copyright subsists under that Act, shall be construed as referring (or including a reference) to copyright under this Act, or, as the case may be, to works or any other subject-matter in which copyright subsists under this Act;
- (c) any reference in an enactment or other document to the grant of an interest in copyright by licence shall be construed, in relation to copyright under this Act, as a reference to the grant of a licence in respect of that copyright.

38. — (1) Except in so far as it is otherwise expressly provided in this Schedule, the provisions of this Act apply

in relation to things existing at the commencement of those provisions as they apply in relation to things coming into existence thereafter.

(2) For the purposes of any references in this Schedule to works, sound recordings or cinematograph films made before the commencement of a provision of this Act, a work, recording or film, the making of which extended over a period, shall not be taken to have been so made unless the making of it was completed before the commencement of that provision.

39. — In this Schedule:

“photograph” includes photolithograph and any work produced by any process analogous to photography, and has not the meaning assigned to it by section 2 of this Act; “the Act of 1911” means the Copyright Act, 1911.

Enactments repealed

Number and Year	Short Title	Extent of Repeal
No. 16 of 1927	The Industrial and Commercial Property (Protection) Act, 1927	Parts VI (other than section 172) and VII, in so far as not already repealed
No. 13 of 1929	The Industrial and Commercial Property (Protection) (Amendment) Act, 1929	Sections 10, 11 and 12
No. 22 of 1942	The Central Bank Act, 1942	Section 17
No. 32 of 1950	The Coinage Act, 1950	Section 18
No. 13 of 1957	The Industrial and Commercial Property (Protection) (Amendment) Act, 1957	Sections 8, 9, 10, 11, 12 and 13
No. 21 of 1958	The Industrial and Commercial Property (Protection) (Amendment) Act, 1958	The whole Act (other than section 4)

INTERNATIONAL ACTIVITIES

Rome Convention for the International Protection of Performers,
Producers of Phonograms and Broadcasting Organisations

With reference to the deposit of its instrument of accession to the Convention by the Government of the Republic of Niger on April 5th, 1963¹⁾, the Secretary-General of the United Nations Organisation has informed us that, by a communication received on June 25th, 1963, this Government has notified him that it has decided to make its accession subject to the following reservations:

- (1) Article 5, paragraph (3): the “criterion of publication” is excluded;

¹⁾ See *Le Droit d'Auteur (Copyright)*, 1963, p. 99.

- (2) Article 16: the application of Article 12 is completely excluded.

This notification is made accordingly with the above-mentioned Articles 5 and 16, stipulating that such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter.

In accordance with its Article 25, this Convention shall come into force three months after the date of deposit of the sixth instrument of ratification, acceptance or accession.

It should be noted that at the present time only three instruments (these of Congo [Brazzaville], Sweden and Niger) are taken into account for the application of this Article.

NATIONAL LEGISLATION

IRELAND

I

Copyright Act, 1963 (Commencement) Order, 1964

(No. 177, of July 20, 1964) ¹⁾

1. — This Order may be cited as the Copyright Act, 1963 (Commencement) Order, 1964.

¹⁾ See *Le Droit d'Auteur (Copyright)*, 1963, pp. 115 and 140.

2. — The 1st day of October, 1964, is hereby appointed as the day on which the Copyright Act, 1963 (No. 10 of 1963), shall come into operation.

II

Copyright (Register of Dramatic Works) Rules, 1964

(No. 178, of July 20, 1964)

1. — These Rules may be cited as the Copyright (Register of Dramatic Works) Rules, 1964.

2. — These Rules shall come into operation on the 1st day of October, 1964.

3. — A register of dramatic works kept pursuant to section 55 of the Copyright Act, 1963 (No. 10 of 1963), shall be in the form set out in the Schedule to these Rules.

4. — Particulars of each of the matters specified in the form in the Schedule to these Rules shall be entered in the register aforesaid.

5. — The person for whose profit a dramatic work is presented, or, if the work is not presented for the profit of any person, the person under whose control it is presented, shall be deemed, for the purpose of these Rules, to be the person presenting it.

SCHEDULE

Register of Dramatic Works

Name and full address of theatre, hall, room or place where the work was performed

Date of performance	Full name and address of person who presented the work	Title of work presented	Name of author of work or of owner of copyright, if any	Full names and addresses of the persons by whom the work was actually performed

EXPLANATORY NOTE

(This Note is not part of the instrument and does not purport to be a legal interpretation)

These rules provide for the keeping in places of entertainment of a register of dramatic works performed therein.

IRELAND

Copyright (Amendment) Act, 1987

(No. 24, of December 11, 1987)

An Act to amend the Copyright Act, 1963

*Amendment of section 14 of
Copyright Act, 1963*

1. Section 14 of the Copyright Act, 1963, is hereby amended by the insertion after subsection (7) of the following subsection:

“(7A) The act of reproducing an object of any description which is in three dimensions shall not be taken to constitute an infringement of the copyright in an artistic work in two dimensions (other than such a work relating to a work of architecture) if—

- (a) any of the features following, that is to say, shape, configuration and pattern, that appear in the work and are applied to the object are wholly or substantially functional, and
- (b) the object is one of a number, in excess of fifty, of identical objects which have been manufactured and made commercially available by the owner of the copyright or by a person authorised by him in that behalf.”.

*Amendment of section 27 of
Copyright Act, 1963*

2. Section 27 of the Copyright Act, 1963, is hereby amended by the substitution of the following subsections for subsections (1), (4), (5), (8), (9) and (10):

“(1) Any person who, at a time after the commencement of the *Copyright (Amendment) Act, 1987*, when copyright subsists in a work—

- (a) makes for sale or hire, or
- (b) sells or lets for hire, or by way of trade offers or exposes for sale or hire, or for

the purposes of trade has in his possession, or

- (c) by way of trade exhibits in public, or
- (d) imports into the State, otherwise than for his private and domestic use,

any article which he knows to be an infringing copy of the work, shall be guilty of an offence under this subsection.

(4) The District Court, upon the application of the owner of the copyright in any work, may act as follows: If satisfied by evidence that there is reasonable ground for believing that infringing copies of the work are being hawked, carried about, sold or offered or exposed for sale, let for hire or offered or exposed for hire, may by order authorise a member of the Garda Síochána to seize the copies without warrant and to bring them before the court, and the court, on proof that the copies are infringing copies, may order them to be destroyed, or to be delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(5) If a Justice of the District Court is satisfied by information on oath that there is reasonable ground for suspecting that an offence under subsection (1), (2), (3) or (8) of this section is being committed on any premises, such Justice may grant a search warrant authorising a named member of the Garda Síochána accompanied by such other members of the Garda Síochána as may be necessary, to enter on the premises, if need be by force, and to seize any copies of any cinematograph film or any work including plates in respect of which he has reasonable ground for suspecting that an offence under any of the said subsections is being committed.

(8) Any person who after the commencement of the *Copyright (Amendment) Act, 1987*, causes a literary, dramatic or musical work to be performed in public, or a cinematograph film to be shown, knowing that copyright subsists in the

Entry into force: December 11, 1987.
Source: Government publication.

work or in the cinematograph film, and that the performance or showing constitutes an infringement of the copyright, shall be guilty of an offence under this subsection.

(9) A person guilty of an offence under subsection (1) or (2) of this section shall be liable, on summary conviction—

- (a) in case it is his first conviction of an offence under this section, to a fine not exceeding £100 for each article to which the offence relates;
- (b) in any other case, to such a fine, or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment;

so, however, that a fine imposed by virtue of this subsection shall not exceed £1,000 in respect of articles comprised in the same transaction.

(10) A person guilty of an offence under subsection (3) or (8) of this section shall be liable, on summary conviction—

- (a) in case it is his first conviction of an offence under this section, to a fine not exceeding £1,000;

- (b) in any other case, to such a fine, or, at the discretion of the court, to imprisonment for a term not exceeding 6 months or to both such fine and such imprisonment.

(10A) Notwithstanding anything contained in subsection (10) of this section, where any person causes a work specified in subsection (8) of this section to be performed in public in contravention of the said subsection (8) by means of a television broadcast or a sound broadcast, he shall, in lieu of any penalty specified in the said subsection (10), be liable on summary conviction to a fine not exceeding £100."

*Short title, construction and
collective citation*

3. (1) This Act may be cited as the Copyright (Amendment) Act, 1987.

(2) The Copyright Act, 1963, and this Act shall be construed together as one Act and may be cited together as the Copyright Acts, 1963 and 1987.

NATIONAL LEGISLATION

IRELAND

Performers' Protection Act, 1968

(No. 19, of July 2, 1968) *

An Act to prevent the making of unauthorised records, films and broadcasts of performances of literary, dramatic, musical and artistic works

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Prohibition of making records without consent of performers.
3. Prohibition of making cinematograph films without consent of performers.
4. Foreign records and films to be deemed to contravene Act in certain circumstances.
5. Prohibition of broadcasting without consent of performers.
6. Rebroadcasting of performances.
7. Prohibition of making or having plates for making records in contravention of Act.
8. Power of court to order destruction of records contravening Act.
9. Special defences.
10. Consent on behalf of performers.
11. Giving of consent without authority.
12. Application of certain provisions of Act to other countries.
13. Short title and commencement.

Interpretation

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

“broadcast” means broadcast by wireless telegraphy whether by way of sound broadcasting or of television;

“cinematograph film” means any print, negative, tape or other article on which a performance of performers or part thereof is recorded for the purposes of visual reproduction;

“communication to the public” includes transmission by wire to subscribers to a diffusion service;

“performance” means a performance of any actors, singers, musicians, dancers or other persons who act, sing, deliver, declaim, play in or otherwise perform literary, dramatic, musical or artistic works, and includes any such performance rendered or intended to be rendered audible or visible by mechanical or electrical means;

“performers”, in the case of a mechanical performance, means the persons whose performance is mechanically reproduced;

“Radio Telefís Éireann” means the broadcasting authority established by virtue of the Broadcasting Authority Acts, 1960 to 1966;

“rebroadcast” means the simultaneous broadcast by one broadcasting organisation of a broadcast of another broadcasting organisation;

“record” means any record or similar contrivance for reproducing sound, including the sound-track of a cinematograph film.

(2) Any reference in this Act to the making of a cinematograph film is a reference to the carrying out of any process whereby a performance or part thereof is recorded for the purposes of visual reproduction.

Prohibition of making records without consent of performers.

2. — (1) Subject to the provisions of this Act, if a person knowingly —

(a) makes a record, directly or indirectly from or by means of a performance without the consent in writing of the performers, or

(b) sells or lets for hire, or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, a record made or deemed to have been made in contravention of this Act, or

(c) uses for the purposes of a broadcast or communication to the public such a record,

he shall be guilty of an offence, and shall be liable, on summary conviction, to a fine not exceeding five pounds for each record in respect of which an offence is proved, but not exceeding one hundred pounds in respect of any one transaction or on conviction on indictment to a fine not exceeding two thousand pounds.

(2) Where a person is charged with an offence under subsection (1)(a) of this section, it shall be a defence to prove that the record to which the charge relates was made for his private and domestic use only.

(3) The making of a record from or by means of a performance without the consent in writing of the performers shall not be a contravention of subsection (1) of this section if —

* This Act came into operation on October 1, 1968, by virtue of the *Performers' Protection Act, 1968 (Commencement) Order, 1968*, of September 19, 1968.

NATIONAL LEGISLATION

(a) the record was made by Radio Telefís Éireann by means of its own facilities, the performers had consented in writing to the broadcasting of the performance by Radio Telefís Éireann and the record, or a reproduction thereof, was not used by Radio Telefís Éireann for any purpose other than such broadcasting, or

(b) the record was —

- (i) a reproduction of a performance incorporated in a record made with the consent of the performers and the reproduction was not made for a purpose different from those for which that consent was given, or
- (ii) a reproduction of a performance incorporated in a record made for the purpose of reporting current events and the reproduction was not made for a different purpose, or
- (iii) a reproduction of a performance incorporated in a record by way of background, or otherwise as incidental to the principal matters comprised or represented in the record, and the reproduction was not made for a different purpose.

(4) Where Radio Telefís Éireann makes a record (other than a record of the kind referred to in subsection (3)(b) of this section) directly or indirectly by means of its own facilities of a performance without the consent in writing of the performers, but the performance is one to the broadcasting of which the performers had consented in writing, Radio Telefís Éireann shall, not more than six months after the date on which the making of the record was completed or such longer period (if any) as may be agreed upon by Radio Telefís Éireann and the performers, destroy the record and any reproductions of it, and, if Radio Telefís Éireann contravenes the provisions of this subsection, it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(5) (a) Subsection (4) of this section shall not apply in relation to a record of a performance which is of an exceptional documentary character, but such a record shall not be used for broadcasting or for any other purpose without the consent of the performers and section 12 (9) of the Copyright Act, 1963, shall apply in relation thereto as if it were a reproduction of a work made under subsection (7) of that section which is of an exceptional documentary character.

(b) A person who contravenes paragraph (a) of this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds and, on conviction on indictment, to a fine not exceeding two thousand pounds.

Prohibition of making cinematograph films without consent of performers

3. — (1) Subject to the provisions of this Act, if a person knowingly —

(a) makes a cinematograph film, directly or indirectly, from or by means of a performance without the consent in writing of the performers, or

(b) sells or lets for hire, or distributes for the purposes of trade, or by way of trade exposes or offers for sale or hire, a cinematograph film made or deemed to have been made in contravention of this Act, or

(c) uses for the purposes of a broadcast or communication to the public such a cinematograph film,

he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding five pounds for each fifty feet of film in respect of which an offence is proved, but not exceeding one hundred pounds in respect of any one transaction or on conviction on indictment to a fine not exceeding two thousand pounds.

(2) Where a person is charged with an offence under subsection (1)(a) of this section, it shall be a defence to prove that the cinematograph film to which the charge relates was made for his private and domestic use only.

(3) The making by Radio Telefís Éireann by means of its own facilities of a cinematograph film from or by means of a performance without the consent in writing of the performers shall not be a contravention of subsection (1) of this section if —

(a) the performers had consented in writing to the broadcasting of the performance by Radio Telefís Éireann and the film or a reproduction of it was not used by Radio Telefís Éireann for any purpose other than the broadcast, or

(b) the film was a film of a performance incorporated in a cinematograph film lawfully made.

(4) Where Radio Telefís Éireann makes a cinematograph film (other than a film of the kind referred to in subsection (3)(b) of this section) directly or indirectly by means of its own facilities of a performance without the consent in writing of the performers, but the performance is one to the broadcasting of which the performers had consented in writing, Radio Telefís Éireann shall, not more than six months after the date on which the making of the film was completed or such longer period (if any) as may be agreed upon by Radio Telefís Éireann and the performers, destroy the film and any reproductions of it, and, if Radio Telefís Éireann contravenes the provisions of this subsection, it shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(5) (a) Subsection (4) of this section shall not apply in relation to a film of a performance which is of an exceptional documentary character, but such a film shall not be used for broadcasting or for any other purpose without the consent of the performers and section 12 (9) of the Copyright Act, 1963, shall apply in relation thereto as if it were a reproduction of a work made under subsection (7) of that section which is of an exceptional documentary character.

(b) A person who contravenes paragraph (a) of this subsection shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds and, on conviction on indictment, to a fine not exceeding two thousand pounds.

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Foreign records and films to be deemed to contravene Act in certain circumstances

4. — For the purposes of paragraphs (b) and (c) of section 2 (1) of this Act and paragraphs (b) and (c) of section 3 (1) of this Act, a record or film to which an order under section 12 of this Act applies and which is made directly or indirectly from or by means of a performance shall, if the consent of any performer to the making of the record or film was required by the law of the country in which it was made, be deemed to have been made in contravention of the Act if, whether knowingly or not, it was made without the consent so required.

Prohibition of broadcasting without consent of performers

5. — Subject to the provisions of this Act, a person who, otherwise than by the use of a record or cinematograph film or the reception of a broadcast, knowingly broadcasts or makes a communication to the public of a performance of performers, or any part of such a performance, without the consent in writing of the performers, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Rebroadcasting of performances

6. — A consent to the broadcasting of a performance shall, unless the consent provides otherwise, be deemed to include consent to the rebroadcasting of the performance.

Prohibition of making or having plates for making records in contravention of Act

7. — If a person makes, or has in his possession a plate or similar contrivance for the purpose of making records in contravention of this Act, he shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

Power of court to order destruction of records contravening Act

8. — The court before which any proceedings are taken under this Act may, on conviction of the offender, order that all records, cinematograph films, plates or similar contrivances in the possession of the offender which appear to the court to have been made in contravention of this Act, or to be adapted for the making of records in contravention of this Act, and in respect of which the offender has been convicted, be destroyed, or otherwise dealt with as the court may think fit.

Special defences

9. — Notwithstanding anything in the preceding provisions of this Act, where a person is charged with an offence under any provision of this Act, it shall be a defence to prove —

- (a) that the record, cinematograph film, broadcast or communication to the public to which the charge relates was made only for the purpose of reporting current events, or

- (b) that the inclusion of the performance in question in the record, cinematograph film, broadcast or communication to the public to which the charge relates was only by way of background or was otherwise only incidental to the principal matters comprised or represented in the record, film, broadcast or communication to the public.

Consent on behalf of performers

10. — Where in any proceedings under this Act it is proved —

- (a) that the record, cinematograph film, broadcast or communication to the public to which the proceedings relate was made with the consent in writing of a person who, at the time of giving the consent, represented that he was authorised by the performers to give it on their behalf, and
(b) that the person making the record, film, broadcast or communication to the public had no reasonable grounds for believing that the person giving the consent was not so authorised,

the provisions of this Act shall apply as if it had been proved that the performers had themselves consented in writing to the making of the record, film, broadcast or communication to the public.

Giving of consent without authority

11. — (1) Where —

- (a) a record, cinematograph film, broadcast or transmission is made with the consent in writing of a person who, at the time of giving the consent, represented that he was authorised by the performers to give it on their behalf when to his knowledge he was not so authorised, and
(b) the consent would, by virtue of section 10 of this Act afford a defence to any proceedings in relation to such making against the person to whom the consent was given,

the person giving the consent shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding one hundred pounds.

(2) The said section 10 shall not apply to proceedings under this section.

Application of certain provisions of Act to other countries

12. — (1) The Government may by order provide that such provisions of this Act as may be specified in the order shall apply in relation to performances, records and cinematograph films, respectively, made in such foreign countries or group or groups of foreign countries as may be specified in the order, in circumstances that are such that, if the performances, records or cinematograph films had been made in the State, the making would have contravened the provisions of the Act.

(2) The Government shall not make an order under this section applying any of the provisions of this Act in respect of any country which is not a party to a convention for the protection of performers to which the State is also a party

GENERAL STUDIES

unless the Government is satisfied that provision has been or will be made under the laws of that country whereby adequate protection will be given in that country to performances in the State.

(3) The Government may by order revoke or amend an order under this section including an order under this subsection.

(4) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made, and if a resolution annulling the order is passed by

either House within the next twenty-one days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Short title and commencement

13. — (1) This Act may be cited as the Performers' Protection Act, 1968.

(2) This Act shall come into operation on such day as the Minister for Industry and Commerce appoints by order.

GENERAL STUDIES

Copyright in Solutions to Mathematical Problems and Exercises

*May the author of a textbook on mathematics object to a third party's publishing the solutions to the problems and exercises contained in his book? **

Solutions to mathematical problems or exercises worked out by applying generally known rules are certainly not *creations* of the mind. Solving mathematical problems or exercises undoubtedly involves intellectual effort, but this effort (like that of a bookkeeper, for example) does not result in the creation of a work in which there can be any copyright. The element which forms the very basis of the idea that an intellectual work can be the subject of a copyright is missing, namely, original personal contribution. (See Koumantos, *Copyright* (in Greek), page 2, and the foreign writers cited, as well as Kummer, *Das urheberrechtlich schützbares Werk*, pages 30 to 36.) Anyone who knows and applies the mathematical rules can and should arrive at these solutions. A person who works out mathematical problems and exercises therefore acquires no exclusive right in the solutions he has found, even if he has them published.

But, even if the person who figures out solutions to mathematical problems or exercises cannot claim to possess any copyright in these solutions, this does not in any way mean that a copyright in such solutions cannot belong to someone else, in particular to the person who composed or made up the problem or exercise concerned. It is beyond question that

the author who composes the mathematical problems or exercises acquires a copyright in the "terms" of the problems or exercises, provided that these are not simply a juxtaposition of figures and signs ($2 + 2 = X$, for example) but show the minimum of original creativeness that is required for an intellectual work to exist. The question, then, is whether the creator of the "terms" acquires, in addition to his copyright in the latter, a further copyright in the proper solutions.

In answering this question, it is worth while to determine first of all whether there is an indestructible logical link between the terms (of a mathematical problem or exercise) and the solution. A problem or exercise, as seen from the point of view of logic, is merely the concrete embodiment of an abstract mathematical rule: the rule is reflected in the exercise and confirmed by it; by means of the exercise, the rule moves away from the sphere of reasoning toward that of experiment. It is obvious that the problem or exercise performs this function not as a simple statement of terms but through the indestructible logical link between the terms and the solution: it is in this unity and precisely by means of this unity that the rule takes on a concrete form. The indestructible nature of the unity stems from the fact that the solution is already inherent in the terms themselves, as their necessary logical consequence. The solution is merely a deduction, an "extraction" from the terms, founded on known mathematical rules and requiring no original creativeness. It is the creator of the terms of the mathematical problem or exercise who at the same time creates its solution as a logical virtuality.

* Excerpt from a *pro veritate* opinion given by Mr. Georges Koumantos, Professor at the Faculty of Law of the University of Athens. It is published here with the author's permission in view of the interest it might offer in connection with the publication of so-called "teachers' manuals".

STATUTORY INSTRUMENTS.

S.I. No. 201 of 1968.

PERFORMERS' PROTECTION ACT, 1968 (COMMENCEMENT) ORDER, 1968.

Published by the Stationery Office, Dublin.

Price Fourpence.

(Pr1. No. 267)

I, **Seoirse Ó Colla**, Minister for Industry and Commerce, in exercise of the powers conferred on me by Section 13(2) of the Performers' Protection Act, 1968, (No. 19 of 1968), hereby order as follows:

1. This Order may be cited as the Performers' Protection Act, 1968 (Commencement) Order, 1968.
2. The 1st day of October, 1968, is hereby appointed as the day on which the Performers' Protection Act, 1968 (No. 19 of 1968), shall come into operation.

GIVEN under my Official Seal,

this 19th day of September, 1968.

SEOIRSE Ó COLLA.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation).

This order appoints the 1st October, 1968, as the date on which the Performers' Protection Act, 1968, (No. 19 of 1968), comes into operation.