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I assent,

LS

MARCELLA ALTHEA LIBURD

Governor-General.

25th June, 2024.

SAINT CHRISTOPHER AND NEVIS

No. 14 of 2024

AN ACT to provide for copyright and related rights and their protection; and to provide for related or incidental matters

[*Published 4th July 2024, Official Gazette No. 36 of 2024.*]

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the National Assembly of Saint Christopher and Nevis, and by the authority of the same as follows:

PART I
PRELIMINARY

1. Short title.

This Act may be cited as the Copyright Act, 2024.

2. Interpretation.

In this Act, unless the context otherwise requires

"accessible format copy" means a copy of a work in an alternative manner or form that:

(a) gives a person who is visually impaired or print disabled access to the work, including permitting the person to have access as feasibly and comfortably as a person without visual impairment or other print disability; and

(b) shall be used exclusively by persons who are visually impaired or print disabled; and

(c) must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of these persons;

"adaptation" means

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

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

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

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

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

"applied art" means a work of art that is embodied in a useful article that can be practically used;

"audio-visual work" means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, where accompanied by sounds, susceptible of being made audible;

"author", in relation to a work, means the person who creates it, being in relation to

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

(b) a musical work, the composer;

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

(d) a photograph, the person taking the photograph;

(e) an audio-visual work or sound recording, the person by whom the arrangements necessary for the making of the work are undertaken;

(f) the typographical arrangement of a published edition, the publisher;

(g) a broadcast, the person initiating the broadcast;

"authorised entity" means an entity that is authorised or recognised by the Government to provide education, instructional training, adaptive reading or information access to persons who are visually impaired or print disabled on a non-profit basis and it may also include a government institution or non-profit organisation that provides the same services to these persons as one of its primary activities or institutional obligations and an authorised entity shall establish and follow its own practices to:

(a) establish that the persons it serves are persons who are visually impaired or print disabled;

(b) limit to these persons and authorised entities in distribution and publishing of accessible format copies;

(c) discourage the reproduction, distribution and making available of unauthorised copies; and

(d) maintain due care in, and records of, its handling of copies of works, while respecting the privacy of persons who are visually impaired or print disabled on an equal basis with others;

"broadcast" means the communication to the public of a work or a performance by wireless transmission, including transmission by satellite, any form of rebroadcasting or transmission of encrypted signals where the means of decrypting are provided to the public by the broadcasting organisation or with its consent;

"business" includes a trade or profession;

"circumvention of technological protection measures" means to avoid, bypass, remove, deactivate, or impair technological protection measures for the purpose of gaining unauthorised access to a work;

"collective work" means a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

"communication to the public" means the transmission by wire or wireless means of a work or a performance, including their making available in such a way that members of the public may access the work or performance from a place and at a time individually chosen by them;

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

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

"copy", in relation to

(a) a work that is a literary, dramatic or musical work, means a whole or substantial reproduction of the work in any material form;

(b) an artistic work, means a whole or substantial reproduction of the work in any material form, including a reproduction in three-dimensions if the artistic work is a two-dimensional work, or a reproduction in two-dimensions if the artistic work is a three-dimensional work;

(c) a work that is an audio-visual work or broadcast, includes a photograph of the whole or any substantial part of any image forming part of the audio-visual work or broadcast;

(d) a work that is a typographical arrangement of a published edition, means a facsimile copy of the arrangement; and

(e) any description of work, includes a copy of the work that is transient or incidental to some other use of the work;

"distribution" means the putting into circulation the original or a copy of a work or fixation of a performance in tangible form through sale or other transfer of ownership, including importing for the purpose of such putting into circulation and offering for sale and other transfer of ownership;

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

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

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

"fixation" means the recording in writing of a work, or the embodiment of sounds, images or both, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

"future copyright" means copyright which will or may come into existence in respect of any future work or class of works or on the occurrence of a future event;

"graphic work" includes any painting, drawing, diagram, map, chart, plan, engraving, etching, lithograph, woodcut or similar work;

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

"infringing copy", in relation to a protected work, means

(a) any copy of the work that is not authorised by the copyright owner,

(b) any copy of the work, the making of which is not authorised under any provision of this Act;

(c) any copy of the work that is or is proposed to be imported into Saint Christopher and Nevis and its making in Saint Christopher and Nevis would have constituted an infringement of the copyright in the work in question or a breach of an exclusive licence agreement relating to that work;

"performer" means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in or otherwise performs, a literary,

dramatic, musical or artistic work or expression of folklore; and references to the performer in the context of the person having performer's rights, shall be construed to include references to the person who, pursuant to any provision of this Act, is for the time being entitled to exercise those rights;

"performance", in relation to

(a) the rights conferred under Part VIII of this Act, includes

(i) a dramatic performance, which includes dance and mime;

(ii) a musical performance;

(iii) a reading or recitation of a literary work;

(iv) a performance of a variety act or any similar presentation, that is, or to the extent that it is, a live performance, given by one or more individuals;

(b) a copyright in a literary, dramatic or musical work, includes

(i) delivery in the case of lectures, addresses, speeches and sermons;

(ii) any mode of aural presentation including presentation by means of a sound recording, audio-visual work, broadcast or other work;

"person having recording rights", in relation to a performance, means a person who

(a) is a party to, and has the benefit of, an exclusive recording contract to which the performance is subject or to whom the benefit of such a contract has been assigned; and

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

"person who is visually impaired or print disabled" means any person who

(a) is blind;

(b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;

regardless of any other disabilities.

"photograph" means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of an audio-visual work;

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

"published" means the authorised release of the original or copies of the work or fixed performance to the public;

"published edition" means the whole or any part of the printed typography of a literary, dramatic, musical or artistic work;

"qualified person" means,

(a) in the case of an individual, a person who is a citizen of, or whose habitual residence is in, Saint Christopher and Nevis or a specified country; and

(b) in the case of a body corporate, a body incorporated or established under any enactment in force in Saint Christopher and Nevis or a specified country;

"qualifying performance" means a performance that

(a) is given by an individual who is a qualified person; or

(b) takes place in Saint Christopher and Nevis or a specified country;

"recording", in relation to a performance, means an audio-visual fixation or sound recording

(a) made directly from a live performance;

(b) made from a broadcast including the performance; or

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

"related rights" includes the rights of performers;

"rental" means any arrangement under which a copy of a work is offered

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

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

"reproduction" means the making of one or more copies of a work in any manner or form, including any permanent or temporary storage of the work in electronic form;

"reprographic process" means a process

(a) for making facsimile copies; or

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

"rights management information" means any information which identifies:

(a) the author, the work, the performer, the performance of the performer or the owner of any right under this Law;

(b) information about the terms and conditions of use of the work or the performance; or

(c) any numbers or codes that represent the foregoing information

when any of these items of information is attached to a copy of a work or a fixed; performance, or appears in connection with the communication to the public of a work, or a fixed performance;

"sound recording" means

(a) a recording of sounds or of a representation of sounds or audio of frequency from which sounds may be reproduced; or

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

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced and which does not include the recording of sounds or representations thereof in an audio-visual work;

"specified country" means a country that is party to any international copyright treaty that St Christopher and Nevis is also party to, or any country specified by Order of the Minister;

"technological protection measures" means any technology, device or component that, in the normal course of operation, is designed to prevent or restrict acts, in respect of works or objects of related rights, which are not authorised by the copyright owner;

"unauthorised", when used to describe any act done in relation to a work, means

(a) if copyright subsists in the work, any act done otherwise than by or with the licence of the owner of the copyright;

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

"work" means

(a) a literary, dramatic, musical or artistic work;

(b) an audio-visual work, broadcast or sound recording;

(c) the typographical arrangement of a published edition;

"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; and

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

PART II

COPYRIGHT

Protected Works

3. Requirements for protection.

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

(a) the category of work; and

(b) either

(i) the qualification of the author, or

(ii) the country or place of first publication, or in the case of a broadcast, the country or place where it is made or from which it is sent as the case may be.

(2) If the requirements of this Part or of section 144 of this Act are satisfied in respect of a work, any copyright shall not cease to subsist by reason of any subsequent event.

4. Eligible works.

(1) Copyright is a property right which subsists in literary and artistic works that are original intellectual creations in the literary, scientific and artistic domain, including, but not limited to

(a) books, pamphlets, articles, computer programs, compilations of data or other material and other writings;

(b) speeches, lectures, addresses, sermons and other works of the same nature;

(c) dramatic works, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;

(d) stage productions of works mentioned in paragraph (c);

(e) musical works, with or without accompanying words;

(f) audio-visual works, including films;

(g) works of architecture;

(h) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;

(i) photographic works;

(j) works of applied art;

(k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;

(l) sound recordings;

(m) broadcasts;

(n) typographical arrangements of published editions.

(2) Works shall be protected by the sole fact of their creation and irrespective of their mode or form of expression, content, quality or purpose.

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

(a) the compilation shall only be regarded as original if, by reason of the selection or arrangement of its contents, the compilation constitutes the author's own intellectual creation; and

(b) the protection does not extend to any data or other material forming part of the compilation and is without prejudice to any copyright subsisting in any such data or other material.

(4) Copyright shall not subsist in a sound recording or audio-visual work to the extent that it is, a copy taken from a previous sound recording or audio-visual work.

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

(6) Copyright protection shall not extend to

(a) an idea, concept, process, principle, procedure, system or discovery or things of a similar nature;

(b) individual words, short phrases or slogans;

(c) familiar symbols or designs;

(d) mere variations of typographic ornamentation or lettering;

(e) colours or colouring of objects;

(f) mere lists of items including ingredients for recipes or other content that lack originality;

(g) works that have no human author.

5. Qualification for protection: author.

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

(2) A work of joint authorship qualifies for copyright protection if any of the authors satisfies the requirement of section 5(1), except that where a work qualifies for copyright protection only under this section, only those authors who satisfy the requirement shall be taken into account for the purposes of sections 9 and 22 of this Act.

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

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

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

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

(4) In this section, "the material time" means, in relation to

(a) an unpublished literary, dramatic, musical or artistic work, the time when the work was made or, if the work extended over a period, a substantial part of that period;

(b) a published literary, dramatic, musical or artistic work, the time when the work was first published or, if the author died before it was first published, the time immediately before his or her death;

(c) a sound recording or audio-visual work, the time when it was made;

(d) a broadcast, the time when the broadcast was made;

(e) the typographical arrangement of a published edition, the time when the edition was first published.

6. Qualification for protection: place of publication.

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

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

7. Nature of copyright protection: economic and moral rights.

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

(a) reproduce the work;

(b) distribute copies of the work;

(c) perform the work in public or, in the case of an audio-visual work, sound recording or broadcast, to play or show the work in public;

(d) broadcast the work;

(e) communication to the public of the work;

(f) make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts; or

(g) rental of the work.

(2) For the purposes of section 7(1), references to doing any act in relation to any work, means doing the act

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

(b) either directly or indirectly;

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

(3) By virtue of and subject to the provisions of this Act, the author of a protected work shall have in respect of the work, whether or not he or she is the owner of the copyright in the work, the moral rights specified in Part III of this Act.

(4) The exclusive right of distribution subject to section 7(1)(b) shall not apply to the original or copies of a work that are put into circulation by way of sale or other transfer of ownership in St Christopher and Nevis with the consent of the owner of copyright.

(5) The exclusive right of communication to the public subject to section 7(1)(d) shall only apply where the transmission made is accessible in Saint Christopher and Nevis.

Duration of Copyright Protection

8. Duration of copyright in literary, dramatic, musical, artistic and audio-visual works.

(1) Subject to the provisions of this section, copyright in any literary, dramatic, musical artistic or audio-visual work shall subsist for the life of author and shall expire at the end of seventy years from the end of the calendar year in which the author dies.

(2) Where the authorship of a work referred to in section 8(1) is unknown, or under a pseudonym, copyright in that work shall expire at the end of seventy years from the end of the calendar year in which it was first published, and section 8(1) shall not apply if the identity of the author becomes known after the end of that period.

(3) For the purpose of section 8(2), acts which constitute being published include:

(a) in relation to a literary, dramatic or musical work, the performance of the work in public or its broadcast;

(b) in relation to an artistic work, the exhibition of the work in public or its inclusion in an audio-visual work shown to the public or in a broadcast;

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

(4) The provisions of sections 8(1) and 8(2) shall not apply to computer-generated works.

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

(a) the reference in section 8(1) to the death of the author shall be construed,

(i) where the identity of all the authors is known the date of the death of the last author shall be considered;

(ii) where the identity of one or more of the authors is known and the identity of one or more others is not, the death of the last of the authors whose identity is known shall be considered; and

(b) the reference in section 8(2) to the identity of the author becoming known, shall be construed as a reference to the identity of any of the authors becoming known.

(6) This section shall not apply to any copyright which subsists by virtue of section 144 of this Act.

9. Duration of copyright in sound recordings.

(1) Copyright in a sound recording expires at the end of a period of seventy years from the end of the calendar year in which it was made, or where it is published before the end of that period, seventy years from the end of the calendar year in which it is published.

(2) For the purposes of section 9(1), a sound recording is published when it is first published or broadcast.

(3) In determining whether a sound recording has been published, for the purposes of section 9(2), any unauthorised act shall be disregarded.

10. Duration of copyright in broadcasts.

(1) Copyright in a broadcast shall expire at the end of a period of seventy years from the end of the calendar year in which the broadcast was made.

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

(3) Reference in section 10(2) to a repeat broadcast means a broadcast that has been previously made with the same content.

11. Duration of copyright in typographical arrangements.

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

12. Duration of moral rights and related rights.

(1) The rights conferred in sections 13, 14 and 16 of this Act shall subsist as long as copyright subsists in the work.

(2) The right conferred in section 15 of this Act shall subsist until the end of twenty years from the end of the calendar year in which the person dies.

PART III

MORAL RIGHTS

13. Right to be identified as author.

(1) Subject to section 13(9), and to such exceptions as may be specified in, or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of an audio-visual work or producer of a sound recording that is a protected work have, respectively, the right to be identified as the author or, as the case may be, director or producer of the work in the circumstances specified in this section.

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

(a) the work or an adaptation of the work is published, performed in public, or communicated to the public; or

(b) copies of an audio-visual work or sound recording, including an adaptation thereof are distributed.

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

(a) the work or an adaptation thereof is published, performed in public or communicated to the public;

(b) copies of a sound recording comprising the work or an adaptation thereof are distributed; or

(c) an audio-visual work, the soundtrack of which includes the work, is shown in public or copies of such audio-visual work are distributed.

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

(a) the work is published or exhibited in public or a visual image of it is communicated to the public;

(b) an audio-visual work including a visual image of the work is shown in public or copies of such an audio-visual work are distributed; or

(c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it or of a photograph of it, are distributed.

(5) In addition to the right specified in section 13(4)(c), the author of a work of architecture in the form of a building has the right to be identified on the constructed building or, where more than one building is constructed to the design, on the first to be constructed.

(6) The author of an audio-visual work has the right to be identified whenever the work is shown in public or communicated to the public, or copies of the work are distributed.

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

(a) in the case of publication or the distribution of copies of an audio-visual work or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his or her identity to the notice of a person acquiring a copy;

(b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and

(c) in any other case, to be identified in a manner likely to bring his or her identity to the attention of a person seeing or hearing the performance, exhibition or communication to the public;

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

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

(9) Except as may otherwise be explicitly provided by contract, the right conferred by this section shall not apply to computer-generated works.

14. Right to object to derogatory treatment of a work.

(1) Subject to sections 14(2) and 14(3) and such exceptions as may be specified in this section or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of an audio-visual work or producer of a sound recording that is a protected work shall have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment, and such right shall be infringed by any person who does any of the acts specified in section 38 of this Act in the circumstances specified in that section.

(2) The right referred to in section 14(1) shall not apply in relation to a computer-generated work.

(3) The right referred to in section 14(1) shall not apply to anything done by or with the authority of the copyright owner in relation to works in which the copyright originally vested in an international organisation by virtue of section 146 of this Act unless the author or director

(a) is identified at the time of the relevant act; or

(b) has previously been identified in or on published copies of the work, and where in such a case the right does not apply, it is not infringed if there is sufficient disclaimer.

(4) In this section

(a) "derogatory treatment", in relation to a work, means any addition to, deletion from, alteration to or adaptation of the work not being a translation of a literary or dramatic work or an arrangement or transcription of a musical work involving no more than a change of key or register which amounts to a distortion or mutilation of the work, or is otherwise prejudicial to the honour or reputation of the author or director, as the case may be; and

(b) "sufficient disclaimer" means a clear and reasonably prominent indication

(i) given at the time of the act; and

(ii) if the author or director is then identified, appearing along with the identification;

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

15. False attribution of work.

(1) A person has the right

(a) not to have a literary, dramatic, musical or artistic work falsely attributed to him or her as author;

(b) not to have an audio-visual work falsely attributed to him or her as director;

(c) not to have a sound recording falsely attributed to him or her as producer;

and in this section, "attribution", in relation to such work, means a statement, whether express or implied, as to the identity of the author, director or producer.

(2) The right conferred by section 16(1) shall be infringed in the circumstances specified in section 41 of this Act.

16. Right to privacy for commissioned works.

Subject to section 42 of this Act, a person who, for private and domestic purposes, commissions the creation of a work, where the resulting work is a protected work, has the right not to have

(a) copies of the work distributed;

(b) the work exhibited or shown in public; or

(c) the work communicated to the public.

Supplementary

17. Consent and waiver of rights.

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

(2) A right to which section 17(1) refers may be waived by instrument in writing signed by the person giving up the right, and the waiver

(a) may relate to works generally or to a specific work or class of works and may relate to existing or future works; and

(b) may be conditional or unconditional and may be expressed to be subject to revocation.

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

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

18. Application of provisions to joint works.

(1) The right conferred under section 13 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author.

(2) The right conferred by section 14 is, in the case of a work of joint authorship, a right of each joint author and his or her right is satisfied if he or she consents to the treatment in question.

(3) A waiver of rights under section 17 by one joint author shall not affect the rights of the other joint authors.

(4) In respect of an audio-visual work which was, or is alleged to have been, jointly directed:

(a) Sections 18(1), 18(2) and 18(3) shall also apply, with such modifications as are necessary, as they apply to a work which is, or alleged to be, a work of joint authorship.

(b) For the purpose of section 18(4)(a), an audio-visual work is "jointly directed" if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director or directors.

(5) The right conferred by section 16 of this Act is, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that

(a) the right of each is satisfied if he or she consents to the act in question; and

(b) a waiver under section 17 by one of them shall not affect the rights of the others.

19. Application of provisions to works.

The rights conferred by

(a) sections 13 and 16 of this Act shall apply in relation to the whole or any substantial part of a work; and

(b) sections 14 and 15 of this Act shall apply in relation to the whole or any part of a work.

PART IV

OWNERSHIP AND ASSIGNMENT OF RIGHTS

Ownership of Copyright

20. Ownership of copyright.

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

(2) Where a protected work is created by an employee in the course of his or her employment consequent to the requirements of their job description, the employer is the first owner of any copyright in the work, unless there is a contractual agreement to the contrary.

(3) Section 20(1) shall not apply to copyright subsisting in a work pursuant to section 144 of this Act.

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

(5) In respect of folklore, that is to say, all literary and artistic works that

(a) constitute a basic element of the traditional and cultural heritage of Saint Christopher and Nevis;

(b) were created in Saint Christopher and Nevis by various groups of the community; and

(c) survive from generation to generation;

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

21. Assignments and licences.

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

(a) assignment;

(b) testamentary disposition; or

(c) operation of law;

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

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

(a) to one or more, but not all, of the things the owners of the copyright has the exclusive right to do;

(b) to part, but not the whole, of the period for which copyright subsists.

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

22. Prospective ownership of copyright.

(1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright, wholly or partially, to another person, then, if on the coming into existence of the copyright the assignee or another person claiming under him or her would be entitled as against all other persons to require the copyright to be vested in him or her, the copyright shall vest in the assignee or his or her successor in title.

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

23. Right of exclusive licensee.

The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he or she has against the person granting the licence.

24. Copyright in manuscript may pass under will.

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

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

(b) an original material thing containing a sound recording or audio-visual work which was not published before the death of the testator;

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

25. Moral rights not assignable.

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

26. Transmission of moral rights on death.

(1) The rights conferred by sections 13, 14 and 16 are not assignable otherwise than by succession.

(2) When copyright forming part of a person's estate passes in part to one person and in part to another, any right which passes with the copyright by virtue of section 26(1) shall be correspondingly divided.

(3) Where, by virtue of section 27(1), a right becomes exercisable by more than one person, then

(a) where the right is conferred by section 14 or 16, it is a right exercisable by each of them and is satisfied in relation to any of them if he or she consents to the treatment or act in question; and

(b) any waiver of the right in accordance with section 17 by one of them shall not affect the rights of the others.

(4) A consent or waiver previously given shall bind any person to whom a right passes by virtue of section 26(1).

(5) Any infringement of the right conferred by section 15 of this Act after a person's death shall be actionable by his or her personal representatives.

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

PART V

INFRINGEMENT OF RIGHTS

General Provisions

27. Meaning of "action".

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

28. Part subject to other provisions.

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

(a) authorise the doing of specified acts in relation to a protected work; or

(b) provide for the licensing of a protected work.

Infringement of Copyright

29. Acts infringing copyright.

(1) The copyright in a work is infringed by any person who, without the licence of the copyright owner, does, in relation to that work, any of the acts which the copyright owner has the exclusive right to do pursuant to section 7 of this Act.

30. Secondary acts of copyright infringement.

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

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

(a) possesses in the course of a business;

(b) sells or lets for hire or offers or exposes for sale or hire;

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

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

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

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

(a) makes;

(b) imports into Saint Christopher and Nevis;

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

(d) sells or lets for hire, or offers for sale or hire;

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

(4) Copyright in a work is infringed by a person who, without the licence of the copyright owner, communicates to the public the work, knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Saint Christopher and Nevis or elsewhere.

(5) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that

place to be used for the performance shall also be liable for the infringement unless at the time he or she gave permission, he or she believed, on reasonable grounds, that the performance would not infringe copyright.

(6) Where copyright in a work is infringed by a public performance of the work or by the playing or showing of the work in public by means of apparatus for playing sound recordings or showing audio-visual works or receiving visual images or sounds conveyed by electronic means, the person specified in section 30(7) shall also be liable for the infringement.

(7) The persons referred to in section 30(6) are

(a) a person who supplied the apparatus or any substantial part of it, if when he or she supplied the apparatus or part

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

(ii) in the case of apparatus whose normal use involves a public performance, playing or showing, he or she did not believe on reasonable grounds that it would be used to infringe copyright;

(b) an occupier of premises who gave permission for the apparatus to be brought onto the premises, if, when he or she gave permission, he or she knew or had reason to believe that the apparatus was likely to be used to infringe copyright; and

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

31. Action by owner of copyright.

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

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

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

(4) Section 31(3) shall not affect any other remedy available to a plaintiff referred to in that subsection.

32. Order for delivery up in civil proceedings.

(1) Subject to the provisions of this section and section 34(6), where a person

(a) in the course of his or her business has an infringing copy of a work in his or her possession, custody or control; or

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

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

(2) An application under section 32(1) shall not be made after the end of the period specified in section 136(1), and no order shall be made unless the court also makes an order under section 135 for the disposal of the infringing copy or article, as the case may be.

(3) A person to whom an infringing copy or other article is delivered up, pursuant to an order made under this section shall, if an order under section 135 of this Act is not made, retain it pending the making of an order or the decision not to make an order, under that section.

Remedies of Licensees

33. Infringement of rights of exclusive licensee.

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

34. Infringement of rights of non-exclusive licensee.

(1) A non-exclusive licensee may bring an action for infringement of copyright or rights in performance where

(a) the infringement was directly connected to a prior licensed act of the non-exclusive licensee; and

(b) the licence

(i) is in writing and is signed by or on behalf of the owner of the copyright or rights in performance; and

(ii) expressly grants the non-exclusive licensee a right to bring an action.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the owner of the copyright or related rights would have had, had the owner brought the action.

(3) The rights granted under this section are concurrent with those of the owner of the copyright.

(4) In an action brought by a non-exclusive licensee by virtue of this section the defendant may avail himself of the defence which would have been available to him had the action been brought by the owner of the copyright or related rights.

(5) Section 35 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a "non-exclusive licensee" means the holder of a licence authorising the licensee to exercise a right which remains exercisable by the owner of the protected work.

35. Infringement where rights are concurrent.

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

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

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

(4) A copyright owner or exclusive licensee who is added as a defendant in pursuance of 35(3) shall not be liable for any costs in the action unless he or she takes part in the proceedings.

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

(a) shall, in assessing damages take into account the terms of the licence and any pecuniary remedy already awarded or available to either of them in respect of the infringement;

(b) shall not direct an account of profits if an award of damages has been made or an account of profits has been directed in favour of the other of them in respect of the infringement; and

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

(6) The copyright owner shall notify any exclusive licensee, having concurrent rights before applying under section 32 of this Act for an order for the delivery up of infringing copies of a work, and the High Court may, on the application of the licensee, having regard to the terms of the licence, make such order under section 32 as it thinks fit.

Infringement of Moral Rights

36. Infringement of right to be identified as author, director or producer.

(1) Subject to section 36(2), the right conferred by section 13 of this Act is infringed by a person who fails to identify the author of a work, the director of an audio-visual work or

producer of a sound recording whenever any action specified in that section occurs in relation to that work.

(2) The following acts shall not constitute an infringement of the right conferred by section 13 of this Act in relation to a work to the extent that such acts are permitted under Part VI of this Act in relation to the work:

(a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of an audio-visual work, sound recording or broadcast;

(b) the incidental inclusion of the work in an artistic work, audio-visual work, sound recording or broadcast;

(c) the use of the work for examination purposes;

(d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;

(e) the use of design documents and models;

(f) the use of a design derived from artistic work;

(g) acts permitted in relation to anonymous or pseudonymous works on the assumption that copyright in the work has expired or that the author is dead;

(h) the use of sound recordings for public performances, broadcasts or communications to the public.

37. Infringement of right to object to derogatory treatment of work.

(1) The right conferred on an author and a director by section 14 of this Act to object to derogatory treatment of his or her work is infringed where the acts described in subsections (2), (3), (4), and (5) of this section are done in relation to that work, and for the purposes of this Part, "derogatory treatment" has the same meaning as that assigned to it in section 14(4) of this Act.

(2) The right referred to in section 37(1) of this section is infringed in the case of a literary, dramatic, or musical work by a person who

(a) publishes, performs in public, or communicates to the public, a derogatory treatment of the work; or

(b) distributes copies of an audio-visual work or sound recording of or including a derogatory treatment of the work.

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

(a) publishes or exhibits in public a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work;

(b) shows in public an audio-visual work including a visual image of a derogatory treatment of the work or distributes copies of such an audio-visual work; or

(c) in the case of a work of architecture in the form of a model for a building or in the case of a sculpture or work of artistic craftsmanship, distributes copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

(4) Subsection 37(3) shall not apply to a work of architecture in the form of a building except that where the author of the work is identified on the building and it is the subject of derogatory treatment, he or she shall have the right to require the identification to be removed.

(5) In the case of an audio-visual work, the right is infringed by a person who

(a) shows in public or communicates to the public a derogatory treatment of the work; or

(b) distributes copies of a derogatory treatment of the work, or who, along with the work, plays in public, communicates to the public, or distributes copies of, a derogatory treatment of the audio-visual work's soundtrack.

38. Infringement by possession of infringing article.

(1) The right conferred by section 14 of this Act is also infringed by a person who

(a) possesses in the course of a business;

(b) sells or lets for hire or offers or exposes for sale or hire;

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

(d) distributes otherwise than in the course of a business so as to affect prejudicially the honour or reputation of the author or director;

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

(2) An "infringing article" means a work or a copy of work which

(a) has been subjected to derogatory treatment as define in section 14 of this Act; and

(b) has been or is likely to be the subject of any of the acts mentioned in section 37 of this Act in circumstances infringing that right.

39. Acts that do not infringe the moral right to object to derogatory treatment of a work.

(1) The right conferred by section 14 of this Act is not infringed by any act done for the purpose of

(a) avoiding the commission of an offence; or

(b) complying with the duty imposed by or under an enactment;

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

(2) In section 39(1), "sufficient disclaimer" means a clear and reasonably prominent indication

(a) given at the time of the act; and

(b) if the author or director is then identified, appearing along with the identification; that the work has been subjected to treatment to which the author or director has not consented.

40. Infringement of right against false attribution of work.

(1) Subject to the provisions of this section, the right conferred on a person by section 15 not to have a literary, dramatic, musical or artistic work falsely attributed to him or her as author or an audio-visual work falsely attributed to him or her as director, is infringed by a person who

(a) distributes copies of a work of any of those descriptions in or on which there is a false attribution.

(b) exhibits in public an artistic work or a copy of an artistic work in or on which there is a false attribution.

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

(a) in the case of a literary, dramatic or musical work, performs the work in public or communicates it to the public as being the work of a person; or

(b) in the case of an audio-visual work, shows it in public or communicates it to the public as being directed by a person, knowing or having reason to believe that the attribution is false.

(3) The right is also infringed by any person who distributes or displays in public any material containing a false attribution in connection with any act referred to in sections 40(1) or 40(2).

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

(a) possesses or deals with a copy of a work referred to in section 40(1) in or on which there is a false attribution; or

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

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

(a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or

(b) deals with a copy of such a work as testing a copy of the unaltered work of the author, knowing or having reason to believe that such is not the case.

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

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

41. Infringement of privacy right in photographs.

The right conferred by section 16 of this Act in relation to a commissioned photograph or audio-visual work is infringed by a person who does or authorises the doing of any act specified in that section in relation to that work, except that the right is not infringed by any act which, pursuant to Part IV of this Act, would not infringe copyright in the work.

42. Effect of consent and waiver of rights.

It shall not be an infringement of any right conferred by section 13, 14, 15 or 16 of this Act to do any act to which a person entitled to the right has consented pursuant to the provisions of section 17 of this Act or in respect of which he or she has given a waiver pursuant to the provisions of that section.

Remedies for Infringement of Moral Rights

43. Remedies for infringing moral rights.

(1) Any person whose right under sections 13, 14, 15 or 16 of this Act is infringed may institute proceedings in the High Court for injunctive relief to prevent the infringement, or for recovery of damages for the infringement.

(2) The grant of an injunction under section 43(1) shall not deprive a person of any damages that may be awarded to him or her for loss sustained by him or her as a result of the infringement of his or her right.

(3) Where in any action for an infringement of a right referred to in 43(1) is proved or admitted, the court may, in addition to the grant of an injunction or the award of damages, order the defendant to publish such correction in such terms and in such manner as the court may direct.

Presumptions

44. Presumptions where action relates to literary, dramatic, musical and artistic works etc.

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

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

(3) Section 44(2) shall, in the case of a work alleged to be a work of joint authorship, apply in relation to each person alleged to be one of the authors.

(4) Where no name, purporting to be that of the author, appears on a work referred to in section 44(2), but

(a) pursuant to section 8(1) of this Act, the work qualifies for copyright protection by virtue of the country of first publication; and

(b) a name purporting to be that of the publisher appears on the copies of the work as first published;

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

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

(a) that the work is an original work; and

(b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

45. Presumption where action relates to sound recording, audio-visual work or computer programme.

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

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

(a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or

(b) that the recording was first published in a specified year or in a named country;

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

(3) Where an action is brought under this Part with respect to an audio-visual work, and copies of the work distributed bear a statement

(a) that a named person was the author or director of the audio-visual work;

(b) that a named person was the owner of copyright in the audio-visual work at the date of issue of the copies; or

(c) that the audio-visual work was first published in a specific year or in a named country;

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

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

(a) that a named person was the owner of copyright in the programme at the date of issue of the copies; or

(b) that the programme was first published in a named country or that copies of it were first issued to the public in electronic form in a specified year;

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

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

(6) Where an action is brought under this Part with respect to an audio-visual work, and the work as shown in public or communicated to the public bears a statement

(a) that a named person was the author or director of the audio-visual work; or

(b) that a named person was the owner of copyright in the audio-visual work immediately after it was made;

the statement shall be admissible as evidence of the facts stated and presumed to be correct until the contrary is proved, and the presumption shall apply equally in an action relating to an infringement alleged to have occurred before the date on which the audio-visual work was shown in public or communicated to the public as it applies in an action relating to an infringement alleged to have occurred on or after that date.

Offences

46. Penalties in respect of dealings which infringe copyright.

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

(a) makes for sale or hire;

(b) in the course of a business, sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes;

(c) imports into Saint Christopher and Nevis for purposes other than his or her private and domestic use; or

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

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

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

(3) Any person who causes

(a) a literary, dramatic or musical work to be performed in public;

(b) an artistic work to be shown in public; or

(c) a sound recording or audio-visual work to be played or shown in public;

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

(4) Any person who commits an offence under section 46(1) shall be liable

(a) on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years or both;

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

(5) Any person who commits an offence under this section, other than an offence under section 46(1), shall be liable

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

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

47. Presumptions not to apply.

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

48. Order to deliver up in criminal proceedings.

(1) Subject to section 48(2), the court before which proceedings are brought against a person for an offence under section 45 of this Act may order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct, if the Court is satisfied that at the time of his or her arrest or charge:

(a) he or she had in his or her possession, custody or control in the course of a business an infringing copy of a protected work; or

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

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

(a) after the time specified in section 135; or

(b) if it appears to the court unlikely that any order will be made under section 129.

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

(4) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order or the decision not to make an order under section 130.

49. Application of provisions re-entry etc.

For the purposes of this Part, sections 137 and 138 of this Act shall apply in respect of the entry and search of any premises.

50. Restricting importation of infringing copies.

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

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

(b) that he or she requests the Comptroller to treat as prohibited goods under the Customs Act, Cap. 20.04 during a period specified, in the notice, printed copies of the work which constitute infringing copies.

(2) The period specified in a notice given under section 50(1) shall not exceed five years and shall not extend beyond the end of the period for which the copyright may subsist.

(3) The owner of the copyright in a sound recording or audio-visual work may give notice in writing to the Comptroller of Customs

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

(b) that infringing copies of the work are expected to arrive in Saint Christopher and Nevis at a time and a place specified in the notice; and

(c) that he or she requests the Comptroller to treat the copies as prohibited goods under the Customs (Control and Management) Act.

(4) Subject to section 50(5), where a notice is given in accordance with this section, the importation into Saint Christopher and Nevis of goods to which the notice relates is prohibited, and notwithstanding anything contained in the Customs (Control and Management) Act, a person shall not be liable to any penalty under that Act other than forfeiture of the goods, by reason that any goods are treated as prohibited goods by virtue of this section.

(5) The importation of any article by a person for his or her private and domestic use is not prohibited under section 50(4).

(6) A person giving a notice under this section shall

(a) comply with such conditions as the Minister with responsibility for the Customs and Excise Department may prescribe to govern the Comptroller of Customs in these matters; and

(b) satisfy such requirements as may be prescribed in connection with the giving of the notice, including requirements relating to

(i) the form of the notice;

(ii) the furnishing of evidence, whether on giving notice, or on the importation of the goods, or at both such times;

(iii) the payment of fees in respect of the notice;

(iv) the giving of security in respect of any liability or expense which the Comptroller may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;

(v) the indemnification of the Comptroller of Customs against any such liability or expenses, whether security has been given or not; and

(vi) any incidental or supplementary matters, and the regulations may make different provisions in respect of different classes of cases.

(7) Regulations made under section 50(6) shall be subject to a negative resolution of the National Assembly.

PART VI

EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

Preliminary

51. Definition of "sufficient acknowledgement".

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

(a) in the case of a published work, it is published anonymously or the author has agreed or required that no acknowledgment of his or her name should be made;

(b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry.

General Exceptions

52. Research and private study.

Subject to section 55 of this Act, fair dealing with a copyright or related rights work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

53. Criticism, review and reporting.

(1) Subject to section 55 of this Act

(a) fair dealing with a copyright or related rights work for the purposes of criticism or review of that or another work or of a performance of a work; or

(b) fair dealing with a copyright or related rights work, other than a photograph, for the purpose of reporting current events;

does not infringe copyright or related rights in the work so long as it is accompanied by sufficient acknowledgment.

(2) No acknowledgment shall be required in connection with the reporting of current events by means of a sound recording, audio-visual work or broadcast.

54. Non-commercial user-generated content.

(1) It is not an infringement of copyright or related rights for a natural person to use an existing protected work which has been published or otherwise made available to the public, for the creation of a transformative work in which copyright subsists, and for that transformative work to be used for non-commercial purposes including the authorising of internet intermediaries to disseminate it.

(2) Acknowledgment of the source of the existing work shall only be required if it is reasonable in the circumstances to do so.

(3) Where use of the transformative work becomes monetised or is otherwise deemed to be commercial, the exception under subsection (1) does not apply.

(4) Use of the existing work must not be substantial and should constitute fair dealing, taking into account the factors that are outlined in section 55.

(5) For the purpose of this section

(a) "internet intermediaries" means a person or entity who regularly provides space or means for works or other subject matter to be enjoyed by the public;

(b) "non-commercial" means that the newly created work does not adversely affect or compete with the exploitation or potential exploitation of the pre-existing work by the owner;

(c) "transformative" means the creation of a new work with a different purpose or character that is not a substitute for the existing work; and

(d) "use" means to do anything that the owner of copyright has the sole right to do under this Act.

55. Determining fair dealing.

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

(a) the nature of the work in question;

(b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;

(c) the purpose and character of the use; and

(d) the effect of the act upon the potential market for, or the commercial value of the work.

56. Private use.

It is not an infringement of copyright or related rights in a work for a person to reproduce a work or any substantial part of a work if

(a) the copy of the work from which the reproduction is made is not an infringing copy;

(b) the person legally obtained the copy of the work from which the reproduction is made other than by borrowing or renting it;

(c) the person did not circumvent any technological protection measures to make the reproduction; and

(d) the person has only made one reproduction of the work and uses it for his or her own private purposes.

57. Backup copies.

(1) It is not an infringement of copyright or related rights in a work for a person who owns or has a licence to use a copy of the work to make a single reproduction of that copy

(a) solely for backup purposes in cases where the copy is lost, damaged or otherwise rendered unuseable;

(b) the copy used for the reproduction is not an infringing copy; and

(c) the person did not circumvent any technological protection measures to make the reproduction.

(2) If the copy used to make the reproduction becomes lost, damaged or otherwise rendered unuseable, the reproduction made subject to this section replaces the copy owned or licensed by the person.

58. Incidental inclusion of protected work.

(1) Copyright and related rights in a work shall not be infringed

(a) by its incidental inclusion in an artistic work, sound recording, audio-visual work or broadcast; or

(b) by the distribution of copies of the playing, showing, or communication to the public of anything whose making was not an infringement of copyright by virtue of paragraph (a) of this section.

(2) For the purposes of this section, a musical work, words spoken or sung with music, or so much of a sound recording, audio-visual work or broadcast as includes a musical work or such words, shall not be regarded as incidentally included if it is deliberately included.

59. Temporary reproductions.

The temporary reproduction of a copyright or related rights work shall be permitted where all of the following conditions are met

(a) the reproduction is made in the process of a transmission of the work or an act of making a stored work perceptible;

(b) it is caused by a person or entity that is authorised to make the transmission of the work or to make a stored work perceptible, or the use of the work leading to the temporary copy is permitted by law subject to this Part of the Act; and

(c) it is an accessory to the transmission or making perceptible that occurs during the normal operation of use of the work and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those referred to in subsections (a) and (b) above.

Use of Work for Educational Purposes

60. Acts done for purposes of instruction or examination.

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

(2) Copyright or related rights in a work shall not be infringed by it being copied by making an audio-visual work or audio-visual work's soundtrack in the course of instruction, or of preparation for instruction, in the making of audio-visual works or audio-visual work's soundtracks, if the copying is done by a person giving or receiving instruction.

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

(4) Copyright or related rights in works freely available on the internet shall not be infringed where they are

(a) reproduced;

(b) communicated to the public; or

(c) publicly performed;

by an educational institution for the purpose of research, private study, instruction, examination or any other act that is necessary for the purpose of education so long as the source is acknowledged, the use is compatible with fair practice and does not exceed the extent justified by the purpose.

61. Anthologies for educational use.

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

(a) the collection is described in the title and in any advertisements thereof issued by or on behalf of the publisher, as being so intended;

(b) the work was not itself published for the use of educational establishments;

(c) the collection consists mainly of material in which no copyright subsists; and

(d) the inclusion is accompanied by a sufficient acknowledgment.

(2) Section 61(1) shall not authorise the inclusion of more than two excerpts from protected works by the same author in collections published by the same publisher over any period of five years.

(3) In relation to any given passage, the reference in section 61(2) to excerpts from works by the same author

(a) shall be taken to include excerpts from works by him or her in collaboration with another; and

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

62. Recording of broadcast by educational establishments.

(1) Subject to section 62(2), a recording of a broadcast or a copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing the copyright or related rights in the broadcast or in any work included in it.

(2) Section 62(1) shall not apply if, or to the extent that, there is a licensing scheme certified pursuant to section 107 for the purposes of this section.

63. Restriction on reprographic copying by educational establishment.

(1) Subject to the provisions of this section, reprographic copies of passages from published literary, dramatic or musical works may be made by or on behalf of an educational

establishment for the purposes of research, private study or instruction without infringing any copyright in the work or in the typographical arrangement.

(2) The reprographic copies made pursuant to section 63(1) shall only be allowed where

(a) the copy does not exceed five per cent of a literary, dramatic or musical work or one chapter, whichever is the lesser; and

(b) the act of reprographic copying is limited to an isolated occurrence, and if repeated is for separate and unrelated occasions; and

(c) no more than a single copy for each student and the teacher is made.

(3) Copying shall not be authorised by this section if, or to the extent that, the work in question is commercially available on the St Christopher and Nevis market within a reasonable time and for a reasonable price, or where licences are available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.

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

64. Subsequent dealings with authorised copies.

(1) Where a copy of a work is an infringing copy if its making is not authorised under sections 60, 62, or 63 of this Act and the copy is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing, and, if that dealing infringes copyright, for all subsequent purposes.

(2) In section 64(1), "dealt with" means sold, or let for hire or offered or exposed for sale or hire.

Exceptions Affecting Libraries and Archives

65. Interpretation of references: Regulations.

(1) In sections 66, 67, 68, and 69 of this Act, references to the librarian or archivist include references to a person acting on his or her behalf.

(2) Regulations made by the Minister for the purposes of this section may provide that a librarian or archivist who is, pursuant to sections 66 and 69 of this Act, required to be satisfied as to a matter before making or supplying a copy of a work

(a) shall be entitled to rely on a declaration as to that matter, signed by the person requesting the copy, unless he or she is aware that the declaration is false in any material particular;

(b) shall not, in such cases as may be prescribed, make or supply a copy to any person in the absence of a declaration by that person.

(3) Where a person requesting a copy makes a declaration that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by

him or her, that person shall be liable for infringement of copyright as if he or she had made the copy himself or herself, and the copy supplied shall be treated as an infringing copy.

66. Supply by librarian of copies of published work.

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

(a) a copy of an article in a periodical; or

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

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

(2) The conditions prescribed pursuant to section 66(1) shall include the following, that is to say,

(a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research, private study or instruction at an educational institution, and will not use them for any other purpose;

(b) that no person shall be furnished, in relation to an article, with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical;

(c) in relation to a work referred to in section 66(1)(b), no person shall be furnished with more than one copy of the same material or of a copy of more than a reasonable proportion of any work; and

(d) that persons to whom copies are supplied are required to pay for them a sum not less than the cost including a contribution to the general expenses of the library attributable to their production.

67. Supply of copies to other libraries.

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

(a) an article in a periodical; or

(b) the whole or part of a published edition of a literary, dramatic or musical work;

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

(2) Section 68(1)(b) shall not apply if, at the time the copy is made, the librarian making it knows or could, by reasonable inquiry, ascertain the name and address of a person entitled to authorise the making of the copy.

68. Replacing copies of works.

(1) The librarian of a prescribed library or archive may, if the prescribed conditions are

complied with, make a copy from any item in the permanent collection of the library or archive for the purpose of

(a) preserving or replacing the item by placing the copy in such permanent collection in addition to or in place of the item;

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

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work, or, in the case of a published edition, in the typographical arrangement.

(2) The prescribed conditions referred to in section 68(1) shall include provisions restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question for the purpose.

69. Copying of unpublished work.

(1) Subject to section 69(2), the librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or in any illustrations accompanying it.

(2) Section 69(1) shall not apply where

(a) the work is published before the document is deposited in the library or archive; or

(b) the copyright owner has prohibited copying of the work;

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

(3) The prescribed conditions referred to in section 69(1) shall include the following, that is to say,

(a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study and will not use them for any other purpose;

(b) that no person is furnished with more than one copy of the same material; and

(c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost, including a contribution to the general expenses of the library or archive, attributable to their production.

Exceptions Relating to Public Administration

70. Parliamentary and judicial proceedings and statutory inquiries.

(1) Copyright or related rights in a work shall not be infringed by anything done for the purposes of parliamentary or judicial proceedings, or, subject to section 70(3), for the purposes of reporting the proceedings.

(2) Copyright or related rights in a work shall not be infringed by anything done for the purposes of the proceedings of a statutory inquiry, or, subject to section 70(3), for the purposes of reporting any of those proceedings held in public.

(3) Sections 70(1) and 70(2) relating to the reporting of proceedings shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

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

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

71. Public records.

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

Designs

72. Design documents and models.

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

(2) It shall not be an infringement of any copyright to issue to the public or to include in an audio-visual work or broadcast, anything the making of which is, by virtue of section 72(1), not an infringement of that copyright.

(3) In this section

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

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

73. Where design derived from artistic work is exploited by owner.

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

(a) making industrial process articles falling to be treated under this Act as copies of the work; and

(b) marketing such articles in Saint Christopher and Nevis or elsewhere;

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

(2) Where only part of an artistic work is exploited in the manner described in section 73(1), then, the provisions of that subsection shall apply only in relation to that part.

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

(a) as to the circumstances in which an article or any description of article is to be regarded for the purposes of this section as made by an industrial process;

(b) excluding from the operation of this section such articles of a primarily literary or artistic character as he or she thinks fit.

(4) In this section,

(a) references to articles shall not include audio-visual works; and

(b) references to the marketing of an article shall be references to its being sold or let for hire or offered or exposed for sale or hire.

Exception Relating to Works in Electronic Form

74. Transfer of works in electronic form.

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

(a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer or prohibiting the assignment of any licence or terminating any licence on a transfer; or

(b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do;

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

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

(3) Sections 74(1) and 74(2) shall apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) This section shall apply also on a subsequent transfer, with the substitution for references in section 74(2) to the purchaser of references to the subsequent transferor.

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

75. Anonymous and pseudonymous works.

(1) Copyright in a work shall not be infringed by

(a) the communication to the public of a work; or

(b) the reproduction of a work for the purposes of digitisation, preservation or restoration

where at the time of the act it was not possible by diligent inquiry to ascertain the identity of the author or owner.

(2) In relation to a work of joint authorship the reference in section 75(1) to its being possible to ascertain the identity of the author shall be construed as reference to its being possible to ascertain the identity of any of the authors or owners.

76. Use of recordings of spoken words and notes from recordings of spoken words.

(1) Where a recording of spoken words or notes from recordings of spoken words is made for the purpose of

(a) reporting current events; or

(b) communication to the public of the whole or part of the work;

it shall not be an infringement of any copyright or related rights to use the recording or material taken from it or to copy the recording or material and use the copy for that purpose, if the conditions specified in section 76(2) are satisfied.

(2) The conditions referred to in section 76(1) are that:

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

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

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

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

77. Reading or recitation in public.

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

(2) Copyright in a work shall not be infringed by the making of a sound recording, audio-visual work or the broadcasting of a reading or recitation which, by virtue of section 77(1), does not infringe copyright in the work.

78. Representation of artistic works on public display.

(1) This section shall apply to

(a) buildings; and

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

(2) The copyright in the work referred to in section 78(1) shall not be infringed by

(a) making a graphic work representing it;

(b) making a photograph or audio-visual work of it;

(c) broadcasting a visual image of it; or

(d) the distribution of copies, or the broadcasting of anything whose making was, by virtue of this section, not an infringement of copyright.

79. Reconstruction of buildings.

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

80. Subsequent work by same artist.

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

Miscellaneous Exceptions Relating to Sound Recordings, Audio-Visual Works and Computer Programmes

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

(1) Where sound recordings or audio-visual works comprising a musical work and accompanying words, if any, have, with the licence or consent of the owner of the copyright in the work, been previously made in or imported into Saint Christopher and Nevis for the purposes of retail sale, then, any person may, after the expiry of the manufacture in, or importation into, Saint Christopher and Nevis of the recordings, and without first obtaining the consent or licence of the owner of the copyright in the work, make or authorise the making of sound recordings or audio-visual works of it if the person

(a) intends to sell the recordings by retail, or to supply them for the purpose of being sold by retail by another person, or intends to use them for making other sound recordings or audio-visual works which are to be sold or supplied;

(b) pays royalties calculated at the prescribed rate; and

(c) complies with such conditions relating to notice, method and time of payment, administration of royalties paid and other matters, as may be prescribed.

(2) Any person who makes or authorises the making of sound recordings or audio-visual works pursuant to section 81(1) shall not make or authorise the making of any alterations in, or omissions from, the work unless sound recordings or audio-visual works of that work containing similar alterations or omissions have been previously made by or with the licence or consent of the owner of the copyright or unless the alterations or omissions are reasonably necessary for the adaptation of the work to the sound recording or audio-visual work in question.

82. Making copies of computer programmes for interoperability.

It shall not be an infringement of copyright in a computer programme to make copies for the purpose of obtaining information on the interoperability of computer programmes or to enable the interoperability of computer programmes.

Miscellaneous Exceptions Respecting Broadcasts

83. Incidental recording for purposes of broadcast.

(1) This section shall apply where, by virtue of a licence or assignment of copyright or related rights, a person is authorised to broadcast from a place in Saint Christopher and Nevis or a specified country

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

(b) an artistic work; or

(c) a sound recording or an audio-visual work.

(2) The person referred to in section 83(1) shall, by virtue of this section, be treated as licensed by the owner of the copyright or related rights in the work to do or authorise any of the following for the purposes of the broadcast

(a) in the case of a literary, dramatic or musical work or an adaptation of the work, to make a sound recording or audio-visual work of the work or adaptation;

(b) in the case of an artistic work, to take a photograph or make an audio-visual work of the work; or

(c) in the case of a sound recording or audio-visual work, to make a copy of it.

(3) A licence referred to under section 83(2) shall be subject to the following conditions, that is to say,

(a) the recording, audio-visual work, photograph or copy in question shall not be used for any other purpose; and

(b) the recording, audio-visual work, photograph or copy shall be destroyed within twenty-eight days of being first used for communication to the public of the work.

(4) A recording, audio-visual work, photograph or copy made in accordance with this section shall be treated as an infringing copy if it is used for any purpose that is in breach of the condition specified in section 83(3).

84. Recording of broadcasts for programme control.

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

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

85. Recording for archival purposes.

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

(2) For the purposes of this Act, a recording referred to in section 85(1) shall not infringe copyright or related rights in the broadcast or in any work included in it.

(3) For the purposes of section 85(1), the Minister shall not designate a body unless he or she is satisfied that it is not established or conducted for profit.

86. Retransmission of broadcasts.

(1) Where a broadcast comprising copyright or related rights is made freely available with the consent of the copyright owner from a place in Saint Christopher and Nevis or a specified country, any entity may, without obtaining the permission of the copyright owner, retransmit that broadcast in St Christopher and Nevis provided that

(a) the retransmission takes place simultaneously with the reception of the broadcast; and

(b) the retransmission is transmitted without alteration of any kind.

(2) For the purposes of this subsection

(a) an alteration to a programme includes an addition to the programme of new material not contained in the programme as broadcast, or an omission from the transmission of any material contained in the programme as broadcast; and

(b) "material" includes advertisements whether commercial or non-commercial.

87. Recording for purpose of time-shifting.

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

Adaptations

88. Adaptations.

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

Exception for Persons who are Visually Impaired or Print Disabled

89. Making of accessible format copies.

(1) Authorised entities shall be permitted without the authorisation of the author and owner of copyright in the protected work to make an accessible format copy of a work, obtain from another authorised entity an accessible format copy, and supply those copies to persons who are visually impaired or print disabled by any means, including by non-commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, when all of the following conditions are met:

(a) the authorised entity wishing to undertake said activity has lawful access to that work or a copy of that work;

(b) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not

introduce changes other than those needed to make the work accessible to the person who is visually impaired or print disabled;

(c) such accessible format copies are supplied exclusively to be used by persons who are visually impaired or print disabled; and

(d) the activity is undertaken on a non-profit basis.

(2) A person who is visually impaired or print disabled, who may be assisted by someone acting on his or her behalf including a primary caretaker or caregiver, shall be permitted to make an accessible format copy of a protected work for his or her personal use or otherwise assist himself or herself to make and use accessible format copies where he or she has lawful access to that work or a copy of that work.

(3) Authorised entities shall be permitted, without the authorisation of the owner of copyright in the protected work, to distribute or make available accessible format copies to:

(a) an authorised entity for the exclusive use of persons who are visually impaired or print disabled; or

(b) directly to a person who is visually impaired or print disabled in another country party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

(4) The permission granted under section 89(3) applies provided that prior to the distribution or making available the originating authorised entity did not know or have reasonable grounds to know that the accessible format copy would be used for persons other than those who are visually impaired or print disabled. Such distribution or making available shall be limited to:

(a) certain special cases,

(b) that do not conflict with a normal exploitation of the work or object of related rights, and

(c) that do not unreasonably prejudice the legitimate interests of the copyright owner.

(5) A person who is visually impaired or print disabled, someone acting on his or her behalf, or an authorised entity, shall be permitted to import an accessible format copy for that person's benefit, without the authorisation of the owner of copyright in the protected work.

(6) This section applies in relation to the works mentioned in section 4 of this Act that are in the form of text, notation or related illustrations, whether published or otherwise made publicly available in any media, including works in audio form, such as audiobooks. It also applies to objects of rights in performance as necessary to make accessible format copies.

Exhaustion

90. Exhaustion of distribution right.

The right of distribution shall be exhausted where the original or copies of a work are lawfully put on the market for sale or have been subject to a transfer of ownership by the owner or with his or her consent.

Prescribed Exceptions

91. Prescribed exceptions to infringement.

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

(2) The Minister shall not make an Order under section 91(1) unless he or she is satisfied that the acts specified in the Order in relation to the work

(a) are necessary in the public interest in connection with an event of national importance;

(b) would not conflict with the normal exploitation of the work; and

(c) would not unreasonably prejudice the legitimate interest of the owner of the copyright in the work.

(3) An Order made under section 91(1) shall make provision for the payment of equitable remuneration to the copyright owner to be determined, in default of agreement, by arbitration, and the Order may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the Order.

PART VII

COPYRIGHT LICENSING

Licensing Schemes Collective Management Organisations and Licensing Bodies

92. Jurisdiction of the High Court.

Subject to the provision of this Act the High Court shall have jurisdiction

(a) to determine any dispute which may be referred to it pursuant to any provision of this Part or any relevant regulations governing licensing bodies or collective management organisations;

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

93. Procedure in proceedings before the High Court.

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

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

(3) Where

(a) the High Court makes an order by way of determination of a dispute referred to it pursuant to this Part, the High Court may direct that the order shall have effect retroactively to such date as the Court specifies, except that no order shall have effect from a date prior to the date on which the dispute was formally referred to the High Court;

(b) the High Court fixes an amount of equitable remuneration or compensation pursuant to section 92(b) of this Act, the Court may also give directions as to the method and time of payment and may stipulate such other conditions of payment as it considers reasonable.

94. Interpretation.

(1) In this Part,

"collective management organisation" means a registered non-profit legal entity that is authorised in accordance with this Act, to represent its members comprising authors and other right holders, both national and foreign, as well as to collect and distribute rights revenue related to the exploitation of the copyright and related rights licensed to the collective management organisation;

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

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

"licensing scheme" means a scheme setting out

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

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

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

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

(a) a single collective work or collective works of which the authors are the same; or

(b) works made by, or by employees commissioned by a single individual, firm, company, or group of companies.

(3) For the purposes of section 94(2), "group", in relation to a company, means that company and

(a) any other company which is its holding company or subsidiary company;

(b) any other company that is a subsidiary of the holding company;

(c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b) of this subsection; and

(d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c) of this subsection.

(4) This Part of the Act shall be read in accordance with any regulations or schedules adopted to regulate the actions of collective management organisations or licensing bodies.

95. Licensing schemes to which sections 96 to 101 apply.

The provisions of sections 96, 97, 98, 99, 100 and 101 shall apply to licensing schemes operated by collective management organisations or licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works, sound recordings, audio-visual works or related rights, so far as they relate to licences for any use of protected copyright works or related rights that are controlled by the owner of copyright or the performer.

96. Reference of proposed licensing scheme to High Court.

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

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

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

(4) An order may be made under section 96(3) so as to be in force indefinitely or for such period as the Court may determine.

97. Reference of existing licensing scheme to High Court.

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

(a) the person claiming that he or she requires a licence in a case of a description to which the scheme applies; or

(b) an organisation claiming to be the representative of such persons;

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

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

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

(4) The order made under section 97(3) may be so as to be in force indefinitely or for such period as the Court may determine.

98. Further reference of scheme.

(1) Where the High Court on a previous reference of a licensing scheme referred to under section 96 or 97 of this Act, or under this section, made an order with respect to the scheme then, while the order remains in force

(a) the collective management organisation or licensing body;

(b) a person claiming that he or she requires a licence in a case of the description to which the order applies; or

(c) an organisation claiming to be representative of such persons;

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

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

(a) within twelve months from the date of the order on the previous reference; or

(b) if the order was made so as to be in force for fifteen months or less, until the last three months before the expiry of the order.

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

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

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

99. Application for grant of licence in connection with licensing scheme.

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

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

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

(b) proposes terms for a licence which are unreasonable;

may apply to the High Court for relief.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of section 99(2) if

(a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or

(b) the case is so similar to those in which licenses are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

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

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

100. Application for review as to entitlement to a licence.

(1) Where the High Court makes an order under section 99 of this Act that a person is entitled to a licence under a licensing scheme, the collective management organisation or licensing body or the original applicant may apply to the Court to review its order.

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

(a) within twelve months from the date of the order, or of the decision on a previous application under this section; or

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

(3) The Court shall, on an application for review, confirm or vary its order as the Court may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or the circumstances of the case.

101. Effect of order of Court as to licensing scheme.

(1) A licensing scheme which is confirmed or varied by the Court under section 96 or 97 of this Act shall be in force, or as the case may be, remain in operation so far as it relates to the description of the case in respect of which the order is made, so long as the order remains in force.

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

(a) pays to the collective management organisation or licensing body any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and

(b) complies with the other terms applicable to such a licence under the scheme;

shall be in the same position as regards infringement of copyright as if he or she had at all

material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The Court may direct that the order referred to in section 101(2), so far as it varies the amount of charges payable, shall have effect from a date before that on which it is made, not being a date earlier than the date on which the reference was made or, where the scheme came into operation after the reference was made, not being a date earlier than the date on which the scheme came into operation.

(4) If a direction is made under section 101(3)

(a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and

(b) the reference in section 101(2)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order, except that no direction may be made where section 101(5) applies.

(5) Where the Court has made an order under section 99 of this Act, that is, an order as to entitlement to licence under a licensing scheme and the order remains in force, the person in whose favour the order is made shall, if he or she

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

(b) complies with the other terms specified in the order,

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

References and Applications Respecting Licences, Collective Management Organisations and Licensing Bodies

102. Licences to which sections 103 to 106 apply.

Sections 103, 104, 105, and 106, references and applications with respect to licensing by collective management organisations and licensing bodies, shall apply to the following descriptions of licences granted by a collective management organisation or licensing body, otherwise than in pursuance of a licensing scheme, that is to say licences relating to copyright in

(a) literary works,

(b) dramatic works,

(c) musical or artistic works,

(d) sound recordings,

(e) audio-visual works

or related rights, so far as they relate to licences for any use of protected copyright works or related rights that are controlled by the owner of copyright or the performer.

103. Reference to High Court of proposed licence.

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

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

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

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

104. Reference to High Court of expiring licence.

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

(2) The application referred to in section 104(1) shall not be made until the last three months before the licence is due to expire.

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

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

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

105. Court may review order as to licence.

(1) Where the High Court makes an order under section 103 or 104 of this Act, the collective management organisation or licensing body or the person entitled to the benefit of the order may apply to the Court to review its order.

(2) An application referred to in section 105(1) shall not be made, except with the special leave of the Court,

(a) within twelve months from the date of the order or of the decision on a previous application under this section; or

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

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

106. Effect of order of High Court as to licence.

(1) Where the Court makes an order under section 103 or 104 of this Act and the order remains in force, the person entitled to the benefit of the order shall, if he or she

(a) pays to the collective management organisation or licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, give an undertaking to pay the charges when ascertained; and

(b) complies with the other terms specified in the order;

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

(2) The benefit of the order made under section 103 of this Act may be assigned if the assignment is not prohibited under the terms of the

(a) Court's order; or

(b) original licence.

(3) The Court may direct that an order made under section 103 or 104 of this Act, or an order made under section 105 of this Act varying the order, so far as it varies the amount of charges payable, shall have from a date before that on which it was made, not being a date earlier than the date on which the reference or application was made or, where a licence was granted or was due to expire after the reference was made, not being a date earlier than the date on which the licence was granted or, as the case may be, was due to expire.

(4) If a direction referred to in section 106(3) is made

(a) any necessary repayments or further payments shall be made in respect of charges already paid; and

(b) the reference in section 106(1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

Factors to be Taken into Account in Certain Classes of Cases

107. General consideration: unreasonable discrimination.

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

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

(b) the terms of those schemes or licences;

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

108. Licences for reprographic copying.

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

(a) the extent to which published editions of the works in question are otherwise available;

(b) the proportion of the work to be copied; and

(c) the nature of the use to which the copies are likely to be put.

109. Licences for educational establishments in respect of works included in broadcasts.

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

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

110. Licences to reflect conditions imposed by promoters' event.

(1) This section shall apply to references or applications under this Part in respect of licences relating to sound recordings, audio-visual works or broadcasts which include, or are to include, any entertainment or other event.

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

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

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

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

111. Licences to reflect payment in respect of underlying rights.

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

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

112. References to the specific matters not to exclude relevant considerations.

References in sections 107, 108, 109, 110, and 111 to the specific matters to which the High Court is to have regard in certain classes of cases shall not affect the Court's general obligation in any case to have regard to all relevant considerations.

PART VIII

RIGHTS IN PERFORMANCE

113. Conferment of rights in performance.

(1) Subject to this Part

(a) a performer shall have the exclusive right to authorise the exploitation of his or her performance; and

(b) a person who has recording rights in relation to a performance, shall have the exclusive right to prevent any person, without his or her consent from making a recording of that performance.

(2) The rights conferred by this Part are independent of

(a) any copyright in or moral rights relating to any work used or performed in the performance; and

(b) any other right or obligation arising otherwise than under this Part.

114. Qualification for protection of rights in performances.

The provisions of this Act on the protection of performers shall apply to

(a) performances fixed in audio-visual media or unfixed performances as regards their fixation in audio-visual media, performers who are nationals of, or have their habitual residence in, Saint Christopher and Nevis or a specified country;

(b) unfixed performances and performances fixed in audio media, without a visual component, performers whose performances

(i) take place on the territory of Saint Christopher and Nevis or a specified country;

(ii) are incorporated in sound recordings that are protected under this Act; or

(iii) have not been fixed in a sound recording, but are included in broadcasts qualifying for protection under this Act.

Performers' Rights

115. Rights of performers.

(1) A performer shall have the exclusive right to carry out or to authorise any of the following acts with respect to his or her performance:

(a) the showing or playing of a recording of his or her performance in public;

(b) the communication to the public of his or her performance whether fixed or unfixed, including the making available to the public of his or her fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them, except where the communication

(i) is made from a fixation of the performance which the performer has authorised to be made; or

(ii) is a rebroadcasting made or authorised by the organisation initially broadcasting the performance;

(c) the fixation of his or her unfixed performance;

(d) the direct or indirect reproduction of his or her performance whether fixed or unfixed, in any manner or form;

(e) the distribution of the original or copies of the fixation of his or her performance; and

(f) the rental of a fixation of his or her performance, or copies thereof even after distribution of them by, or pursuant to, authorisation by the performer.

(2) The right of distribution under section 115(1)(e) does not apply to the original or a copy of a fixation of his or her performance that has already been subject to a sale or other transfer of ownership in St Christopher and Nevis, authorised by the performer.

(3) Once the performer has authorised the incorporation of his or her performance in an audio-visual fixation, the performer shall in the absence of a contractual provision to the contrary, be deemed to have assigned the exclusive economic rights with respect to that fixation to the producer.

(4) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall have the right to claim to be identified as the performer of his or her performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of the performances that would be prejudicial to his or her reputation.

(5) Modifications consistent with the normal exploitation of a performance in the course of a use authorised by the performer shall not be considered prejudicial to the performer's reputation.

116. Consent and royalty adaptation of recording.

(1) A performer's rights are infringed by a person who, without his or her consent and payment of royalty at the prescribed rate, uses an original recording of a qualifying

performance whether authorised or not for the purpose of making an adaptation of the recording.

(2) In section 116(1), "an adaptation of the recording" means a recording in which the performance is accompanied by lyrics or music not contained in the original recording.

117. Infringement of performers' rights via illicit copies.

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

(a) imports into Saint Christopher and Nevis, otherwise than for his or her private and domestic use; or

(b) in the course of a business, possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes;

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

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

(3) In section 117(2), "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

118. Equitable Remuneration.

(1) Where any published sound recording or audio-visual work, the original sound recording or audio-visual work of which it was lawfully made in Saint Christopher and Nevis or a specified country, is used

(a) by way of being published for commercial purposes; or

(b) by way of communication to the public;

the user of the sound recording or audio-visual work shall pay to the performer of the sound recording or audio-visual work a single equitable remuneration.

(2) When more than one performer is entitled to share in the single equitable remuneration paid subject to section 118(1), the amount paid to each performer shall be divided equally among those performers or in the manner and shares agreed among the performers.

(3) The single equitable remuneration paid by the user to the performer under section 118(1) shall be fixed, in default of agreement, by the Court.

(4) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication.

(5) For the purposes of this section, sound recordings or audio-visual works that have been made available to the public by wire or wireless means in such a way that members

of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

119. Consent required for recording of performance.

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

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

120. Infringement of recording rights by use of recording.

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

(a) he or she shows or plays in public the whole or any substantial part of the performance; or

(b) he or she communicates to the public the whole or any substantial part of the performance;

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

(2) The reference in section 120(1) to the "appropriate consent" is to the consent of the person who at the time the consent was given had recording rights in relation to the performance or, if there was more than one such person, of all of them.

121. Infringement of recording rights via illicit copies.

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

(a) imports into Saint Christopher and Nevis otherwise than for his or her private and domestic use; or

(b) in the course of a business, possesses, sells or lets for hire, offers or exposes for sale or hire or distributes;

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

(2) Where, in an action for infringement of the rights referred to in section 121(1), a defendant shows that the illicit recording was innocently acquired by him or her or a predecessor in title of his or her, the remedy in damages available against him or her in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

(3) In section 121(2), "innocently acquired" means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

122. Exceptions to infringement.

Notwithstanding the rights in performances conferred by this Part the exceptions found in Part VI equally apply to performers' rights where related rights is expressly mentioned.

Duration and Transmission of Rights in Performances

123. Duration of rights in performances.

The rights conferred by this Part in respect of a performance shall exist for seventy years from the end of the calendar year in which the performance was fixed.

124. Transmission of rights in performances.

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

(2) On the death of a person entitled to performers' rights

(a) the rights shall pass to that person as he or she may, by testamentary disposition, specifically direct; and

(b) if, or to the extent that there is no such direction, the rights shall be exercisable by his or her personal representative.

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

(4) Where by virtue of section 124(2)(a) a right becomes exercisable by more than one person, it shall be exercisable by each of them independently of the others.

(5) Sections 124(1), 124(2) and 124(3) shall be without prejudice to any rights conferred by this Act on a person who has been assigned the benefit of an exclusive recording contract or licence to make recordings of a performance.

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

125. Consent.

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

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

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

Remedies for Infringement of Rights in Performances

126. Infringement actionable as breach of duty.

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

(a) for an injunction to prevent the infringement or to prohibit the continuation of the infringement; or

(b) for recovery of damages for the infringement.

(2) The grant of an injunction under section 126(1) shall not deprive a person of any damages that may be awarded to him or her for loss sustained by him or her as a result of the infringement of his or her rights under this Part.

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

127. Order for delivery up of illicit recording in civil proceedings.

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

(2) An application referred to in section 127(1) shall not be made after the end of the period specified in section 136 of this Act, and the court shall not make an order under this section unless it also makes an order under section 135 of this Act for the disposal of the recording or it is of the opinion that there are grounds on which an order under that section could be made.

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

Offences

128. Criminal liability related to illicit recordings.

(1) A person or entity who, without consent,

(a) makes for sale or hire;

(b) imports into Saint Christopher and Nevis otherwise than for his or her private and domestic use;

(c) possesses in the course of a business with a view to doing any act infringing the rights conferred by this Part; or

(d) in the course of a business

(i) sells or lets for hire;

(ii) offers or exposes for sale or hire; or

(iii) distributes;

a recording which is, and which he or she knows or has reason to believe is, an illicit recording commits an offence, and shall be liable, on summary conviction, to a fine not

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

(2) A person or entity

(a) commits an offence if they cause a recording of a performance that was made without consent to be shown or played in public, or to be communicated to the public so as to infringe any of the rights conferred by this Part, provided that they knew or had reason to believe that those rights are infringed

(b) who commits the offence under section 128(2)(a) shall be liable:

(i) on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years, or both;

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

(3) In sections 128(1) and 128(2), the expression "consent" means,

(a) in the case of a qualifying performance that is not subject to an exclusive recording contract, the consent of the performer; and

(b) in the case of a performance that is subject to an exclusive recording contract, the consent of the person having recording rights.

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

(5) No offence is committed under section 128(1) or 128(2) by doing an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.

129. Order for delivery up of illicit recording in criminal proceedings.

(1) Where a person or entity is brought before the Court for an offence under section 128, the Court may order that any illicit recordings of the performance be delivered up to a person having performer's rights or recording rights in the performance or to such other person as the court may direct, if the Court is satisfied that at the time of the arrest or charge, the person or entity had the illicit recording of a performance in his or her possession, custody or control in the course of business.

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

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

(a) after the end of the period specified in section 136 of this Act; or

(b) if it appears to the court unlikely that any order will be made under section 133 of this Act.

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

(5) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 135.

130. False representation of authority to give consent.

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

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

PART IX

TECHNOLOGICAL PROTECTION MEASURES AND RIGHTS MANAGEMENT INFORMATION

131. Infringement of technological protection measures.

(1) It is an infringement of copyright and rights in performance to

(a) circumvent effective technological protection measures; or

(b) produce, import, distribute, sell, rent, advertise for sale or rental, or possess devices, products, components or services for commercial purposes that

(i) are promoted, advertised or marketed for the purpose of circumventing effective technological protection measures;

(ii) have only a limited commercially significant purpose or use other than to circumvent effective technological protection measures; or

(iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological protection measures.

(2) Notwithstanding section 131(1), it is not an infringement of copyright or rights in performance to circumvent technological protection measures where undertaking acts permitted by any exceptions or limitations contained in this Act.

(3) For the purposes of this section, technological protection measures are "effective" where the use of a work or right in performance protected under this Act is controlled by the owner of copyright through application of an access control or protection process – such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism – which, in the normal course of its operation, achieves the protection objective.

132. Technological protection measures offence.

A person who produces, imports, distributes, sells, rents, advertises for sale or rental, a technological protection measure circumvention device commits an offence, and shall be liable, on summary conviction, to a fine not exceeding fifty thousand dollars or imprisonment for a term not exceeding two years or both, or on conviction on indictment, to a fine of

two hundred and fifty thousand dollars or imprisonment for a term not exceeding five years, or both.

133. Infringements of right management information.

(1) It is an infringement of copyright and rights in performance to

(a) remove or alter any electronic rights management information without the consent of the owner of copyright or the holder of rights in performance, or

(b) distribute, import for distribution, or communicate to the public works or other subject-matter protected under this Act from which electronic copyright management information has been removed or altered without the authorisation of the right owner when such act will induce, enable, facilitate or conceal an infringement of any right covered by this Act.

(2) Any copy of a work or performance referred to in section 133(1), constitutes an infringing copy for the purposes of this Act.

(3) Section 133(1) does not prohibit any governmental activities for public policy or security authorised by law.

PART X

GENERAL

134. Voluntary registration of copyright.

(1) The Intellectual Property Office may keep a voluntary register of copyright and related rights, whether electronically or otherwise, containing

(a) the names or titles of works in which copyright or related rights is presumed to subsist;

(b) the names and addresses of authors, owners and publishers of the copyright and related rights;

(c) the names and addresses of assignees, licencees and any person who an interest in the copyright or related rights has been granted to; and

(d) any other particulars as may be prescribed by the Minister.

(2) Any author or owner or his or her agent may make an application to register a work in which it is presumed that copyright or related rights subsists.

(3) An application made pursuant to section 134(2) must contain

(a) the name and address of the author of the work and if the author is dead, the date of the author's death;

(b) the name and address of the owner of the work;

(c) the title of the work;

(d) a description of the work;

(e) where relevant, the date and place of first publication and the publisher;

(f) where relevant, any interests, licences or assignments related to the work; and

(g) a declaration that the information provided is true to the knowledge of the applicant.

(4) Subsequent to the receipt of an application to register a copyright or related rights work, the Intellectual Property Office may conduct an inquiry before registering the work.

(5) The Intellectual Property Office shall grant a certificate of registration for an application that meets all the requirements of this section and such certificate of registration shall be

(a) presumed authentic in the absence of evidence to the contrary; and

(b) admissible as evidence in any legal proceedings.

(6) The Intellectual Property Office may amend, alter or remove the registration of any work

(a) to correct any errors;

(b) to record any interests granted, licences or assignments of the work;

(c) to record the death of the author;

(d) to remove the registration where it becomes known that the registration was obtained by fraud or other malfeasance; or

(e) if requested by the applicant.

(7) The Intellectual Property Office may refuse to amend, alter or remove the registration of any work where

(a) doing so will adversely affect any other person with an interest in the work; or

(b) it would be improper to amend, alter or remove the work in the absence of some legal requirement to do so.

(8) The Intellectual Property Office shall make the register of copyright and related rights available to the public whether by electronic or other means.

(9) The register of copyright and related rights shall be published and updated from time to time.

(10) Where a person fraudulently or without consent applies for the registration of copyright or related rights on behalf of another person, and such application causes damage to the copyright author or owner, such damages shall be recoverable by an action in court.

(11) The non-registration of a copyright or related rights work shall not deprive a person of his or her rights under this Act in relation to the work.

(12) The Intellectual Property Office shall not be liable for any act or omission done in good faith in relation to any function exercised under this section.

(13) The Intellectual Property Office may charge fees for applications, requests or services under this section pursuant to the prescribed fee structure.

(14) The Minister may prescribe regulations governing the voluntary registration of copyright and related rights under this section, including prescribing the fee structure referred to in section 134(13).

135. Order for disposal of infringing copy or illicit recording.

(1) An application may be made to the Court for

(a) an order that an infringing copy or article delivered up in pursuance of an order under sections 32 and 48 of this Act shall be

(i) forfeited to the copyright owner; or

(ii) destroyed or otherwise dealt with as the court may direct;

(b) an order that an illicit recording of a performance delivered up in pursuance of an order made under section 127 or 129 of this Act shall be

(i) forfeited to the person having performer's rights or recording rights in relation to the performances as the court may direct; or

(ii) destroyed or otherwise dealt with as the court thinks fit; or

(c) a decision that no order under paragraph (a) or (b) of this subsection should be made.

(2) In considering what order, if any, should be made, the Court shall have regard to all the circumstances of the case and, in particular

(a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his or her interest;

(b) where the infringement relates to rights conferred under Part VIII of this Act, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) The Minister may, by regulations, make provision respecting the service of notice on persons having an interest in an infringing copy, or other articles, or an illicit recording, as the case may be, and the person shall be entitled

(a) to appear in proceedings for an order under this section whether or not he or she was served with notice; and

(b) to appeal against any order made, whether or not he or she appeared.

(4) An order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) Where there is more than one person interested in an infringing copy or other article, or as the case may be, an illicit recording the court shall make such order as it thinks just and may, in particular direct that the copy, article or recording be sold, or otherwise dealt with and the proceeds divided.

(6) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy, article, or recording, as the case may be, was before being delivered up or seized shall be entitled to its return.

(7) References in this section to a person having an interest in a copy or other article or a recording include any person in whose favour an order could be made in respect of the copy, article or, recording as the case may be, under this section.

136. Period after which remedy or delivery up not available.

(1) Subject to section 136(2), an application for an order under section 32 or 127 of this Act may not be made after the end of the period of six years from the date on which the infringing copy or article or, as the case may be, the illicit recording in question was made.

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

(a) is under a disability; or

(b) is prevented by fraud or concealment from discovering the facts entitling him or her to apply;

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

137. Time limit for prosecution.

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

138. Powers of the Police Force.

(1) Subject to section 138(3) and section 139, where a member of the Police Force of or above the rank of Inspector is satisfied that there is reasonable cause to believe that an offence against this Act will be committed, is being committed, or has been committed, he or she may give directions to any Constable authorising him or her to

(a) enter and search any premises or place;

(b) stop, board and search any vessel, other than a ship of war, or any aircraft, other than a military aircraft; or

(c) stop and search any vehicle, in which the constable reasonably suspects there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings;

(d) request any applicable copyright licences; and

(e) seize, remove or detain

(i) any article which appears to the Constable to be an infringing copy or an illicit recording or any other article which appears to him or her to be intended for use for making such copies or recordings;

(ii) anything which appears to him or her to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act; or

(f) prevent or cease any copyright offences that may take place or are taking place.

(2) An officer to whom directions are given under section 139 of this Act may, with such assistance as is necessary

(a) break open any outer or inner door of any place which he or she is authorised by this section to enter and search;

(b) forcibly board any vessel, aircraft or vehicle which he or she is authorised under this Act to stop, board and search;

(c) remove by force any person or thing obstructing him or her in the exercise of any power conferred on him or her by this Act;

(d) detain any person found in any place which he or she is authorised under this section to search until such place is searched;

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

(f) detain any vehicle which he or she is authorised under this Act to stop and search until it is searched.

(3) It shall be the duty of any officer in the execution of any directions given under section 138(1) to produce the instrument containing the directions to the owner or occupier of any premises, place, vessel or aircraft entered or vehicle stopped, pursuant to such directions if required by the owner or occupier to do so.

139. Restrictions on the entry and search of domestic premises.

A magistrate may, if he or she is satisfied by information on oath that there is reasonable grounds for suspecting that

(a) there is in any building, ship, boat, aircraft, vehicle, box, receptacle, or other structure or place, hereinafter called the "premises", any article which may be seized, removed or detained under any provision of this Act, or

(b) there is or will be the commission of any offence under this Act,

issue a warrant authorising a member of the Police Force not below the rank of Sergeant, with such assistance as may be necessary, to enter and search the premises and where relevant prevent or cease any copyright offences.

140. Powers of the Customs and Excise Department.

The Comptroller of Customs, for the purpose of enforcing section 50 of this Act or pursuant to any other statutory power or duty of Customs Officers, may give directions to any Customs Officer authorising him or her to stop, board and search any vessel, other than a ship of war, or any aircraft, other than a military aircraft, to seize, remove or detain

(a) any prohibited goods that are subject to a notice received from a copyright owner pursuant to section 50 of this Act;

(b) any article which appears to the Customs Officer to be an infringing copy or an illicit recording or any other article which appears to him or her to be intended for use for making such copies or recordings;

(c) anything which appears to him or her to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

141. Obstruction of members of the Police Force.

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

(a) wilfully obstructs a police officer in the exercise of his or her powers or the performance of his or her duties under this Act;

(b) wilfully fails to comply with any requirement properly made to him or her by the police officer; or

(c) without reasonable excuse, fails to give the police officer any other assistance which he or she may reasonably require to be performing his or her duties under this Act;

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

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

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

142. Offences by body corporate.

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

143. Power to apply provisions of Act to other countries.

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

(a) persons who are citizens or habitual residents of that country as they apply to persons who are citizens or habitual residents of Saint Christopher and Nevis;

(b) bodies incorporated or established under the laws of that country as they apply in relation to bodies incorporated or established under the laws of Saint Christopher and Nevis;

(c) literary, dramatic, musical or artistic works, sound recordings, audio-visual works and editions first published in that country as they apply in relation to such works, first published in Saint Christopher and Nevis;

(d) broadcasts made from or sent from that country as they apply in relation to broadcasts made from or sent from Saint Christopher and Nevis;

(e) performances taking place in that country or given by an individual who is a citizen or habitual resident of that country;

(f) performances incorporated in sound recordings or audio-visual works which are protected by Article 5 of the Rome Convention or the Beijing Treaty on Audiovisual Performances; or

(g) performances, not being fixed on a sound recording or audio-visual work that are carried by a broadcast which is protected by Article 6 of the Rome Convention, as they apply in relation to performances taken in Saint Christopher and Nevis or given by an individual who is a citizen or habitual resident of Saint Christopher and Nevis.

(2) An Order made under section 143(1) may apply to any provisions of this Act, in relation to any country,

(a) without exception or modification, or subject to such exceptions and modifications as may be specified in the order;

(b) generally or in relation to such classes of works or other classes of case as may be so specified.

(3) An Order shall not be made under section 143(1) in relation to any country unless

(a) the country is a Convention country; or

(b) a country as to which the Minister is satisfied that provision has been or will be made under its law in respect of the class of works or, as the case may be, the performances, to which the order relates, giving adequate protection to the owners of copyright under this Act or, as the case may be, to Saint Christopher and Nevis performances as defined in section 144(4) of the Act.

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

144. Denial of copyright or rights in performances.

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

(a) do not give adequate protection to Saint Christopher and Nevis works to which this section applies or to Saint Christopher and Nevis performances; or

(b) do not give adequate protection in the case of one or more classes of the works or performances;

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

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

(a) citizens or nationals of that country, not being at that time persons whose habitual residence is in Saint Christopher and Nevis or a specified country excluding the country concerned; or

(b) in the case of works, bodies incorporated or established under the laws of that country.

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

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

(a) "Saint Christopher and Nevis' performances" means

(i) performances given by individuals who are citizens or habitual residents of Saint Christopher and Nevis; or

(ii) performances that take place in Saint Christopher and Nevis; and

(b) "Saint Christopher and Nevis works" means works of which the author is a qualified person at the material time within the meaning of section 7(3) of this Act.

145. Protection of producers of sound recordings, audio-visual works and broadcasts of broadcasting organisation from convention countries.

As provided in sections 4 and 114 the provisions of this Act shall apply not only to works and performers, but also to producers of sound recordings, audio-visual works and broadcasting organisations that are eligible for protection in Saint Christopher and Nevis by virtue of and in accordance with any international convention or other international agreement to which Saint Christopher and Nevis is party.

146. International organisations.

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

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

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

(b) the work was made in such circumstances that, if it had been first published in Saint Christopher and Nevis, the organisation would have been entitled to the copyright in the work, then, copyright shall subsist in the work by virtue of this section and the organisation shall be first owner of that copyright.

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

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

147. Territorial waters and exclusive economic zone.

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

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

(3) In this section

(a) "exclusive economic zone" means the exclusive economic zone of Saint Christopher and Nevis as described in sections 8 and 9 of the Maritime Areas Act, Cap. 7.03;

(b) "territorial sea" means the territorial sea of Saint Christopher and Nevis as described in section 3 of the Maritime Areas Act.

148. Act applies to ships, aircraft registered in Saint Christopher and Nevis.

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

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

149. Regulations.

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

(a) prescribing anything that this Act authorises or requires to be prescribed;

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

150. Transitional provisions.

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

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

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

(4) Proceedings under this Act for infringement may be taken notwithstanding that the alleged infringement occurred before the date this Act came into effect.

151. Savings.

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

152. Act binds Crown.

This Act shall bind the Crown.

153. Repeal .

(1) Subject to sections 153(2) and (3), and section 150 of this Act, the Copyright Act, 1956 of the United Kingdom and any Order-in-Council and subsidiary legislation made under that Act, in so far as they are part of the laws of Saint Christopher and Nevis shall cease to apply to Saint Christopher and Nevis.

(2) The Copyright Act, Cap. 18.08 is hereby repealed.

(3) Where immediately prior to the date this Act came into effect, copyright subsists in Saint Christopher and Nevis in any literacy, dramatic, musical or artistic work by virtue of any copyright legislation referred to in sections 153(1) or 153(2), that copyright shall continue to subsist, and the person entitled to the copyright by virtue of that Act shall be the owner of the copyright, under and subject to this Act, and, in particular,

(a) the duration of the copyright;

(b) the acts comprised within the exclusive rights attaching to the copyright; and

(c) the effect upon the ownership of the copyright of any event or transaction occurring or of any contract or agreement made on or after the date this Act came into effect;

shall be governed by this Act.

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

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

154. Repeal of Copyright (Specified Countries) Order.

The Copyright (Specified Countries) Order 2018 is repealed.

LATOYA JONES
Deputy Speaker

Passed by the National Assembly this 10th day of May, 2024.

TREVLYN STAPLETON
Clerk of the National Assembly

GOVERNMENT PRINTERY
ST. KITTS, W. I.