



**Isle of Man**

*Ellan Vannin*

**AT 7 of 2014**

**COPYRIGHT ETC (AMENDMENT) ACT 2014**





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## COPYRIGHT ETC (AMENDMENT) ACT 2014

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**Isle of Man***Ellan Vannin*

## COPYRIGHT ETC (AMENDMENT) ACT 2014

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AN ACT to amend the law relating to copyright, design right and rights in performances.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### *Introductory*

#### **1 Short title**

The short title of this Act is the Copyright etc (Amendment) Act 2014.

#### **2 Commencement**

- (1) This Act, except section 1 and this section, comes into operation on such day or days as the Department of Economic Development may by order appoint.
- (2) An order under subsection (1) may include such supplemental, incidental, consequential and transitional provision as appears to the Department to be necessary or expedient for the purposes of the order.

### *Copyright*

#### **3 Increase in maximum penalties**

- (1) In section 106(4)(a) and (4A)(a) (making or dealing with infringing articles etc.) of the *Copyright Act 1991*, for "£5,000" substitute "£50,000".
- (2) In the following provisions of that Act, for "2 years" substitute "10 years" —

- (a) section 106(4)(b);
- (b) section 164A(1)(b) (unauthorised decoders).

#### 4 Forfeiture of infringing copies

After section 113 of the *Copyright Act 1991* insert —

##### **113A Forfeiture of infringing copies, etc.**

- (1) Where there have come into the possession of any person in connection with the investigation or prosecution of a relevant offence —
  - (a) infringing copies of a copyright work; or
  - (b) articles specifically designed or adapted for making copies of a particular copyright work,that person may apply under this section for an order for the forfeiture of the infringing copies or articles.
- (2) For the purposes of this section “**relevant offence**” means —
  - (a) an offence under section 106(1), (2) or (2A) (criminal liability for making or dealing with infringing articles, etc.);
  - (b) an offence under the *Consumer Protection (Trade Descriptions) Act 1970*; or
  - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made —
  - (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the infringing copies or articles, to that court; or
  - (b) where no application for the forfeiture of the infringing copies or articles has been made under paragraph (a), by way of complaint to a court of summary jurisdiction.
- (4) On an application under this section, the court shall make an order for the forfeiture of any infringing copies or articles only if it is satisfied that a relevant offence has been committed in relation to the infringing copies or articles.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any infringing copies or articles if it is satisfied that such an offence has been committed in relation to infringing copies or articles which are representative of the infringing copies or articles in question (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

- (6) Any person aggrieved by an order made under this section by a court of summary jurisdiction, or by a decision of such a court not to make such an order, may appeal against that order or decision to the High Court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 109 of the *Summary Jurisdiction Act 1989* (statement of case)).
- (8) Subject to subsection (9), where any infringing copies or articles are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the infringing copies or articles to which the order relates shall (instead of being destroyed) be forfeited to the owner of the copyright in question or dealt with in such other way as the court considers appropriate. **22**.

## 5 Exploitation of design derived from artistic work

The following provisions of the *Copyright Act 1991* are repealed —

- (a) section 52 (effect of exploitation of design derived from artistic work);
- (b) section 79(4)(g);
- (c) in Schedule 1, paragraph 19.

## 6 Infringement: exception

In section 53 of the *Copyright Act 1991* (permitted acts in relation to copyright works: things done in reliance on registration of design) —

- (a) in subsection (1) —
  - (i) in paragraph (a), after **63** corresponding design **22** insert **64**, or under the Community Design Regulation as the right holder of a corresponding registered Community design **22**;
  - (ii) in paragraph (b), after **64** the registration or **22** insert **64**, in a case of registration under the 1949 Act, **22**;
  - (iii) at the end insert **64** or, in a case of registration under the Community Design Regulation, that the person registered as the right holder was not the right holder of the design for the purposes of the Regulation **22**;
- (b) after subsection (2) insert —

**64** (3) In subsection (1), a “**corresponding registered Community design**”, in relation to an artistic work, means a design within the

meaning of the Community Design Regulation which if applied to an article would produce something which would be treated for the purposes of this Act as a copy of the artistic work.

- (4) In this section, “**the Community Design Regulation**” means Council Regulation (EC) 6/2002 of 12 December 2001 on Community design (OJ 2002 L3/1, 5/1/2002). **22**.

## 7 Tribunal: procedural rules

- (1) For the heading to section 145 of the *Copyright Act 1991* substitute —

### **145 Procedural rules** **22**.

- (2) For subsection (1) of that section substitute —

**145** (1) In this section “**the rules**” means rules made under section 8 of the *Tribunals Act 2006* regulating the practice and procedure of the Tribunal. **22**.

- (3) In section 147(2) and (3) of that Act, for **145** rules under section 145 **22** and **145** rules under that section **22** substitute **145** rules referred to in section 145(1) **22**.

- (4) In section 176 of that Act, at the end insert —

**145** (5) Subsection (3) applies to rules referred to in section 145(1) as it applies to subordinate legislation made under any provision of this Act. **22**.

- (5) In section 35(2) of the *Design Right Act 1991*, for **145** Rules under the said section 145 **22** substitute **145** Rules referred to in subsection (1) of the said section 145 **22**.

- (6) In section 11(3) of the *Performers’ Protection Act 1996*, for **145** section 145 of the *Copyright Act 1991* **22** substitute **145** section 8 of the *Tribunals Act 2006* **22**.

- (7) In section 18(3) of the *Copyright (Amendment) Act 1999*, for **145** section 145 of the *Copyright Act 1991* **22** substitute **145** section 8 of the *Tribunals Act 2006* **22**.

- (8) Nothing in subsections (1) to (7) affects rules made under section 145 of the *Copyright Act 1991* and in force immediately before the coming into operation of this section, but any such rules may be amended or revoked by rules made under section 8 of the *Tribunals Act 2006*.

## 8 Duration of copyright: transitional cases

Section 167 of the *Copyright Act 1991* is amended as follows —

- (a) at the beginning insert **145**(1) **22**;
- (b) at the end insert —



- (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (6) The regulations may apply to a work although it is not known whether copyright subsists in it, and references to a missing owner and a right or interest of a missing owner are to be read as including references to a supposed owner and a supposed right or interest.

### **114B Extended collective licensing**

- (1) The Department may by regulations provide for a licensing body specified in or determined in accordance with the regulations to be authorised to grant copyright licences in respect of works in which copyright is not owned by the body or a person on whose behalf the body acts.
- (2) An authorisation must specify —
- (a) the types of work to which it applies; and
  - (b) the acts restricted by copyright that the licensing body is authorised to license.
- (3) The regulations must provide for the copyright owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.
- (5) In this section “**copyright licences**” has the same meaning as in section 114.
- (6) Nothing in this section applies in relation to Crown copyright or Tynwald copyright.

### **114C General provision about licensing under sections 114A and 114B**

- (1) This section and section 114D apply to regulations under sections 114A and 114B.
- (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.
- (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.

- (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including —
  - (a) the deduction of administrative costs;
  - (b) the period for which sums must be held;
  - (c) the treatment of sums after that period (as *bona vacantia* or otherwise).
- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.
- (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision —
  - (a) for determining the rights and obligations of any person if a work ceases to qualify as an orphan work (or ceases to qualify by reference to any copyright owner), or if a rights owner exercises the right referred to in section 114B(3), while a licence is in force;
  - (b) about maintenance of registers and access to them;
  - (c) permitting the use of a work for incidental purposes including an application or search;
  - (d) for a right conferred by section 77 to be treated as having been asserted in accordance with section 78;
  - (e) for the payment of fees to cover administrative expenses.

#### 114D Regulations under sections 114A and 114B

- (1) The power to make regulations includes power —
  - (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Tribunal or conferring powers on it;
  - (b) to make transitional, transitory or saving provision;
  - (c) to make different provision for different purposes.
- (2) Regulations under any provision may amend this Act, or any other statutory provision made before that provision comes into operation, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Tribunal or conferring powers on it.
- (3) Regulations may make provision by reference to guidance issued from time to time by any person. 

## 10 Recognition of foreign copyright works

- (1) In section 149(1) of the *Copyright Act 1991* (qualification by reference to author) —
- (a) in paragraph (a), after “a British citizen,” insert **“a national of another EEA state,”**;
- (b) for paragraph (b) substitute —
- “(b) an individual domiciled or resident in the Island, the United Kingdom or another EEA state or in the Channel Islands or Gibraltar or in another country to which the relevant provisions of Part I of the Copyright, Designs and Patents Act 1988 (an Act of Parliament) extend, or; and**
- (c) for paragraph (c) substitute —
- “(c) a body incorporated under the law of the Island, a part of the United Kingdom or another EEA state or of the Channel Islands or Gibraltar or of another country to which the relevant provisions of the said Part I extend.”**
- (2) In section 150(1) of that Act (qualification by reference to country of first publication), after “the Island” insert—
- “, the United Kingdom, another EEA state, the Channel Islands or Gibraltar or another country to which the relevant provisions of Part I of the Copyright, Designs and Patents Act 1988 (an Act of Parliament) extend.”**
- (3) In section 151(1) of that Act (qualification by reference to place of transmission), after “the Island” insert —
- “, the United Kingdom, another EEA state, the Channel Islands or Gibraltar or another country to which the relevant provisions of Part I of the Copyright, Designs and Patents Act 1988 (an Act of Parliament) extend.”**
- (4) For section 152 of that Act substitute—

### **152 Application of this Act in relation to other countries**

- (1) Where a country is a party to any act of the Berne Convention or a member of the World Trade Organisation, this Act, so far as it relates to literary, dramatic, musical and artistic works, films and typographical arrangements of published editions —
- (a) applies in relation to a citizen or subject of that country or a person domiciled or resident there as it applies in relation to a person who is a British citizen or is domiciled or resident in the Island;

- (b) applies in relation to a body incorporated under the law of that country as it applies in relation to a body incorporated under the law of the Island; and
  - (c) applies in relation to a work first published in that country as it applies in relation to a work first published in the Island.
- (2) Where a country is a party to the Rome Convention, this Act, so far as it relates to sound recordings and broadcasts —
  - (a) applies in relation to that country as mentioned in paragraphs (a), (b) and (c) of subsection (1); and
  - (b) applies in relation to a broadcast made from that country as it applies to a broadcast made from the Island.
- (3) Where a country is a party to the WPPT, this Act, so far as relating to sound recordings, applies in relation to that country as mentioned in paragraphs (a), (b) and (c) of subsection (1).
- (4) The Council of Ministers may by order —
  - (a) make provision for the application of this Act to a country by subsection (1), (2) or (3) to be subject to specified restrictions;
  - (b) make provision for applying this Act, or any of its provisions, to a specified country;
  - (c) make provision for applying this Part, or any of its provisions, to any country of a specified description;
  - (d) make provision for the application of legislation to a country under paragraph (b) or (c) to be subject to specified restrictions.
- (5) Provision made under subsection (4) may apply generally or in relation to such classes of works, or other classes of case, as are specified.
- (6) The Council of Ministers may not make an order containing provision under subsection (4)(b) or (c) unless satisfied that provision has been or will be made under the law of the country or countries in question, in respect of the classes to which the provision under subsection (4)(b) or (c) relates, giving adequate protection to the owners of copyright under this Act.
- (7) Application under subsection (4)(b) or (c) is in addition to application by subsections (1) to (3).
- (8) Provision made under subsection (4)(c) may cover countries that become (or again become) of the specified description after the provision comes into force.
- (9) In this section—

“**the Berne Convention**” means the Berne Convention for the Protection of Literary and Artistic Works signed at Berne on 9 September 1886;

“**the Rome Convention**” means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961;

“**the WPPT**” means the World Intellectual Property Organisation Performances and Phonograms Treaty adopted in Geneva on 20 December 1996. **22**.

### *Publication right*

## 11 Publication right

Schedule 1 has effect for the purpose of creating a right analogous to copyright in certain previously unpublished works.

### *Design right*

## 12 Meaning of “design” and “original”

(1) In section 1 of the *Design Right Act 1991* (design right: meaning of “design”) —

- (a) in subsection (2), omit **23** any aspect of **22**;
- (b) in subsection (4) —
  - (i) after “commonplace” insert **23** in a qualifying country **22**, and
  - (ii) at the end insert —
    - 23**; and

“**qualifying country**” has the meaning given in section 5(2) **22**.

(2) Subsection (1)(b) applies only to designs created after the commencement of that subsection.

(3) In section 51(3) of the Copyright Act 1991 (copyright infringement: exception for certain designs), in the definition of “design”, omit **23** any aspect of **22**.

## 13 Ownership of design

(1) In section 1(5)(a) of the *Design Right Act 1991* (person by reference to whom design qualifies for design right), for “the design was commissioned or the designer employed” substitute **23** the designer was employed **22**.

(2) In section 3 of that Act (ownership of design right) —

- (a) in subsection (1), omit **“in pursuance of a commission or”**;
  - (b) omit subsection (2); and
  - (c) in subsection (3), omit **“**, in a case not falling within subsection (2) **”**.
- (3) In section 6(1) of that Act (design qualifies for design right by reference to designer), omit **“in pursuance of a commission or”**.
- (4) In section 7 of that Act (qualification by reference to commissioner or employer) —
- (a) in the heading, omit **“commissioner or”**;
  - (b) in subsection (1), for “in pursuance of a commission from, or in the course of employment with,” substitute **“in the course of employment with”**;
  - (c) in subsection (2), omit **“a joint commission or”** and **“commissioners or”**;
  - (d) in subsection (3), omit **“jointly commissioned or”**, **“commissioners or”** and **“commissioner or”**, and for **“3(2) or (3)”** substitute **“3(3)”**.
- (5) In section 8 of that Act (qualification by reference to first marketing) —
- (a) in subsection (1), omit **“, commissioner”**;
  - (b) in subsection (4)(a), omit **“, commissioner of the design”**.
- (6) In section 47 of that Act (definitions) —
- (a) in the definition of “**Manx design**”, omit **“the design is commissioned or”**; and
  - (b) omit the definition of “**commission**”.
- (7) In section 48 of that Act (index of defined expressions), omit the entry for “**commission**”.
- (8) This section does not apply to —
- (a) any design created before the commencement of this section; or
  - (b) any design created after the commencement of this section in pursuance of a commission (irrespective of whether the design was commissioned before or after that commencement) provided that —
    - (i) the designer and the commissioner of the design have entered into a contract relating to the commission of the design, and
    - (ii) the contract was entered into before that commencement.

## 14 Qualification criteria

- (1) In section 5 of the *Design Right Act 1991* (qualifying individuals and qualifying persons) —
- (a) in subsection (1) —
- (i) omit the definition of “**qualifying individual**”; and
- (ii) for the definition of “**qualifying person**” substitute —
- | **“qualifying person”** means —
- (a) an individual habitually resident in a qualifying country, or
- (b) a body corporate or other body having legal personality which —
- (i) is formed under the law of the Island or another qualifying country; and
- (ii) has in any qualifying country a place of business at which substantial business activity is carried on. **”**;
- (b) omit subsection (3).
- (2) In section 6 of that Act (qualification by reference to designer) —
- (a) in subsection (2), omit **“a qualifying individual or, in the case of a computer-generated design, ”**;
- (b) in subsection (3), omit **“a qualifying individual or, as the case may be, ”**; and
- (c) in subsection (4), omit **“qualifying individuals or ”**.
- (3) In section 8 of that Act (qualification by reference to first marketing) —
- (a) in subsection (1)(a), omit “who is exclusively authorised to put such articles on the market in the Island”;
- (b) in subsection (2), for “requirements” substitute “requirement”;
- (c) in subsection (3), for “those requirements” substitute “that requirement”; and
- (d) omit subsection (4).
- (4) In section 48 of that Act (index of defined expressions), omit the entry for “**qualifying individual**”.
- (5) This section applies only to designs created after the commencement of this section.

## 15 Infringement: exceptions

After section 30 of the *Design Right Act 1991* insert —

**Ⓒ** *Miscellaneous***30A Exception for private acts, experiments and teaching**

Design right is not infringed by —

- (a) an act which is done privately and for purposes which are not commercial;
- (b) an act which is done for experimental purposes; or
- (c) an act of reproduction for teaching purposes or for the purpose of making citations provided that —
  - (i) the act of reproduction is compatible with fair trade practice and does not unduly prejudice the normal exploitation of the design; and
  - (ii) mention is made of the source.

**30B Exception for overseas ships and aircraft**

Design right is not infringed by —

- (a) the use of equipment on ships or aircraft which are registered in another country but which are temporarily in the Island;
- (b) the importation into the Island of spare parts or accessories for the purpose of repairing such ships or aircraft; or
- (c) the carrying out of repairs on such ships or aircraft. **Ⓒ**

*Rights in performances***16 Increase in maximum penalties**

- (1) In section 19(5)(a) and (5A)(a) (making or dealing with illicit recordings etc.) of the *Performers' Protection Act 1996*, for “£5,000” substitute **Ⓒ** £50,000 **Ⓒ**.
- (2) In section 19(5)(b) of that Act, for “2 years” substitute **Ⓒ** 10 years **Ⓒ**.

**17 Forfeiture of illicit recordings**

After section 26 of the *Performers' Protection Act 1996* insert —

**Ⓒ 26ZA Forfeiture of illicit recordings**

- (1) Where illicit recordings of a performance have come into the possession of any person in connection with the investigation or prosecution of a relevant offence, that person may apply under this section for an order for the forfeiture of the illicit recordings.

- (2) For the purposes of this section “**relevant offence**” means —
- (a) an offence under section 19(1) or (1A) (criminal liability for making or dealing with illicit recordings);
  - (b) an offence under *the Consumer Protection (Trade Descriptions) Act 1970*; or
  - (c) an offence involving dishonesty or deception.
- (3) An application under this section may be made —
- (a) where proceedings have been brought in any court for a relevant offence relating to some or all of the illicit recordings, to that court; or
  - (b) where no application for the forfeiture of the illicit recordings has been made under paragraph (a), by way of complaint to a court of summary jurisdiction.
- (4) On an application under this section, the court shall make an order for the forfeiture of any illicit recordings only if it is satisfied that a relevant offence has been committed in relation to the illicit recordings.
- (5) A court may infer for the purposes of this section that such an offence has been committed in relation to any illicit recordings if it is satisfied that such an offence has been committed in relation to illicit recordings which are representative of the illicit recordings in question (whether by reason of being part of the same consignment or batch or otherwise).
- (6) Any person aggrieved by an order made under this section by a court of summary jurisdiction, or by a decision of such a court not to make such an order, may appeal against that order or decision to the High Court.
- (7) An order under this section may contain such provision as appears to the court to be appropriate for delaying the coming into force of the order pending the making and determination of any appeal (including any application under section 109 of the *Summary Jurisdiction Act 1989* (statement of case)).
- (8) Subject to subsection (9), where any illicit recordings are forfeited under this section they shall be destroyed in accordance with such directions as the court may give.
- (9) On making an order under this section the court may direct that the illicit recordings to which the order relates shall (instead of being destroyed) be forfeited to the person having the performers’ rights or recording rights in question or dealt with in such other way as the court considers appropriate. .

**18 Performers' moral rights**

- (1) After section 26B of the *Performers' Protection Act 1996* insert the provisions set out in Part 1 of Schedule 2.
- (2) That Act is further amended in accordance with Part 2 of Schedule 2.
- (3) The rights conferred by sections 26C to 26H of that Act (inserted by this section) do not apply in relation to any performance that took place before the coming into operation of this section.

**19 Licensing of performers' rights**

- (1) Schedule 1A to the *Performers' Protection Act 1996* (licensing of performers' property rights) is amended as follows.
- (2) In the heading omit **PROPERTY**.
- (3) After paragraph 1 insert —

**Power to provide for licensing of orphan rights**

- 1A (1) The Department may by regulations provide for the grant of licences to do, or authorise the doing of, acts to which section 3, 3A, 3B, 3C, 3D, 4 or 5 applies in respect of a performance, where —
- (a) the performer's consent would otherwise be required under that section; but
  - (b) the right to authorise or prohibit the act qualifies as an orphan right under the regulations.
- (2) The regulations may —
- (a) authorise a person or a description of persons specified, or determined in accordance with, the regulations to grant licences; or
  - (b) provide for a person designated, or determined in accordance with, the regulations to specify a person or a description of persons authorised to grant licences.
- (3) The regulations must provide that, for a right to qualify as an orphan right, it is a requirement that the owner of the right has not been found after a diligent search made in accordance with the regulations.
- (4) The regulations must provide for any licence —
- (a) to have effect as if granted by the missing owner;
  - (b) not to give exclusive rights;
  - (c) not to be granted to a person authorised to grant licences.
- (5) The regulations may apply in a case where it is not known whether a performer's right subsists, and references to a right, to a

missing owner and to an interest of a missing owner are to be read as including references to a supposed right, owner or interest.

*Extended collective licensing*

1B (1) The Department may by regulations provide for a licensing body specified in or determined in accordance with the regulations to be authorised to grant licences to do, or authorise the doing of, acts to which section 3, 3A, 3B, 3C, 3D, 4 or 5 applies in respect of a performance, where the right to authorise or prohibit the act is not owned by the body or a person on whose behalf the body acts.

- (2) An authorisation must specify the acts to which any of those sections applies that the licensing body is authorised to license.
- (3) The regulations must provide for the rights owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.

*General provision about licensing*

1C (1) This paragraph and paragraph 1D apply to regulations under paragraphs 1A and 1B.

- (2) The regulations may provide for a body to be or remain authorised to grant licences only if specified requirements are met, and for a question whether they are met to be determined by a person, and in a manner, specified in the regulations.
- (3) The regulations may specify other matters to be taken into account in any decision to be made under the regulations as to whether to authorise a person to grant licences.
- (4) The regulations must provide for the treatment of any royalties or other sums paid in respect of a licence, including —
  - (a) the deduction of administrative costs;
  - (b) the period for which sums must be held;
  - (c) the treatment of sums after that period (as *bona vacantia* or otherwise).
- (5) The regulations must provide for circumstances in which an authorisation to grant licences may be withdrawn, and for determining the rights and obligations of any person if an authorisation is withdrawn.

- (6) The regulations may include other provision for the purposes of authorisation and licensing, including in particular provision —
- (a) for determining the rights and obligations of any person if a right ceases to qualify as an orphan right (or ceases to qualify by reference to any rights owner), or if a rights owner exercises the right referred to in paragraph 1B(3), while a licence is in force;
  - (b) about maintenance of registers and access to them;
  - (c) permitting the use of a work for incidental purposes including an application or search;
  - (d) for a right conferred by section 26C to be treated as having been asserted under section 26D;
  - (e) for the payment of fees to cover administrative expenses.
- 1D (1) The power to make regulations includes power —
- (a) to make incidental, supplementary or consequential provision, including provision extending or restricting the jurisdiction of the Tribunal or conferring powers on it;
  - (b) to make transitional, transitory or saving provision;
  - (c) to make different provision for different purposes.
- (2) Regulations under any provision may amend this Act, or any statutory provision made before that provision comes into operation, for the purpose of making consequential provision or extending or restricting the jurisdiction of the Tribunal or conferring powers on it.
- (3) Regulations may make provision by reference to guidance issued from time to time by any person. ~~22~~.
- (4) In section 26A of that Act, and in the heading to that section, omit ~~23~~ property ~~22~~.

## 20 Recognition of foreign performances

- (1) In section 27 of the *Performers' Protection Act 1996* (rights in performances: qualifying countries, etc.) —
- (a) in subsection (1), in the definition of “qualifying country”, for paragraph (b) substitute —
    - ~~23~~ (b) an EEA state (including the United Kingdom);
    - (ba) the Channel Islands or Gibraltar;
    - (bb) a country which is a party to the Rome Convention; or ~~22~~;
  - (b) after subsection (3) insert —
    - ~~24~~ (4) The Council of Ministers may by order —

- (a) make provision for the application of this Act to a country by virtue of paragraph (bb) or (c) of the definition of “qualifying country” in subsection (1) to be subject to specified restrictions;
  - (b) amend the definition of “qualifying country” in subsection (1) so as to add a country which is not a party to the Rome Convention;
  - (c) make provision for the application of this Act to a country added under paragraph (b) to be subject to specified restrictions.
- (5) In this section, “**the Rome Convention**” means the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations done at Rome on 26 October 1961. **22**.
- (2) In section 28(4) of that Act, omit “any of the Channel Islands or”.
- (3) After section 30 of that Act (and the following cross-heading) insert —

**23 30A Power to amend in consequence of changes to international law**

The Council of Ministers may by order amend this Act in consequence of changes to international law in the area of performance rights. **22**.

## SCHEDULE 1

[Section 11]

## PUBLICATION RIGHT

**1 Interpretation**

In this Schedule —

“**the Act**” means the *Copyright Act 1991*;

“**publication**” includes any communication to the public, in particular —

- (a) the issue of copies to the public;
- (b) making the work available by means of an electronic retrieval system;
- (c) the performance, exhibition or showing of the work in public; or
- (d) broadcasting the work;

“**publication right**” means the property right referred to in paragraph 2(1);

“**unauthorised act**”, in relation to a time when there is no copyright in a work, means an act done without the consent of the owner of the physical medium in which the work is embodied or on which it is recorded;

“**work**” means a literary, dramatic, musical or artistic work or a film; and other expressions have the same meanings as in the Act.

**2 Publication right**

- (1) A person who after the expiry of copyright protection, publishes for the first time a previously unpublished work has, in accordance with the following provisions, a property right equivalent to copyright.
- (2) No account shall be taken for this purpose of any unauthorised act.
- (3) No publication right arises from the publication of a work in which Crown copyright or Tynwald copyright subsisted.
- (4) Publication right expires at the end of the period of 25 years from the end of the calendar year in which the work was first published.

**3 Qualification for publication right**

- (1) Subject to any order under sub-paragraph (2), publication right does not subsist in a work unless —
  - (a) it is first published in the Island; and
  - (b) the publisher of the work is at the time of first publication a national of an EEA state.

Where two or more persons jointly publish the work, it is sufficient for the purposes of (b) if any of them is a national of an EEA state.

- (2) The Council of Ministers may by order make provision for applying in relation to a country outside the Island and specified in the order any of the provisions of this Schedule so specified, so as to secure that those provisions apply in relation to a work —
  - (a) first published in that country; or
  - (b) the publisher of which is at the time of first publication a national of that country or, in the case of a body corporate, incorporated under the law of that country.
- (3) An order under sub-paragraph (2) may —
  - (a) apply any provisions of this Schedule subject to such exceptions and modifications as are specified in the order; and
  - (b) direct that any provisions of this Schedule apply either generally or in relation to such classes of work, or other classes of case, as are specified in the order.
- (4) The Council of Ministers shall not make an order under subsection (2) in relation to a country (other than the United Kingdom or another EEA state) unless it is satisfied that provision has been or will be made under the law of that country in respect of works, giving adequate protection to the owners of publication right under this Schedule.

#### **4 Application of copyright provisions to publication right**

- (1) The substantive provisions of the Act relating to copyright (but not moral rights in copyright works), that is, the relevant provisions of —
  - (a) Part II (rights of copyright owner);
  - (b) Part III (acts permitted in relation to copyright works);
  - (c) Part V (dealings with rights in copyright works);
  - (d) Part VI (remedies for infringement); and
  - (e) Part VII (copyright licensing),apply in relation to publication right as in relation to copyright, subject to the following exceptions and modifications.
- (2) The following provisions do not apply —
  - (a) in Part III, sections 57, 64, 66A and 67;
  - (b) in Part VI, sections 103 to 105;
  - (c) in Part VII, section 114(4).
- (3) The following provisions have effect with the modifications indicated —
  - (a) in section 106(4) and (5) (offences of making or dealing in infringing articles, &c.), the maximum punishment on summary

conviction is custody for a term not exceeding 3 months or a fine not exceeding £5,000, or both;

- (b) in sections 114(2), 115 and 122 for **“works of more than one author”** substitute **“works of more than one publisher”**.
- (4) The other relevant provisions of the Act, that is –
- (a) in Part I, provisions defining expressions used generally in the Act;
  - (b) Part VIII (the Isle of Man Copyright Tribunal);
  - (c) in Part IX –
    - (i) section 154 (territorial waters), and
    - (ii) section 155 (Manx ships, aircraft and hovercraft); and
  - (d) in Part X –
    - (i) section 168(1) and (3) (savings for other rules of law, &c.), and
    - (ii) sections 169 to 175 (general interpretation provisions),
 apply, with any necessary adaptations, for the purposes of supplementing the substantive provisions of the Act as applied by this paragraph.
- (5) Except where the context otherwise requires, any other statutory provision relating to copyright (whether passed or made before or after this Schedule) applies in relation to publication right as in relation to copyright.

## **5 Circumvention of protection measures and rights management information**

The following provisions of the Act apply, with any necessary modifications, to publication right as they apply to copyright –

- (a) subsections (1) to (4) and (5)(b) of section 163ZA (circumvention of technological measures);
- (b) subsections (1) to (5), (6)(b) and (7) of section 163ZD (rights and remedies in respect of devices and services) of that Act;
- (c) section 163ZE (remedy where effective technological measures prevent permitted acts);
- (d) subsections (1) to (5) and (6)(b) of section 163ZG (rights management information); and
- (e) any other provision as it has effect for the purposes of the provisions mentioned in sub-paragraphs (a), (b) and (d).

**6 Presumptions relevant to works subject to publication right**

- (1) In proceedings brought by virtue of Part VI of the Act, as applied to publication right by paragraph 3, with respect to a work, where copies of the work as issued to the public bear a statement that a named person was the owner of publication right in the work at the date of issue of the copies, the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.
- (2) Sub-paragraph (1) does not apply to proceedings for an offence under section 106 of the Act as applied and modified by paragraph 4 in relation to publication right; but without prejudice to its application in proceedings for an order under section 107 of the Act as that section applies to publication right by virtue of paragraph 3.

**7 Transitional provision**

This Schedule applies to works first published after the date in which this Schedule comes into operation.

## SCHEDULE 2

[Section 18]

## PERFORMERS' MORAL RIGHTS

## PART 1 — NEW SECTIONS 26C TO 26N OF THE 1996 ACT

**26C** *Right to be identified as performer***26C Right to be identified as performer**

- (1) Whenever a person —
- (a) produces or puts on a qualifying performance that is given in public;
  - (b) broadcasts live a qualifying performance;
  - (c) communicates to the public a sound recording of a qualifying performance; or
  - (d) issues to the public copies of such a recording,
- the performer has the right to be identified as such.
- (2) The right of the performer under this section is —
- (a) in the case of a performance which is given in public, to be identified in any programme accompanying the performance or in some other manner likely to bring his identity to the notice of a person seeing or hearing the performance;
  - (b) in the case of a performance which is broadcast, to be identified in a manner likely to bring his identity to the notice of a person seeing or hearing the broadcast;
  - (c) in the case of a sound recording which is communicated to the public, to be identified in a manner likely to bring his identity to the notice of a person hearing the communication;
  - (d) in the case of a sound recording which is issued to the public, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy,
- or (in any of the above cases) to be identified in such other manner as may be agreed between the performer and the person mentioned in subsection (1).
- (3) The right conferred by this section in relation to a performance given by a group (or so much of a performance as is given by a group) is not infringed —

- (a) in a case falling within subsection (2)(a), (b) or (c); or
- (b) in a case falling within subsection (2)(d) in which it is not reasonably practicable for each member of the group to be identified,

if the group itself is identified as specified in subsection (2).

- (4) In this section “group” means two or more performers who have a particular name by which they may be identified collectively.
- (5) If the assertion under section 26D specifies a pseudonym, initials or some other particular form of identification, that form shall be used; otherwise any reasonable form of identification may be used.
- (6) This section has effect subject to section 26E (exceptions to right).

### **26D Requirement that right be asserted**

- (1) A person does not infringe the right conferred by section 26C (right to be identified as performer) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.
- (2) The right may be asserted generally, or in relation to any specified act or description of acts —
  - (a) by instrument in writing signed by or on behalf of the performer; or
  - (b) on an assignment of a performer's property rights, by including in the instrument effecting the assignment a statement that the performer asserts in relation to the performance his right to be identified.
- (3) The persons bound by an assertion of the right under subsection (2) are —
  - (a) in the case of an assertion under subsection (2)(a), anyone to whose notice the assertion is brought;
  - (b) in the case of an assertion under subsection (2)(b), the assignee and anyone claiming through him, whether or not he has notice of the assertion.
- (4) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

### **26E Exceptions to right**

- (1) The right conferred by section 26C (right to be identified as performer) is subject to the following exceptions.

- (2) The right does not apply where it is not reasonably practicable to identify the performer (or, where identification of a group is permitted by virtue of section 26C(3), the group).
- (3) The right does not apply in relation to any performance given for the purposes of reporting current events.
- (4) The right does not apply in relation to any performance given for the purposes of advertising any goods or services.
- (5) The right is not infringed by an act which by virtue of any of the following provisions of Schedule 1 would not infringe any of the rights conferred by sections 3 to 13 —
  - (a) paragraph 2(1A) (news reporting);
  - (b) paragraph 3 (incidental inclusion of a performance or recording);
  - (c) paragraph 4(2) (things done for the purposes of examination);
  - (d) paragraph 8 (Tynwald and judicial proceedings);
  - (e) paragraph 9 (commissions and statutory inquiries).

*Right to object to derogatory treatment*

**26F Right to object to derogatory treatment of performance**

- (1) The performer of a qualifying performance has a right which is infringed if —
  - (a) the performance is broadcast live; or
  - (b) by means of a sound recording the performance is played in public or communicated to the public,
 with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.
- (2) This section has effect subject to section 26G (exceptions to right).

**26G Exceptions to right**

- (1) The right conferred by section 26F (right to object to derogatory treatment of performance) is subject to the following exceptions.
- (2) The right does not apply in relation to any performance given for the purposes of reporting current events.
- (3) The right is not infringed by modifications made to a performance which are consistent with normal editorial or production practice.
- (4) Subject to subsection (5), the right is not infringed by anything done for the purpose of —

- (a) avoiding the commission of an offence;
- (b) complying with a duty imposed by or under an enactment; or
- (c) in the case of the British Broadcasting Corporation, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is likely to encourage or incite crime or lead to disorder or to be offensive to public feeling.

(5) Where —

- (a) the performer is identified in a manner likely to bring his identity to the notice of a person seeing or hearing the performance as modified by the act in question; or
- (b) he has previously been identified in or on copies of a sound recording issued to the public,

subsection (4) applies only if there is sufficient disclaimer.

(6) In subsection (5) “**sufficient disclaimer**”, in relation to an act capable of infringing the right, means a clear and reasonably prominent indication —

- (a) given in a manner likely to bring it to the notice of a person seeing or hearing the performance as modified by the act in question; and
- (b) if the performer is identified at the time of the act, appearing along with the identification,

that the modifications were made without the performer's consent.

## 26H Infringement of right by possessing or dealing with infringing article

(1) The right conferred by section 26F (right to object to derogatory treatment of performance) is also infringed by a person who —

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

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

(2) An “**infringing article**” means a sound recording of a qualifying performance with any distortion, mutilation or other modification that is prejudicial to the reputation of the performer.

*Supplementary***26I Duration of rights**

- (1) A performer's rights under sections 26C to 26H in relation to a performance subsist so long as that performer's rights under sections 3 to 13 subsist in relation to the performance.
- (2) In subsection (1) "**performer's rights**" includes rights of a performer that are vested in a successor of his.

**26J Consent and waiver of rights**

- (1) It is not an infringement of the rights conferred by sections 26C to 26H to do any act to which consent has been given by or on behalf of the person entitled to the right.
- (2) Any of those rights may be waived by instrument in writing signed by or on behalf of the person giving up the right.
- (3) A waiver —
  - (a) may relate to a specific performance, to performances of a specified description or to performances generally, and may relate to existing or future performances; and
  - (b) may be conditional or unconditional and may be expressed to be subject to revocation,
 and if made in favour of the owner or prospective owner of a performer's property rights in the performance or performances to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.
- (4) Nothing in sections 26C to 26N shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to either of the rights conferred by those sections.

**26K Application of provisions to parts of performances**

- (1) The right conferred by section 26C (right to be identified as performer) applies in relation to the whole or any substantial part of a performance.
- (2) The right conferred by section 26F (right to object to derogatory treatment of performance) applies in relation to the whole or any part of a performance.

**26L Moral rights not assignable**

- The rights conferred by sections 26C to 26H are not assignable.

**26M Transmission of moral rights on death**

- (1) On the death of a person entitled to a right conferred by sections 26C to 26H –
  - (a) the right passes to such person as he may by testamentary disposition specifically direct;
  - (b) if there is no such direction but the performer's property rights in respect of the performance in question form part of his estate, the right passes to the person to whom the property rights pass;
  - (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.
- (2) Where a performer's property rights pass in part to one person and in part to another, as for example where a bequest is limited so as to apply –
  - (a) to one or more, but not all, of the things to which the owner has the right to consent; or
  - (b) to part, but not the whole, of the period for which the rights subsist,any right which by virtue of subsection (1) passes with the performer's property rights is correspondingly divided.
- (3) Where by virtue of subsection (1)(a) or (1)(b) a right becomes exercisable by more than one person –
  - (a) it is, in the case of the right conferred by section 26F (right to object to derogatory treatment of performance), a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
  - (b) any waiver of the right in accordance with section 26J by one of them does not affect the rights of the others.
- (4) A consent or waiver previously given or made binds any person to whom a right passes by virtue of subsection (1).
- (5) 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 estate as if the right of action had subsisted and been vested in him immediately before his death.

**26N Remedies for infringement of moral rights**

- (1) An infringement of a right conferred by sections 26C to 26H is actionable as a breach of statutory duty owed to the person entitled to the right.

- (2) Where —
- (a) there is an infringement of a right conferred by sections 26C to 26H;
  - (b) a person falsely claiming to act on behalf of a performer consented to the relevant conduct or purported to waive the right; and
  - (c) there would have been no infringement if he had been so acting,
- that person shall be liable, jointly and severally with any person liable in respect of the infringement by virtue of subsection (1), as if he himself had infringed the right.
- (3) Where proceedings for infringement of the right conferred on a performer by sections 26C to 26H, it shall be a defence to prove —
- (a) that a person claiming to act on behalf of the performer consented to the defendant's conduct or purported to waive the right; and
  - (b) that the defendant reasonably believed that the person was acting on behalf of the performer.
- (4) In proceedings for infringement of the right conferred by section 26F the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the performer from the broadcast or sound recording of the performance. **22**.

## PART 2 — FURTHER AMENDMENTS OF THE 1996 ACT

### 1. Section 1 amended

In section 1 (rights conferred on performers and persons having recording rights), after subsection (1) insert —

- 23** (1A) Rights are also conferred on a performer by the following provisions of this Act (moral rights) —
- (a) section 26C (right to be identified);
  - (b) section 26F (rights to object to derogatory treatment). **22**.

### 2. Section 30B amended

In section 30B (requirement for signature: application in relation to body corporate) —

- (a) at the beginning insert **23**(1) **22**;
- (b) at the end insert —

22 (2) The requirement in the following provisions that an instrument be signed by a person is also satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal—

- (a) section 26D(2)(a) (assertion of performer's moral rights);
- (b) section 26J(2) (waiver of performer's moral rights). 22.

### 3. Section 33 amended

In section 33 (index of defined expressions), at the appropriate place insert —

22 group section 26C(4); 22.