

COMMONWEALTH OF DOMINICA

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COMMONWEALTH OF DOMINICA

Act No. 2003

I assent

VERNON L. SHAW *President*

May, 2003

AN ACT TO PROVIDE FOR THE PROTECTION OF LITERARY AND ARTISTIC WORKS, AND FOR MATTERS RELATED THERETO

(Gazetted , 2003)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows

PART I PRELIMINARY

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

COPYRIGHT ACT 2003.

(2) This Act shall come into force on such day as the Minister may by Order published in the *Gazette* appoint.

2. In this Act, unless the context otherwise requires

"adaptation" includes

- (a) in relation to a computer programme, 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;
- (b) in relation to a literary work in a non-dramatic form, a version of the work (whether in its original language or in a different language) in a dramatic form;
- (c) in relation to a literary work in a dramatic form, a version of the work (whether in its original language or in a different language) in a non-dramatic form;
- (d) in relation to a literary work (whether in a non-dramatic form or in a dramatic form)
 - (i) a translation of the work; or
 - (ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical; and
- (e) in relation to a musical work, an arrangement or transcription of the work;

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

"artistic work" means

- (a) a graphic work, photograph, sculpture or collage, irrespective of its artistic quality;
- (b) a work of architecture, being a building or a model of a building, irrespective of its artistic quality; or
- (c) a work of artistic craftsmanship not falling within paragraph (a) or (b) of this definition;

"audiovisual work" means a work which consists of a series of related visual images, with or without accompanying sounds, which is capable of being shown as a moving picture, and where accompanied by sounds, capable of being made audible;

"author" means the person who creates a work, being

- (a) in relation to a literary work, the author of the work;
- (b) in relation to a musical work, the composer;
- (c) in relation to an artistic work other than a photograph, the artist;
- (d) in relation to a photograph, the photographer;
- (e) in the case of a sound recording or film, the person by whom the arrangements necessary for making the recording or film are undertaken;
- (f) in the case of a broadcast, the person making the broadcast as described in section 4(3) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, the person making the other broadcast;
- (g) in the case of a cable programme, the person providing the cable programme service in which the programme is included;
- (h) in the case of the typographical arrangement of a published edition, the publisher; and
- (i) in the case of a literary, dramatic, musical or artistic work which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken.

"building" includes any fixed structure and a part of a building or fixed structure;

"business" includes a trade or profession;

"cable programme" means any item included in a cable programme service, and any reference in this Act

- (a) to the inclusion of a cable programme or work in a cable programme service is a reference to its transmission as part of the service; and
- (b) to the person including it is a reference to the person providing the service;

"cable programme service" means a service which consists wholly or mainly in sending visual images, sounds or other information, irrespective of the form in which the images, sounds or information are represented, by means of a telecommunication system, otherwise than by wireless telegraphy, for reception

- (a) at two or more places (whether for simultaneous reception or at different times in response to requests by different users); or
- (b) for presentation to members of the public;

and which is not, or to the extent that it is not, excepted from this definition by regulations made

under this Act.

"collective work" means

(a) a work of joint authorship; or

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

"communication to the public" means the transmission by wire or wireless means of the images or sounds or both of a work in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable, and, irrespective of whether the person can receive the images or sounds at the same place and time, or at different places or times chosen by them.

"Comptroller" means the Comptroller of Customs;

"computer" means an electronic or similar device having information processing capabilities;

"computer programme" means a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that a computer can read, of causing the computer to perform or achieve a particular task or result;

"computer-generated work" means a work which is generated by a computer in circumstances in which the work cannot be said to have a human author;

"copy" in relation to

(a) a literary, dramatic or musical work, means a reproduction of such work in any material form;

(b) the artistic work

(i) means a reproduction of the work in any material form; and

(ii) includes a reproduction in three dimensions if the artistic work is a two dimensional work, and a reproduction in two dimensions if the artistic work is a three dimensional work;

(c) a film, television broadcast or cable programme, includes a photograph of the whole or any substantial part of any image forming part of the film, television broadcast or cable programme;

(d) a typographical arrangement of a published edition, includes a facsimile copy of the arrangement; and

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

"copyright" means the property right subsisting, in accordance with this Act, in a work;

"copyright licence" means a licence to do, or authorize the doing of, any act restricted by copyright;

"copyright work" means a work of any of the descriptions specified in section 5, and in which

copyright subsists;

"Court" means the High Court;

"dramatic work" includes a work of dance or mime;

"distribution" means the distribution to the public whether for commercial or non commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement, and "distributing" shall have a corresponding meaning;

"economic rights" means the rights referred to in section 10;

"electronic retrieval system" means an electronic system

(a) in which works may be stored; and

(b) from which a member of the public may cause a work selected by him to be transmitted by wire or wireless means, to receiving equipment under his control;

"expression of folklore" means a group-oriented and tradition based creation of a group or individual, which is of unknown authorship, and which reflects the standards, values, cultural and social identity of a community, as transmitted orally, or by other means, and includes

(a) folk tales, folk poetry, and folk riddles;

(b) folk songs and instrumental folk music;

(c) folk dances and folk plays;

(d) production of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaics, woodwork, metal ware, jewelry, handicrafts, costumes and indigenous textiles;

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

"fixation" means the embodiment of images or sounds in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or communicated;

"future copyright" means copyright which will or may come into existence in respect of any future work or class of works on the coming into operation of this Act, or on the occurrence of any future event and "prospective owner" shall be construed accordingly and, in relation to any such copyright, includes a person prospectively entitled thereto by virtue of such an agreement as is specified in section 24;

"graphic work" includes

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

(b) an engraving, etching, lithograph, woodcut or similar work;

"illicit recording" means

(a) for the purposes of a performer's rights, a recording of the whole or substantial part of his performance, without his authorization;

(b) for the purposes of the rights of a person having recording rights under an exclusive recording contract, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract, without his authorization or that of the performer;

(c) for the purposes of any offence under this Act, a recording which is an illicit recording by virtue of either paragraph (a) or (b) of this definition;

"infringement" means any act which violates any right protected under this Act;

"infringing copy" in relation to a protected work means

(a) any copy of the work, the making of which constitutes an infringement of the copyright in the work; or

(b) any copy of the work which is or is proposed to be imported into Dominica, and the making of which would, in Dominica, have constituted an infringement of the copyright in the work or a breach of any exclusive agreement relating to the work;

"literary work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes

(a) a table or compilation; and

(b) a computer programme;

"Minister" means the Minister responsible for copyright and related rights;

"moral rights" means the rights specified in section 15;

"musical work" means a work consisting of music inclusive of any words or action intended to be sung, spoken or performed with the music;

"owner of copyright" means

(a) where the economic rights are vested in the author, the author;

(b) where the economic rights are originally vested in a person other than the author, that person; and

(c) where the ownership of the economic rights has been transferred to another person, that other person;

"performer" means a singer, musician, or other person who sings, delivers, declaims, plays in, or otherwise performs literary and artistic works or expressions of folklore;

"performance" in relation to

(a) the rights conferred under Part V, includes

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

- (ii) a musical performance;
- (iii) a reading or recitation of a literary work; or
- (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; and

(b) a literary, dramatic or musical work includes

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

(ii) any mode of visual or acoustic presentation, including presentation by means of sound recording, film, broadcast or cable programme of the work;

"photographic work" means a recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or otherwise) by which such recording is made; but a still picture extracted from an audiovisual work shall not be considered a photographic work but a part of the audiovisual work concerned;

"producer" in relation to an audiovisual work or a sound recording, means the person by whom the initiative and responsibility for the making of the audiovisual work or sound recording are undertaken;

"protected work" means a work in which copyright subsists by virtue of this Act;

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

"rental" means the transfer of the possession of work for a limited period of time for profit-making purposes;

"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 copy" means a copy of a work made by a reprographic process;

"reprographic process" means a process

(a) involving the use of an appliance for making a single or multiple copies; or

(b) for making facsimile copies,

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

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

"sound recording" means

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

(b) a recording of the whole or any part of a literary, dramatic or musical work, from which sounds

reproducing the work or part may be produced, regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced;

"work" means

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording, film, broadcast or cable programme; and
- (c) the typographical arrangement of a published edition;

"work of applied art" means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

"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 distinct from that of the other author or authors.

3. (1) In this Act, "publication", in relation to a work

- (a) means the issue of copies of the work to the public; and Publication.
 - (b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system, and "publish" has a corresponding meaning.
- (2) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as publication of the work.

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

(4) The following acts do not constitute publication for the purposes of the work

- (a) in the case of a literary, dramatic or musical work
 - (i) the performance of the work;
 - (ii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);
- (b) in the case of an artistic work
 - (i) the exhibition of the work;
 - (ii) the issue to the public of copies of a film including the work; or
 - (iii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);
- (c) in the case of an artistic work being
 - (i) a sculpture;
 - (ii) a work of architecture in the form of a building or a model for a building; or
 - (iii) a work of artistic craftsmanship,

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

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

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

(ii) the broadcasting of the work or its inclusion in a cable programme service.

(5) For the purposes of this section, no account shall be taken of any unauthorized act.

4. (1) In this Act the expression

"broadcast" means a transmission by wireless telegraphy, whether encrypted or not, of visual images or sounds or other information for reception by the public by any means including fibre, cable or satellite which

(a) is capable of being lawfully received, in Dominica or elsewhere, by members of the public; or

(b) is transmitted for presentation to members of the public in Dominica or elsewhere; and reference to broadcasting shall be construed accordingly.

(2) An encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person providing the contents of the transmission.

(3) References in this Act to the person making a broadcast, broadcasting a work or including a work in broadcast are references

(a) to a person transmitting the programme, to the extent that he has responsibility for its contents; and

(b) to any person providing the programme who makes, with the person transmitting it, the arrangements for its transmission.

(4) References in this Act to a programme, in the context of broadcasting, are references to any item included in a broadcast.

(5) For the purposes of this Part the place from which a broadcast is made is, in the case of a satellite transmission, the place from which the signals carrying the broadcast are transmitted to the satellite.

(6) References in this Part to the reception of a broadcast include reception of a broadcast relayed by means of a telecommunications system.

(7) For the purposes of this Part, "telecommunications system" means a system for conveying visual images, sounds or other information by electronic means.

PART II COPYRIGHT

Description and subsistence of copyright

5. (1) Copyright is a property right which subsists in accordance with this Act in original works of the following descriptions

- (a) literary, dramatic, musical or artistic works;
- (b) sound recordings, films, broadcasts or cable programmes; and
- (c) typographical arrangements of published editions.

(2) The works referred to in this section shall be protected by the sole fact of their creation and irrespective of their mode of expression, content, quality or purpose.

6. (1) The following shall also be protected as works

- (a) translations, adaptations, arrangements and other transformations or modifications of works; and
- (b) collections of works, collections of mere data (databases) whether in machine readable or other form, and collections of expressions of folklore, provided that such collections are original by reason of the selection or arrangement of their contents.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work or expression of folklore incorporated in or utilized for the making of such a work.

7. (1) In this Part, "published edition", in the context of copyright in the typographical arrangement of a published edition, means a published edition of the whole or any part of one or more literary, dramatic or musical works.

(2) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that, it reproduces the typographical arrangement of a previous edition.

8. (1) Notwithstanding the provisions of section 5 and 6, no copyright shall subsist in any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work.

Works not protected.

(2) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.

(3) Copyright does not subsist in a cable programme

(a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast; or

(b) If it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

(4) Copyright does not subsist in a sound recording or film which is, or to the extent that it is, a copy of a previous sound recording or film.

9. (1) The provisions of this Act relating to the protection of Application of Act. literary and artistic works shall apply to

(a) works of authors who are nationals of, or have their habitual residence in, Dominica;

(b) works first published in Dominica, and works first published in another country and also published in Dominica within thirty days of publication in that other country, irrespective of the nationality or residence of their authors;

(c) audiovisual works, the producer of which has his headquarters or habitual residence in Dominica; and

(d) works of architecture erected in Dominica and other artistic works incorporated in a building or other structure located in Dominica.

(2) The provisions of this Act shall also apply to works that are eligible for protection in Dominica by virtue of and in accordance with any international convention or other international agreement to which Dominica is party.

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

(a) performers who are nationals of Dominica;

(b) performers who are not nationals of Dominica but whose performances

(i) take place in Dominica;

(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.

(4) The provisions of this Act on the protection of sound recordings shall apply to

(a) sound recordings the producers of which are nationals of Dominica;

(b) sound recordings first fixed in Dominica; and (c) sound recordings first published in Dominica.

(5) The provisions of this Act on the protection of broadcasts shall apply to

(a) broadcasts of broadcasting organisations the headquarters of which are situated in Dominica; and

(b) broadcasts transmitted from transmitters situated in Dominica.

(6) A cable programme shall qualify for copyright protection if it is sent from a place in Dominica or in a country prescribed in accordance with this Act or any law in force regulating

transmission by cable, provided that copyright shall not subsist in any cable programme if

(a) it is included in a cable programme service by reception and immediate re-transmission of a broadcast; or

(b) it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.

(7) The provisions in this Act shall also apply to

(a) performers, producers of sound recordings and broadcasting organizations that are eligible for protection by virtue of, and in accordance with, any international convention or other international agreement to which Dominica is party; and (b) ships and aircraft of every description.

10. (1) Subject to provisions of Part VII, the author or other owner of copyright shall have the exclusive right to do, authorize, or prohibit the following acts in relation to his work

(a) reproduction of the work;

(b) translation of the work;

(c) adaptation, arrangement or other transformation of the work;

(d) the distribution to the public by sale, rental, public lending or otherwise of the original or a copy of the work that has not already been subject to a distribution authorized by the owner of copyright;

(e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound

recording, a computer programme, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;

(j) importation of copies of the work;

(g) public display of the original or a copy of the work; (h) public performance of the work;

(i) broadcasting of the work or including it in a cable programme service; and

(j) other communication to the public of the work.

(2) The rights of rental and lending under paragraph (e) of subsection (1) shall not apply to the rental or lending of computer programmes where the programme itself is not the essential object of the rental or lending.

Duration of Copyright Protection

11. (1) Subject to the provisions of this section, copyright in a literary, dramatic, musical or artistic work shall be protected during the life of the author and for seventy years after his death.

(2) In the case of a work of joint authorship, the economic rights shall be protected during the life of the last surviving author and for seventy years after his death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic rights shall be protected for fifty years from the date on which the work was either made, first made available to the public, or first published, whichever date is the latest.

(4) In the case of a work published anonymously or under a pseudonym, the economic rights shall be protected for fifty years from the date on which the work was either made, first made available to the public or first published, whichever date is the latest, provided that where the authors' identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2) shall apply, as the case may be.

(5) The provisions of subsections (1) and (4) shall not apply to a computer-generated work, the copyright in which shall expire fifty years from the year in which the work was made.

(6) In the case of a work of applied art, the economic rights shall be protected for twenty-five years from the making of the work.

(7) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

12. (1) Copyright in a sound recording or film shall expire at the end of fifty years from the date of the calendar year in which it was made, or where it is made available to the public before the end of that period, at the end of fifty years from the end of the calendar year in which it is so made available.

(2) For the purposes of subsection (1), a sound recording or film is made available to the public when it is first published, broadcast or included in a cable programme service, provided that in determining whether a sound recording or film has been made available to the public, any unauthorized act shall be disregarded.

13. (1) Copyright in a broadcast or cable programme shall expire at the end of seventy years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service.

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

(3) For the purpose of subsection (2) repeat broadcast or cable programme means one which is a repeat either of a broadcast previously made or of a cable programme previously included in a cable programme service.

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

PART III MORAL RIGHTS

15. (1) Independently of his economic rights, and even where he is no longer the owner of the said rights, the author of a work shall have the right

(a) to have his name indicated prominently on the copies and in connection with any public use of

his work;

(b) to use a pseudonym;

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

(d) not to have a film falsely attributed to him as its director; and

(e) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honour or reputation.

(2) In this section, "attribution", in relation to a work, means the making of a statement, whether express or implied, as to the identity of the author or director.

(3) No right referred to in subsection (1) shall be transmissible during the life of the author, but the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law following the death of the author.

(4) The author may waive any moral right referred in subsection (1), provided that such waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under subsection (1) (e) specifies the nature and extent of the modification or other action in respect of which the right is waived.

(5) Following the death of the author, the person upon whom any moral right has devolved shall have the right to waive any such right.

16. A person who, for private and domestic purposes, commissions the taking of a photograph or the making of a film, has, where the resulting work is a protected work, the right not to have

(a) copies of the work issued to the public;

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

(c) the work broadcast or included in a cable programme service.

Right to privacy commissioned photographs and films

17. Subject to the provisions of subsections (2) to (6) of Duration of moral section 11, the provisions of sections 11 to 14 shall apply *mutatis* rights. *mutandis* to moral rights.

PART IV OWNERSHIP AND ASSIGNMENT OF COPYRIGHT

18. (1) Subject to this section, the author of a work shall be the first owner of the copyright in that work.

(2) Where the work is a collective work, the co-authors shall be the first owners of the copyright in it, and where the work consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the first owner of the economic rights in the part that he has created.

(3) Where a work is created by an employee in the course of his employment, the first owner

of the copyright in it shall be, unless provided otherwise in a contract, the employer.

(4) Where an employee, in the course of his employment with the proprietor of a newspaper, magazine or similar periodical, makes a literary, dramatic or artistic work for the purpose of publication in a newspaper, magazine or similar periodical, that proprietor shall be the first owner of the copyright in the work in . so far as the copyright relates to

(a) publication of the work in any newspaper, magazine or similar periodical;

(b) copying the work for the purpose of such publication; or

(c) broadcasting the work.

(5) Where a protected work is made under a contract for services, the author of the work shall be first owner of any copyright in the work.

(6) In the case of an audiovisual work, the first owner of the copyright in it shall be the producer, unless provided otherwise in a contract.

(7) The co-authors of an audiovisual work and the authors of the pre-existing works included in or adapted for the making of the audiovisual work shall maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be the subject of acts covered by their economic rights separately from the audiovisual work.

(8) The rights of the owner in respect of expressions of folklore shall vest in the State to the same extent as if the State had been the original creator of such expressions.

(9) This section shall not apply to State copyright, or to copyright which subsists by virtue of section 22.

19. (1) The person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work, and this provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to identify the author.

(2) Subject to subsection (1), the publisher whose name appears on an anonymous or pseudonymous work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the economic and moral rights of the author.

(3) The presumption set out in subsection (2) shall cease to apply where the author reveals his identity.

20. (1) Where a work is made by or under the direction of the State copyright. State

(a) the work shall qualify for copyright notwithstanding section 19; and

(b) the State shall be the first owner of any copyright in the work.

(2). Copyright in the work referred to in subsection (1) shall be referred to, 111 this Act, as “State Copyright” notwithstanding that it may have been assigned to another person.

(3) State copyright shall expire

(a) in the case of a typographical arrangement of a published edition, at the end of twenty five years from the end of the year in which the work was made; and

(b) in the case of any other work, at the end of seventy years from the end of the year in which the work was made.

(4) In the case of a work of joint authorship where one or more, but not all, of the authors are employed by or are under the control of the State, this section shall apply in relation to those authors and the copyright existing by virtue of their contribution to the work.

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

(6) This section is subject to section 21.

21. Notwithstanding the provisions of sections 5 and 6, no copyright shall subsist in any official text of a legislative, administrative or legal nature, or any translation thereof.

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

(a) the work shall qualify for copyright notwithstanding section 19; and

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

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

(a) in the case of a typographical arrangement of a published edition, twenty five years after the work was made, or such longer period as may be specified for the purposes of this paragraph pursuant to subsection (5);

(b) in the case of any other work, fifty years after the work was made or such longer period as may be specified for the purposes of this paragraph pursuant to subsection (5).

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

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

(5) The Minister may, *from time to time*, by *Order*

(a) declare that any international organisation is an international organisation *to* which this

section applies; and

(b) for the purposes of complying with any international obligation of Dominica, specify a period for the purposes of paragraph *(a)* or subsection (2) *(a)* or (2) *(b)* of this section.

23. (1) The copyright in a work may be transferred by Assignment and assignment testamentary disposition or by operation of law. licensing of authors' rights.

(2) The assignment 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 which, by virtue of this Act, the owner of the copyright has the exclusive right to do;

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

(3) Any assignment of an economic right, and any licence to do an act subject to authorisation by the owner of copyright, shall be in writing signed by the parties thereto.

(4) An assignment in whole or in part of any economic right, or a licence to do an act subject to authorisation by the author or other owner of copyright, shall not include or be deemed to include the assignment or license of any other rights not explicitly referred to therein.

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

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

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

25. Where under a bequest a person is entitled, beneficially or otherwise, to

(a) the manuscript or other support on which a literary, dramatic, musical or artistic work was first expressed in a material form; or

(b) the material support embodying a sound recording or film,

and the work had not been published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including the copyright in the work in so far as the testator was the owner of the copyright

immediately before his death.

PART V

PROTECTION OF PERFORMERS, PRODUCERS OF SOUND *RECORDINGS* AND *BROADCASTING ORGANISATIONS*

Performers' rights

26. (1) Subject to the provisions of section 30, a performer shall have the exclusive right to carry out or to authorise any of the authorization of followingacts

(a) the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication

(i) is made from a fixation of the performance, other than a fixation made under the terms of section 30 or otherwise made without the authorisation of the performer; or

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

(b) the fixation of his unfixed performance;

(c) the direct or indirect reproduction of a fixation of his performance;

(d) the first making available to the public of a fixation of his performance, or copies thereof, through sale or other transfer of ownership;

(e) rental to the public or public lending of a fixation of his performance, or copies thereof, irrespective of the ownership of the copy rented or lent; and

(f) the making available to the public of his 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.

(2) Once the performer has authorised the incorporation of his performance in an audiovisual fixation, the provisions of subsection (1) shall have no further application.

(3) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances and performances fixed in phonograms, have the right to claim to be identified as the performer of his 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 his performances that would be prejudicial to his reputation.

(4) The provisions of section 15 (3) and (4) apply *mutatis mutandis* to the rights granted under this subsection.

(5) Nothing in this section shall be construed as depriving performers of the right to agree by

contracts on terms and conditions more favorable to them in respect of their performances.

(6) The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed in a phonogram, or in the absence of such a fixation, from the end of the year in which the performance took place.

Producers of sound recordings

27. (1) Subject to the provisions of section 30, a producer of a sound recording shall have the exclusive right to carry out or to authorise any of the following acts

(a) direct or indirect reproduction of the sound recording, in any manner or form;

(b) importation of copies of the sound recording;

(c) the making available to the public by sale or other transfer of ownership, of the original or copies of the sound recording that has not already been subject to a distribution authorised by the producer;

(d) rental to the public or public lending of a copy of the sound of recording, irrespective of the ownership of the copy rented or lent; and

(e) the making available to the public of the sound recording, by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them.

(2) The rights under subsection (1) shall be protected from the publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year, following the year of fixation.

28. (1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) 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 or, if the sound recording has not been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

(4) For the purposes of this section, sound recordings 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.

Broadcasting organisations

29. (1) Subject to the provisions of section 30, a broadcasting organisation shall have the exclusive right to carry out or to authorise any of the following acts

- (a) the rebroadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast; and
- (d) the reproduction of a fixation of its broadcast.

(2) The rights under this section shall be protected from the moment the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.

30. Section 26, 27, 28 and 29 shall not apply where the acts referred to in those sections are related to

- (a) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (b) reproduction solely for scientific research;
- (c) reproduction solely for the purpose of face-to-face teaching activities, except for performances and phonograms which have been published as teaching or instructional materials; or
- (d) cases where, under Part VII, a work can be used without the authorisation of the author or other owner of copyright.

PART VI INFRINGEMENT OF COPYRIGHT

31. The copyright in a protected work is infringed by any person who, not being the owner of the copyright in that work, and without the licence of such owner, does or authorizes the doing, in relation to that work, of any act specified in section 10 and this Part.

32. Copyright in a work is infringed by a person who, other than pursuant to a copyright licence, imports into Dominica, an object which is, and which that person knows or has reason to believe, is an infringing copy of the work.

33. Copyright in a work is infringed by a person who, in Dominica, other than pursuant to a copyright licence

- (a) possess in the course of 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 distributes; or
- (d) distributes otherwise than in the course of a business to such an extent as to prejudicially affect the owner of the copyright, a copy which is and which he knows or has reasons to believe is, an infringing copy of the work.

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

- (a) makes;
- (b) imports into Dominica;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire, or offers or exposes for sale or hire,

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

(2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunications system (otherwise than by broadcasting or inclusion in a cable programme service), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Dominica or elsewhere.

35. (1) 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 is also liable for the infringement unless, when he gave permission, he believed, on reasonable grounds, that the performance would not infringe copyright.

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

36. (1) 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

(a) playing sound recordings;

(b) showing films; or

(c) receiving visual images or sounds conveyed by electronic means, the persons specified in subsection (2) to (4) are also liable for the infringement.

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

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

(b) in the case of apparatus the normal use of which involves a public performance, playing or showing, he did not believe, on reasonable grounds, that it would not be so used as to infringe copyright.

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

(4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if, when he supplied it he knew, or had reason to believe, that what he

supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

Rights and remedies of copyright owner

37. (1) The owner of copyright shall have the right to bring an action against any person who infringes any of his rights under this Act.

(2) In any proceedings for infringement of copyright, the following remedies shall be available to the plaintiff

(a) damages;

(b) an injunction;

(c) seizure or destruction of any infringing copy and its packaging, as well as of any implements used to commit an infringement;

(d) accounts;

(e) expenses and legal costs incurred as a result of the infringement; or

(f) any other remedy which is available to the plaintiff in respect of the infringement of any other property right.

(3) Where in an action for infringement of copyright it is shown that the defendant did not know, and had no reason to believe, that copyright subsisted in the work to which the action relates, the Court may limit damages to the profits made by the defendant and attributable to the infringement.

(4) The Court may, in an action for infringement of copyright having regard to all the circumstances, and in particular to

(a) the flagrancy of the infringement; and

(b) any benefit accruing to the defendant by reason of the infringement, award such additional damages as the justice of the case may require.

(5) In the proceedings for infringement of copyright in respect of the construction of a building, no injunction or other order shall be made

(a) after the construction of the building has begun, so as to prevent the building from being completed; or

(b) so as to require the building, in so far as it has been constructed, to be demolished.

38. (1) Where a person -

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

(b) has, in his possession, custody or control, an object specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that the object has been or is to be used to make infringing copies, the owner of the copyright in the work may

apply to the Court for an order that the infringing copy or object be delivered up to him or to such other person as the Court may direct.

(2) No order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 56 of this Act.

(3) A person to whom an infringing copy or other object is delivered up in pursuance of an order under this section shall, if an order under section 56 of this Act is not made, retain the copy or object pending the making of an order, or the decision not to make an order, under that section.

(4) Nothing in this section shall affect any other power of the Court.

39. (1) Subject to any decision of the Court under section 56, and to subsection (2), (3) and (4), an infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the owner of copyright would be entitled to apply for an order under section 38 may be seized and detained by him or a person authorized by him.

(2) Before he seizes anything under this section, the copyright owner or person authorized by him shall give notice of the time and place of the intended seizure to the nearest police station.

(3) The copyright owner or person authorized by him shall leave, at the place from which anything is seized under this section, a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made, and the grounds on which it is made.

(4) In this section, "premises" includes land, buildings, fixed or movable structures, vehicles, vessels and aircraft.

Rights and remedies of exclusive licensee

40. (1) An exclusive licensee shall have, 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.

(2) The rights and remedies of the exclusive licensee shall be concurrent with those of the copyright owner, and references in the relevant provisions of this part to the copyright owner shall be construed accordingly.

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

41. (1) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee 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, may not, without the leave of the Court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is joined as a plaintiff or added as a

defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) Subsections (1) and (2) do not affect the granting of interlocutory relief on an application by a copywriter owner or exclusive licensee alone.

(4) Whether or not the copyright owner and the exclusive licensee are both parties to proceedings for infringement of copyright that relate (wholly or partly) to an infringement in respect of which they have or had concurrent rights of action

(a) the Court shall, in assessing damages, take into account

(i) the terms of the licence;

(ii) any pecuniary remedy already awarded or available to either the copyright owner or the exclusive licensee in respect of the infringement;

(b) no account of the profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of either the copyright owner or the exclusive licensee in respect of the infringement; and

(c) the Court shall, if an account of profits is directed, apportion the profits between the copyright owner and the exclusive licensee in such manner as the Court considers just, subject to any agreement between them.

(5) The copyright owner shall notify any exclusive licensee having concurrent rights before applying for an order under section 38; and the Court may, on the application of the licensee, make such order, under section, as **it** thinks fit, having regard to the terms of the contact.

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

Infringement of Moral Rights

42. (1) The right conferred on an author or director of a protected work by section 15(1) (c) and (d) is infringed whenever the author or the director is not identified in the following circumstances

(a) in the case of a literary work (other than words intended to be sung or spoken with music), or a dramatic work, whenever

(i) the work or an adaption thereof is published commercially, performed in public, broadcast or included in a cable programme; or

(ii) copies of a film or sound recording including the work or an adaptation thereof are issued to the public;

(b) in the case of a musical work or literary work consisting of words intended to be sung or

spoken with music, whenever

(i) the work or an adaptation thereof is published commercially; or

(ii) copies of a sound recording of the work or an adaptation thereof are issued to the public;

(c) whenever, in a film, the sound track of which includes the work, is shown in public or copies of such film are issued to the public.

(d) in the case of an artistic work, whenever

(i) the work is published commercially or exhibited in public or a visual image of it is broadcast or included in a cable programme service; or

(ii) a film including a visual image of the work is shown in public or copies of such a film are issued to the public;

(e) 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, whenever copies of a graphic work representing it or a photograph of it, are issued to the public; and

(f) in the case of a film, whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued to the public.

(2) In addition to the right specified in paragraph (e) of subsection (1), the author of a work of architecture in the form of a building has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed, and that right is infringed by any person who fails to identify the author as required by this subsection.

43. (1) The right conferred on an author or a director by Infringement of section 15(1)(e) to object to derogatory treatment of his work is r

(a) in the case of a literary, dramatic or musical work, by a person who

(i) publishes commercially, performs in public, broadcasts or includes in a cable programme service, a derogatory treatment of the work; or

(ii) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work;

(b) in the case of an artistic work, by a person who

(i) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcast or includes in a cable programme service, a visual image of a derogatory treatment of the work;

(ii) shows in public a film which includes a visual, image of a derogatory treatment of the work, or issues to the public copies of such a film; or

(iii) in the case of a work of architecture in the form of a model of a building or in the case of a sculpture or work of craftsmanship, issues to the public copies of a graphic work

representing, or of a photograph of, a derogatory treatment of the work; and

(c) in the case of a film, the right is infringed by a person who

(i) shows in public, broadcast or includes in a cable programme service, a derogatory treatment of the film; or

(ii) issues to the public copies of a derogatory treatment of the film, or who, along with the film, plays, in public, broadcasts or includes in a cable programme service, issues to the public copies of, a derogatory treatment of the film soundtrack,

(2) Subsection (1) (b) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed.

(3) For the purposes of this section, "commercial publication", in relation to a literary, dramatic, musical or artistic work means

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

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

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

(d) distributes otherwise than in a course of a business, so as to prejudicially affect the honour or reputation of the author or director,
a copy which is, and which he knows or has reason to believe is, an infringing copy.

(2) In this section an "infringing copy" means a work or a copy of a work which

(a) has been subjected to derogatory treatment; and

(b) has been or is likely to be the subject of any of the arts specified in section 43 in circumstances infringing that right.

(3) For the purposes of this Act

(a) "treatment" of a work means any addition to, deletion from, alteration to or adaptation of the work, other than

(i) a translation or a literary or dramatic work; or

(ii) an arrangement or transcription of a musical work involving no more than a change of key or register; and

(b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work, or is otherwise prejudicial to the honour or reputation of the author or director, and references to a derogatory treatment of a work shall be construed accordingly.

45. (1) Subject to the provisions of this section, the right conferred by section 15 (I) (c) and 15 (I) (d) not to have work, being a literary, dramatic, musical or artistic work falsely attributed to him as its author or a film falsely attributed to him as its director, is infringed by any person who

(a) issues to the public 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, broadcasts it or includes it in a cable programme service as being the work of a person; or

(b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service 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 issues it, to the public or displays in public any material containing a false attribution in connection with any act referred to in subsection (1) or (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 subsection (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 being the unaltered work of the author; or

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

(6) In this section

(a) "attribution" in relation to a work means a statement (express or implied) as to who is the author or director; and

(b) references 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, contrary to the fact

(a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or

(b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as its author.

Rights and remedies in relation to moral rights

46. (1) An infringement of any right conferred by paragraphs (a), (c), (d) and (e) of section 15, and by section 18 is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In proceedings for infringement under this section, the Court may grant relief by way of damages, an injunction, accounts or any other remedy available in respect of the infringement of any other property right.

(3) In proceedings for infringement of a right conferred by section 15 (1) (e) the Court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any Act unless a disclaimer is made, in such terms and in such manner as may be approved by the Court, dissociating the author or director from the treatment of the work.

Presumptions

47. (1) The presumptions set out in subsections (2) to (5) shall apply in proceedings brought under this Act with respect to a literary, dramatic, musical, or artistic work.

(2) Where a name purporting to be that of the author appeared on copies of a literary, dramatic, or musical work as published or on an artistic work when it was made, the person whose name appeared shall be presumed, until the contrary is proved

(a) to be the author of the work; or

(b) to have made the work in circumstances not falling within section 18(3) to (5), or section 20 or 22.

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

(4) Where no name purporting to be that of the author appeared on copies of the work as published or on the work when it was made, but

(a) the work qualifies for copyright under section 9(1) (b); and

(b) a name purporting to be that of the publisher appeared on copies of the work as first published, the person whose name appeared shall be presumed, until the contrary is proved, to represent the author and shall be entitled to protect and enforce the author's rights.

(5) If the author of the work is dead or the identity of the author cannot be ascertained by

reasonable inquiry, it shall be presumed, until the contrary is proved

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

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

48. (1) This section applies to any proceedings for infringement of copyright in any artistic work of which copies in three dimensions have been issued to the public by or with the licence of the owner of the copyright in that work.

(2) In any proceedings to which this section applies, where copies are issued to the public, whether in Dominica or elsewhere, bear a clear and legible label or other mark indicating the following claims, namely

(a) that copyright existed in the artistic work of which the copy was made;

(b) that a named person was the owner of the copyright in the artistic work at the time the copy was issued to the public;

(c) that a named person was the exclusive licensee of the copyright owner at the time the copy was issued to the public; and

(d) that the copy was first issued to the public in a specified year,

it shall be presumed, until the contrary is proved, that at all material times the defendant had knowledge of the claims specified in paragraphs (a) to (d), and that the copy was first made available to the public in the year specified.

(3) For the purposes of subsection (2), the copyright symbol on a label, or other mark thereon, shall be taken to indicate that copyright is claimed to exist in the artistic work of which the copy so labeled or marked is made.

(4) Nothing in this section shall be construed as limiting or affecting section 47.

49. (1) In proceedings brought under this Act with respect to a computer programme, where copies of the programme are issued to the public in electronic form bearing a statement that

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

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

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

(2) In proceedings brought under this Act with respect to a sound recording, where copies of the recording as issued to the public bear a label *or other* marking stating that

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

(b) the recording was first published in a specified year *or* in a specified country, the label *or* mark shall be admissible as evidence *of* the facts stated and shall be presumed to be correct until the contrary is proved.

(3) In proceedings brought under this Act with respect to a film, where copies *of* the film as issued to the public bear a statement that

(a) a named person was the author *or* director *of* the film;

(b) a named person was the owner *of* the copyright in the film at the date *of* the issue *of* the copies; *or*

(c) the film was first published in a specified year *or* in a specified country, the statement shall be presumed to be correct until the contrary is proved.

(4) The presumption created in subsections (1) to (3) shall apply in proceedings relating to an infringement alleged to have occurred after the date on which the copies were issued to the public.

(5) In proceedings brought under this Act with respect to a film as shown in public, broadcast, *or* included in a cable programme bears a statement that

(a) ,a named person was the author *or* director *of* the film; *or*

(b) a named person was the owner of copyright in the film immediately after it was made, the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(6) The presumption created by subsection (5) shall apply in proceedings relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast, or included in a cable programme in the same manner as it applies in proceedings relating to an infringement alleged to have occurred after the date on which the film was shown in public, broadcast, or included in a cable programme.

50. In proceedings brought under this Act with respect to a literary, dramatic, or musical work the copyright in which lies in the State, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct until the contrary is proved.

Offences

51. (1) Any person who, without the authorization of the copyright owner

(a) makes for sale or hire;

(b) imports into Dominica otherwise than for his private and domestic use;

(c) possesses in the course of business with a view to committing any act infringing the copyright,

(d) in the course of business

(i) sells or lets for hire;

(ii) offers or exposes for sale or hire;

(iii) exhibits in public; or

(iv) distributes; or

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

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

(2) Any person who

(a) makes a copy specifically designed or adapted for making copies of a particular copyright work; or

(b) has such a copy in his possession,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business, commits an offence.

(3) Where copyright is infringed (otherwise than by reception of a broadcast or cable programme)

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

(b) by the playing or showing in public of a sound recording or film,

any person who caused the work to be so performed, played or shown, knowing or having reason to believe that copyright would be infringed, commits an offence.

(4) Any person who commits an offence under subsection(1) is liable, in the case of a first offence, to a fine of two thousand five hundred dollars for each copy or article to which the offence relates, and in the case of a subsequent offence, to such fine and to imprisonment for twelve months.

(5) Any person who commits an offence under this section other than an offence referred to in subsection (4) is liable, in the case of a first offence, to a fine of fifteen thousand dollars, and in the case of subsequent offence, to such fine and to imprisonment for six months.

52. (1) The following acts shall constitute infringements of copyright and neighbouring rights

(a) the manufacture or importation for sale or rental of any device, or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made;

(b) the manufacture or importation for sale or rental of any device or means that is capable of enabling or assisting the reception of an encrypted programme which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the programme;

(c) the removal or alteration of any electronic rights management information without authority; and

(d) the distribution, import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, broadcasts or performances knowing

or having reason to believe that electronic rights management information has been removed or altered without authority.

(2) Section 37 shall apply to an illicit device or means mentioned in subsection (1) as it applies to infringing copies.

(3) Any illicit act referred to in subsection (1) shall be treated as an infringement of copyright or neighbouring rights to which the civil remedies and penalties provided for in sections 37,38,39 and 51 are applicable.

(4) For the purpose of this section, "rights management information" means any

(a) information which identifies an author, performer, performance, producer of a sound recording, sound recording, broadcast, broadcaster or owner of any right under this Act; or

(b) information which discloses the terms and conditions of use of the work, performance, sound recording or broadcast; and

(c) any numbers or codes which represent such information when any of the said items of information is attached to a copy of a work, a fixed performance, a sound recording or fixed broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or broadcast.

53. The presumptions in section 47 to 49 shall not apply to proceedings for an offence under section 51, but without prejudice to their application in proceedings for an order under section 51.

54. (I) The Court before which proceedings are brought against a person for an offence under section 51 may, if it is satisfied that, at the time of his arrest or charge

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

(b) he had, in his possession, custody or control of a copy specifically designed or adapted *for* making copies of a particular copyright work, knowing or having reason to believe that it had been or was used to make infringing copies, order that the infringing copy or article be delivered up to the copyright owner or to such other person as the Court may direct.

(2) An order may be made under this section by the Court on its own motion, or on the application of the prosecution, and may be made whether or not the person is convicted of the offence, but shall not be made

(a) after the end of the period specified in section 57; or

(b) if it appears to the Court unlikely that any order will be made under section 56.

(3) 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 56.

(4) An appeal from an order made under this section shall lie to the Court of Appeal.

55. Where any body corporate is convicted of an offence under section 51, every director and every person concerned in the management of the body corporate commits an offence if it is proved that the act that constituted the offence took place with his authority, permission or consent.

56. (1) An application may be made to the Court for an order that an infringing copy or other article delivered up pursuant to an order made under section 38 or 54, or seized and detained in pursuance of the right conferred by section 39 shall be

- (a) forfeited to the copyright owner; or
- (b) destroyed or otherwise dealt with as the Court thinks fit.

(2) In considering what order (if any) should be made under subsection (1), the Court shall have regard to

(a) whether other remedies available in proceedings for infringement of copyright would be adequate to compensate the copyright owner and to protect the interests of the copyright owner; and

(b) the need to ensure that no infringing copy is disposed of in a manner that would adversely affect the copyright owner.

(3) Provision shall be made by Rules of Court as to the service of notice on persons having an interest in the copy or other object.

(4) Any person having an interest in the copy or other object is entitled

(a) to appear in proceedings for an order under this section, whether or not that person is served with notice; and

(b) to appeal against any order made, whether or not that person appears in the proceedings, and an order made under subsection (1) shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on appeal.

(5) Where there is more than one person interested in a copy or other article, the Court may direct that the article sold, or otherwise dealt with, and the proceeds divided, and shall make such other order as it considers just.

(6) If the Court decides that no order should be made under this section, the person in whose possession, custody, or control the copy or other object was before being delivered up 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 as the case may be, recording under this section.

57. (1) An application for an order under section 38 may not be made after the end of the period

of six years from the date on which the infringing copy article or, as the case may be, the illicit recording in question was made, subject to subsection (2) to (4).

(2) If during the whole or any part of that period a person is entitled to apply for an order, the copyright owner

(a) is under a disability; or

(b) is prevented by fraud or concealment from discovering the facts entitling him to apply,
an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonably diligence, have discovered those facts.

(3) An order under section 54 shall not, in any case, 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.

58. A prosecution for an offence under this Act shall not be commenced after the expiration of five years after the commission of the offence or one year after the discovery thereof, whichever date occurs last.

Supplementary

59. (1) Subject to subsection (3), a member of the Police Force not below the rank of Sergeant (hereinafter referred to as an officer), to whom a warrant has been issued pursuant to section 60 may

(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 he reasonably suspects that there is an infringing copy or an illicit recording or any article used or intended to be used *for* making infringing copies or illicit recordings; and

(d) seize, remove or detain

(i) any article which appears to him to be an infringing copy or an illicit recording or any article which appears to him to be intended *for* use *for* making such copies or recordings; and

(ii) anything which appears to him to contain, or to be likely to be *or to* contain, evidence *of* an offence under this Act.

(2) An officer to whom a warrant has been issued under section 60 may, with such assistance, from any police officer, as may be necessary

(a) break open any outer or inner door *of* any place which he is authorized under this section to enter and search;

(b) forcibly board any vessel, aircraft or vehicle which he is authorized under this Act to stop, board and search;

(c) forcibly remove any person or thing obstructing him in the exercise or any power conferred on him by this Act;

(d) detain any person *found* in any place which he is authorized under this section to search until each place has been searched;

(e) detain any vessel or aircraft which he is authorized 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; and

(f) detain any vehicle which he is authorized under this Act to stop and search until it has been searched.

(3) Every police officer shall, in the execution of any direction given to him under subsection (1), produce the warrant containing such directions to the owner or occupier of any premises, place, vessel or aircraft entered or vehicle stopped pursuant to such direction if required by such owner or occupier to do so.

60. A magistrate may, if he is satisfied by proof upon oath that there is reasonable ground for believing that 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, issue a warrant authorizing an officer, not below the rank of sergeant, with such assistance, from another officer as may be necessary, to enter and search the premises.

61. (1) Without prejudice to any other written law, any person who

(a) willfully obstructs an officer in the exercise of his powers or the performance of his duties under this Act;

(b) willfully fails to comply with any requirement properly made to him by any such officer;
or

(c) without reasonable excuse, fails to give such officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act, commits an offence and is liable to a fine of three thousand five hundred dollars and to imprisonment for a term of six months.

62. 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 any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who purported to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

PART VII

EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

63. (1) Notwithstanding the provisions of section 10(1)(a), and subject to the provisions of subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorization of the author or owner of copyright where the reproduction is made by any person exclusively for his own personal purposes.

(2) The authorization under subsection (1) shall not extend to the reproduction

(a) of a work of architecture in the form of building or other construction;

(b) in the form of reprography, of the whole or a substantial part of a book or a recording of a musical work, a sound recording or a film by electronic means;

(c) of the whole or a substantial part of a database in digital form;

(d) of a computer programme, except as provided in section 70; and

(e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

64. Notwithstanding the provisions of section 10 (1)(a), the temporary reproduction of a work shall be permitted where

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

(b) it is caused by a person who, by way of authorization by the owner of copyright or of operation of law, is entitled to make that transmission or of making perceptible the work; and

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

65. (1) Notwithstanding the provisions of section 10(1)(a), the reproduction, in the form of quotation, of a short part of a published work that has been made available shall be permitted without the authorization of the author or other owner of copyright; provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose.

(2) The quotation shall be accompanied by an indication of source and the name of the author, if his name appears in the work from which the quotation is taken.

66. For the purpose of determining whether an act done in relation to a work constitutes fair practice, the court determining the question shall take account of 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 effect of that act upon the potential market on the commercial value of the work.

67. (1) Notwithstanding the provisions of section 10(1)(a), Reproduction for the following acts

shall be permitted without the authorization of teaching the author or other owner of copyright

(a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, provided that such reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;

(b) the reprographic reproduction, *for* face-to-face teaching in educational institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of work, to the extent justified by the purpose, provided that

(i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions; and

(ii) there is no collective licence available (that is, offered by a collective administration organization of which the educational institution is or should be aware) under which such reproduction can be made.

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1).

(3) Where a reproduction permissible under subsection (1) or (2) is subsequently reproduced such reproduced copy shall be treated as an infringing copy.

68. Notwithstanding the provisions of section 10(I)(a), any library or archive whose activities do not serve direct or indirect commercial gain may, without the authorization of the author or other owner of copyright, make a single copy of the work by reprographic reproduction

(a) where the work reproduced is a published article, other short work or short extract *of* a work, and where the purpose *of* the reproduction is to satisfy the request *of* any person, provided that

(i) the library or archive is satisfied that the copy will be used solely for the purposes *of* study, scholarship or private research;

(ii) the act *of* reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; and

(iii) there is no collective licence available (that is, offered by a collective administration organization *of* which the library or archive is or should be aware) under which such copies can be made; or

(b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection *of* another similar library or archives provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the act *of* reprographic reproduction is an isolated case occurring, *if* repeated, on separate and unrelated occasions.

69. Notwithstanding the provisions *of* section 10(1)(a), (i) and (j), the following acts shall be permitted in respect *of* a work without the authorization of the author or other owner of copyright, subject to the obligation to indicate the source and the name *of* the author as far as practicable

(a) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or

religious topics or a broadcast work of the same character; this permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work;

(b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose; and

(c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information.

70. (I) Notwithstanding section 13 (1) (a) and (c), the reproduction, in single copy, or the adaptation of a computer programme by the lawful owner of a copy of that computer programme shall be permitted without the authorization of the author or other owner of copyright, provided that the copy or adaptation is necessary

(a) for use of the computer programme with a computer for the purpose and extent for which the computer programme has been obtained; or

(b) for archival purposes and for the replacement of the lawfully owned copy of the computer programme in the event that the said copy of the computer programme is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer programme shall be used for any purpose other than those specified in subsection (I), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer programme ceases to be lawful.

71. Notwithstanding the provisions of section 10(1)(f), a person may, for his own personal use, import, without the authorization of the author or other owner of copyright a copy of a work.

72. Notwithstanding the provisions of section I O(1)(g), the public display of an original or copy of a work shall be permitted without the authorization of the author, provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process, and provided further that the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

Exceptions relating to Public Administration

73. (I) Copyright is not infringed by anything done for the purposes of parliamentary or judicial proceedings or, subject to subsection (3), for the purposes of reporting such proceedings.

(2) Copyright in a work is not infringed by anything done for the purposes of the proceedings of a statutory inquiry or, subject to subsection (3), for the purposes of reporting any such proceedings held in public.

(3) The provisions of subsections (I) and (2) relating to the reporting or proceedings shall not be construed as authorizing the copying of a work which is itself a published report of the

proceedings.

(4) Copyright in a work is not 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 an investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment.

74. Where any protected work or reproduction of any such work is comprised in any public record pursuant to any enactment which is, by virtue of that enactment, open to public inspection, the copyright in the work is not 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.

75. (1) Copyright in a work is not infringed by anything done in relation to the work, by or on behalf of the State or any person authorized in writing by a government department

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

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

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

Exceptions relating to works in electronic form

76. (1) Where a copy of a work in electronic form has been purchased on terms which expressly or impliedly, or by virtue of any rule of law, allows the purchaser to copy the work, adapt it or make copies of an adaption in connection with his use of it, then in the absence of any express terms

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

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

(3) Subsections (1) and (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 also apply on a subsequent transfer, with the subsection (2) to the purchaser by references to the subsequent transferor.

Adaptations

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

PART VIII
SPECIAL JURISDICTION OF COURT RELATING TO LICENSING

Preliminary

78. (1) In this Part

"copyright licence" means a licence to do, or authorize the doing, of any of those acts restricted by copyright in relation to the works of more than one author;

"licensing body" means a society or other organization 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 agent for him, of copyright licences and whose objects include the granting of licences covering works of more than one author;

"licensing scheme" means a scheme operated by a licensing body setting out

(i) the classes of case in which the licensing body, or the persons on whose behalf it acts, is willing to grant copyright licences; and

(ii) the terms on which licences would be granted in those classes of case, and for this purpose a "scheme" includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) Reference in this part to licence or licensing schemes covering the works of more than one author does not include licences or schemes covering

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

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

79. Subject to this Act, the Court shall have jurisdiction to

(a) determine any dispute which may be referred to it pursuant to any provision of this Part; and

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

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

(2) The Court may order that the costs or the expenses of any proceeding 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 such order or direct in what manner such costs or expenses are to be taxed.

(3) Where

- (a) the Court makes an order by way of determination of a dispute pursuant to this Part, the Court may, in its discretion, direct that the order shall have effect retroactively to such date as the Court specifies; but no order shall have effect from a date prior to the date on which the dispute was formally referred to the Court;
- (b) the Court fixes an amount of equitable remuneration or compensation pursuant to section 79(b), 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.

References and applications to licensing schemes

81. Sections 82 to 87 apply to the following licensing schemes

(a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films, or film sound-tracks when accompanying a film, which cover the works of more than one author, so far as they relate to licences for

- (i) copying the work;
- (ii) performing, playing or showing the work in public; or
- (iii) broadcasting the work or including it in a cable programme service;

(b) licensing schemes in relation to the copyright in sound recordings, other film sound-tracks when accompanying a film, broadcasts or cable programmes, or the typographical arrangement of published editions; and

(c) licensing schemes in relation to the copyright in sound recordings, films or computer programmes, so far as they relate to licences for the rental of copies to the public.

82. (1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the Court by an organisation claiming to represent 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 as it relates to cases of the description to which the reference relates, as the Court may determine to be appropriate in the circumstances.

(4) The order made under subsection (3) may be of indefinite duration or may endure for such period as the Court may, determine.

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

(a) the person claiming that he 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 person.

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

(2) A scheme which has been referred to the 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 as it relates to cases of the description to which the reference relates, as the Court may determine to be appropriate in the circumstances.

(4) The order made under subsection (3) may be of indefinite duration or may endure for such period as the Court may determine.

84. (1) Where the Court has, on a previous reference of a licensing scheme under section 82 or 83, or under this section, made an order with respect to the scheme, then, while the order remains in force

(a) the licensing body;

(b) an applicant for a licence in a case of the description to which the order applies; or

(c) an organisation claiming to represent 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 after 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 that has been 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 as it relates to cases of the description to which the reference relates, as the Court may determine to be appropriate in the circumstances.

(5) The order made pursuant to subsection (4) may be made so as to be in force indefinitely or

for such period as the Court may determine.

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

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

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

(b) proposes unreasonable terms for a licence, may apply to the High Court for relief.

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

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

(b) the case is so similar to those in which licences are granted under the unreasonable scheme that it should be dealt with in the same way.

(4) If the Court is satisfied that the claim referred to in subsection (1) 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 referred to in subsection (I) may be of indefinite duration or may endure for such period as the Court may determine.

86. (1) Where the Court has made an order under section 85 that a person is entitled to a licence under a licensing scheme, the 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 a application for review, confirm or vary its order as the Court may determine to be appropriate having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

87. (1) A licensing scheme which has been confirmed or varied by the Court under section 82 or 83 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 was made, so long as the order remains in force.

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

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

(b) complies with the other terms applicable to such a licence under the scheme, shall be in the same position, as regards infringement of copyright, as if he had, at all material times, been the holder of a licence granted by the owner of copyright in question in accordance with the scheme.

(3) The Court may direct that the order, so far as it varies the amount of charges payable, has effect from a date on which it is made, but not earlier than the date on which the reference was made or, if later, on which the scheme came into operation.

(4) If a direction is made under subsection (3)

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

(b) the references in subsection (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

(5) A direction under subsection (3) shall not be made where subsection (6) applies.

(6) Where the Court makes an order under section 85 and the order remains in force, the person in whose name the order is made shall, if he satisfies the conditions specified in subsection (7), be in the same position, as regards infringement

of copyright, as if he had, at all material times, been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(7) The conditions referred to in subsection (6) are that the person mentioned therein shall

(a) pay 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) comply with the other terms specified in the order.

88. Sections 89 to 92 apply to the following descriptions of licences to which licence granted by a licensing body otherwise than in pursuance of licensing scheme

(a) licences relating to the copyright in a literary, dramatic, musical or artistic work or film, or film sound track when accompanying a film, which cover the works of more than one author, so far as they authorize

- (i) copying the work;
- (ii) performing, playing or showing the work in public; or
- (iii) broadcasting the work or including it in a cable programme service;

(b) licences relating to the copyright in a sound recording other than a film soundtrack when accompanying a film, broadcast or cable programme, or the typographical arrangement of a published edition; and

(c) licences in relation to the copyright in sound recordings, films or computer programmes so far as they relate to the rental of copies to the public.

89. (1) The terms on which a licensing body proposes to grant Reference to court a licence may be referred to the Court by the prospective licensee. of proposed licence.

(2) The Court shall first decide whether to entertain the reference to in subsection (1), 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 appropriate in the circumstances.

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

90. (1) A licensee, under a licence which is due to expire by effluxion of time or as a result of notice given by the licensing body, may apply to the Court for relief on the ground that it is unreasonable, in the circumstances, that the licence should expire.

(2) An application under subsection (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 has been made to the Court shall remain in operation until the proceedings thereon 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 determine to be appropriate in the circumstances.

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

91. Where the Court has made an order under section 89 to 90, the licensing body or the person entitled to the benefit of the order may apply to the Court to review its order and the provisions of section 86 shall apply *mutatis mutandis*.

92. (1) Where the Court makes an order under section 89 or 90 and the order remains in force, the person entitled to the benefit of the order shall, if he satisfies the conditions specified in subsection (2), be in the same position, as regards infringement of copyright, as if he had, at all material times, been the holder of a licence granted by the owner of the copyright in question on the terms specified

in the order.

(2) The conditions referred to in subsection (1) are that the person mentioned therein shall

(a) pay 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) comply with the other terms specified in the order.

(3) The benefit of the order may be assigned

(a) in the case of an order under section 89, if the assignment is not prohibited under the terms of the Court order; and

(b) in the case of an order under section 90, if assignment was not prohibited under the terms of the original licence.

(4) The Court may direct that an order under section 89 or 90, or an order under section 91 varying such an order, so far as it varies the amount of charges payable, shall not have effect from a date

(a) before that on which it was made, not being a date earlier than the date on which the reference or application was made; or

(b) 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.

(5) If a direction referred to in subsection (4) is made

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

(b) the reference in paragraph (a) of subsection (1) 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 case

93. In determining what is reasonable on a reference or application under this Part relating to a licensing scheme or licence, the 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.

94. Where a reference or application is made to the Court under this Part for the licensing of reprographic copying of published literary, dramatic, musical or artistic work, or the typographical

arrangement of published editions, the Court shall have regard to

- (a) the extent to which published editions of the work 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.

95. (1) This section applies to references and applications under this Part relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.

(2) In considering what charges should be paid for a licence the Court shall have no regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

96. (1) This section applies to references or applications under this Part in respect of licences relating to sound recordings, films, broadcast or cable programmes which include, or are to include, any entertainment or any other event.

(2) The 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 in those conditions.

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

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

(b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

97. (1) In considering what charges should be paid for a licence on a reference or application under this Part relating to licences for the rental, to the public, of copies of sound recordings, films or computer programmes, the Court shall take into account any reasonable payments which the owner of the copyright in the sound recording, film 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 the copyright in works included in that work.

(2) On any reference or application under this Part relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Court shall take into account, in considering what charges should be paid for a licence, 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, film, broadcast or cable programme.

98. The mention, in sections 93 to 97, of the specific matters to which the Court is to have regard in certain classes of cases does not affect the Court's general obligation, in any case, to have regard to all relevant considerations.

PART IX
BORDER PROTECTION MEASURES

99. (1) Where he has reasonable grounds to believe that a pirated copy of his work is being imported, or is about to be imported into Dominica, the person who owns the copyright in a work may, by a written notice to the Comptroller, so notify the Comptroller and request him to detain any such pirated copy as may come into the control or custody of Customs.

(2) A notice under subsection (1) shall

(a) contain such particulars, as may be prescribed, in support of the claim that the item is a pirated copy; and

(b) specify the period for which the notice shall be in force, which period shall

(i) not be longer than five years from the date of the notice; or

(ii) where the copyright in the work to which the notice relates will expire within the five year period referred to in paragraph (a), not be longer than the period for which the copyright will last.

(3) The Comptroller shall, in relation to any notice given under subsection (1)

(a) accept the notice if it complies with the requirements of this section and any regulations made hereunder; or

(b) reject the notice if it does not so comply; and

(c) within a reasonable period of receiving the notice, advise the claimant whether he has accepted or rejected the notice.

(4) A notice accepted under this section shall remain in force for the period specified in the notice unless

(a) it is revoked by the claimant in writing; or

(b) the Court orders, in proceedings under section 102, that the notice be discharged.

(5) Nothing in this section shall apply in relation to a work which has been made, copied, published, adapted or distributed outside Dominica with the authorization of the owner of the copyright in the work.

100. (1) Where a notice which has been accepted under section 99 (3)(a) is in force and the Comptroller is of the opinion that any imported item to which the notice relates, and which is in the control or custody of the Comptroller is or may be a pirated copy, the Comptroller may conduct or cause to be conducted such investigation as he considers necessary in order to establish whether or not the item is or appears to be a pirated copy.

(2) Where an investigation is conducted under subsection (1), the Comptroller may, in writing and within such period as he may specify, require the claimant or any other person appearing to him to have an interest in the item to provide him with such further information as he may specify for the

purpose of the investigation.

(3) Whether or not the Comptroller conducts an investigation, he shall, within a reasonable time of forming an opinion under subsection (1), make a determination whether or not the item is or appears to be a pirated copy and shall notify the claimant in writing of his determination.

(c) determining whether an item which the Comptroller has determined to be a pirated copy imported other than for private and domestic use under section 100 (3) is indeed such a copy.

(2) Notice of proceedings under subsection (1)(c) shall be served on the Comptroller.

(3) In proceedings under subsection (1)(c) the Court shall issue directions as to the service of notice on any person having an interest in the item the subject of the proceedings, and any such interested person shall be entitled to

(a) appear in those proceedings whether or not he was served with a notice under section 61; and

(b) appeal against any order made in those proceedings, whether or not that person appeared in the proceedings.

(4) No order made in the proceeding under subsection (3) shall take effect until the end of the period within which notice of an appeal may be given or, if, before the end of that period notice of appeal is duly given, until the end of the final determination or abandonment of the proceedings on the appeal.

PART X GENERAL PROVISIONS

103. The provisions of any international treaty in respect of i copyright and related rights to which Dominica is a party shall apply to matters dealt with in this Act and, in case of conflict with provisions of this Act, shall prevail over the latter.

104. This Act binds the State.

105. (1) The Minister may by affirmative resolution in parliament make regulations for giving effect to the purposes of this Act including setting up one or more organizations to administer rights on behalf of the owners of such rights, and determining the conditions under which such organizations shall operate.

(2) Before making regulations under this section the Minister shall give publicity to the draft regulations and invite the views of the public and in particular from the performing rights society limited and mechanical copyright protection society limited.

106. The Copyright Act (hereinafter referred to as "the former Act"), is hereby repealed.

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

(2) Nothing in this Act shall affect the right of the State or any person deriving title from the State to sell, use or otherwise deal with articles forfeited under the Customs (Control and Management) Act including any articles so forfeited by virtue of this Act or the former Act.

108. (1) Where immediately prior to the coming into force of this Act, copyright subsists in any work in Dominica by virtue of the former Act, such copyright shall continue to subsist and the person entitled thereto by virtue of that Act shall be the owner thereof under and subject to this Act, and in particular

(a) the duration of such copyright;

(b) the acts comprised within the exclusive rights attaching to such copyright; and

(c) the effect upon the ownership of such copyright of any event or transaction occurring or any contract or agreement made after the coming into force of this Act.

(2) Where, before the coming into force of this Act, 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 to a performance in respect of which rights are conferred by this Act, being an act which, prior to such coming into force would have been lawful, nothing in this Act shall diminish or prejudice any rights or interests which, in relation to that work or performance, are subsisting and valuable on the said coming into force, 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.

(3) Where an act done before the coming into force of this Act was then an infringement of copyright but is not an infringement of copyright or rights in a performance under this Act, then, proceedings in respect of that act may be taken as if this Act had not been passed.

(4) An act done before the coming into force of this Act shall not be an infringement of copyright or rights in a performance conferred by this Act if that act would not, but for the passing of this Act, have constituted an infringement.

(5) Proceedings for infringement of copyright instituted but not disposed of before the appointed day shall be disposed of as if this Act had not been passed.

(6) Proceedings under this Act or infringement may be taken notwithstanding that the alleged infringement occurred before the coming into force of this Act.

Passed in the House of Assembly this 29th day of April, 2003.

ALEX F. PHILLIP (MRS.)
Clerk of the House of Assembly