



ANALYSIS

- Title
1. Short Title and commencement
 2. Interpretation
 3. Supplementary provisions as to interpretation
 4. Act to bind the Crown
 5. No copyright except by virtue of this Act

PART I

COPYRIGHT IN ORIGINAL WORKS

6. Nature of copyright under this Act
7. Copyright in literary, dramatic, musical, and artistic works
8. Term of copyright
9. Ownership of copyright in literary, dramatic, musical, and artistic works
10. Infringements by importation, sale, and other dealings
11. Provisions as to anonymous and pseudonymous works
12. Provisions as to works of joint authorship

PART II

COPYRIGHT IN OTHER SUBJECT-MATTER

13. Copyright in sound recordings
14. Copyright in cinematograph films
15. Copyright in television broadcasts and sound broadcasts
16. Extended application of provisions relating to broadcasts
17. Copyright in published editions of works
18. Supplementary provisions for the purposes of Part II

PART III

FAIR DEALING WITH COPYRIGHT MATERIAL

19. General exceptions from protection of literary, dramatic, and musical works and other subject-matter
20. General exceptions from protection of artistic works
21. Special exceptions for libraries, Universities, and schools
22. Special exception for records of musical works
23. Revision of royalty rate

PART IV

REMEDIES FOR INFRINGEMENT OF COPYRIGHT

24. Action by owner of copyright for infringement
25. Rights of owner of copyright in respect of infringing copies, etc.
26. Proceedings in case of copyright subject to exclusive licence
27. Proof of facts in copyright actions
28. Penalties and summary proceedings in respect of dealings which infringe copyright
29. Provisions for restricting importation of printed copies

PART V

COPYRIGHT TRIBUNAL

Constitution

30. Establishment of Tribunal
31. Removal of members from office
32. Retirement of members
33. Deputy members
34. Oath to be taken
35. Remuneration and travelling expenses

Jurisdiction and Procedure

36. Interpretation
37. Jurisdiction
38. Applications to Tribunal
39. Reference of licence schemes to Tribunal
40. Further reference of licence schemes to Tribunal
41. Powers of Tribunal in relation to diffusion service
42. Parties in proceedings before Tribunal
43. Procedure of Tribunal
44. Evidence in proceedings before Tribunal
45. Effect of orders of Tribunal
46. Costs
47. Stating of case for Court of Appeal
48. Proceedings before Tribunal shall not be appealed against

PART VI

EXTENSION OR RESTRICTION OF OPERATION OF ACT

49. Application of Act to other countries
50. Provisions as to international organisations
51. Denial of copyright to citizens of countries not giving adequate protection to New Zealand copyright material

PART VII

CROWN COPYRIGHT AND CROWN USE OF COPYRIGHT MATERIAL

52. Crown copyright
53. Use of copyright material for services of the Crown
54. Rights of third parties in respect of Crown use
55. Proceedings against the Crown

PART VIII

MISCELLANEOUS PROVISIONS

56. Assignments and licences in respect of copyright
 57. Future copyright
 58. Right to make conditions in respect of unpublished works
 59. Copyright to pass under will with unpublished works
 60. Broadcasts and diffusion of broadcast programmes
 61. Special provisions as to public records and public archives
 62. False attribution of authorship
 63. Warranty implied in licences
 64. Delivery of copies of books
 65. Application of Act to Tokelau Islands
 66. Regulations
 67. Savings of rights of Crown and other persons
 68. Transitional provisions, repeals, and amendments
- Schedules

1962, No. 33

An Act to consolidate and amend the law relating to copyright [5 December 1962]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Copyright Act 1962.

(2) This Act shall come into force on the first day of April 1963.

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

“Adaptation” includes any of the following, that is to say,—

(a) In relation to a literary work, a version of the work (whether in its original language or a different

language) in which it is converted into a dramatic work:

(b) In relation to a dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a literary work:

(c) In relation to a literary or dramatic work,—

(i) A translation of the work:

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

(d) In relation to a musical work, an arrangement or transcription of the work:

“Artistic work” means a work of any of the following descriptions, that is to say,—

(a) The following, irrespective of artistic quality, namely, paintings, sculptures, drawings, engravings, and photographs:

(c) Works of artistic craftsmanship, not falling within either of the preceding paragraphs of this definition:

(b) Works of architecture, being either buildings or models for buildings:

“Broadcasting Corporation” means the New Zealand Broadcasting Corporation established under the Broadcasting Corporation Act 1961:

“Building” includes any structure:

“Cinematograph film” means any sequence of visual images recorded on material of any description (whether translucent or not) so as to be capable, by use of that material,—

(a) Of being shown as a moving picture; or

(b) Of being recorded on other material (whether translucent or not), by the use of which it can be so shown;

and includes the sounds embodied in any soundtrack associated with a cinematograph film:

“Construction” includes erection; and references to reconstruction shall be construed accordingly:

“Copy”, in relation to a cinematograph film, means any print, negative, tape, or other article on which the

film or part of it is recorded; and includes the sound-track, whether incorporated in any print or negative or tape or other article, or issued for use in conjunction with any print or negative or tape or other article:

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

“Drawing” includes any diagram, map, chart, or plan:

“Engraving” includes any etching, lithograph, woodcut, print, or similar work, not being a photograph:

“Future copyright” means copyright which will or may come into existence in respect of any future work or class of works or other subject-matter, or on the coming into operation of any provisions of this Act, or in any future event:

“Government Department” means every Department and instrument of the Executive Government of New Zealand; and includes the Public Trustee and the Maori Trustee:

“Her Majesty” or the “Crown” means Her Majesty in right of New Zealand:

“Infringing copy”,—

(a) In relation to a literary, dramatic, or musical work, or a published edition thereof, or an artistic work, means any reproduction otherwise than in the form of a cinematograph film;

(b) In relation to a sound recording, means a record embodying that recording;

(c) In relation to a cinematograph film, means a copy of the film; and

(d) In relation to a television broadcast or a sound broadcast, means a copy of a cinematograph film of it or a record embodying a sound recording of it,—

being (in any such case) an article the making of which constituted an infringement of the copyright in the work, edition, recording, film, or broadcast, or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in the place into which it was imported:

- “Judicial proceeding” means a proceeding before any Court, tribunal, or person having by law or consent of parties power to hear, receive, and examine evidence:
- “Lecture” includes an address, speech, or sermon; and “delivery”, in relation to a lecture, includes delivery by the use of a record:
- “Literary work” includes any written table or compilation:
- “Manuscript”, in relation to a work, means the original document embodying the work, whether written by hand or not:
- “New Zealand” includes the Tokelau Islands:
- “New Zealand citizen” includes any body corporate incorporated under the laws of New Zealand:
- “Performance”, in relation to lectures, includes delivery; and in relation to any other work or subject-matter, subject to the provisions of subsection (5) of this section, includes any mode of visual or acoustic presentation, including any such presentation by the operation of radio apparatus, or by the exhibition of a cinematograph film, or by the use of a record, or by any other means; and references to performing a work shall be construed accordingly:
- “Photograph” means any product of photography or of any process akin to photography, other than a part of a cinematograph film, and “author”, in relation to a photograph, means the person who, at the time when the photograph is taken, is the owner of the material on which it is taken:
- “Plate” includes any stereotype, stone, block, mould, matrix, transfer, negative, or other similar appliance:
- “Prescribed” means prescribed by regulations made under this Act:
- “Radio apparatus” has the same meaning as in section 163 of the Post Office Act 1959:
- “Record” means any disc, tape, perforated roll, or other device in which sounds are embodied so as to be capable (with or without the aid of some other instrument) of being automatically reproduced therefrom, and references to a record of a work or other subject-matter are references to a record (as herein defined) by means of which it can be performed:

“Reproduction”, in the case of a literary, dramatic, or musical work, includes a reproduction in the form of a record or of a cinematograph film; and, in the case of an artistic work, includes a version produced by converting the work into a three-dimensional form, or, if it is in three dimensions, by converting it into a two-dimensional form, and references to reproducing a work shall be construed accordingly:

“Sculpture” includes any cast or model made for purposes of sculpture:

“Sound broadcast” means sounds broadcast otherwise than as part of a television broadcast:

“Sound recording” means the aggregate of the sounds embodied in, and capable of being reproduced by means of, a record of any description, other than a soundtrack associated with a cinematograph film:

“Sufficient acknowledgment” means an acknowledgment of the work or other subject-matter in question by its title or other description and, unless the work is anonymous or the author or maker has previously agreed that no acknowledgment of his name should be made, also identifying the author or maker:

“Television broadcast” means visual images broadcast by way of television, without or together with any sounds broadcast for reception along with those images:

“Tribunal” means the Copyright Tribunal established under Part V of this Act:

“Work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separate from the contribution of the other author or authors:

“Writing” includes any form of notation, whether by hand or by printing, typewriting, or any similar process.

(2) References in this Act to a literary, dramatic, musical, or artistic work include references to an adaptation of the work.

(3) References in this Act to broadcasting are references to broadcasting by radiocommunication (within the meaning of section 163 of the Post Office Act 1959), whether by way of television or of sound broadcasting.

(4) References in this Act to the transmission of a work or other subject-matter to subscribers to a diffusion service are references to the transmission thereof in the course of a service

of distributing broadcast programmes or other programmes (whether provided by the person operating the service or other persons), over wires, or other paths provided by a material substance, to the premises of subscribers to the service; and for the purposes of this Act, where a work or other subject-matter is so transmitted,—

- (a) The person operating the service (that is to say, the person who, in the agreements with subscribers to the service, undertakes to provide them with the service, whether he is the person who transmits the programmes or not) shall be taken to be the person causing the work or other subject-matter to be so transmitted; and
- (b) No person, other than the person operating the service, shall be taken to be causing it to be so transmitted, notwithstanding that he provides any facilities for the transmission of the programmes:

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

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

- (a) The operation of any apparatus whereby the waves are transmitted, directly or indirectly, to the receiving apparatus shall not be taken to constitute performance or to constitute causing the visual images or sounds to be seen or heard; but
- (b) Except as provided in subsection (7) of this section, in so far as the display or emission of the images or sounds constitutes a performance, or causes them to be seen or heard, the performance, or the causing of the images or sounds to be seen or heard, as the case may be, shall be taken to be effected by the operation of the receiving apparatus.

(6) Without prejudice to subsection (5) of this section, where a work is performed, or visual images or sounds are caused to be seen or heard, by the operation of any apparatus to which this subsection applies, being apparatus provided by or with the consent of the occupier of the premises where the apparatus is situated, the occupier of those premises shall, for the purposes of this Act, be taken to be the person giving the performance, or causing the images or sounds to be seen or heard, whether he is the person operating the apparatus or not. This subsection applies to any such receiving apparatus as is mentioned in subsection (5) of this section and to any apparatus for reproducing sounds by the use of a record.

(7) If, as a result of the reception of a programme (other than a broadcast programme) transmitted to subscribers to a diffusion service, any act mentioned in paragraph (b) of subsection (5) or in subsection (6) of this section constitutes a performance in public or the seeing or hearing of images or sounds in public, the person operating the diffusion service shall be deemed to have caused the work or other subject-matter to be performed, seen, or heard in public.

Cf. Copyright Act 1956, ss. 2 (6), 3 (1), 6 (10), 11 (3), 12 (9), 13 (10), 18 (3), 37 (5), 48 (U.K.); 1913, No. 4, s. 2

3. Supplementary provisions as to interpretation—

(1) Except in so far as the context otherwise requires, any reference in this Act to the doing of an act in relation to a work or other subject-matter shall be taken to include a reference to the doing of that act in relation to a substantial part thereof, and any reference to a reproduction, adaptation, or copy of a work or other subject-matter, or a record embodying a sound recording, shall be taken to include a reference to a reproduction, adaptation, or copy of a substantial part of the work or other subject-matter, or a record embodying a substantial part of the sound recording, as the case may be:

Provided that, for the purposes of the following provisions of this Act, namely subsections (1) and (2) of section 7, subsection (2) of section 14, subsection (1) of section 17, subsections (2) to (4) of section 52, and section 59, this subsection shall not affect the construction of any reference to the publication, or absence of publication, of a work or other subject-matter.

(2) For the purposes of this Act,—

- (a) A literary, dramatic, or musical work, or an edition of such a work, or an artistic work, shall be taken to have been published if, but only if, reproductions of the work or edition have been issued to the public:
- (b) A sound recording shall be taken to have been published if, but only if, records embodying the recording or any part thereof have been issued to the public:
- (c) A cinematograph film shall be taken to have been published if, but only if, copies of the film have been sold, let on hire, or offered for sale or hire to the public:
- (d) Publication does not include,—
 - (i) The performance, or the issue of records, of a literary, dramatic, or musical work:
 - (ii) The exhibition of an artistic work, the construction of a work of architecture, and the issue of photographs or engravings of a work of architecture or of a sculpture:
- (e) Except in so far as it may constitute an infringement of copyright, or a contravention of any restriction imposed by section 62 of this Act, publication does not include the issue of reproductions of a work or edition, the issue of records embodying a recording, and the selling, letting on hire, or offering for sale or hire of copies of a film which is merely colourable and not intended to satisfy the reasonable requirements of the public.

(3) In determining, for the purpose of subsection (2) of this section, whether reproductions of a work or edition or records have been issued to the public, or copies of a film have been sold, let on hire, or offered for sale to the public, subsection (1) of this section shall not apply.

(4) For the purposes of this Act, a publication in New Zealand shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

(5) In determining for the purposes of any provision of this Act—

- (a) Whether a work or other subject-matter has been published; or

(b) Whether a publication of a work or other subject-matter was the first publication thereof; or

(c) Whether a work or other subject-matter was published in the lifetime of a person,—

no account shall be taken of any unauthorised publication or of the doing of any other unauthorised act.

(6) A publication or other act shall, for the purposes of subsection (5) of this section, be taken to have been unauthorised—

(a) If copyright subsisted in the work or other subject-matter and the act in question was done otherwise than by, or with the licence of, the owner of the copyright; or

(b) If copyright did not subsist in the work or other subject-matter, and the act in question was done otherwise than by, or with the licence of, the author, maker, or publisher, as the case may be, or persons lawfully claiming under him.

(7) Nothing in subsections (5) and (6) of this section shall affect any provisions of this Act as to the acts restricted by any copyright or as to acts constituting infringements of copyright, or any provisions of section 62 of this Act.

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

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

(a) To the doing of different acts or classes of acts; or

(b) To the doing of one or more acts or classes of acts in different countries or at different times,—

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

(10) Without prejudice to the generality of subsection (9) of this section, where under any provision of this Act a question arises whether an article of any description has been imported or sold, or otherwise dealt with, without the licence of the owner of any copyright, the owner of the copyright, for the purpose of determining that question, shall be taken to be the person entitled to the copyright in respect of its application to the making of articles of that description in the country into which the article was imported, or, as the case may be, in which it was sold or otherwise dealt with.

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

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

(13) Where, in the case of copyright of any description,—

(a) Provisions contained in this Act specify certain acts as being restricted by the copyright, or as constituting infringements thereof; and

(b) Other provisions of this Act specify certain acts as not constituting infringements of the copyright,—

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

Cf. Copyright Act 1956, ss. 12 (9), 13 (10), 49 (U.K.); 1913, No. 4, ss. 2 (2), (3), 3 (2), (3), 8 (3)

4. Act to bind the Crown—This Act shall bind the Crown.

5. No copyright except by virtue of this Act—(1) Subject to the provisions of this Act, no copyright shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

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

Cf. Copyright Act 1956, s. 46 (4), (5) (U.K.); 1913, No. 4, s. 4

PART I

COPYRIGHT IN ORIGINAL WORKS

6. Nature of copyright under this Act—(1) In this Act “copyright” in relation to a work (except where the context otherwise requires) means the exclusive right, by virtue and subject to the provisions of this Act, to do, and to authorise other persons to do, certain acts in relation to that work in New Zealand. The said acts, in relation to a work of any description, are those acts which, in the relevant provision of this Act, are designated as the acts restricted by the copyright in a work of that description.

(2) In accordance with subsection (1) of this section, but subject to the following provisions of this Act, the copyright in a work is infringed by any person who, not being the owner of the copyright, and without the licence of the owner thereof, does, or authorises another person to do, any of the said acts in relation to the work in New Zealand.

(3) In subsections (1) and (2) of this section references to the relevant provision of this Act, in relation to a work of any description, are references to the provision of this Act whereby it is provided that (subject to compliance with the conditions specified therein) copyright shall subsist in works of that description.

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

Cf. Copyright Act 1956, s. 1 (U.K.); 1913, No. 4, ss. 3 (2), 5 (1)

7. Copyright in literary, dramatic, musical, and artistic works—(1) Copyright shall subsist, subject to the provisions of this Act, in every original literary, dramatic, musical, or artistic work which is unpublished, and of which the author was a New Zealand citizen or was domiciled or resident in New Zealand at the time when the work was made, or, if the making of the work extended over a period, was a New Zealand citizen or was so domiciled or resident for a substantial part of that period.

(2) Where an original literary, dramatic, musical, or artistic work has been published, then, subject to the provisions of this Act, copyright shall subsist in the work (or, if copyright

in the work subsisted immediately before its publication, shall continue to subsist) if, but only if,—

(a) The first publication of the work took place in New Zealand; or

(b) The author of the work was a New Zealand citizen or was domiciled or resident in New Zealand at the time when the work was first published, or immediately before his death, whichever first occurred.

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

(a) Reproducing the work in any material form:

(b) Publishing the work:

(c) Performing the work in public:

(d) Broadcasting the work:

(e) Causing the work to be transmitted to subscribers to a diffusion service:

(f) Making any adaptation of the work:

(g) Doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (e) of this subsection.

(4) The acts restricted by the copyright in an artistic work are—

(a) Reproducing the work in any material form:

(b) Publishing the work:

(c) Including the work in a television broadcast:

(d) Causing a programme which includes the work to be transmitted to subscribers to a diffusion service.

Cf. Copyright Act 1956, ss. 2 (1), (2), (5), 3 (2), (3), (5) (U.K.); 1913, No. 4, ss. 2 (4), 3 (1), (2), 23 (1)

8. Term of copyright—(1) Where by virtue of this Act copyright subsists in any literary, dramatic, musical, or artistic work (other than a photograph),—

(a) If in the lifetime of the author the work has been published or performed in public or included in a broadcast, or records of the work have been offered for sale to the public, that copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the author died, and shall then expire:

- (b) If in the lifetime of the author none of the acts mentioned in paragraph (a) of this subsection has been done, that copyright shall continue to subsist until the end of the period of seventy-five years from the end of the calendar year in which the author died, and shall then expire:

Provided that, if any of those acts has been done after the death of the author, copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which one of those acts has first been done, or the end of the period of seventy-five years from the end of the calendar year in which the author died, whichever period is the shorter.

- (2) Where by virtue of this Act copyright subsists in any photograph, that copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the original photograph was taken, and shall then expire.

Cf. Copyright Act 1956, ss. 2 (3), 3 (4) (U.K.); 1913, No. 4, ss. 6, 23, 27

9. Ownership of copyright in literary, dramatic, musical, and artistic works—(1) Subject to the provisions of this section, the author of a work shall be entitled to any copyright subsisting in the work by virtue of this Part of this Act.

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

(3) Subject to subsection (2) of this section, where a person commissions the taking of a photograph, or the making of a painting, drawing, engraving, or sculpture and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the person who so commissioned the work shall be entitled to any copyright subsisting therein by virtue of this Part of this Act.

(4) Where, in a case not falling within either subsection (2) or subsection (3) of this section, a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be entitled to any copyright subsisting in the work by virtue of this Part of this Act.

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

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

Cf. Copyright Act 1956, s. 4 (U.K.); 1913, No. 4, s. 8 (1)

10. Infringements by importation, sale, and other dealings—(1) Without prejudice to the general provisions of section 6 of this Act as to infringements of copyright, the provisions of this section shall have effect in relation to copyright subsisting by virtue of this Part of this Act.

(2) The copyright in a literary, dramatic, musical, or artistic work is infringed by any person who, without the licence of the owner of the copyright, imports an article (otherwise than for his private and domestic use) into New Zealand if to his knowledge the making of that article constituted an infringement of that copyright, or would have constituted such an infringement if the article had been made in the place into which it is so imported.

(3) The copyright in a literary, dramatic, musical, or artistic work is infringed by any person who, in New Zealand, and without the licence of the owner of the copyright,—

(a) Sells, lets for hire, or by way of trade offers or exposes for sale or hire any article; or

(b) By way of trade exhibits any article in public,—
if to his knowledge the making of the article constituted an infringement of that copyright, or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it was imported.

(4) Subsection (3) of this section shall apply in relation to the distribution of any articles either—

(a) For purposes of trade; or

(b) For other purposes, but to such an extent as to affect prejudicially the owner of the copyright in question,—

as it applies in relation to the sale of an article.

Cf. Copyright Act 1956, s. 5 (U.K.); 1913, No. 4, s. 5 (2)

11. Provisions as to anonymous and pseudonymous works—

(1) Where the first publication of a literary, dramatic, or musical work, or of an artistic work other than a photograph, occurs in the lifetime of the author and is anonymous or pseudonymous, subsection (1) of section 8 of this Act shall not apply.

(2) Subject to the preceding provisions of this Act, any copyright subsisting by virtue of this Act in any work to which subsection (1) of this section applies shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the work was first published, and shall then expire.

(3) Subsections (1) and (2) of this section shall not apply in the case of a work if, at any time before the end of the period mentioned in the said subsection (2), it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry.

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

Cf. Copyright Act 1956, s. 11 (1) and Second Schedule (U.K.)

12. Provisions as to works of joint authorship—(1) In relation to a work of joint authorship, the references to the author in subsections (1) and (2) of section 7 and in subsection (3) of section 11 of this Act shall be construed as references to any one or more of the authors.

(2) In relation to a work of joint authorship, other than a work to which subsection (3) of this section applies, references to the author in subsection (1) of section 8 of this Act shall be construed as references to the author who died last.

- (3) In relation to a work of joint authorship which—
- (a) Was first published under two or more names, of which one or more (but not all) were pseudonyms; or
 - (b) Was first published under two or more names all of which were pseudonyms, if, at any time within the period of fifty years from the end of the calendar year in which the work was first published, it is possible for a person without previous knowledge of the facts to ascertain the identity of any one or more (but not all) of the authors by reasonable inquiry—

references to the author in subsection (1) of section 8 of this Act shall be construed as references to the author whose identity was known or disclosed, or, if the identity of two or more authors was known or disclosed, as reference to that one of the authors who died last.

(4) Where, in relation to a work of joint authorship, copyright would not have subsisted or continued to subsist in the work by virtue of this Part of this Act if one or more of the authors had been the sole author or authors, the work shall be treated for the purposes of this Act as if the other author or authors, as the case may be, had been the sole author or sole joint authors of the work.

(5) In the proviso to subsection (6) of section 19 of this Act, the reference to other excerpts from works by the author of the passage in question—

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

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

Cf. Copyright Act 1956, s. 11 (2), (3) and Third Schedule (U.K.); 1913, No. 4, s. 22 (1)

PART II

COPYRIGHT IN OTHER SUBJECT-MATTER

13. Copyright in sound recordings—(1) Copyright shall subsist, subject to the provisions of this Act, in every sound recording, of which the maker was a New Zealand citizen or was domiciled or resident in New Zealand at the time when the recording was made.

(2) Without prejudice to subsection (1) of this section, copyright shall subsist, subject to the provisions of this Act, in every sound recording which has been published, if the first publication of the recording took place in New Zealand.

(3) Copyright subsisting in a sound recording by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the recording was made, and shall then expire.

(4) Subject to the provisions of this Act, the maker of a sound recording shall be entitled to any copyright subsisting in the recording by virtue of this section:

Provided that where a person commissions the making of a sound recording, and pays or agrees to pay for it in money or money's worth, and the recording is made in pursuance of that commission, that person, in the absence of any agreement to the contrary, shall, subject to the provisions of Parts VII and VIII of this Act, be entitled to any copyright subsisting in the recording by virtue of this section.

(5) The acts restricted by the copyright in a sound recording are the following, whether a record embodying the recording is utilised directly or indirectly in doing them, that is to say,—

- (a) Making a record embodying the recording:
- (b) Broadcasting the recording:
- (c) Causing the recording to be heard in public, if:
 - (i) The recording is performed in a place to which a charge is made for admission; or
 - (ii) The recording is performed by or upon a coin-operated machine; or
 - (iii) The person causing the recording to be heard in public receives any payment in respect of the performance.

(6) Where a sound recording is caused to be heard in public as part of the activities of, or for the benefit of, a club, society, or other organisation which is not established or conducted for profit and whose main objects are charitable

or are concerned with the advancement of religion, education, or social welfare, the act of causing it to be so heard shall not constitute an infringement of the copyright in the recording:

Provided that this subsection shall not apply if a charge is made and any proceeds or some part of them are applied otherwise than for the purposes of the organisation.

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

Cf. Copyright Act 1956, s. 12 (U.K.): 1913, No. 4, s. 25 (1)

14. Copyright in cinematograph films—(1) Copyright shall subsist, subject to the provisions of this Act, in every cinematograph film of which the maker was a New Zealand citizen or was domiciled or resident in New Zealand for the whole or a substantial part of the period during which the film was made.

(2) Without prejudice to subsection (1) of this section, copyright shall subsist, subject to the provisions of this Act, in every cinematograph film which has been published, if the first publication of the film took place in New Zealand.

(3) Copyright subsisting in a cinematograph film by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year during which the making of the film was completed, and shall then expire.

(4) Subject to the provisions of this Act, the maker of a cinematograph film shall be entitled to any copyright subsisting in the film by virtue of this section:

Provided that where a person commissions the making of a film and pays or agrees to pay for it in money or money's worth, and the film is made in pursuance of that commission, that person, in the absence of any agreement to the contrary, shall, subject to the provisions of Parts VII and VIII of this Act, be entitled to any copyright subsisting in the film by virtue of this section.

(5) The acts restricted by the copyright in a cinematograph film are—

(a) Making a copy of the film:

(b) Causing the film, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public:

(c) Broadcasting the film:

(d) Causing the film to be transmitted to subscribers to a diffusion service.

(6) Where by virtue of this section copyright has subsisted in a cinematograph film, a person who, after that copyright has expired, causes the film to be seen, or to be seen and heard, in public does not thereby infringe any copyright subsisting by virtue of Part I of this Act in any literary, dramatic, musical, or artistic work.

(7) The copyright in a cinematograph film is not infringed by the use made of any record embodying sounds also embodied in a soundtrack associated with the film if those sounds are not derived (directly or indirectly) from such a soundtrack.

(8) For the purposes of this Act the maker of a cinematograph film is the person by whom the arrangements necessary for the making of the film are undertaken.

Cf. Copyright Act 1956, s. 13 (U.K.)

15. Copyright in television broadcasts and sound broadcasts—(1) Copyright shall subsist, subject to the provisions of this Act,—

(a) In every television broadcast made by the Broadcasting Corporation from a place in New Zealand; and

(b) In every sound broadcast made by the Broadcasting Corporation from such a place.

(2) Subject to the provisions of this Act, the Broadcasting Corporation shall be entitled to any copyright subsisting in a television broadcast or sound broadcast made by it; and any such copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the broadcast is made, and shall then expire.

(3) In so far as a television broadcast or sound broadcast is a repetition (whether the first or any subsequent repetition) of a television broadcast or sound broadcast previously made as mentioned in subsection (1) of this section, and is made by broadcasting material recorded on film, records, or otherwise,—

(a) Copyright shall not subsist therein by virtue of this section if it is made after the end of the period of fifty years from the end of the calendar year in which the previous broadcast was made; and

- (b) If it is made before the end of that period, any copyright subsisting therein by virtue of this section shall expire at the end of that period.
- (4) The acts restricted by the copyright in a television broadcast or sound broadcast are—
- (a) In the case of a television broadcast in so far as it consists of visual images, making, otherwise than for private purposes, a photograph or cinematograph film of it, or copies of such a photograph or film:
- (b) In the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds, making, otherwise than for private purposes, a sound recording of it or a record embodying such a recording:
- (c) In the case either of a television broadcast or of a sound broadcast, rebroadcasting it.
- (5) The restrictions imposed by virtue of subsection (4) of this section in relation to a television broadcast or sound broadcast made by the Broadcasting Corporation shall apply whether the act in question is done by the reception of the broadcast or by making use of any record, print, negative, tape or other article on which the broadcast has been recorded.
- (6) For the purposes of subsection (4) of this section a photograph or cinematograph film or a copy thereof, or a sound recording or a record embodying a recording, shall be taken to be made otherwise than for private purposes if it is made for the purposes of the doing by any person of any of the following acts, that is to say,—
- (a) The sale or letting for hire of any copy of the photograph or film, or, as the case may be, of any record embodying the recording:
- (b) Broadcasting the photograph or film or recording:
- (c) Causing the photograph or film or recording to be seen or heard in public.
- (7) For the purposes of this Act a television broadcast or sound broadcast shall be taken to be made by the person by whom, at the time when, and from the place from which, the visual images or sounds in question, or both, as the case may be, are broadcast.
- (8) The provisions of this section shall apply to broadcasts made by any private broadcasting station which is established and operated under Part III of the Broadcasting Corporation Act 1961 as they apply to broadcasts made by the Broadcasting Corporation.

Cf. Copyright Act 1956, s. 14 (U.K.)

16. Extended application of provisions relating to broadcasts—The Governor-General may from time to time, by Order in Council, provide that, subject to such exceptions and modifications (if any) as may be specified in the order, such provisions of this Act relating to television broadcasts and sound broadcasts as may be so specified shall apply in relation to the operation of radio apparatus by way of the emission (as opposed to reception) of electro-magnetic waves—

- (a) By such persons or classes of persons, in or outside New Zealand, other than the Broadcasting Corporation, as may be specified in the order; and
- (b) For such purposes (whether involving broadcasting or not) as may be so specified,—

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

Cf. Copyright Act 1956, s. 34 (U.K.)

17. Copyright in published editions of works—(1) Copyright shall subsist, subject to the provisions of this Act, in every published edition of any one or more literary, dramatic, or musical works in the case of which either—

- (a) The first publication of the edition took place in New Zealand; or
- (b) The publisher of the edition was a New Zealand citizen or was domiciled or resident in New Zealand at the date of the first publication thereof:

Provided that this subsection does not apply to an edition which reproduces the typographical arrangement of a previous edition of the same work or works.

(2) Subject to the provisions of this Act, the publisher of an edition shall be entitled to any copyright subsisting in the edition by virtue of this section; and any such copyright shall continue to subsist until the end of the period of twenty-five years from the end of the calendar year in which the edition was first published, and shall then expire.

(3) The act restricted by the copyright subsisting by virtue of this section in a published edition is the making, by any photographic or similar process (not being a cinematograph film or television broadcast), of a reproduction of the typographical arrangement of the edition.

Cf. Copyright Act 1956, s. 15 (U.K.)

18. Supplementary provisions for the purposes of Part II—

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

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

(3) Any such copyright is also infringed by any person who, in New Zealand, and without the licence of the owner of the copyright,—

(a) Sells, lets for hire, or by way of trade offers or exposes for sale or hire, any article; or

(b) By way of trade exhibits any article in public,—
if to his knowledge the making of the article constituted an infringement of that copyright, or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it was imported.

(4) Subsection (3) of this section shall apply in relation to the distribution of any articles either—

(a) For purposes of trade; or

(b) For other purposes, but to such an extent as to affect prejudicially the owner of the copyright in question,—

as it applies in relation to the sale of an article.

(5) Subsections (2), (3), and (4) of this section shall have effect without prejudice to the general provisions of section 6 of this Act as to infringement of copyright.

(6) Where by virtue of this Part of this Act copyright subsists in a sound recording, cinematograph film, broadcast, or other subject-matter, nothing in this Part of this Act shall be

construed as affecting the operation of Part I of this Act in relation to any literary, dramatic, musical, or artistic work from which that subject-matter is wholly or partly derived; and copyright subsisting by virtue of this Part of this Act shall be additional to, and independent of, any copyright subsisting by virtue of Part I of this Act:

Provided that this subsection shall have effect subject to the provisions of subsection (6) of section 14 of this Act.

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

Cf. Copyright Act 1956, s. 16 (U.K.)

PART III

FAIR DEALING WITH COPYRIGHT MATERIAL

19. General exceptions from protection of literary, dramatic, and musical works and other subject-matter—

(1) No fair dealing with a literary, dramatic, or musical work for purposes of research or private study shall constitute an infringement of the copyright in the work.

(2) No fair dealing with a literary, dramatic, or musical work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.

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

(a) In a newspaper, magazine, or similar periodical; or

(b) By means of broadcasting, or in a cinematograph film,—

and, in a case falling within paragraph (a) of this subsection, is accompanied by a sufficient acknowledgment.

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

(5) The provisions of subsections (1), (2), (3), and (4) of this section shall apply to the doing of any act in relation to sound recordings, cinematograph films, television broadcasts, and sound broadcasts, and published editions of literary,

dramatic, and musical works as they apply to the doing of that act in relation to literary, dramatic, and musical works.

(6) The copyright in a published literary, dramatic, or musical work, or in a published edition of such a work, is not infringed by the inclusion of a short passage therefrom in a collection intended for the use of schools, if—

- (a) The collection is described in its title, and in any advertisements thereof issued by or on behalf of the publisher, as being so intended; and
- (b) The work or edition in question was not published for the use of schools; and
- (c) The collection consists mainly of material in which no copyright subsists or in which the copyright is owned by the publisher or by the Crown; and
- (d) The inclusion of the passage is accompanied by a sufficient acknowledgment:

Provided that this subsection shall not apply in relation to the copyright in a work if, in addition to the passage in question, two or more other excerpts from works by the author thereof (being works in which copyright subsists at the time when the collection is published) are contained in that collection, or are contained in that collection taken together with every similar collection (if any) published by the same publisher within the period of five years immediately preceding the publication of that collection.

(7) The copyright in a literary, dramatic, or musical work is not infringed by publishing in a newspaper a report of a lecture delivered in public, unless the report is prohibited by a conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except while the building is being used for public worship, in a position near the lecturer; but nothing in this subsection shall affect the provisions of subsection (3) of this section as to reporting current events.

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

(9) Where a person is authorised to broadcast a literary, dramatic, or musical work from a place in New Zealand but (apart from this subsection) would not be entitled to make

reproductions of it in the form of a record or of a cinematograph film, the copyright in the work is not infringed by his making an ephemeral record or ephemeral cinematograph film of the work solely for the purpose of broadcasting the work.

(10) For the purposes of this section an ephemeral record or an ephemeral cinematograph film means one—

- (a) Which is used solely for broadcasting; and
- (b) Of which not more than six copies are made; and
- (c) Of which, before the end of the period of six months from the date of the first broadcast, the original and all copies are either—
 - (i) Destroyed; or
 - (ii) Authorised by the Minister of Justice, because of their documentary character or exceptional importance, to be preserved in the records of a Government Department or of the Broadcasting Corporation or in the National Archives established under the Archives Act 1957.

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

Cf. Copyright Act 1956, s. 6 (U.K.); 1913, No. 4, s. 5

(1)

20. General exceptions from protection of artistic works—

(1) No fair dealing with an artistic work for purposes of research or private study shall constitute an infringement of the copyright in the work.

(2) No fair dealing with an artistic work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.

(3) The copyright in an artistic work is not infringed by the inclusion of the work in a photograph, cinematograph film, or television broadcast, if its inclusion therein is only by way of background, or is otherwise incidental to the principal matters represented, or is for the purpose of reporting current events.

(4) The copyright in a work of architecture is not infringed by the making of a painting, drawing, engraving, or photograph of the work or any part thereof, or the inclusion of the work or any part thereof in a cinematograph film or television broadcast.

(5) The copyright in a sculpture, or in a work of artistic craftsmanship (not being a work of architecture and not being a painting, drawing, engraving, or photograph), or in a mural, is not infringed by the making of a painting, drawing, engraving, or photograph of the work or the inclusion of the work in a cinematograph film or television broadcast if the work is permanently situated in or in view of a public place within the meaning of the Police Offences Act 1927 or in any premises open to the public.

(6) The copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph, or cinematograph film, if by virtue of subsection (3), subsection (4), or subsection (5) of this section the making of that painting, drawing, engraving, photograph, or film did not constitute an infringement of the copyright.

(7) The copyright in an artistic work is not infringed by reproducing it for the purposes of a judicial proceeding or for the purposes of a report of a judicial proceeding.

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

(9) The copyright in an artistic work is not infringed by the making of a subsequent artistic work by the same author, notwithstanding that part of the earlier work—

(a) Is reproduced in the subsequent work; and

(b) Is so reproduced by the use of a mould, cast, sketch, plan, model, or study made for the purposes of the earlier work,

if in making the subsequent work the author does not repeat or imitate the main design of the earlier work.

(10) Where copyright subsists in a building as a work of architecture, the copyright is not infringed by any reconstruction of that building; and where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists, and has been so constructed by, or with the licence of, the owner of that copyright, any subsequent reconstruction of the building by reference to those drawings or plans shall not constitute an infringement of that copyright.

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

Cf. Copyright Act 1956, s. 9 (U.K.)

21. Special exceptions for libraries, Universities, and schools—(1) The copyright in a published literary, dramatic, or musical work, or in a published edition of such a work, or in a published artistic work, is not infringed by making or supplying a copy of the work or edition, if the copy is made or supplied by or on behalf of a teacher at any University or school, or the librarian of the General Assembly Library, or of the library maintained by any Government Department, local authority, public body, University, or school, or of a library of any other prescribed class, not being a library conducted for profit, subject to the following conditions and any further conditions which may be prescribed:

- (a) The copies in question shall be supplied only to persons satisfying the teacher or librarian or a person acting on his behalf that they require them for the purposes of research or private study and will not use them for any other purpose:
- (b) Except in the case of an artistic work, no copy shall extend to more than a reasonable proportion of the work or edition in question or to more than one article in a periodical publication, unless two or more articles in the same publication relate to the one subject-matter:
- (c) No person shall be furnished with more than one copy of the same artistic work, or the same article, or the same part of any other work or edition:
- (d) Persons to whom copies are supplied shall not be required to make a higher payment (if any) for them than the cost (including a contribution to the general expenses of the University, school, or library) attributable to their production.

(2) The copyright in a published literary, dramatic, or musical work, or in a published edition of such a work, or in a published artistic work, is not infringed by making or supplying a copy of the work, or part of it, by or on behalf of the librarian of a library, if—

- (a) The copy is supplied to the librarian of another library;

(b) At the time when the copy is made the librarian by or on whose behalf it is supplied does not know the name and address of any person entitled to authorise the making of the copy, and could not by reasonable inquiry ascertain the name and address of such a person; and

(c) Any other prescribed conditions are complied with:

Provided that the condition specified in paragraph (b) of this subsection shall not apply in the case of an article contained in a periodical publication.

(3) The copyright in an unpublished literary, dramatic, musical, or artistic work is not infringed by making or supplying a copy of the work deposited at a library to which subsection (1) of this section applies by or on behalf of the librarian of that library, if—

(a) The copy is supplied under the conditions of paragraph (a) of subsection (1) of this section; or

(b) The copy is supplied to the librarian of any such library; and

(c) Any other prescribed conditions are complied with.

(4) The copyright in a literary, dramatic, musical, or artistic work is not infringed by reason only that the work is reproduced, or an adaptation of the work is made,—

(a) In the course of instruction, whether at a University or school or elsewhere or by correspondence, where the reproduction or adaptation is made by a teacher or student; or

(b) As part of questions to be answered in an examination, or in answer to such a question.

(5) The copyright in a literary, dramatic, or musical work is not infringed by reason only that the work—

(a) Is performed in class, or otherwise in the presence of an audience; and

(b) Is so performed in the course of the activities of a University or school by a teacher or student in attendance at the University or school,—

if the audience is limited to persons who are teachers in, or students in attendance at, the University or school, or otherwise directly connected with the activities of the University or school:

Provided that a person shall not be taken to be directly connected with the activities of a University or school by reason only that he is a parent or guardian of a student in attendance at the University or school.

(6) The copyright in a sound recording, cinematograph film, television broadcast, or sound broadcast is not infringed by reason only that, in the course of instruction at a University or school or elsewhere,—

- (a) A recording or part of it is embodied in a record made for the purposes of instruction; or
- (b) A film is caused to be seen, or seen and heard, for the purposes of instruction; or
- (c) A film of a television school broadcast or a recording of a television or sound school broadcast is made.

(7) No act to which subsection (4), subsection (5), or subsection (6) of this section applies shall constitute publication of a work or other subject-matter or shall affect the provisions of this Act in respect of the term of copyright; and, for the purposes of sections 10 and 18 of this Act, the fact that to a person's knowledge the making of any article would have constituted an infringement of copyright but for the provisions of subsections (4) and (6) of this section shall have the like effect as if to his knowledge the making of it had constituted such an infringement.

(8) In this section,—

“Article” includes an item of any description:

“School” means any primary or post-primary public or other registered school within the meaning of the Education Act 1914; and includes any teachers training college and any other educational institution not conducted for profit and approved by the Minister of Education for the purposes of this section:

“School broadcast” means any broadcast made for reception and use in schools:

“Student” includes any pupil or person attending a school:

“University” includes a University College and a University College of Agriculture.

Cf. Copyright Act 1956, ss. 7, 41 (U.K.)

22. Special exception for records of musical works—(1) The copyright in a musical work is not infringed by a person who makes in or imports into New Zealand a record of the work, if—

- (a) Records of the work, or (as the case may be) of a similar adaptation of the work, have previously been made in or imported into New Zealand or Australia for the purposes of retail sale, and were so made or

imported by, or with the licence of, the person having the right to authorise for New Zealand the making or importation of records of the work (in this section referred to as the owner of the copyright);

- (b) Before making or importing the record, the person gave to that owner of the copyright the prescribed notice of his intention to make or import it;
- (c) The person intends to sell the record by retail, or to supply it for the purpose of its being sold by retail by another person, or intends to use it for making other records which are to be so sold or supplied; and
- (d) The person pays to that owner of the copyright a royalty of an amount ascertained in accordance with the following provisions of this section.

(2) Subject to the following provisions of this section, the royalty mentioned in paragraph (d) of subsection (1) of this section shall be an amount equal to five per cent (or such other rate as may be prescribed under section 23 of this Act) of the ordinary retail selling price of the record, calculated in the prescribed manner:

Provided that the minimum royalty shall be a halfpenny and, where the royalty includes a fraction of a farthing, it shall be reckoned as one farthing.

(3) In the case of a record which comprises (with or without other material) two or more musical works in which copyright subsists,—

- (a) The minimum royalty shall be a halfpenny in respect of each of those works, or, if a higher or lower amount is prescribed by an Order in Council under section 23 of this Act as the minimum royalty, shall be that amount in respect of each of those works; and
- (b) If the owners of copyright in the works are different persons, the royalty shall be apportioned among them in such a manner as they may agree or, in default of agreement, shall be apportioned on the basis of the playing time of each work, calculated to the nearest half-minute; and
- (c) If any non-copyright work is included in a record, the total royalty payable in respect of the record shall be reduced by the proportionate fraction of the total playing time taken up by the non-copyright work, calculated to the nearest half-minute.

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

- (a) The words consist or form part of a literary or dramatic work in which copyright subsists; and
- (b) Such previous records as are mentioned in paragraph (a) of subsection (1) of this section were made or imported by, or with the licence of, the owner of the copyright in that literary or dramatic work; and
- (c) The conditions specified in paragraphs (b) and (d) of subsection (1) of this section are fulfilled in relation to the owner of that copyright,—

the making of the record shall not constitute an infringement of the copyright in the literary or dramatic work:

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

(5) For the purposes of this section records may be disposed of on a wholesale basis to ultimate users, so long as the manufacture or importation of records is substantially with a view to retail sale, and subject to the royalty being calculated on the basis of the ordinary retail selling price.

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

(7) Where, for the purposes of paragraph (a) of subsection (1) of this section, any person requires to know whether such previous records as are mentioned in that paragraph were made or imported as therein mentioned, that person may make the prescribed inquiries; and if the owner of the copyright fails to reply to those inquiries within the prescribed period,

the previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of that copyright.

(8) The preceding provisions of this section shall apply in relation to records of part of a work as they apply in relation to records of the whole of it:

Provided that subsection (1) of this section—

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

(9) In relation to musical works published before the first day of April, nineteen hundred and fourteen, the preceding provisions of this section shall apply as if paragraph (a) of subsection (1), paragraph (b) of subsection (4), subsections (6) and (7), and the proviso to subsection (8) of this section were omitted:

Provided that this subsection shall not extend the operation of subsection (4) of this section to a record in respect of which the condition specified in paragraph (b) of that subsection is not fulfilled, unless the words comprised in the record (as well as the musical work) were published before the first day of April, nineteen hundred and fourteen, and were so published as words to be sung to, or spoken incidentally to or in association with, the music.

(10) Nothing in this section, other than the express authority to import in subsection (1), shall be construed as authorising the importation of records which could not lawfully be imported apart from this section; and accordingly, for the purposes of any provision of this Act relating to imported articles, where the question arises whether the making of a record made outside New Zealand would have constituted an infringement of copyright if the record had been made in New Zealand, that question shall be determined as if subsection (1) of this section had not been enacted.

(11) The Governor-General may from time to time, by Order in Council, make regulations for the purpose of paragraph (d) of subsection (1) of this section, which regulations may prescribe the manner in which and the time at which royalties shall be paid and the steps to be taken to ensure the receipt of the royalties by the owner of the copyright, and shall apply subject to any agreement to the contrary.

(12) Any person who claims that the owner of the copyright or his agent has unreasonably refused to agree to some method of payment other than that prescribed under subsection (11) of this section, or has made his agreement subject to unreasonable conditions, may apply to the Tribunal, which, after hearing the parties or considering their written submissions, may approve some other method of payment either absolutely, or subject to such conditions as to security or otherwise, as the Tribunal thinks fit. Every such approval shall have effect according to its tenor.

(13) Any regulations made for the purpose of subsection (2) of this section may exclude sales tax from the retail price for the purpose of calculating the royalty.

Cf. Copyright Act 1956, s. 8 (U.K.); 1913, No. 4, s. 25 (2)–(7)

23. Revision of royalty rate—(1) If at any time after the end of the period of one year from the date of the commencement of this Act it appears to the Minister of Justice that the ordinary rate of royalty or the minimum amount thereof, in accordance with the provisions of section 22 of this Act, or with those provisions as last varied by an order under this section, may have ceased to be equitable, either generally or in relation to any class of records, he may request the Copyright Tribunal to hold an inquiry into the matter.

(2) The Tribunal shall thereupon conduct a public inquiry and shall report thereon to the Minister.

(3) At any time after the Tribunal presents such a report, the Governor-General may by Order in Council prescribe such different rate or amount, either generally or in relation to any class of records, as he may consider just, and every such Order in Council shall have effect on the date specified therein.

(4) Every order made under subsection (3) of this section shall be laid before Parliament.

(5) Notwithstanding anything in this section, the Minister shall not request the Tribunal to hold an inquiry under this section before the expiration of three years after the last preceding report of the Tribunal was made.

Cf. Copyright Act 1956, s. 8 (3) (U.K.); 1913 No. 4, s. 25 (3)

PART IV

REMEDIES FOR INFRINGEMENT OF COPYRIGHT

24. Action by owner of copyright for infringement—
(1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement all such relief, by way of damages, injunction, accounts, or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

(2) Where in an action for infringement of copyright it is proved or admitted—

(a) That an infringement was committed; but

(b) That at the time of the infringement the defendant was not aware, and had no reasonable grounds for supposing, that it was an infringement of copyright,—
the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement, whether any other relief is granted under this section or not.

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

(a) The flagrancy of the infringement; and

(b) Any benefit shown to have accrued to the defendant by reason of the infringement,—

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

(4) In an action for infringement of copyright in respect of the construction of a building, no injunction or other order shall be made—

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

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

(5) In this Part of this Act the term “action” includes a counterclaim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.

Cf. Copyright Act 1956, s. 17 (U.K.); 1913, No. 4, ss. 9 (1), 11, 12 (1)

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

Provided that if, by virtue of subsection (2) of section 5 of the Limitation Act 1950 (which relates to successive conversions or detentions), the title of the owner of the copyright to such a copy or plate would (if he had then been the owner of the copy or plate) have been extinguished at the end of the period mentioned in that subsection or corresponding provision, he shall not be entitled to any rights or remedies under this subsection in respect of any thing done in relation to that copy or plate after the end of that period.

(2) A plaintiff shall not be entitled by virtue of this section to any damages against a person who at the time he came into possession of infringing copies or infringing plates was not aware and had no reasonable grounds for supposing they were infringing copies or plates, but the plaintiff shall have the following rights:

- (a) The right to delivery up of infringing plates, on notice, without compensation to the person who innocently held them, or damages if they are not so delivered;
- (b) The right to delivery up of infringing copies upon payment to the person who held them of the cost of those copies;
- (c) The right to leave the copies in the hands of the person holding them on the basis that that person may lawfully dispose of them; and
- (d) The right to the profits earned by the innocent infringer, whether before or after he had notice that the copies were infringing copies, and to an account of those profits.

Cf. Copyright Act 1956, s. 18 (U.K.); 1913, No. 4, ss. 10, 11

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

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

- (a) The exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section 24 of this Act as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section;
- (b) The exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, by virtue of section 25 of this Act as if the licence had been an assignment; and
- (c) The owner of the copyright shall not have any rights of action, or be entitled to any remedies, by virtue of section 25 of this Act which he would not have had or been entitled to if the licence had been an assignment.

(3) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 24 of this Act, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the Court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant:

Provided that this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

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

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

- (a) If the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or otherwise) to which the licence is subject; and

(b) Whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 24 of this Act in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(6) Where an action, in so far as it is brought under section 24 of this Act, relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the Court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the Court shall apportion the profits between them as the Court may consider just, and shall give such directions as the Court may consider appropriate for giving effect to that apportionment.

(7) In an action brought either by the owner of the copyright or by the exclusive licensee,—

(a) No judgment or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 24 of this Act, if a final judgment or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and

(b) No judgment or order for an account of profits in respect of an infringement of copyright shall be given or made under that section, if a final judgment or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

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

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

Cf. Copyright Act 1956, s. 19 (U.K.)

27. Proof of facts in copyright actions—(1) In any action brought by virtue of this Part of this Act—

(a) Copyright shall be presumed to subsist in the work or other subject-matter to which the action relates, if the defendant does not put in issue the question whether copyright subsists therein; and

(b) Where the subsistence of the copyright is proved or admitted, or is presumed in pursuance of paragraph (a) of this subsection, the plaintiff shall be presumed to be the owner of the copyright, if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership thereof.

(2) Subject to subsection (1) of this section, where, in the case of a literary, dramatic, musical, or artistic work, a name purporting to be that of the author appeared on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared (if it was his true name or a name by which he was commonly known) shall, in any action brought by virtue of this Part of this Act, be presumed, unless the contrary is proved,—

(a) To be the author of the work; and

(b) To have made the work in circumstances not falling within subsection (2), subsection (3), or subsection (4) of section 9 of this Act.

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

work, as if references in that subsection to the author were references to one of the authors.

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

(a) That the work was first published in New Zealand, and was so published within the period of fifty years ending with the beginning of the calendar year in which the action was brought; and

(b) That a name purporting to be that of the publisher appeared on copies of the work as first published,—then, unless the contrary is shown, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication. For the purposes of this subsection a fact shall be taken to be established if it is proved or admitted, or if it is presumed in pursuance of the following provisions of this section.

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

(a) The work shall be presumed to be an original work unless the contrary is proved; and

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

(6) Paragraphs (a) and (b) of subsection (5) of this section shall apply where a work has been published, and—

(a) The publication was anonymous, or was under a name alleged by the plaintiff to have been a pseudonym; and

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

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

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

- (a) That a person named on the label or mark was the maker of the sound recording;
 - (b) That the recording was first made in a year specified on the label or mark;
 - (c) That the recording was first published in a country and on a date specified on the label or mark,—
- that label or mark shall be sufficient evidence of the facts so stated except in so far as the contrary is proved.

Cf. Copyright Act 1956, s. 20 (U.K.); 1913, No. 4, s. 9 (3)

28. Penalties and summary proceedings in respect of dealings which infringe copyright—(1) Every one who, at a time when copyright subsists under the provisions of this Act, knowingly—

- (a) Makes for sale or hire any infringing copy; or
- (b) Sells or lets for hire, or by way of trade exposes or offers for sale or hire, any such infringing copy; or
- (c) Distributes infringing copies either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright; or
- (d) By way of trade exhibits in public any infringing copy; or
- (e) Imports into New Zealand, otherwise than for his private and domestic use, any infringing copy of the work—

commits an offence against this subsection.

(2) Every person who knowingly makes or has in his possession any plate for the purpose of making infringing copies, or who knowingly and for his profit causes any literary, dramatic, or musical work in which copyright subsists to be performed in public without the consent of the owner of the copyright, commits an offence against this subsection.

(3) Every one who commits an offence against subsection (1) or subsection (2) of this section is liable, on summary conviction,—

- (a) If he is convicted of an offence against subsection (1) of this section, to a fine not exceeding two pounds

for every infringing copy to which the offence relates, but not exceeding fifty pounds in respect of the same transaction, or in case of a second or subsequent conviction to such a fine or to imprisonment for a term not exceeding three months or to both:

- (b) If he is convicted of an offence against subsection (2) of this section, to a fine not exceeding fifty pounds, or in case of a second or subsequent conviction to such a fine or to imprisonment for a term not exceeding three months or to both.

(4) The Court may, if the alleged offender is convicted, order that any plate used or intended to be used for making infringing copies shall be destroyed, or delivered up to the owner of the copyright, or otherwise dealt with as the Court may think fit.

Cf. Copyright Act 1956, s. 21 (U.K.); 1913, No. 4, s. 14

29. Provisions for restricting importation of printed copies—(1) The owner of copyright in any published literary, dramatic, or musical work, or a published edition of such a work, or a published artistic work, may give notice in writing to the Minister of Customs—

- (a) That he is the owner of the copyright in the work; and
 (b) That he requests that Minister, during a period specified in the notice, to treat as prohibited imports copies of the work to which this section applies:

Provided that the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright is to subsist.

(2) This section applies, in the case of a work, to any printed copy made outside New Zealand which, if it had been made in New Zealand, would be an infringing copy of the work.

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

Provided that this subsection shall not apply to the importation of any article by a person for his private and domestic use.

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

(5) Without prejudice to the generality of subsection (4) of this section, regulations made under that subsection may include provision for requiring a person who has given a notice under subsection (1) of this section, or a notice purporting to be a notice under that subsection,—

(a) To give to the Minister of Customs such security as may be prescribed by the regulations, in respect of any liability or expense which he may incur in consequence of the detention at any time within the period specified in the notice, of any copy of the work to which the notice relates, or in consequence of anything done in relation to a copy so detained:

(b) Whether any such security is given or not, to keep the Minister of Customs indemnified against any such liability or expense as is mentioned in paragraph (a) of this subsection.

(6) Notwithstanding anything in the Customs Act 1913, a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) because any goods are treated as prohibited goods by virtue of this section.

Cf. Copyright Act 1956, s. 22 (U.K.); 1913, No. 4, s. 21

PART V

COPYRIGHT TRIBUNAL

Constitution

30. Establishment of Tribunal—(1) There is hereby established a Tribunal to be known as the Copyright Tribunal.

(2) The Tribunal shall consist of three members, to be appointed by the Governor-General in Council, of whom one (who shall be so appointed as Chairman) shall be a barrister

or solicitor of not less than seven years practice of the Supreme Court, whether or not he holds or has held any judicial office.

(3) Except as otherwise provided in this Part of this Act, every member of the Tribunal shall hold office for a term of five years, but may from time to time be reappointed.

(4) Any member of the Tribunal may hold that office concurrently with any other office held by him.

(5) No act or proceeding of the Tribunal, or of any person acting as a member of the Tribunal, shall be invalidated in consequence of there being a vacancy in the number of the Tribunal at the time of that act or proceeding, or of the subsequent discovery that there was some defect in the appointment of any person so acting, or that he was incapable of being or had ceased to be such a member.

(6) Notwithstanding anything to the contrary in this Act, every member of the Tribunal, unless he vacates office under section 31 or section 32 of this Act, shall continue to hold office until his successor is appointed.

(7) No person shall be deemed to be employed in the service of Her Majesty for the purpose of the Public Service Act 1912 and the Superannuation Act 1956 by reason only of his being a member of the Tribunal.

Cf. Copyright Act 1956, s. 23 (U.K.)

31. Removal of members from office—(1) If at any time the Chairman of the Tribunal holds any other judicial office, he shall not be removed from office as Chairman unless he is removed or suspended from his other judicial office.

(2) In connection with the removal or suspension from his judicial office of any person who is also Chairman of the Tribunal, anything done or omitted to be done by him as Chairman of the Tribunal shall have the same effect and consequences in all respects as if they were acts done or omitted by him in his other judicial office.

(3) Any Chairman who is not the holder of any other judicial office, and any other member of the Tribunal, may be at any time removed or suspended from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct.

32. Retirement of members—Any member of the Tribunal may resign his office by writing addressed to the Minister of Justice.

33. Deputy members—(1) In any case in which the Chairman or any other member of the Tribunal is suspended from office, or becomes incapable of acting by illness, absence, or other sufficient cause, or if the Chairman or any other member deems it not proper or desirable that he should adjudicate on any specified matter, the Governor-General in Council may appoint a suitable person to be the deputy Chairman or another deputy member, as the case may be, to act for the Chairman or other member for the period or purpose stated in the appointment, or until the Chairman or other member dies, resigns, or is removed from office, or until the deputy Chairman or other member resigns, or his appointment is revoked.

(2) If the Chairman or any other member of the Tribunal dies, resigns, or is removed from office, the Governor-General in Council may appoint any person to be the deputy Chairman or a deputy member to act in place of that Chairman or member until that Chairman's or member's successor comes into office, or the deputy Chairman or member resigns, or his appointment is revoked.

(3) No person shall be appointed as deputy Chairman unless he is eligible for appointment as Chairman.

(4) The fact that any person is sitting as the deputy of the Chairman or any other member of the Tribunal shall be conclusive evidence of his authority to do so, and no person shall be concerned to enquire whether the occasion for his appointment has arisen or ceased.

34. Oath to be taken—Before entering upon the duties of his office, the Chairman and each member, deputy Chairman, and deputy member of the Tribunal shall subscribe and take or make an oath or affirmation before a Judge of the Supreme Court that he will faithfully and impartially perform the duties of his office.

35. Remuneration and travelling expenses—(1) There shall be paid out of money appropriated by Parliament to the members and deputy members of the Tribunal remuneration by way of salaries or fees and allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

(2) The Tribunal is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

Jurisdiction and Procedure

36. Interpretation—(1) In this Part of this Act, unless the context otherwise requires,—

“Licence” means a licence granted by or on behalf of the owner of the copyright (including future copyright) in a literary, dramatic, or musical work or in a sound recording or in a cinematograph film, being—

(a) In the case of a literary, dramatic, or musical work, a licence to perform in public or to broadcast the work, or to make a sound recording or cinematograph film of the work for the purpose of broadcasting it, or to cause the work to be transmitted to subscribers to a diffusion service;

(b) In the case of a sound recording, a licence to do any act restricted by subsection (5) of section 13 of this Act;

(c) In the case of a cinematograph film, a licence to broadcast the film or to cause the film to be transmitted to subscribers to a diffusion service:

“Licence scheme” means a scheme made (whether before or after the commencement of this Act) by one or more licensors, setting out the classes of cases in which they, or the persons on whose behalf they act, are willing to grant licences of that description, and the charges (if any), and terms and conditions subject to which licences would be granted in those classes of cases; and, for the purposes of this definition, “scheme” includes anything in the nature of a scheme, whether described therein as a scheme or as a tariff or by any other name:

“Licensor”, in relation to the copyright (including future copyright) in any literary, dramatic, or musical work or sound recording or cinematograph film, means any owner of the copyright and any person or body of persons (whether corporate or unincorporate) acting as agent for any owner in relation to the negotiation or granting of licences.

(2) References in this Part of this Act to terms and conditions are references to any terms and conditions other than those relating to an amount of a charge for a licence.

(3) For the purposes of this Part of this Act, a case shall be taken to be covered by a licence scheme if, in accordance with a licence scheme for the time being in operation,

licences would be granted in cases of the class to which that case belongs:

Provided that where, in accordance with the provisions of a licence scheme,—

(a) The licences which would be so granted would be subject to terms and conditions whereby particular matters would be excepted from the licences; and

(b) The case in question relates to one or more matters falling within such an exception,—

that case shall be taken not to be covered by the scheme.

Cf. Copyright Act 1956, ss. 24 (2), (4), (5), 27 (1) (U.K.)

37. Jurisdiction—The Tribunal shall have all such jurisdiction as is conferred on it by this Act or by any regulations or Order in Council made under this Act.

38. Applications to Tribunal—(1) Any person who claims in a case covered by a licence scheme, that the licensor operating the scheme has refused or failed to grant him a licence in accordance with the provisions of the scheme, or to procure the grant to him of such a licence, may apply to the Tribunal under this section.

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

(a) That a licensor has refused or failed to grant the licence, or to procure the grant thereof, and that in the circumstances it is unreasonable that the licence should not be granted; or

(b) That any charges, terms, or conditions subject to which a licensor proposes that the licence should be granted are unreasonable,—

may apply to the Tribunal under this section.

(3) Where an application is made under either subsection (1) or subsection (2) of this section the Tribunal may, after hearing the parties or considering their submissions in writing, and if satisfied that it is just to do so, make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms and conditions, and subject to the payment of such charges (if any) as,—

(a) In the case of an application under subsection (1) of this section, the Tribunal may determine to be applicable in accordance with the licence scheme; or

(b) In the case of an application under subsection (2) of this section, the Tribunal may determine to be reasonable in the circumstances.

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

(5) In considering any application under this section relating to the charge for a licence to broadcast any literary, dramatic, or musical work, the Tribunal shall have regard to the extended audience by which the work may be seen, heard, or seen and heard because of the operation of section 60 of this Act.

(6) For the purposes of this section any term or condition which excludes the exercise by the licensee or proposed licensee of any right conferred by this Act shall be deemed to be unreasonable.

Cf. Copyright Act 1956, s. 27 (2), (3), (5), (6) (U.K.)

39. Reference of licence schemes to Tribunal—(1) Where, at any time while a licence scheme is in operation, a dispute arises with respect to the scheme between the licensor operating the scheme and—

(a) An organisation claiming to be representative of persons requiring licences in cases of a class to which the scheme applies; or

(b) Any person claiming that he requires a licence in a case of a class to which the scheme applies, the licensor, organisation, or person in question may refer the scheme to the Tribunal in so far as it relates to cases of that class.

(2) The Tribunal shall not entertain a reference under this section by an organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of persons which it claims to represent.

(3) Subject to subsection (2) of this section, the Tribunal, on any reference under this section, shall, after hearing the parties or considering their submissions in writing, make such order, either confirming or varying the scheme, in so far as it relates to cases of the class to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.

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

(5) Where a licence scheme has been referred to the Tribunal under this section, then, notwithstanding anything contained in the scheme,—

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

Provided that this subsection shall not apply in relation to a reference as respects any period after the reference has been withdrawn, or has been discharged by virtue of subsection (2) of this section.

Cf. Copyright Act 1956, s. 25 (1), (4), (5), (6), (7)
(U.K.)

40. Further reference of licence scheme to Tribunal—

(1) Where the Tribunal has made an order (whether under section 39 of this Act or under this section) with respect to a licence scheme, then, subject to subsection (2) of this section, at any time while the order remains in force,—

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

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

(2) A licence scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal under subsection (1) of this section at a time earlier than—

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

- (b) The beginning of the period of three months ending with the date of expiry of the order, in the case of an order made so as to be in force for fifteen months or less.

(3) Subject to subsection (4) of this section, the Tribunal, on any reference under this section, shall, after hearing the parties or considering their submissions in writing, make such order in relation to the scheme as previously confirmed or varied, in so far as it relates to cases of the class in question, either by way of confirming, varying, or further varying the scheme, as the Tribunal may determine to be reasonable in the circumstances.

(4) Subsections (2), (4), and (5) of section 39 of this Act shall apply for the purposes of this section.

(5) Nothing in this section shall be construed as preventing a licence scheme, in respect of which an order has been made under section 39 of this Act, from being again referred to the Tribunal under that section, either—

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

Cf. Copyright Act 1956, s. 26 (1), (2), (4), (5), (7) (U.K.)

41. Powers of Tribunal in relation to diffusion service—

(1) Where, on a reference to the Tribunal under this Part of this Act relating to licences to cause works to be transmitted to subscribers to a diffusion service in New Zealand, the Tribunal is satisfied—

- (a) That the licences are required wholly or partly for the purpose of distributing programmes broadcast, from a place outside New Zealand, by an organisation other than the Broadcasting Corporation; and
- (b) That, under the arrangements in accordance with which the programmes are broadcast by that organisation, charges are payable by or on behalf of the organisation to another body, as being the body entitled under the relevant copyright law to authorise the broadcasting of those works from that place,
- the Tribunal shall, subject to subsection (2) of this section, exercise its powers under this Part of this Act as the Tribunal

may consider appropriate for securing that the persons requiring the licences are exempted from the payment of any charges for them in so far as the licences are required for the purpose of distributing those programmes.

(2) If on such a reference as is mentioned in subsection (1) of this section the Tribunal is satisfied as to the matters mentioned in paragraphs (a) and (b) of that subsection, but it is shown to the satisfaction of the Tribunal that the charges payable by or on behalf of the organisation, as mentioned in paragraph (b) of that subsection,—

- (a) Make no allowance for the fact that, in consequence of the broadcasting of the works in question by that organisation, the persons requiring the licences may be enabled to cause those works to be transmitted to subscribers to diffusion services in New Zealand; or
- (b) Do not adequately reflect the extent to which it is likely that those persons will cause those works to be so transmitted in consequence of their being so broadcast,

subsection (1) of this section shall not apply, but the Tribunal shall exercise its powers under this Part of this Act so as to secure that the charges payable for the licences, in so far as the licences are required for the purpose mentioned in subsection (1) of this section, are on a scale not exceeding that appearing to the Tribunal to be requisite for making good the deficiency (as mentioned in paragraph (a) or paragraph (b) of this subsection, as the case may be) in the charges payable by or on behalf of the organisation broadcasting the works.

(3) The preceding provisions of this section shall have effect, with the necessary modifications, in relation to applications under this Part of this Act as they have effect in relation to references thereunder.

(4) In this section “the relevant copyright law”, in relation to works broadcast from a place outside New Zealand, means so much of the laws of the country in which that place is situated as confers rights similar to copyright under this Act or as otherwise relates to such rights.

Cf. Copyright Act 1956, s. 28 (U.K.)

42. Parties in proceedings before Tribunal—(1) The parties to any application (not being a reference or further reference) to the Tribunal shall be the applicant and the licensor and any other organisation or person directed by the Tribunal to be added as a party under subsection (3) of this section.

(2) The parties to any reference or any further reference to the Tribunal shall be the licensor, organisation, or person at whose instance the reference is made, and the licensor, if the reference is not made at his instance, and any other organisation or person directed by the Tribunal to be added as a party under subsection (3) or subsection (4) of this section.

(3) Where an organisation or person applies to be made a party to any application, reference, or further reference to the Tribunal, and the Tribunal is satisfied that the organisation or person has a substantial interest in the matter in dispute, the Tribunal may direct that the organisation or person shall be added as a party.

(4) Where a reference or a further reference is made to the Tribunal by a licensor, the Tribunal may of its own motion, if it thinks it desirable, direct that any other organisation or person be added as a party.

(5) Notwithstanding anything in this section, the Attorney-General, if in his opinion the public interest is or may be involved, may, on giving such notice to other parties as the Tribunal may direct, appear and be heard, or present submissions in writing on any application, reference, or further reference to the Tribunal.

Cf. Copyright Act 1956, ss. 25 (2), (3), 26 (3), (4), 27 (4) (U.K.)

43. Procedure of Tribunal—(1) Where any application, reference, or further reference is made to the Tribunal, the Tribunal shall, subject to the provisions of section 40 of this Act (which relates to further references) fix a time and place for the hearing of the application or reference and shall cause notice thereof to be given to the parties.

(2) Every sitting of the Tribunal shall be held in such place as it deems convenient, and shall be in public unless the Tribunal in any particular case, having regard to the interests of the parties and of all other persons concerned, considers that the sitting or any part thereof should be held in private.

(3) The Tribunal may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings.

(4) Any sitting of the Tribunal may be adjourned from time to time and from place to place.

(5) Where under this Act any organisation or person is entitled to appear and be heard by the Tribunal, that organisation or person may appear by its or his counsel, solicitor, or agent.

(6) In any proceedings before the Tribunal, any solicitor or counsel engaged by the Tribunal may be appointed by the Tribunal to appear and be heard as counsel assisting the Tribunal.

(7) Every decision of the Tribunal shall be in writing and shall state the reasons therefor.

(8) Except as otherwise provided in this Part of this Act, the Tribunal shall determine its own procedure.

Cf. Copyright Act 1956, Fourth Schedule, clause 6 (U.K.)

44. Evidence in proceedings before Tribunal—(1) The Tribunal may receive in evidence any statement, document, information, or matter that may in its opinion assist it to deal effectively with the matter before it, whether or not the same would be otherwise admissible in a Court of law.

(2) Subject to the provisions of subsection (1) of this section, the Evidence Act 1908 shall apply to the Tribunal in the same manner as if the Tribunal were a Court within the meaning of that Act.

Cf. Copyright Act 1956, Fourth Schedule, clause 6 (U.K.)

45. Effect of orders of Tribunal—(1) Where the Tribunal has made an order under section 38 of this Act declaring that a person is entitled to a licence in respect of any matters specified in the order, then if—

(a) That person has complied with the terms and conditions specified in the order; and

(b) In a case where the order requires the payment of charges, he has paid those charges to the licensor in accordance with the order, or, if the order so provides, has given to the licensor an undertaking to pay the charges when ascertained,—

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

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

- (a) Apart from this subsection would be an infringement of copyright; but
- (b) Would not be such an infringement if he were the holder of a licence granted in accordance with the scheme, as confirmed or varied by the order, in so far as the scheme relates to cases comprised in the order—

shall, if he has complied with the requirements specified in subsection (3) of this section, be in the like position, in any proceedings for infringement of that copyright, as if he had at the material time been the holder of such a licence.

(3) The said requirements are—

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

(4) Where, on a reference to the Tribunal under this Part of this Act,—

- (a) The reference relates to licences in respect of copyright in sound recordings; and
- (b) The Tribunal is satisfied that any of the licences in question are required for the purposes of organisations such as are mentioned in subsection (6) of section 13 of this Act,—

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

(5) Subsection (4) of this section shall have effect, with the necessary modifications, in relation to applications under this Part of this Act as it has effect in relation to references thereunder.

(6) In relation to copyright in a literary, dramatic, or musical work, any reference in this section to proceedings

for infringement of copyright includes a reference to proceedings brought by virtue of subsection (2) of section 28 of this Act.

Cf. Copyright Act 1956, s. 29 (U.K.)

46. Costs—(1) The Tribunal, in any proceedings before it under this Act, may make such order as to costs as it thinks fit.

(2) Any such order as to costs may be filed in the Magistrate's Court, and may be enforced as a judgment of that Court.

Cf. Copyright Act 1956, Fourth Schedule, clause 5 (U.K.)

47. Stating of case for Court of Appeal—The Tribunal may, on application of any party to any proceedings before the Tribunal, or of its own motion, state a case for the opinion of the Court of Appeal on any point of law.

Cf. Copyright Act 1956, s. 30 (U.K.)

48. Proceedings before Tribunal shall not be appealed against—Proceedings before the Tribunal shall not be held bad for want of form. No appeal shall lie against any determination of the Tribunal, nor, except on the ground of lack of jurisdiction, shall any proceeding, order, or decision of the Tribunal be liable to be challenged, reviewed, quashed, or called in question by any Court.

PART VI

EXTENSION OR RESTRICTION OF OPERATION OF ACT

49. Application of Act to other countries—(1) The Governor-General may from time to time, by Order in Council, direct that any of the provisions of this Act specified in the order shall apply in the case of another country in any one or more of the following ways, that is to say, so as to secure that those provisions—

- (a) Apply in relation to literary, dramatic, musical, or artistic works, sound recordings, cinematograph films, or editions first published in that country as they apply in relation to literary, dramatic, musical, or artistic works, sound recordings, cinematograph films, or editions first published in New Zealand:

- (b) Apply in relation to persons who, at a material time, are citizens or subjects of that country as they apply in relation to persons who, at such a time, are New Zealand citizens:
- (c) Apply in relation to persons who, at a material time, are domiciled or resident in that country as they apply in relation to persons who, at such a time, are domiciled or resident in New Zealand:
- (d) Apply in relation to bodies incorporated under the laws of that country as they apply in relation to bodies incorporated under the laws of New Zealand:
- (e) Apply in relation to television broadcasts and sound broadcasts made from places in that country by one or more organisations authorised under the laws of that country, as they apply in relation to television broadcasts and sound broadcasts made from places in New Zealand by the Broadcasting Corporation.

(2) An Order in Council under this section may—

- (a) Apply the provisions in question as mentioned in subsection (1) of this section but subject to exceptions or modifications specified in the order:
- (b) Direct that the provisions in question shall so apply either generally or in relation to such classes of works, or other classes of cases, as may be specified in the order.

(3) The Governor-General shall not make an Order in Council under this section applying any of the provisions of this Act in the case of a country, other than a country which is a party to a convention relating to copyright to which New Zealand is also a party, unless he is satisfied that, in respect of the class of works or other subject-matter to which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

(4) An Order in Council under this section may be so made as to apply generally to a country, or to any colonies, protectorates, or other territory for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such colonies, protectorates, or other territory.

(5) In this section the term "country" includes every territory for whose international relations the Government of that country is responsible.

Cf. Copyright Act 1956, s. 32 (U.K.); 1913, No. 4, s. 33.

50. Provisions as to international organisations—

(1) Where it appears to the Governor-General that one or more sovereign Powers, or the Government or Governments thereof, are members of an organisation, and that it is expedient that the provisions of this section should apply to that organisation, the Governor-General may, by Order in Council, declare that the organisation is one to which this section applies.

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

(a) Copyright would not subsist in the work apart from this subsection; but

(b) If the author of the work or maker of the film had been a New Zealand citizen at the time when it was made, copyright would have subsisted in the work or film immediately after it was made and would thereupon have vested in the organisation—
copyright shall subsist in the work or film as if the author or maker had been a New Zealand citizen when it was made, and the organisation shall, subject to the provisions of this Act, be entitled to that copyright.

(3) Where an original literary, dramatic, musical, or artistic work, or a cinematograph film, is first published by or under the direction or control of an organisation to which this section applies in such circumstances that, apart from this subsection, copyright does not subsist in the work immediately after the first publication thereof, and either—

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

(b) The work was made in such circumstances that, if it had been first published in New Zealand, the organisation would have been entitled to the copyright in the work or film,—

copyright shall subsist in the work or film (or, if copyright therein subsisted immediately before its publication, shall

continue to subsist) as if it had been first published in New Zealand, and the organisation shall, subject to the provisions of Parts VII and VIII of this Act, be entitled to that copyright.

(4) Copyright in a literary, dramatic, musical, or artistic work, or a cinematograph film, whether unpublished or published, to which an organisation is entitled in accordance with either subsection (2) or subsection (3) of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the work or film was made, or (in the case of a photograph) was taken, and shall then expire.

(5) The provisions of Parts I, II, and III of this Act, in relation to literary, dramatic, musical, and artistic works and to cinematograph films, with the exception of the provisions relating to subsistence, duration, or ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section as they apply to copyright subsisting by virtue of the said Parts I, II, and III.

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

Cf. Copyright Act 1956, s. 33 (U.K.)

51. Denial of copyright to citizens of countries not giving adequate protection to New Zealand copyright material—

(1) If it appears to the Governor-General that the laws of a country fail to give adequate protection to New Zealand literary, dramatic, musical, or artistic works, sound recordings, or cinematograph films, or fail to give such protection in the case of one or more classes of such works, recordings, or films (whether the lack of protection relates to the nature of the work, recording, or film or to the country of its author or maker or both), the Governor-General may make an Order in Council designating that country and making such provision in relation thereto as is mentioned in the following provisions of this section.

(2) An Order in Council under this section shall provide that, either generally or in such classes of cases as are

specified in the order, copyright under this Act shall not subsist in literary, dramatic, musical, or artistic works, sound recordings, or cinematograph films which were first published after a date specified in the order, if at the time of their first publication the authors or makers thereof were—

- (a) Citizens or subjects of the country designated by the order, not being at that time persons domiciled or resident in New Zealand; or
- (b) Bodies incorporated under the laws of the country designated by the order.

(3) In making an Order in Council under this section the Governor-General shall have regard to the nature and extent of the lack of protection for New Zealand works, recordings, or films in consequence of which the order is made.

(4) An Order in Council under this section may be so made as to apply generally to a country, or to any colonies, protectorates, or other territory for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such colonies, protectorates, or other territory.

(5) In this section—

“New Zealand work, recording, or film” means a literary, dramatic, musical, or artistic work, or a sound recording, or a cinematograph film of which the author or maker, at the time when the work, recording, or film was made, was a New Zealand citizen or domiciled or resident in New Zealand:

“Country” includes every territory for whose international relations the Government of that country is responsible.

Cf. Copyright Act 1956, s. 35 (U.K.); 1913, No. 4, s. 31

PART VII

CROWN COPYRIGHT AND CROWN USE OF COPYRIGHT MATERIAL

52. Crown copyright—(1) In the case of every original literary, dramatic, musical, or artistic work made by or under the direction or control of Her Majesty or a Government Department,—

- (a) If apart from this section copyright would not subsist in the work, copyright shall subsist therein by virtue of this section; and

(b) In any case, Her Majesty shall, subject to the provisions of this Part of this Act, be entitled to the copyright in the work.

(2) Her Majesty shall, subject to the provisions of this Part of this Act, be entitled to copyright in every original literary, dramatic, musical, or artistic work first published in New Zealand, if first published by or under the direction or control of Her Majesty or a Government Department.

(3) Copyright in a literary, dramatic, musical, or artistic work, whether unpublished or published, to which Her Majesty is entitled in accordance with either subsection (1) or subsection (2) of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the work was made, or (in the case of a photograph) was taken, and shall then expire.

(4) In the case of every sound recording, cinematograph film, television broadcast, or sound broadcast made, or edition of any one or more literary, dramatic, or musical works published, by or under the direction or control of Her Majesty or a Government Department,—

(a) If apart from this subsection copyright would not subsist in the recording, film, broadcast, or edition, copyright shall subsist by virtue of this subsection; and

(b) In any case, Her Majesty shall, subject to the provisions of this Part of this Act, be entitled to the copyright in the recording, film, broadcast, or edition, and it shall subsist for the same period as if it were copyright subsisting by virtue of, and owned in accordance with, section 13, section 14, section 15, or section 17 of this Act.

(5) The preceding provisions of this section shall have effect subject to any agreement, made by or on behalf of Her Majesty or a Government Department with the author of the work or the maker of a recording, film, broadcast, or edition, whereby it is agreed that the copyright in the work or other subject-matter shall vest in the author or maker, or in another person designated in the agreement in that behalf.

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

Cf. Copyright Act 1956, s. 39 (U.K.); 1913, No. 4, s. 24

53. Use of copyright material for services of the Crown—

(1) The copyright in a literary, dramatic, or musical work, or a published edition of such a work, or in an artistic work, sound recording, cinematograph film, television broadcast, or sound broadcast is not infringed by any use of the work or other subject-matter by or on behalf of the Crown or a Government Department or any person authorised in writing by a Government Department—

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

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

(2) The copyright in a work or other subject-matter is not infringed by the reproduction or adaptation of the work or other subject-matter by or on behalf of the Crown or a Government Department or any servant or agent of the Crown for use within a Government Department or by any servant or agent of the Crown.

(3) Where any act is done under any of the provisions of subsections (1) and (2) of this section, the Crown shall be liable to pay, out of money appropriated by Parliament for the purpose, reasonable compensation to the owner of the copyright upon such terms as may, with the approval of the Minister of Finance, be agreed upon between the Crown and the owner of the copyright, or in default of agreement, upon such terms as shall be determined by the Copyright Tribunal:

Provided that no compensation shall be payable in respect of any period of twelve months during which not more than twelve copies are reproduced.

(4) No act to which subsection (1) or subsection (2) of this section applies shall constitute publication of a work or other subject-matter or shall affect the provisions of this Act in respect of the term of copyright; and, for the purposes of sections 10 and 18 of this Act, the fact that to a person's knowledge the making of any article would have constituted an infringement of copyright but for the provisions of subsections (1) and (2) of this section shall have the like effect as if, to his knowledge, the making of it has constituted an infringement.

(5) In paragraph (a) of subsection (1) of this section the term "period of emergency" means any period beginning with such a date as may be declared by Order in Council to be the commencement, and ending with such a date as may be declared by the Order in Council to be the termination, of a period of emergency.

54. Rights of third parties in respect of Crown use—
(1) In relation to any use for services of the Crown, that is made of a work or other subject-matter in which copyright subsists—

(a) By or on behalf of the Crown or a Government Department or a person authorised by a Government Department under section 53 of this Act; or

(b) By the owner of the copyright to the order of a Government Department,—

the provisions of any licence or agreement made, whether before or after the commencement of this Act, between the owner of the copyright and any person other than a Government Department shall be of no effect as far as those provisions restrict any act done for the services of the Crown.

(2) Where an exclusive licence has been granted and is in force, then, in relation to any use of the work or other subject-matter which, but for the provisions of this section and section 53 of this Act, would constitute an infringement of the rights of the licensee, subsection (3) of section 53 of this Act shall have effect as if every reference in that subsection to the owner of the copyright were a reference to the licensee.

(3) Where, under subsection (3) of section 53 of this Act, any payments are required to be made by a Government Department acting on behalf of the Crown, any person having the right by licence (not being an exclusive licence) or agreement to make use of any work or other subject-matter in which copyright subsists, shall be entitled to recover from the owner or exclusive licensee of the copyright such part (if any) of those payments as may be agreed upon between that person and the owner of the copyright, or in default of agreement as may be determined by the Tribunal.

(4) In this section “exclusive licence” has the same meaning as in subsection (9) of section 26 of this Act.

55. Proceedings against the Crown—(1) Where after the commencement of this Act any servant or agent of the Crown infringes any copyright subsisting by virtue of this Act, and the infringement is committed with the authority of the Crown, then, subject to the provisions of this Act, civil proceedings in respect of the infringement shall lie against the Crown under the Crown Proceedings Act 1950.

(2) Nothing in subsection (1) of this section shall affect the rights of the Crown, any Government Department, or any person authorised by a Government Department under section 53 of this Act.

(3) Save as expressly provided by this section, no proceedings shall lie against the Crown by virtue of this Act in respect of the infringement of any copyright as is mentioned in subsection (1) of this section.

PART VIII

MISCELLANEOUS PROVISIONS

56. Assignments and licences in respect of copyright—

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

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

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

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

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

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

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

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

Cf. Copyright Act 1956, s. 36 (U.K.); 1913, No. 4, s. 8 (2)

57. Future copyright—(1) Future copyright shall be capable of being assigned, wholly or partially, in the same manner and in all respects as if it were then in existence, and on coming into existence the copyright shall vest in the assignee or his successor in title accordingly.

(2) Subsections (2) to (4) of section 56 of this Act shall apply to future copyright in the same manner as they apply to existing copyright.

Cf. Copyright Act 1956, s. 37 (U.K.)

58. Right to make conditions in respect of unpublished works—(1) This section shall apply where the owner of the copyright in an unpublished literary, dramatic, or musical work or an artistic work (other than a photograph) has, whether before or after the commencement of this Act, transferred or bequeathed to the Crown, a public body, a library, a University within the meaning of subsection (8) of section 21 of this Act, or any other prescribed institution (in this section referred to as the institution) the property in or possession of that work in the case of an artistic work (other than a photograph), or the manuscript of that work or a copy thereof in any other case, subject to any conditions prohibiting, restricting, or regulating publication of that work, whether for a specified period or without limit of period.

(2) In any case to which this section applies, while the work, manuscript, or copy is in the possession of the institution, any publication of the work in breach of such a condition (whether by the institution owning the work or, as the case may be, the manuscript of the work or a copy thereof or having possession of such a work, manuscript, or copy or by any other person) shall, notwithstanding that the copyright in the work may have expired, be actionable as if copyright continued to subsist in the work and the publication were an infringement of the copyright.

(3) Nothing in this section shall apply to any publication with the consent of the person who would be the owner of the copyright in the work if the copyright had not expired.

59. Copyright to pass under will with unpublished works—Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic, or musical work, or to an artistic work, and the work was not published before the death of the

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

Cf. Copyright Act 1956, s. 38 (U.K.); 1913, No. 4, s. 23 (2)

60. Broadcasts and diffusion of broadcast programmes—

(1) Where a television broadcast or sound broadcast is made by the Broadcasting Corporation, and any person, by the reception of that broadcast, causes a literary, dramatic, musical, or artistic work, or a sound recording or cinematograph film, to be seen, heard, or seen and heard, in public, or causes the broadcast programme to be transmitted to subscribers to a diffusion service, he does not thereby infringe the copyright (if any) in that work, recording, or film.

(2) The provisions of this section shall apply to broadcasts made by any private broadcasting station which is established and operates under Part III of the Broadcasting Corporation Act 1961 as they apply to broadcasts made by the Broadcasting Corporation.

Cf. Copyright Act 1956, s. 40 (U.K.)

61. Special provisions as to public records and public archives—

(1) Where any work or other subject-matter in which copyright subsists, or a reproduction thereof, is comprised in any public records or public archives under the charge of the Chief Archivist appointed under section 6 of the Archives Act 1957, and is available for public reference in accordance with section 20 of that Act, the copyright is not infringed by making, or supplying to any person, any reproduction of the work or other subject-matter by or under the direction of the Chief Archivist.

(2) In subsection (1) of this section the terms "public records" and "public archives" have the same meaning as in section 2 of the Archives Act 1957.

Cf. Copyright Act 1956, s. 42 (U.K.)

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

(2) A person (in this subsection referred to as "the offender") contravenes those restrictions as respects another

person if, without the licence of that other person, he does any of the following acts in New Zealand, that is to say, he—

- (a) Inserts or affixes that other person's name in or on a work of which that person is not the author, or in or on a reproduction of such a work in such a way as to imply that the other person is the author of the work; or
- (b) Publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, a work in or on which the other person's name has been so inserted or affixed, if to the offender's knowledge that person is not the author of the work; or
- (c) Does any of the acts mentioned in paragraph (b) of this subsection in relation to, or distributes, reproductions of a work, being reproductions in or on which the other person's name has been so inserted or affixed, if to the offender's knowledge that person is not the author of the work; or
- (d) Performs in public, or broadcasts, a work of which the other person is not the author, as being a work of which he is the author, if to the offender's knowledge that person is not the author of the work.

(3) Subsection (2) of this section shall apply where, contrary to the fact, a work is represented as being an adaptation of the work of another person as it applies where a work is so represented as being the work of another person.

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

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

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

(5) Subsections (2), (3), and (4) of this section shall apply with respect to anything done in relation to another

person after that person's death, as if any reference to that person's licence were a reference to a licence given by him or by his personal representatives:

Provided that nothing in those subsections shall apply to anything done in relation to a person more than twenty years after that person's death.

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

(a) Publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, a reproduction of the work, as being a reproduction made by the author of the work; or

(b) Distributes reproductions of the work as being reproductions made by the author of the work,—if (in any such case) the reproduction or reproductions was or were to his knowledge not made by the author.

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

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

(9) Any damages recovered under this section by personal representatives, in respect of a contravention committed in relation to a person after his death, shall devolve as part of his estate, as if the right of action had subsisted and had been vested in him immediately before his death.

(10) Nothing in this section shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this section:

Provided that this subsection shall not be construed as requiring any damages recovered by virtue of this section to be disregarded in assessing damages in any proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

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

Cf. Copyright Act 1956, s. 43 (U.K.)

63. Warranty implied in licences—(1) In every licence for the performance or broadcasting of a literary, dramatic, musical, or artistic work, sound recording, or cinematograph film in which copyright subsists, granted by any person, whether as principal or agent, there shall be implied a warranty that the person by whom or on whose behalf the licence is granted is the true owner of the copyright in the work, recording, or film which is the subject of the licence, or is duly authorised to grant such a licence.

(2) Where the Court is satisfied that a person falsely claiming to be, or to have the authority of, the owner of the copyright in a work, recording, or film in which copyright subsists has threatened or commenced proceedings designed to prohibit a performance or broadcast of that work, recording, or film or to claim damages in respect thereof, and that, as a result of the threat or commencement of proceedings, the work, recording, or film has not been so performed or broadcast, the person threatened or the defendant in such proceedings, as the case may be, and any other person interested in the proposed performance or broadcast, shall be entitled to recover such loss as he may have sustained thereby.

(3) The provisions of this section shall have effect notwithstanding any provision to the contrary in any licence, and shall extend to all licences whether granted before or after the commencement of this Act.

64. Delivery of copies of books—(1) The publisher of every book which—

(a) Is printed in New Zealand; or

(b) Is commissioned to be printed outside New Zealand by a publisher resident in New Zealand,—

and in which copyright subsists by virtue of this Act, shall within a period of thirty days from the date of publication deliver at his own expense two copies of the book to the Librarian of the General Assembly Library, who shall give a written receipt for them.

(2) If demand is made by the Director of the National Library Service within six months from the date of publication, a further copy of any such book shall be delivered within thirty days from the date of the demand by the publisher at his own expense to the Director of the National Library Service. The Director shall give a written receipt for every copy of a book so delivered.

(3) The copies delivered under subsections (1) and (2) of this section shall be copies of the whole book, with all maps and illustrations belonging thereto, finished and coloured in the same manner as the best copies of the book are published, and bound, sewed, or stitched together, and on the best paper on which the book is printed.

(4) Where the name of the publisher does not appear on the book, the printer (if he is resident in New Zealand) as well as the publisher shall be liable for a failure to comply with the provisions of this section:

Provided that, where any copies of the books are delivered by the printer under subsections (1) and (2) of this section, he shall be entitled to recover from the publisher the cost of the copies.

(5) Notwithstanding anything to the contrary in this section, there shall be no liability to deliver copies of a second or subsequent edition of a book that is a photo copy of or otherwise identical in content with the first edition (or, as the case may be, the latest edition of which copies have been delivered) and does not contain any additions or alterations in letterpress or maps or illustrations belonging thereto.

(6) Every person who fails to comply with any of the provisions of this section commits an offence, and is liable on summary conviction to a fine not exceeding fifty pounds.

(7) In this section—

“Book” means any collection of printed sheets of paper or other substance; and includes—

(a) Every part or division of a book and every pamphlet, magazine, periodical, sheet of letterpress, sheet of music, map, plan, chart, or table separately published; and

(b) Every second or subsequent edition of a book:
“Printer” and “printing” have the same meaning as in section 2 of the Newspapers and Printers Act 1955; and “printed” has a corresponding meaning.

Cf. 1913, No. 4, s. 52

65. Application of Act to Tokelau Islands—This Act shall be in force in the Tokelau Islands; and shall, in its application to those islands, be read subject to the provisions of the Tokelau Islands Act 1948, and subject also to all modifications necessary for such application.

66. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing classes of libraries for the purposes of all or any of the provisions of subsections (1) and (3) of section 21 of this Act:
- (b) Regulating the payment of royalties under section 22 of this Act:
- (c) Prescribing conditions under which infringing copies may be regarded and treated as prohibited imports under section 29 of this Act:
- (d) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

67. Savings of rights of Crown and other persons—

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

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

68. Transitional provisions, repeals, and amendments—

(1) The transitional provisions in the First Schedule to this Act shall have effect for the purposes of this Act; and the provisions of the Second Schedule to this Act shall have effect in accordance with those transitional provisions.

(2) Subject to the said transitional provisions, the following enactments are hereby repealed:

- (a) The Copyright Act 1913:
- (b) The Copyright Amendment Act 1924:
- (c) Subsection (3) of section 16 of the Law Reform Act 1936.

(3) Part II of the First Schedule of the Summary Proceedings Act 1957 is hereby amended by inserting in the appropriate columns and in the appropriate alphabetical order the following words:

“The Copyright Act 1962	28	Infringing copyright.”
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SCHEDULES

Section 68

FIRST SCHEDULE

TRANSITIONAL PROVISIONS

PART I

PROVISIONS RELATING TO PART I OF ACT

Interpretation

1. In this Schedule, in their application to copyright subsisting or acts done before the commencement of this Act, the terms "collective work", "dramatic work", "literary work", "performance", and "photograph" have the meaning assigned to these terms in the definitions set out in clause 1 of the Second Schedule to this Act.

2. (1) In the application of subsection (4) of section 3 of this Act to a publication effected before the commencement of that section, the reference to 30 days shall be treated as a reference to 14 days.

(2) For the purposes of the application of subsections (5), (6), and (7) of section 3 of this Act to any act done before the commencement of a provision of this Act to which those subsections apply, references to copyright include references to copyright under the Copyright Act 1913, and, in relation to copyright under that Act, references to the licence of the owner are references to the consent or acquiescence of the owner.

Conditions for Subsistence of Copyright

3. In the application of section 7 of this Act to works first published before the commencement of this Act, subsection (2) of that section shall apply as if paragraph (b) of that subsection were omitted.

Duration of Copyright

4. If apart from this clause the copyright in any unpublished work subsisting by virtue of the Copyright Act 1913 would expire at the commencement of this Act or at any time between the commencement of this Act and the 31st day of March 1973, that copyright shall continue to subsist until the 31st day of March 1973, and shall then expire.

5. In relation to any photograph taken before the commencement of this Act, subsection (2) of section 8 of this Act shall apply.

6. Where an author was dead at the commencement of this Act, and any literary, dramatic, or musical work of that author or any engraving by that author, being a work or engraving in which copyright subsisted immediately before his death, or (in the case of a work of joint authorship) at or immediately before the death of the author who died last, had been published or (in the case of a dramatic or musical work) performed in public or (in the case of a lecture) delivered in public before the commencement of this Act, the copyright shall continue to subsist until the end of the period of 50 years from the end of the year which includes the earliest occasion on which one of those acts was done.

FIRST SCHEDULE—*continued**Ownership of Copyright*

7. (1) Subsections (2) to (4) of section 9 of this Act shall not apply—

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

(2) In relation to any work to which subclause (1) of this clause applies, subsection (1) of section 9 of this Act shall have effect subject to the proviso set out in clause 2 of the Second Schedule to this Act (being the proviso to subsection (1) of section 8 of the Copyright Act 1913).

Infringements of Copyright

8. For the purposes of section 10 of this Act, the fact that, to a person's knowledge, the making of an article constituted an infringement of copyright under the Copyright Act 1913, or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if, to that person's knowledge, the making of the article had constituted an infringement of copyright under this Act.

9. (1) Copyright shall not subsist by virtue of this Act in any artistic work made before the commencement of this Act which, at the time when the work was made, constituted a design capable of registration under the Designs Act 1953, or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by any industrial process.

(2) The provisions set out in clause 3 of the Second Schedule to this Act (being the relevant provisions of the Designs Regulations 1954) shall apply for the purposes of subclause (1) of this clause.

10. (1) Where, before the repeal by this Act of section 6 of the Copyright Act 1913, a person has, in the case of a work, given the notice requisite under the proviso set out in clause 4 of the Second Schedule to this Act (being the proviso to the said section 6), then, as respects reproductions by that person of that work after the repeal of that section by this Act, that proviso shall have effect as if it had been re-enacted in this Act as a proviso to subsection (2) of section 6 of this Act:

Provided that the said proviso shall so have effect subject to the provisions set out in clause 5 of the Second Schedule to this Act (being so much of subsection (1) of section 22 of the Copyright Act 1913 as is applicable to the said proviso), as if those provisions had also been re-enacted in this Act.

(2) For the purposes of the operation of the said proviso in accordance with subclause (1) of this clause, any regulations made before the repeal of section 6 of the Copyright Act 1913 shall have effect as if they had been made under this Act, and the power of the Governor-General in Council to make further regulations thereunder shall apply as if the proviso had been re-enacted as mentioned in subclause (1) of this clause.

FIRST SCHEDULE—*continued**Works of Joint Authorship*

11. (1) Notwithstanding anything in section 12 of this Act, copyright shall not subsist by virtue of Part I of this Act in any work of joint authorship first published before the commencement of this Act, if the period of copyright had expired before the commencement of this Act.

(2) In this clause the expression "the period of copyright" means whichever is the longer of the following periods, that is to say,—

- (a) The life of the author who died first and a term of fifty years after his death; and
- (b) The life of the author who died last.

PART II

PROVISIONS RELATING TO PART II OF ACT

Sound Recordings

12. In the case of a sound recording made before the commencement of this Act, subsection (3) of section 13 of this Act shall apply.

13. Notwithstanding anything in section 13 of this Act, copyright shall not subsist by virtue of that section in a sound recording made before the 1st day of April 1914, unless, immediately before the commencement of this Act, a corresponding copyright subsisted, in relation to that recording, by virtue of subsection (8) of section 25 of the Copyright Act 1913 (which relates to records made before the commencement of that Act).

Cinematograph Films

14. Section 14 of this Act shall not apply to cinematograph films made before the commencement of this Act.

15. Where a cinematograph film made before the commencement of this Act was an original dramatic work within the definition of the expression "dramatic work" set out in clause 1 of the Second Schedule to this Act (being the definition thereof in the Copyright Act 1913), the provisions of this Act, including the provisions of this Schedule other than this clause, shall have effect in relation to the film as if it had been an original dramatic work within the meaning of this Act; and the person who was the author of the work for the purposes of the Copyright Act 1913 shall be taken to be the author thereof for the purposes of the said provisions as applied by this clause.

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

Television Broadcasts and Sound Broadcasts

17. Copyright shall not subsist by virtue of section 15 of this Act in any television broadcast or sound broadcast made before the commencement of this Act.

18. For the purposes of subsection (3) of section 15 of this Act, a previous television broadcast or sound broadcast shall be disregarded if it was made before the commencement of that section.

FIRST SCHEDULE—*continued*

19. Where copyright subsists in a television broadcast by virtue of section 15 of this Act, the acts restricted by subsection (4) of that section shall, for a period until the 30th day of September 1968, include, in the case of a television broadcast, causing it to be seen, or seen and heard, in public, if—

- (a) It is seen, or seen and heard, in a place to which a charge is made for admission; or
- (b) It is seen, or seen and heard, by means of a coin operated apparatus; or
- (c) The person causing it to be seen, or seen and heard, receives any payment for displaying or emitting the television broadcast.

(2) Where during the period mentioned in subclause (1) of this clause a television broadcast is caused to be seen, or seen and heard, in public as part of the activities of, or for the benefit of, a club, society, or other organisation which is not established or conducted for profit and whose main objects are charitable or are concerned with the advancement of religion, education, or social welfare, the act of causing it to be seen, or seen and heard, shall not constitute an infringement of the copyright in the broadcast:

Provided that this subclause shall not apply if a charge is made and any proceeds or some part of them are applied otherwise than for the purposes of the organisation.

Published Editions

20. Copyright shall not subsist by virtue of section 17 of this Act in any edition of any one or more literary, dramatic, or musical works published before the commencement of that section.

Supplementary Provisions

21. For the purposes of subsections (2) to (4) of section 18 of this Act, the fact that, to a person's knowledge, the making of an article constituted an infringement of copyright under the Copyright Act 1913, or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if, to that person's knowledge, the making of the article had constituted an infringement of copyright under this Act.

PART III

PROVISIONS RELATING TO PART III OF ACT

22. Subsection (9) of section 19 of this Act does not apply to an authorisation granted before the commencement of this Act.

23. (1) In relation to a painting, drawing, engraving, photograph, or cinematograph film made before the commencement of this Act subsection (6) of section 20 of this Act shall apply if, by virtue of subsections (3) to (5) of that section, the making of the painting, drawing, engraving, photograph, or film would not have constituted an infringement of copyright under this Act if this Act had been in operation at the time when it was made.

(2) In subsection (10) of section 20 of this Act, the reference to construction by, or with the licence of, the owner of the copyright in any architectural drawings or plans includes a reference to construction by,

FIRST SCHEDULE—*continued*

or with the licence of, the person who, at the time of the construction, was the owner of the copyright in the drawings or plans under the Copyright Act 1913, or under any enactment repealed by that Act.

24. (1) References in section 22 of this Act to records previously made by, or with the licence of, the owner of the copyright in a work include references to records previously made by, or with the consent of, the owner of the copyright in that work under the Copyright Act 1913.

(2) The repeal by this Act of any provisions of section 25 of the Copyright Act 1913 shall not affect the operation of those provisions, or of any regulations or order made thereunder, in relation to a record made before the repeal.

PART IV

PROVISIONS RELATING TO PART IV OF ACT

25. Nothing in section 24 of this Act shall apply to any infringement of copyright under the Copyright Act 1913, or shall affect any proceedings under that Act, whether begun before or after the commencement of that section.

26. Section 25 of this Act shall not apply with respect to any article made, or, as the case may be, imported, before the commencement of this Act; but, notwithstanding the repeal by this Act of section 10 of the Copyright Act 1913 (which contains provisions corresponding to subsection (1) of section 25 of this Act), proceedings may (subject to the provisions of that Act) be brought or continued by virtue of the said section 10 in respect of any article made or imported before the repeal, although the proceedings relate to the conversion or detention thereof after the repeal took effect.

27. Section 26 of this Act shall not apply to any licence granted before the commencement of that section, and shall not affect any proceedings under the Copyright Act 1913, whether begun before or after the commencement of this Act.

28. For the purposes of section 28 of this Act, the definition of the expression "infringing copy" in section 2 of this Act shall apply as if any reference to copyright in that definition included a reference to copyright under the Copyright Act 1913.

29. Where before the commencement of this Act a notice had been given in respect of a work under section 21 of the Copyright Act 1913 (which contains provisions corresponding to section 29 of this Act), and that notice had not been withdrawn and had not otherwise ceased to have effect before the commencement of this Act, the notice shall have effect after the commencement of that section as if it had been duly given thereunder:

Provided that a notice shall not continue to have effect by virtue of this paragraph after the end of the period of six months beginning with the commencement of this Act.

PART V

PROVISIONS RELATING TO PART V OF ACT

30. References in Part V of this Act to copyright include references to copyright under the Copyright Act 1913.

FIRST SCHEDULE—*continued*

31. The definition of the term "licence" in subsection (1) of section 36 of this Act shall include, in the case of a television broadcast, a licence to do any act restricted by subclause (1) of clause 19 of this Schedule for the period mentioned in that clause; and the definition of the term "licensor" shall include the owner of the copyright in any television broadcast for that period.

32. During the period mentioned in clause 19 of this Schedule, the Tribunal shall, in the exercise of its jurisdiction under clause 31 of this Schedule, have regard (among other matters) to any conditions imposed by the promoters of any entertainment or other event which is to be included in the television broadcast; and in particular the Tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions:

Provided that nothing in this clause shall require the Tribunal to have regard to any such conditions in so far as they purport to regulate the charges to be imposed in respect of the grant of licences, or in so far as they relate to payments to be made to the promoters of any event in consideration of the grant of facilities for broadcasting.

PART VI

PROVISIONS RELATING TO PART VI OF ACT

33. In section 50 of this Act, subsection (2) shall not apply to works made before the commencement of this Act, and subsection (3) shall not apply to works first published before the commencement of that section.

PART VII

PROVISIONS RELATING TO PART VII OF ACT

34. The provisions of sections 53 and 54 of this Act shall apply in relation to works and other subject-matter in which copyright subsisted before the commencement of this Act as they apply to works and other subject-matter in which copyright subsists under this Act, and references in those sections to copyright include references to copyright under the Copyright Act 1913.

PART VIII

PROVISIONS RELATING TO PART VIII OF ACT

Television Broadcasts

35. (1) Subsection (1) of section 60 of this Act shall not apply to a television broadcast made by the Broadcasting Corporation during the period mentioned in clause 19 of this Schedule.

(2) Where a television broadcast is made by the Broadcasting Corporation, and the broadcast is an authorised one, any person who, during the period mentioned in clause 19 of this Schedule and subject to the provisions of that clause, causes, by the reception of that broadcast, a literary, dramatic, musical, or artistic work, or a sound recording or cinematograph film to be seen, heard, or seen and heard, in public or (with the exception of a sound recording) to be transmitted to subscribers to a diffusion service, shall, in any proceedings for the infringement of the copyright (if any) in the work, recording, or film

FIRST SCHEDULE—*continued*

under section 7, section 13, or section 14 of this Act, be deemed to be the holder of a licence granted by the owner of that copyright to cause the work, recording, or film (as the case may be) to be seen, heard, seen and heard, or transmitted to subscribers to a diffusion service.

(3) If, in the circumstances to which subclause (2) of this clause would otherwise apply, any person causing the literary, dramatic, musical, or artistic work, or sound recording or cinematograph film, to be seen, heard, seen and heard, or transmitted (as the case may be) infringed the copyright in question, because the broadcast was not an authorised one—

(a) No proceedings shall be brought against that person under this Act in respect of his infringement of the copyright; but

(b) It shall be taken into account in assessing damages in any proceedings against the Broadcasting Corporation in respect of that copyright in so far as that copyright was infringed by the Broadcasting Corporation in making the broadcast.

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

(5) The provisions of this clause shall apply to broadcasts made by any private broadcasting station which is established and operates under Part III of the Broadcasting Corporation Act 1961 as they apply to broadcasts made by the Broadcasting Corporation.

Assignments, Licences, and Bequests

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

(a) Was made or occurred before the commencement of this Act; and

(b) Had any operation affecting the title to copyright in the work under the Copyright Act 1913, or would have had such an operation if the Copyright Act 1913 had continued in force,—

shall have the corresponding operation in relation to the copyright in the work under this Act:

Provided that, if the operation of any such document was or would have been limited to a period specified in the document, it shall not have any operation in relation to the copyright under this Act, except in so far as that period extends beyond the commencement of the provision of this Act by virtue of which copyright subsists in the work.

(2) For the purposes of the operation of a document in accordance with subclause (1) of this clause—

(a) Expressions used in the document shall be construed in accordance with their effect immediately before the commencement of this Act, notwithstanding that a different meaning is assigned to them for the purposes of this Act; and

(b) Section 57 of this Act shall not apply.

(3) Without prejudice to the generality of subclause (1) of this clause, the proviso set out in clause 6 of the Second Schedule to this Act (being the proviso to subsection (2) of section 8 of the Copyright Act 1913) shall apply to assignments and licences having effect in relation to copyright under this Act in accordance with that subclause as if that proviso had been re-enacted in this Act.

FIRST SCHEDULE—*continued*

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

- (a) In the case of a sound recording, references to the copyright under the Copyright Act 1913 shall be construed as references to the copyright under that Act in records embodying the recording; and
- (b) In the case of a cinematograph film, references to the copyright under the Copyright Act 1913 shall be construed as references to any copyright under that Act in the film (in so far as it constituted a dramatic work for the purposes of the Copyright Act 1913) or in photographs forming part of the film.

(5) In this clause the expression “operation affecting the title”, in relation to copyright under the Copyright Act 1913, means any operation affecting the ownership of that copyright, or creating, transferring or terminating an interest, right, or licence in respect of that copyright.

False Attribution of Authorship

37. (1) Paragraphs (b) and (c) of subsection (2) of section 62 of this Act shall apply to any such act as is therein mentioned, if done after the commencement of that section, notwithstanding that the name in question was inserted or affixed before the commencement of that section.

(2) Subject to subclause (1) of this clause, no act done before the commencement of this Act shall be actionable by virtue of that section.

(3) In this clause the term “name” has the same meaning as in section 62 of this Act.

PART IX

WORKS MADE BEFORE 1 APRIL 1914

38. (1) This Part of this Schedule applies to works (other than photographs and sound recordings) published, to photographs taken, and to sound recordings made, before the 1st day of April 1914.

(2) In this Part of this Schedule, the expression “rights conferred by the Copyright Act 1913”, in relation to a work referred to in subclause (1) of this clause, means such a substituted right as, by virtue of section 32 of the Copyright Act 1913, was conferred in place of a right subsisting immediately before the commencement of that Act.

39. Notwithstanding anything in Part I of this Schedule, subsections (1) and (2) of section 7 of this Act shall not apply to a work to which this Part of this Schedule applies, unless a right conferred by the Copyright Act 1913 subsisted in the work immediately before the commencement of this Act.

40. (1) Where, in the case of a dramatic or musical work to which this Part of this Schedule applies, the right conferred by the Copyright Act 1913 did not include the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as not including those specified in subclause (3) of this clause.

(2) Where, in the case of a dramatic or musical work to which this Part of this Schedule applies, the right conferred by the Copyright Act 1913 consisted only of the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act,

FIRST SCHEDULE—*continued*

the acts restricted by the copyright shall be treated as consisting only of those specified in subclause (3) of this clause.

(3) The said acts are—

(a) Performing the work in public:

(b) Broadcasting the work:

(c) Causing the work to be transmitted to subscribers to a diffusion service.

41. Where a work to which this Part of this Schedule applies consists of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, and immediately before the commencement of this Act a right of publishing the work in a separate form subsisted by virtue of the provision set out in clause 7 of the Second Schedule to this Act (being the note appended to the First Schedule to the Copyright Act 1913), that provision shall have effect, in relation to that work, as if it had been re-enacted in this Act with the substitution, for the word "right" where it first occurs, of the word "copyright".

42. (1) Without prejudice to the generality of subclause (1) of clause 36 of this Schedule, the provisions of this clause shall have effect where—

(a) The author of a work to which this Part of this Schedule applies had, before the commencement of the Copyright Act 1913, made such an assignment or grant as is mentioned in paragraph (a) of the proviso to subsection (1) of section 32 of that Act (which relates to transactions whereby the author had assigned, or granted an interest in, the copyright or performing right in a work for the full term of that right under the law in force before the Copyright Act 1913); and

(b) Copyright subsists in the work by virtue of any provision of this Act.

(2) If, before the commencement of this Act, any event occurred, or notice was given, which in accordance with paragraph (a) of the said proviso had any operation affecting the ownership of the right conferred by the Copyright Act 1913 in relation to the work, or creating, transferring or terminating an interest, right, or licence in respect of that right, that event or notice shall have the corresponding operation in relation to the copyright in the work under this Act.

(3) Any right which, at a time after the commencement of this Act, would, by virtue of paragraph (a) of the said proviso, have been exercisable in relation to the work, or to the right conferred by the Copyright Act 1913, if this Act had not been passed, shall be exercisable in relation to the work or to the copyright therein under this Act, as the case may be.

(4) If, in accordance with paragraph (a) of the said proviso, the right conferred by the Copyright Act 1913 would have reverted to the author or his personal representatives on the date referred to in that paragraph, and the said date falls after the commencement of the provision of this Act whereby copyright subsists in the work, then on that date—

(a) The copyright in the work under this Act shall revert to the author or his personal representatives, as the case may be; and

(b) Any interest of any other person in that copyright which subsists on that date by virtue of any document made before the commencement of the Copyright Act 1913 shall thereupon determine.

FIRST SCHEDULE—*continued*

PART X

GENERAL AND SUPPLEMENTARY PROVISIONS

43. In relation to photographs taken and sound recordings made before the commencement of this Act, the definition of the expression "New Zealand citizen" in subsection (1) of section 2 of this Act shall apply as if for the words "body corporate incorporated under the laws of New Zealand" there were substituted the words "body corporate which has established a place of business in New Zealand".

44. The mention of any particular matter in the preceding provisions of this Schedule with regard to the repeal of any of the provisions of the Copyright Act 1913 shall not affect the general application to this Act of the Acts Interpretation Act 1924 in relation to the Copyright Act 1913.

45. For the purposes of the application, by virtue of any of the preceding clauses of this Schedule, of any of the provisions set out in the Second Schedule to this Act,—

- (a) The expressions of which definitions are set out in clause 1 of that Schedule (being the definitions of those expressions in the Copyright Act 1913) shall, notwithstanding anything in this Act, be construed in accordance with those definitions; and
- (b) Where, for those purposes, any of those provisions is to be treated as if re-enacted in this Act, it shall be treated as if it had been so re-enacted with the substitution, for the words "this Act", wherever the reference is to the passing or the commencement of the Copyright Act 1913, of the words "the Copyright Act 1913".

46. Without prejudice to the operation of any of the preceding provisions of this Schedule or of the Acts Interpretation Act 1924—

- (a) Any enactment or other document referring to an enactment repealed by this Act shall be construed as referring (or as including a reference) to the corresponding enactment of this Act:
- (b) Any enactment or other document referring to copyright, or to works in which copyright subsists, if apart from this Act it would be construed as referring to copyright under the Copyright Act 1913, or to works in which copyright subsists under that Act, shall be construed as referring (or as including a reference) to copyright under this Act, or, as the case may be, to works or any other subject-matter in which copyright subsists under this Act:
- (c) Any reference in an enactment or other document to the grant of an interest in copyright by licence shall be construed, in relation to copyright under this Act, as a reference to the grant of a licence in respect of that copyright.

47. (1) Except in so far as it is otherwise expressly provided in this Schedule, the provisions of this Act apply in relation to things existing at the commencement of this Act as they apply in relation to things coming into existence thereafter.

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

SECOND SCHEDULE

Clauses 1, 7 (2), 12 (2), 13 (1),
36 (3), 41, First Schedule

PROVISIONS OF COPYRIGHT ACT 1913 AND REGULATIONS
REFERRED TO IN THE FIRST SCHEDULE

1. *Definitions in section 2 (1) of the Copyright Act 1913 (referred to in clause 1 of First Schedule):*

“Collective work” means—

- (a) Any encyclopaedia, dictionary, year-book, or similar work;
- (b) A newspaper, review, magazine, or similar periodical; and
- (c) Any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated:

“Dramatic work” includes any pieces of recitation, choreographic work, or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented gives the work an original character:

“Literary work” includes maps, charts, plans, tables, and compilations:

“Performance” means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument:

“Photograph” includes photo-lithograph and any work produced by any process analogous to photography.

2. *Proviso to section 8 (1) of the Copyright Act 1913 (referred to in clause 7 of First Schedule):*

Provided that—

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

SECOND SCHEDULE—*continued***3. Regulation 78 of the Designs Regulations 1954 (S.R. 1954/224) (referred to in clause 9 of First Schedule):**

For the purpose of section 30 of the Copyright Act 1913, a design shall be deemed to be used as a model or pattern to be multiplied by any industrial process within the meaning of that section—

- (a) When the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or intended to be reproduced together form only a single set of articles as defined in section 2 (1) of the Act; or
- (b) When the design is to be applied to—
 - (i) Printed paper hangings;
 - (ii) Carpets, floor cloths, or oil cloths, manufactured or sold in lengths or pieces;
 - (iii) Textile piece goods, or textile goods manufactured or sold in lengths or pieces; or
 - (iv) Lace, not made by hand.

4. Proviso to section 6 of the Copyright Act 1913 (referred to in clause 10 of First Schedule):

Provided that at any time after the expiration of 25 years, or in the case of a work in which copyright subsists at the commencement of this Act 30 years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him, calculated at the rate of 10 per cent on the price at which he publishes the work; and, for the purposes of this proviso, the Governor-General may, by Order in Council gazetted, make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

5. Section 22 (1) of the Copyright Act 1913 (referred to in clause 10 of First Schedule):

In the case of a work of joint ownership . . . references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter.

6. Proviso to section 8 (2) of the Copyright Act 1913 (referred to in clause 36 of First Schedule):

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the commencement of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the

SECOND SCHEDULE—*continued*

expiration of 25 years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work, or a licence to publish a work or part of a work as part of a collective work.

7. Note to First Schedule to the Copyright Act 1913 (referred to in clause 41 of First Schedule):

In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would, if this Act had not been passed, have become entitled under section 18 of the Imperial Copyright Act 1842.

NOTE—In this Schedule the expression “this Act” means the Copyright Act 1913.

This Act is administered in the Department of Justice.
