

# **LAWS OF FIJI**

## **COPYRIGHT ACT, 1999**

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**ACT NO. 11 OF 1999**

I assent

K. K. T. MARA  
President  
[19 March 1999]

**AN ACT**

TO CONSOLIDATE AND AMEND THE LAW RELATING TO COPYRIGHT AND  
FOR RELATED MATTERS

ENACTED by the Parliament of the Fiji Islands-

**Part I-PRELIMINARY**

*Short title and commencement*

- 1.-(1) This Act may be cited as the Copyright Act 1999.

(2) This Act commences on a date or dates appointed by the Minister by notice in the *Gazette*.

(3) The Minister may appoint different dates for the commencement of different provisions.

### ***Interpretation***

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

"adaptation" -

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

(i) a translation of the work from one language to another;

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

(iii) wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical;

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

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

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

"artistic work" means-

(a) a graphic work, photograph, sculpture, collage or model, irrespective of artistic quality;

(b) a work of architecture, being a building or a model for a building;

(c) a work of artistic craftsmanship, not falling within paragraph (a) or paragraph (b) of this definition;

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

"author" has the meaning given to it by section 5;

"authorised", with respect to anything done in relation to a work, means done-

(a) by or with the licence of the copyright owner; or

(b) pursuant to section 57 or 58;

"broadcast" means a transmission of a programme, whether or not encrypted, by wireless communication, where the transmission is-

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

(b) for presentation to members of the public in the Fiji Islands or elsewhere;

and "broadcasting" has a corresponding meaning;

"building" includes-

(a) any fixed structure; and

(b) a part of a building or fixed structure;

"business" includes a trade or profession;

"cable programme" and associated terms have the meaning given to them by section 4;

"collective licence", in relation to a copy, means a copyright licence offered by a collective body, under which the copy can be made;

"collective work" means-

(a) a work of joint authorship; or

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

"commercial publication" has the meaning given to it by section 11;

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

and "communicated to the public" has a corresponding meaning;

"compilation" includes-

(a) a compilation consisting wholly of works or parts of works;

(b) a compilation consisting partly of works or parts of works;

(c) multi-media productions; and

(d) a compilation of data other than works or parts of works;

"computer-generated", in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

"Convention country" means a country that is party to a Convention or other international agreement relating to performers' rights to which the State is also a party;

"copying" has the meaning given to it by section 30(2);

and "copy" and "copies" have corresponding meanings;

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

"copyright owner" has the meaning given to it by section 8;

"copyright work" means a work of any of the descriptions in section 14(1) in which copyright exists;

"country" includes every territory for whose international relations the government of that country is responsible;

"director", in relation to a copyright work that is an audio visual work, includes any person nominated by the director of the audio visual work to exercise the director's rights under Part IV if-

(a) the nomination is in writing and signed by the director;

(b) the nomination is made before the completion of the making of the audio visual work; and

(c) the person nominated makes a creative contribution to the making of the audio visual work;

"dramatic work" includes-

(a) a work of dance or mime; and

(b) a scenario or script for an audio visual work;

"educational establishment" means-

(a) a tertiary institution;

(b) a private training institution; or

(c) a government training institute;

"electronic" means actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy; and "in electronic form" means in a form usable only by electronic means;

"employed" means employed under a contract of service or a contract of apprenticeship; and "employee", "employer" and "employment" have corresponding meanings;

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

"facsimile copy" includes a copy that is reduced or enlarged in scale;

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

"graphic work" includes-

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

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

"infringing copy" has the meaning given to it by section 12;

"instruction" means giving or receiving a lesson, either in person or by correspondence, to a student or a group of students at an educational establishment or elsewhere;

"Intermediate school" means a school in which full time instruction is given to the pupils in the sixth, seventh or eighth years of formal education;

"international organisation" means an organisation the members of which include one or more states;

"issue to the public" has the meaning given to it by section 9;

"judicial proceedings" includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person's legal rights or liabilities;

"kindergarten" means a school in which instruction is given to children between the ages of 3 and 6 in games, stories, simple handwork and other activities aimed at inculcating good physical and social habits;

"lawful user", in relation to a computer program, means a person who has a right to use the program, whether under a licence to do any restricted act or otherwise;

"legal practitioner" means a person admitted as a legal practitioner under the Legal Practitioners Act 1996;

"licensing body" means a body of persons (whether corporate or unincorporate) that, as copyright owner or prospective copyright owner or as agent for a copyright owner, negotiates and grants copyright licences including licences that cover the works of more than one author;

"licensing scheme" means a scheme setting out-

(a) the classes of cases in which the operator of the scheme, or the person on whose behalf the operator acts, is willing to grant a copyright licence; and

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

and for the purpose of this definition "scheme" includes anything in the nature of a scheme whether described as a scheme or as a tariff or by any other name;

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

(a) a table or compilation; and

(b) a computer program;

"Minister" means the Minister responsible for the administration of this Act and includes the Attorney General if he or she is so responsible;

"ministerial inquiry" includes the proceedings of a committee set up by the Government or a Minister to inquire into or advise on any matter;

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

"national archives" has the same meaning as it has in the Public Records Act (Cap 108);

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

"plate" includes any stereotype, stone, block, mould, matrix, transfer, negative, or other similar appliance;

"prescribed" means prescribed by regulations made under this Act;

"premises" includes land, buildings, moveable structures, vehicles, vessels, aircraft and hovercraft;

"primary school" means a school in which full time instruction is given from first year to the eighth year of formal education or for any shorter period;

"proceedings" includes a counterclaim; and references to the plaintiff and to the defendant in proceedings are to be construed accordingly;

"public performance" means-

(a) in the case of a work other than an audiovisual work - reciting, playing, dancing, acting or otherwise performing the work (which term includes an expression of folklore) either directly or by means of any device or process;

(b) in the case of an audiovisual work - showing of images in sequence and making of an accompanying audible sound; and

(c) in the case of a sound recording - making the recorded sounds audible,

in each case, at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places and/or times, and where the performance can be perceived without the need for communication to the public as defined in this Act;

"publication" has the meaning given to it by section 10;

"published edition" means a published edition of the whole or any part of one or more literary, dramatic, or musical works;

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

and "recorded" has a corresponding meaning;

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

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

and "reprographic copying" has a corresponding meaning;

"reprographic process" means a process-

(a) for making facsimile copies; or

(b) involving the use of an appliance for making multiple copies;

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

"restricted act" means an act described in section 16;

"school" means a school as defined in section 2 of the Education Act (Cap 262);

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

"secondary school" means a school in which full time instruction is given in general, technical, commercial and/or agricultural subjects, extending over a period of 2 to 6 years, to pupils who have completed the full primary school course; and includes a school in which instruction may be given to part-time pupils;

"sound recording" means-

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

(b) a recording of the whole or any part of a literary, dramatic, or musical work, from which sounds reproducing the work or part may be produced. regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced;

"special school" means a school for persons mentally or physically impaired;

"State" means the Republic of the Fiji Islands and includes every Ministry and department of the Government, but does not include-

(a) a statutory authority;

(b) a Government Commercial Company as defined in the Public Enterprises Act 1996;

"statutory inquiry" means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment;

"sufficient acknowledgement", in relation to a work, means an acknowledgement identifying-

(a) the work by its title or other description, and

(b) the author of the work, unless-

(i) in the case of a published work - it is published anonymously;

(ii) in the case of any unpublished work - it is not possible by reasonable inquiry to ascertain the identity of the author;

"telecommunications system" means a system for conveying visual images, sounds, or other information by electronic means;

"transcript" means a written record of words spoken on a recording;

"Tribunal" means the Copyright Tribunal established by section 202;

"unauthorised", with respect to anything done in relation to a work, means done otherwise than-

(a) by or with the licence of the copyright owner; or

(b) pursuant to section 57 or section 58;

"unknown authorship" has the meaning given to it by section 7;

"wireless communication" means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose;

"work of joint authorship" has the meaning given to it by section 6;

"writing" includes any form of notation or code; whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded; and

"written" has a corresponding meaning.

(2) References in this Act to the time at which a literary, dramatic, or musical work is made are to the time at which the work is recorded, in writing or otherwise.

***Associated definitions for purposes of broadcasting***

3-(1) For the purposes of this Act, an encrypted transmission is to be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

(2) References in this Act to a programme, in relation to broadcasting, are to the visual images, sounds, or other information transmitted.

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

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

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

(4) For the purposes of this Act, in the case of a broadcast by satellite transmission-

(a) the place from which the broadcast is made is the place from which the signals carrying the broadcast are transmitted to the satellite; and

(b) the person making the broadcast is the person who transmits those signals to the satellite.

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

***Meaning of "cable programme service" and associated terms***

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

"cable programme" means any item included in a cable programme service;

"cable programme service" means a transmission service where the transmission is-

(a) for reception at 2 or more places, either simultaneously or at different times, in response to requests by different users; or

(b) for presentation to members of the public,

but does not include a transmission service that is not, or so far as it is not, excepted by or under the following provisions of this section;

"transmission service" means a service that consists wholly or mainly in sending visual images, sounds, or other information by means of a telecommunications system, otherwise than by wireless communication.

(2) A cable programme service does not include-

(a) a transmission service or part of a transmission service of which it is an essential feature that while visual images, sounds, or other information are being transmitted, by means of a telecommunications system, by the person providing the service, there will or may be transmitted from each place of reception, by means of the same system or, as the case may be, the same part of the system, visual images, sounds, or other information (other than signals sent for the operation or control of the service) for reception by the person providing the service or other persons receiving it;

(b) a transmission service run for the purposes of a business where-

(i) no person except the person carrying on the business is concerned in the control of the equipment used for the purposes of the telecommunications system through which the service operates;

(ii) visual images, sounds, or other information are transmitted by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing amenities for others; and

(iii) the system is not connected to any other telecommunications system;

(c) a transmission service run by a single individual where-

(i) all the equipment used for the purposes of the telecommunications system through which the service operates is under his or her control;

(ii) the visual images, sounds, or other information transmitted by the system are conveyed solely for his or her private and domestic purposes; and

(iii) the system is not connected to any other telecommunications system;

(d) a transmission service where-

(i) all the equipment used for the purposes of the telecommunications system through which the service operates is situated in, or connects, premises that are in the occupation of a single occupier; and

(ii) the system is not connected to any other telecommunications system - except where the service operates as part of the amenities provided for residents or inmates of premises run as a business;

(e) a transmission service that is, or to the extent that it is, run for persons providing broadcasting or cable programme services or providing programmes for such services.

(3) The Minister may, from time to time, by regulation amend subsection (2) by-

(a) varying any exclusion and making such transitional provisions in relation to the variation as appear to the Minister to be necessary;

(b) repealing any exclusion and making such transitional provisions in relation to the repeal as appear to the Minister to be necessary; or

(c) adding a new exclusion.

(4) References in this Act to the inclusion of a cable programme in a cable programme service are to the transmission of the programme as part of the service.

(5) References in this Act to the person including a work in a cable programme, including a work in a cable programme service, or including a cable programme in a cable programme service, are to the person providing the service.

#### ***Meaning of "author"***

5.-(1) For the purposes of this Act, the author of a work is the person who creates it.

(2) For the purposes of subsection (1), the person who creates a work is-

(a) in the case of a literary, dramatic, musical or artistic work that is computer-generated - the person by whom the arrangements necessary for the creation of the work are undertaken;

(b) in the case of a sound recording or audio visual work - the person by whom the arrangements necessary for the making of the recording or audio visual work are undertaken;

(c) in the case of a broadcast - the person making the broadcast or, in the case of a broadcast that relays another broadcast by reception and immediate retransmission, the person making that other broadcast;

(d) in the case of a cable programme - the person providing the cable program service in which the programme is included;

(3) The author of a work of any of the descriptions referred to in subsection (2) may be a natural person or a body corporate.

#### ***Meaning of "work of joint authorship "***

(1) In this Act, "work of joint authorship" means a work produced by the collaboration of 2 or more authors in which the contribution of each author is not distinct from that of the other author or authors.

(2) A broadcast is to be treated as a work of joint authorship in any case where more than one person is to be taken as making the broadcast.

(3) References in this Act to the author of a work are to be construed, in relation to a work of joint authorship, as references to all the authors of the work.

#### ***Meaning of "unknown authorship"***

7.-(1) For the purposes of this Act, a work is of unknown authorship if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(2) For the purposes of this Act, the identity [sic] of an author is to be regarded as unknown if it is not possible for a person who wishes to ascertain the identity [sic] of the author to do so by reasonable inquiry; but if that identity is once known it is not subsequently to be regarded as unknown.

#### ***Meaning of "copyright owner"***

8.-(1) Where copyright or any aspect of copyright is owned by more than one person jointly, references in this Act to the copyright owner, or to the owner of the copyright in the work, are to all owners.

(2) Where different persons are entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Act is the person who is entitled to the aspect of copyright relevant for that purpose.

(3) Where a question arises under this Act whether an object of any description has been imported, sold, or otherwise dealt with other than pursuant to a copyright licence, the copyright owner shall be taken to be the person entitled to the copyright in respect of its application to the making of objects of that description in the country into which the object was imported or in which it was sold or otherwise dealt with.

#### ***Meaning of "issue to the public"***

9.-(1) References in this Act to the issue of copies of a work to the public mean the act of putting into circulation copies not previously put into circulation, but do not include the acts of-

(a) subsequent distribution or sale of those copies;

(b) subject to subsections (2) and (3), subsequent hiring or loan of those copies; or

(c) subsequent importation of those copies into the Fiji Islands.

(2) In relation to a computer program, the issue of copies of the work to the public includes the rental of copies of the computer program to the public, but does not include any such rental where-

(a) the computer program is incorporated into any other thing;

(b) the rental of the computer program is not the principal purpose or one of the principal purposes of the rental; and

(c) the computer program cannot readily be copied by the hirer.

(3) In relation to a sound recording or audio visual work, the issue of copies of the work to the public includes the rental of copies of the work to the public.

### ***Meaning of "publication"***

**10.**-(1) In this Act, the term "publication" in relation to a work-

(a) means the issue of copies of the work to the public;

(b) includes, in the case of a literary, dramatic, musical, or artistic work, making it available to the public by means of an electronic retrieval system;

and "publish" has a corresponding meaning.

(2) In the case of a work of architecture in the form of a building, or an artistic work incorporated into a building, construction of the building is equivalent to the publication of the work.

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

(4) The following do not constitute publication for the purposes of this Act-

(a) in the case of a literary, dramatic, or musical work-

(i) the performance of the work; or

(ii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);

(b) in the case of any artistic work-

(i) the exhibition of the work;

(ii) the issue to the public of copies of a film including the work; or

(iii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);

(c) in the case of an artistic work being-

(i) a sculpture;

(ii) a work of architecture in the form of a building or a model for a building; or

(iii) a work of artistic craftsmanship,

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

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

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

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

(5) No account is to be taken for the purposes of this section of any unauthorised act.

#### ***Meaning of "commercial publication"***

**11.** In this Act, the term "commercial publication", in relation to a literary, dramatic, musical, or artistic work, means the publication of the work consisting of-

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

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

and related expressions are to be construed accordingly.

#### ***Meaning of "infringing copy"***

**12.-(1)** In this Act, the term "infringing copy", in relation to a copyright work, is to be construed in accordance with this section.

(2) An object is an infringing copy if its making constitutes an infringement of the copyright in the work in question.

(3) An object that a person imports, or proposes to import, into the Fiji Islands is a infringing copy of a work if-

(a) the making of the object in the Fiji Islands by that person would have infringed the copyright in the work;

(b) the making of the object in the Fiji Islands by the copyright owner would have constituted a breach of an exclusive licence relating to the work; or

(c) the making of the object, by whomever and wherever it was made, constituted an infringement of the copyright in the work.

(4) If in any proceedings the question arises whether an object is an infringing copy, and it is shown-

(a) that the object is a copy of the work in question; and

(b) that copyright exists in the work or has existed at any time,

it is presumed until the contrary is proved that the object was made at a time when copyright existed in the work.

(5) In this Act, an infringing copy includes a copy falling to be treated as an infringing copy under any of the following provisions-

(a) section 76(2) (which relates to recording for the purposes of time shifting);

(b) section 77(4) (which relates to incidental recording for the purposes of broadcast or cable programme);

(c) section 84(1) (which relates to subsequent dealings with copies made under Part III.

(6) In this Act, an infringing copy does not include a literary work or an artistic work that-

(a) relates to a medicine imported by the State pursuant to section 2 or 2A of the Pharmacy and Poisons Act (Cap 115); and

(b) has been made, copied, published, adapted, or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country.

### *Act to bind the State*

**13.** This Act binds the State.

## **Part II**

### **DESCRIPTION, OWNERSHIP AND DURATION OF COPYRIGHT**

## *Division 1-Description of Copyright*

### *Copyright in original works*

**14.**-(1) Copyright is a property right that exists in accordance with this Act in original works of the following descriptions-

- (a) literary, dramatic, musical, or artistic works;
- (b) sound recordings;
- (c) audio visual works;
- (d) broadcasts;
- (e) cable programmes;
- (f) typographical arrangements of published editions.

(2) A work is not original if-

- (a) it is, or to the extent that it is, a copy of another work; or
- (b) it infringes the copyright in, or to the extent that it infringes the copyright in, another work.

(3) A cable programme is not an original work if its communication to the public is by way of reception and immediate re-transmission of a broadcast.

### *Recording necessary for some works*

**15.**-(1) Copyright does not exist in a literary, dramatic or musical work unless and until the work is recorded, in writing or otherwise.

(2) It is immaterial for the purposes of subsection (1) whether the work is recorded by or with the consent of the author.

(3) If a work is not recorded by the author, the question whether copyright exists in the record, as distinct from the work recorded, is not affected by anything in subsection (1).

### *Acts restricted by copyright*

**16.**-(1) The owner of the copyright in a work has the exclusive right-

- (a) to copy;

(b) to issue copies to the public;

(c) to publicly perform;

(d) to broadcast;

(e) to communicate to the public;

(f) to adapt,

the work.

(2) Subsection (1) applies subject to Parts IV and IX.

### *Division 2-Qualification for Copyright*

#### *Qualification for copyright*

**17.**-(1) Copyright does not exist in a work unless the requirements of either section 18, section 19 or section 20 are satisfied in respect of the work.

(2) Subsection (1) does not apply to copyright that exists by virtue of section 26 or section 28.

(3) If the requirements of any of sections 18, 19, 20, 26 or 28 are once satisfied in respect of a work, copyright in that work does not cease to exist merely because a change occurs in any of the circumstances by reason of which those requirements were satisfied.

(4) If any provision of this Act imposes a requirement, in addition to the requirements of section 18, 19 or 20, that must be satisfied for copyright to exist in a work, copyright does not exist in a work unless the requirements of that provision as well as the requirements of section 18, 19 or 20 are satisfied in respect of that work.

#### *Qualification by reference to author*

**18.**-(1) A work qualifies for copyright if the author is, at the material time-

(a) a Fiji Islands citizen; or

(b) an individual domiciled or resident in the Fiji Islands.

(2) A work qualifies for copyright if the author is, at the material time-

(a) a citizen or subject of a prescribed foreign country;

(b) an individual domiciled or resident in a prescribed foreign country;

(c) a body incorporated under the law of a prescribed foreign country;

(d) in the case of an audiovisual work - a body which has its headquarters in a prescribed foreign country.

(3) Subject to subsection (4), a work of joint authorship qualifies for copyright if, at the material time, any of the authors satisfies the requirements of subsection (1) or subsection (2).

(4) If a work of joint authorship qualifies for copyright under this section alone, only those authors who satisfy the requirements of subsection (1) or subsection (2) are to be taken into account for the purposes of the application to that work of-

(a) section 21 (which relates to the first ownership of copyright);

(b) subsection (1) and (4) of section 22 (which relate to the duration of copyright in literary, dramatic, musical, or artistic works);

(c) section 62 (which relates to acts permitted on assumptions as to the expiry of copyright or the death of the author in relation to anonymous or pseudonymous works).

(5) For the purposes of this Act, the material time, in relation to a literary, dramatic, musical or artistic work, is-

(a) in the case of an unpublished work - when the work is made or, if the making of the work extends over a period, a substantial part of that period;

(b) in the case of a published work - when the work is first published or, if the author has died before that time, immediately before his or her death.

(6) For the purposes of this Act, the material time, in relation to a work other than a literary, dramatic, musical, or artistic work, is-

(a) in the case of a sound recording or audio visual work - when the work is made or, if the making of the work extends over a period, a substantial part of that period;

(b) in the case of a broadcast - when the broadcast is made;

(c) in the case of a cable programme - when the programme is included in a cable programme service;

(d) in the case of a typographical arrangement of a published edition - when the edition is first published.

***Qualification by reference to country of first publication***

**19.**-(1) A work (being a literary, dramatic, musical, or artistic work, a sound recording, an audio visual work, or a typographical arrangement of a published edition) qualifies for copyright if it is first published-

(a) in the Fiji Islands; or

(b) in a prescribed place outside the Fiji Islands.

(2) For the purposes of this section, publication in one country is not to be regarded as other than the first publication by reason only of simultaneous publication elsewhere; and for this purpose publication elsewhere within the previous 30 days is to be treated as simultaneous.

***Qualification by reference to place of transmission***

**20.**-(1) A broadcast qualifies for copyright if it is made from-

(a) a place in the Fiji Islands; or

(b) a place in a prescribed place outside the Fiji Islands.

(2) A cable programme qualifies for copyright if it is sent from -

(a) a place in the Fiji Islands; or

(b) a place in a prescribed place outside the Fiji Islands.

***First Ownership of copyright***

**21.**-(1) Subject to this section, the person who is the author of a work is the first owner of any copyright in the work.

(2) Subject to subsection (3), if an employee makes, in the course of his or her employment, a literary, dramatic, musical, or artistic work, that person's employer is the first owner of any copyright in the work.

(3) If an employee, in the course of his or her employment with the proprietor of a newspaper, magazine, or similar periodical, makes a literary, dramatic, or artistic work for the purpose of publication in a newspaper, magazine, or similar periodical, the proprietor is the first owner of the copyright in the work insofar as the copyright relates to-

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

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

(c) broadcasting the work.

(4) If-

(a) a person commissions, and pays for, or agrees to pay for, the taking of a photograph or the making of a computer program, painting, drawing, engraving, model, sculpture, film, or sound recording; and

(b) the work is made in pursuance of that commission, that person is the first owner of any copyright in the work.

(5) Subsections (2), (3) and (4) apply subject to any agreement to the contrary.

(6) Subsections (1) to (5) apply subject to sections 26 and 28.

### ***Division 3-Duration of Copyright***

#### ***Duration of copyright in literary, dramatic, musical or artistic works***

**22.**-(1) Subject to the following subsections, copyright in a literary, dramatic, musical or artistic work expires at the end of 50 years after the end of the calendar year in which the author dies.

(2) If the work is a photograph, copyright expires at the end of 50 years after the end of the calendar year in which the photograph is taken.

(3) If the work is computer-generated, copyright expires at the end of 50 years after the end of the calendar year of authorised publication of the work, or, if there is no authorised publication within 50 years after the making of the work, at the end of 50 years after the end of the calendar year of its making.

(4) If the work is of unknown authorship, copyright expires at the end of 50 years after the end of the calendar year of authorised publication of the work, or if there is no authorized publication within 50 years after the making of the work. at the end of 50 years after the end of the calendar year of its making.

(5) If-

(a) a work is of unknown authorship;

(b) copyright in the work has expired pursuant to subsection (4); and

(c) the identity of the author becomes known after the copyright has expired,

subsection (1) does not apply to revive copyright in the work.

(6) in relation to a work of joint authorship-

(a) the reference in subsection (1) to the death of the author is to be construed-

(i) if the identity of all the authors is known - as a reference to the last of them to die;

(ii) if the identity of one or more, but not all, of the authors is known - as a reference to the death of the last of the authors whose identify [sic] is known; and

(b) the reference in subsection (5) to the identity of the author becoming known is to be construed as a reference to the identity of any of the authors becoming known.

(7) This section does not apply to copyright in a work to which section 26 or 28 applies.

### *Duration of copyright in audio visual works and sound recordings*

**23.**-(1) Copyright in a sound recording or audio visual works expires at the end of the period of 50 years from the end of the calendar year in which the work is made, or is first made available to the public, or is first published, whichever is the latest.

(2) For the purposes of subsection (1), a sound recording or audiovisual work is made available to the public by being-

(a) played or shown in public;

(b) broadcast; or

(c) communicated to the public.

### *Duration of copyright in broadcasts and cable programmes*

**24.**-(1) Copyright in a broadcast or a cable programme expires at the end of the period of 50 years from the end of the calendar year in which the broadcast is made or the cable programme is communicated to the public.

(2) Copyright in a repeated broadcast or repeated cable programme expires at the same time as copyright in the initial broadcast or initial cable programme expires; and accordingly no copyright arises in respect of a repeated broadcast or repeated cable programme that is broadcast or, as the case requires, communicated to the public after the expiry of the copyright in the initial broadcast or, as the case requires, the initial cable programme.

(3) A repeated broadcast means a broadcast that is a repeat or a broadcast previously made.

(4) A repeated cable programme means a cable programme previously communicated to the public.

***Duration of copyright in typographical arrangement of published editions***

**25.** Copyright in a typographical arrangement of a published edition expires at the end of the period of 25 years from the end of the calendar year in which the edition is first published.

***Division 4-State Copyright***

***State copyright***

**26.**-(1) Where a work is made by or under the direction or control of the State-

(a) the work qualifies for copyright notwithstanding section 17(1); and

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

(2) Copyright in a work as described in subsection (1) is referred to in this Act as "State copyright", notwithstanding that such copyright is assigned to another person.

(3) State copyright expires-

(a) in the case of a typographical arrangement of a published edition - at the end of the period of 25 years from the end of the calendar year in which the work is made;

(b) in the case of any other work - at the end of the period of 50 years from the end of the calendar year in which the work is made.

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

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

(6) This section is subject to section 27.

***No copyright in certain works***

**27.**-(1) No copyright exists in any of the following works-

(a) any Bill introduced into the House of Representatives;

- (b) any Act as defined in the Interpretation Act (Cap 7);
- (c) any subsidiary legislation as defined in the Interpretation Act (Cap 7);
- (d) the debates of the Parliament of the Fiji Islands;
- (e) a report of a Royal Commission, Commission of Inquiry, ministerial inquiry or statutory inquiry;
- (f) a judgment of any court or tribunal.

(2) Subsection (1) applies to works made before or after this Act comes into force.

### *Copyright vesting in certain international organisations*

**28.** If an original work (being a literary, dramatic, musical or artistic work or an audio visual work or sound recording) is made by an officer or employee of, or is published by, an international organisation to which this section applies-

- (a) the work qualifies for copyright notwithstanding section 17(1); and
- (b) the organisation is the first owner of any copyright in the work.

(2) The copyright of an international organisation under this section expires-

- (a) in the case of a typographical arrangement of a published edition - at the end of the period of 25 years from the end of the calendar year in which the work is made or such longer period as may be specified for the purposes of this paragraph under subsection (5);
- (b) in the case of any other work - at the end of the period of 50 years from the end of the calendar year in which the work was made, or such longer period as may be specified for the purposes of this paragraph under subsection (5).

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

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

(5) The Minister may from time to time, by regulation-

- (a) declare that any international organisation is an international organisation to which this section applies;

(b) for the purposes of complying with any international obligation of the State, specify a period for the purpose of paragraph (a) or (b) of subsection (2).

### **Part III**

## **INFRINGEMENT OF COPYRIGHT**

### ***Division 1-Primary Infringement of Copyright***

#### ***Infringement of copyright***

**29.**-(1) Copyright in a work is infringed by a person who, without a licence of the copyright owner, does, or authorises another to do, any act which is restricted by copyright.

(2) References in this Act to the doing of a restricted act are to the doing of an act-

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

(b) either directly or indirectly,

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

(3) This Part is subject to Part IV.

#### ***Infringement by copying***

**30.**-(1) The copying of a work is a restricted act in relation to every description of copyright work.

(2) For the purposes of this Act copying means, in relation to any description of work, means reproducing or recording the work in any material form and includes-

(a) in relation to a literary, dramatic, musical, or artistic work - storing the work in any medium by any means;

(b) in relation to an artistic work - converting the work into a 3-dimensional form, or if it is in 3 dimensions, converting it into a 2-dimensional form;

(c) in relation to an audio visual work, television broadcast, or cable programme - the making of a photograph of the whole or any substantial part of any image forming part of the audio visual work, broadcast, or cable programme.

#### ***Infringement by issue of copies to public***

**31.** The issue of copies of a work to the public is a restricted act in relation to every description of copyright work.

***Infringement by performance***

**32.**-(1) The performance of a work in public is a restricted act in relation to a literary, dramatic, or musical work.

(2) The playing or showing of a work in public is a restricted act in relation to a sound recording, audio visual work, broadcast or cable programme.

(3) If copyright in a work is infringed by the performance, playing, or showing of the work in public by means of apparatus for receiving visual images or sounds conveyed by electronic or other means-

(a) the person by whom the visual images or sounds are sent: and

(b) in the case of a performance, the performers,

are not to be regarded as responsible for the infringement.

(4) For the purposes of subsection (3), a person who sends visual images or sounds does not include a person who retransmits visual images or sounds.

***Infringement by broadcasting or communication to the public***

**33.** The broadcasting of a work or its communication to the public is a restricted act in relation to-

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

(b) a sound recording or audio visual work;

(c) a broadcast or cable programme.

***Infringement by making an adaptation or act done in relation to an adaptation***

**34.**-(1) The making of an adaptation of a work is a restricted act in relation to a literary, dramatic, audio visual or musical work.

(2) For the purposes of subsection (1), an adaptation is made when it is recorded, in writing or otherwise.

(3) The doing of any of the acts specified in subsection (1) or in any of sections 30 to 33 in relation to an adaptation of a work, is also a restricted act in relation to the literary, dramatic, audio visual, or musical work from which the adaptation was made.

(4) For the purposes of subsection (3), if the act done in relation to an adaptation of a work is an act specified in section 32 or 33, it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

## ***Division 2-Secondary Infringement of Copyright***

### ***Importing infringing copy***

**35.** Copyright in a work is infringed by a person who, other than pursuant to a copyright licence, imports into the Fiji Islands, otherwise than for that person's private and domestic use, an object that is, and that the person knows or has reason to believe is, an infringing copy of the work.

### ***Possessing or dealing with infringing copy***

**36.** Copyright in a work is infringed by a person who, other than pursuant to a copyright licence-

- (a) possesses in the course of a business;
- (b) in the course of a business or otherwise, sells or lets for hire;
- (c) in the course of a business, offers or exposes for sale or distributes;
- (d) in the course of a business, exhibits in public or distributes; or
- (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the copyright owner,

an object that is, and that the person knows or has reason to believe is, an infringing copy of the work.

### ***Providing means for making infringing copies***

**37.-(1)** Copyright in a work is infringed by a person who, other than pursuant to a copyright licence-

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

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

(2) Copyright in a work is infringed by a person who, other than pursuant to a copyright licence, transmits the work by means of a telecommunications system (otherwise than by broadcasting or communication to the public), knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the Fiji Islands or elsewhere.

### *Permitting use of premises for infringing performance*

**38.**-(1) If copyright in a literary, dramatic, or musical work is infringed by a performance at a place of public entertainment, a person who gave permission for that place to be used for the performance is also liable for the infringement unless, when the person gave that permission, the person believed on reasonable grounds that the performance would not infringe copyright.

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

### *Provision of apparatus for infringing performance, etc*

**39.**-(1) If copyright in a work is infringed by a performance of the work in public, or by the playing or showing of the work in public, by means of apparatus for-

(a) playing sound recordings;

(b) showing audio visual works; or

(c) receiving visual images or sounds conveyed by electronic means,

the persons described in subsections (2) to (4) are also liable for the infringement.

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

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

(b) in the case of apparatus whose normal use involves a performance, playing, or showing in public - the person had no reasonable grounds for believing that the apparatus would not be so used as to infringe copyright.

(3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if, permission, was supplied, the person knew,

or had reason to believe, that the apparatus was likely to be so used as to infringe copyright.

(4) A person who supplied a copy of a sound recording or an audio visual work used to infringe copyright is liable for the infringement if, when the copy was supplied, the person knew, or had reason to believe, that the copy so supplied, or a copy made directly or indirectly from the copy, was likely to be so used as to infringe copyright.

## **Part IV**

### **ACTS PERMITTED IN RELATION TO COPYRIGHT WORKS**

#### *Division 1-General*

##### *Incidental copying of copyright work*

**40.**-(1) Copyright in a work is not infringed by-

(a) the incidental copying of the work in an artistic work, a sound recording, an audio visual work, a broadcast, or a cable programme;

(b) the issue to the public of copies of an artistic work, the playing of a sound recording, the showing of an audio visual work, the making of a broadcast or the inclusion of a cable programme in a cable programme service, in which a copyright work has been incidentally copied; or

the issue to the public of copies of a sound recording, audio visual work, broadcast, or cable programme to which paragraph (a) or (b) applies.

(2) For the purposes of this subsection, a musical work, words spoken or sung with music, or so much of a sound recording, broadcast, or cable programme as includes a musical work or such words, is not to be regarded as incidentally copied in another work if the musical work or, as the case requires, such words of that sound recording, broadcast, or cable programme is deliberately copied.

##### *Criticism, review and news reporting*

**41.**-(1) Copying a work for the purpose of criticism or review of that or another work, or of a performance of a work, does not infringe copyright in the work if the copy is accompanied by a sufficient acknowledgement.

(2) Copying a work for the purpose of reporting current events by means of a sound recording, audio visual work, broadcast or cable programme does not infringe copyright in the work.

(3) Copying a work (other than a photograph) for the purpose of reporting current events by any means other than those referred to in subsection (2) does not infringe copyright in the work if the copy is accompanied by a sufficient acknowledgement.

### *Research or private study*

**42.**-(1) Copying a work for the purposes of research or private study by an individual does not infringe copyright in a literary, dramatic, musical or artistic work, unless there is a collective licence available of which the individual is or should be aware under which the copying can be done.

(2) For the avoidance of doubt, it is declared that copying a published edition for the purposes of research or private study by an individual does not infringe copyright in either the typographical arrangement of the edition or in any literary, dramatic, or musical work or part of a work in the edition.

(3) In relation to-

(a) a literary, dramatic, or musical work that is contained in a book by one author; or

(b) a published edition that is a book by one author,

copying for the purposes of research or private study by an individual is limited to the making of one copy of the same work, or the same part of a work, on any one occasion.

(4) In relation to-

(a) a literary, dramatic, or musical work that is contained in an article in a periodical;

(b) a published edition that is an article in a periodical,

copying for the purposes of research or private study by an individual does not include copying for the purposes of research or private study the whole or part of the work or edition if another article dealing with a different subject matter is copied, on the same occasion, from the same issue of the periodical; but in any other case, includes copying for the purposes of research or private study by an individual the whole or part of the work or edition and any artistic work included in the whole or part.

(5) In relation to a literary, dramatic, or musical work or a published edition, other than a work or edition to which subsection (3) or subsection (4) applies, copying for the purposes of research or private study by an individual includes copying for the purposes of research or private study not more than 10% of the work or edition and any artistic work included in that 10%.

(6) Except as provided in subsections (3) to (5), copying a work for the purposes of research or private study by an individual may include copying for the purposes of research or private study the whole or part of the work.

(7) In determining, for the purposes of subsection (6), whether copying is for the purposes of research or private study by an individual, a court must have regard to-

(a) the purpose of the copying;

(b) the nature of the item copied;

(c) whether the item could have been obtained within a reasonable time at an ordinary commercial price;

(d) the effect of the copying on the potential market for, or value of, the work; and

(e) where part of an item is copied - the amount and substantiality of the part copied taken in relation to the whole item.

(8). This section does not apply to a literary work that is a computer program.

### *Division 2-Education*

#### *Exemption from copyright infringement*

**43.**-(1) Copying by a school referred to in subsection (2) for the purposes of research or private study by an individual does not infringe copyright in a literary, dramatic, musical or artistic work, unless there is a collective licence available of which the school is or should be aware under which the copying can be done.

2) A school referred to in subsection (1) includes-

(a) a kindergarten;

(b) a primary school;

(c) an intermediate school;

(d) a secondary school;

(e) a special school.

(3) For the purposes of subsection (1) copying for purposes of research or private study means-

(a) the whole or part of a literary, dramatic, musical or artistic work is copied for supply to any student or staff member of the school;

(b) the school supplies no more than one copy of the copied material to any student or staff member of that school: and

(c) if any student or staff member is required to pay for a copy, the payment required is no higher than the cost of production of the copy together with a reasonable contribution to the general expenses of the school.

(4) Subsection (1) does not apply to a literary work that is a computer program.

### *Partial exemption from copyright infringement*

**44.**-(1) Copying by an educational establishment for the purposes of research or private study by an individual does not infringe copyright in a literary, dramatic, musical or artistic work, unless there is a collective licence available of which the educational establishment is or should be aware under which the copying can be done.

(2) For the purposes of subsection (1), copying for the purposes of research or private study by an individual means copying not more than-

(a) one chapter of the literary, dramatic, musical or artistic work; or

(b) 10% of the literary, dramatic, musical or artistic work, for supply to any student or staff member of the educational establishment,

whichever is the less.

(3). An educational establishment may apply to the Minister for a certificate of exemption entitling the establishment to exemption similar to those provided pursuant to section 43 for a school.

(4) In determining, for the purposes of subsection (2), whether copying is for the purpose of research or private study, a court must have regard to-

(a) the purpose of the copying;

(b) the nature of the item copied;

(c) whether the item could have been obtained within a reasonable time at an ordinary commercial price;

(d) the effect of copying on the potential market for, or value of, the work; and

(e) where part of an item is copied - the amount and substantiality of the part copied taken in relation to the whole item.

(5) Copyright in a dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying-

(a) is done by a person giving or receiving instruction; and

(b) is not by means of a reprographic process.

(6) Copyright in a sound recording, audio visual work or audio visual soundtrack, broadcast or cable programme is not infringed by its being copied by making an audio visual work or audio visual soundtrack in the course of instruction, or of preparation for instruction, in the making of an audio visual work or audio visual soundtrack, provided the copying is done by a person giving or receiving instruction.

(7) Subsection (1) does not apply to a literary work that is a computer program.

***Performing, playing, or showing work in course of activities of educational establishment***

**45.**-(1) The performance of a literary, dramatic, or musical work before an audience consisting of persons who are students or staff members at a school or educational establishment or are directly connected with the activities of the school or establishment-

(a) by a student or staff member in the course of the activities of the school or establishment; or

(b) at the school or establishment by any person for the purposes of instruction,

is not a performance in public for the purposes of section 32(1).

(2) The playing or showing, for the purposes of instruction, of a sound recording, audio visual work, broadcast, or cable programme before an audience as described in subsection (1) at a school or educational establishment is not a playing or showing of the work in public for the purposes of section 32(2).

(3) A parent or guardian of a student at a school or educational establishment is not, for the purposes of this section, to be treated as a person directly connected with the activities of the school or educational establishment.

***Recording by educational establishments of broadcasts and cable programmes***

**46.** A recording of a broadcast or cable programme, or a copy of such a recording may be made by or on behalf of a school or educational establishment for the educational purposes of that school or establishment without infringing copyright in the broadcast or

cable programme, or in any work included in it, unless there is a collective licence available of which the school or educational establishment is or should or be aware under which copying can be done.

### *Things done for purposes of examination*

**47.** Copyright is not infringed by anything done for the purposes of an examination, whether by way of setting the questions, communicating the questions to the candidates or answering the questions.

### *Division 3-Libraries and Archives*

#### *Prescribed libraries and archives*

**48.** In sections 49 to 53, unless the context otherwise requires-

(a) "archive" means-

(i) the National Archives of the Fiji Islands;

(ii) any library, museum or other body approved by the Minister of Information to be a repository of archival material under section 3 of the Libraries (Deposit of Books) Act (Cap 109);

(iii) any collection of documents (within the meaning of section 7 of the Public Records Act (Cap 108)) of historical significance or public interest that is in the custody of and maintained by a person or body, whether incorporated or unincorporated, that does not keep and maintain the collection for the purpose of deriving a profit;

(b) "prescribed library" means-

(i) the Parliamentary Library;

(ii) a library maintained by an educational establishment, government department, or local authority;

(iii) any other library or class of library prescribed by regulations made under section 229, not being a library conducted for profit;

(c) a reference to the librarian of a prescribed library or the archivist of an archive includes a person acting on behalf of the librarian or archivist.

#### *Copying by librarians of parts of published works*

**49.**-(1) The librarian of a prescribed library may, if the conditions contained in subsection (2) are complied with make from a published edition, for supply to another person-

(a) in relation to a literary, dramatic, or musical work contained in a book by one author, not more than one copy of a short excerpt from the work;

(b) in relation to a literary, dramatic, or musical work other than-

(i) a work contained in a book by one author; or

(ii) an article in a periodical,

not more than one copy of a short excerpt of each author's work and any artistic work included in that work, without infringing copyright in the literary, dramatic, musical or artistic work or the typographical arrangement of the published edition.

(2) The conditions referred to in subsection (1) are-

(a) that a copy is supplied only to a person who satisfies the librarian that the person requires it for the purposes of research or private study;

(b) that a copy must be supplied only to a person who satisfies the librarian that the requirement is not related to any similar requirement of another person;

(c) that no person is supplied on the same occasion with more than one copy of the same material;

(d) if a person to whom a copy is supplied is required to pay for it, the payment required is no higher than the cost of production of the copy together with a reasonable contribution to the general expenses of the library; and

(e) that there is no collective licence available of which the librarian is or should be aware under which the copying can be done.

(3) Subsection (1) does not apply to a literary work that is a computer program.

### *Copying by librarians of articles in periodicals*

**50.**-(1) The librarian of a prescribed library may, if the conditions contained in subsection (2) are complied with, make for supply to any person a copy of-

(a) a literary, dramatic, or musical work, and any artistic work included in that work, contained in an article in a periodical; or

(b) a published edition that is an article in a periodical,

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The conditions referred to subsection (1) are-

(a) that no person is supplied on the same occasion with more than one copy of the same article;

(b) that no person is supplied on the same occasion with copies of more than one article contained in the same issue of a periodical unless the copies supplied all relate to the same subject matter;

(c) if a person to whom a copy is supplied is required to pay for it, the payment required is no higher than the cost of production of the copy together with a reasonable contribution to the general expenses of the library; and

(d) that there is no collective licence available of which the librarian is or should be aware under which the copying can be done.

***Copying by librarians for supply to other libraries***

**51.**-(1) The librarian of a prescribed library may make from a published edition, for supply to another prescribed library-

(a) in the case of a literary, dramatic or musical work contained in a book by one author - not more than one copy of the work;

(b) in the case of a literary, dramatic or musical work contained in an article in a periodical - the whole article and any artistic work included in that work;

(c) in the case of a literary, dramatic or musical work other than a work to which paragraph (a) or (b) applies - not more than one copy of the work or edition and any artistic work included in that work,

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(2) The librarian of a prescribed library may, if the conditions contained in subsection (3) are complied with, make a copy of a literary, dramatic or musical work, and any artistic work included in the work, if the copy is-

(a) from a published edition that is a book; and

(b) for supply to the librarian of another prescribed library;

without infringing copyright in the literary, dramatic, musical, or artistic work or the typographical arrangement of the published edition.

(3) The conditions referred to in subsection (2) are that the librarian to whom the copy of the work is supplied-

(a) has been unable to obtain the work at a commercial price within the 6 months preceding the supply;

(b) makes and keeps a record sufficient to identify the work copied;

(c) permits the inspection of the record by the copyright owner during normal office hours; and

(d) pays, on demand, equitable remuneration to the copyright owner for the work copied.

(4) In subsection (3)(d), the term "equitable remuneration" means a sum agreed the librarian and the copyright owner.

(5) Subsections (1) and (2) do not apply to a literary work that is a computer program.

#### ***Copying by librarians or archivists to replace copies of works***

**52-**(1) The librarian of a prescribed library or the archivist of an archive may make a copy of any item in the permanent collection of the library or archive for the purpose of-

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

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

without infringing copyright in any literary, dramatic or musical work, in any artistic work included in the work or in the typographical arrangement of a published edition.

(2) Subsection (1) applies only where it is not reasonably practicable to purchase a copy of the item in question to fulfil the purpose in question.

#### ***Copying by librarians or archivists of certain unpublished works***

**53.**-(1) The librarian of a prescribed library or the archivist of an archive may, if the conditions contained in subsection (3) are complied with, copy for supply to any person a copy of an unpublished work in the library or archive, without infringing copyright in that work.

(2) This section does not apply if the copyright owner has prohibited copying of the work and at the time the copy is made the librarian or archivist making it is, or ought to be aware of that fact.

(3) The conditions referred to in subsection (1) are-

(a) that no person is supplied on the same occasion with more than one copy of the same work;

(b) that if a person to whom a copy is supplied is required to pay for the copy, the payment required is no higher than the cost of production of the copy together with a reasonable contribution to the general expenses of the library or archive; and

(c) that there is no collective licence available of which the library or archive is or should be aware under which the copying can be done.

#### ***Division 4-Public Administration***

##### ***Parliamentary and judicial proceedings***

**54.** Copyright is not infringed by anything done for the purposes of-

(a) parliamentary judicial proceedings;

(b) reporting such proceedings.

##### ***Commissions of inquiry and statutory inquiries***

**55.** Copyright is not infringed by anything done for the purposes of-

(a) the proceedings of a commission of inquiry, a ministerial inquiry or a statutory inquiry;

(b) reporting any such proceedings that are held in public.

(2) Subsection (1)(b) does not authorise the copying of a work that is itself a published report of the proceedings of a committee of inquiry, ministerial inquiry or statutory inquiry.

(3) Copyright in a work is not infringed by the issue to the public of copies of the report of a commission of inquiry, ministerial inquiry or statutory inquiry containing the work or material from it.

##### ***Material open to public inspection or on official register***

**56.**-(1) If material is open to public inspection or public reference pursuant to a statutory requirement, or is on a statutory register, copyright in the material is not infringed by the copying of the material, by or with the authority of the appropriate person, for a purpose that does not involve the issuing of copies to the public.

(2) If material is open to public inspection or public reference pursuant to a statutory requirement, copyright is not infringed by the copying or issuing to the public or copies of the material, by or with the authority of the appropriate person, for the purpose of enabling the material to be inspected at a more convenient time or place or otherwise facilitating the exercise of any right for the purpose of which the requirement is imposed.

(3) If material that is open to public inspection or public reference pursuant to a statutory requirement, or that is on a statutory register, contains information about matters of general scientific, technical, commercial, or economic interest, copyright is not infringed by the copying or issuing to the public of copies of the material, by or with the authority of the appropriate person, for the purpose of disseminating that information.

The Minister may by regulations provide that all or any of subsections (1) to (3), in such cases as may be specified in the regulations, apply only to copies marked in a specified manner.

(5) The Minister may by regulations provide that all or any of subsections (1) to (3) apply, to the extent and with any modifications specified in the regulations, in relation to-

(a) material made open to public inspection or public reference by-

(i) an international organisation specified in the regulations; or

(ii) a person specified in the regulation who has functions in the Fiji Islands under an international agreement to which the State is a party; or

(b) a register maintained by an international organisation specified in the regulations,

as those provisions apply in relation to material open to public inspection or public reference pursuant to a statutory requirement or by virtue of being on a statutory register.

(6) In this section-

"appropriate person" means a person required to make material in a register open to public inspection or public reference on payment of any fee prescribed by or under a written law or, as the case may be, the person maintaining the register:

"statutory register" means a register maintained pursuant to a statutory requirement;

"statutory requirement" means a requirement of a written law.

***Material communicated to the State in the course of public business***

**57.**-(1) This section applies where-

(a) a literary, dramatic, musical, or artistic work has, in the course of public business, been communicated to the State for any purpose, by or with the licence of the copyright owner; and

(b) a document (within the meaning of section 12 of the Official Secrets Act 1911 (UK)) recording or embodying the work is owned by, or is in the custody or control of, the State.

(2) The State may, for-

(a) the purpose for which the work was communicated to the State; or

(b) any related purpose that could reasonably have been anticipated by the copyright owner,

copy the work, and issue copies of the work to the public, without infringing copyright in the work.

(3) The State may not copy a work, or issue copies of a work to the public, under this section if the work has previously been published otherwise than under this section.

(4) In subsection (1) "public business" includes any activity carried on by the State.

(5) This section has effect subject to any agreement to the contrary between the State and the copyright owner.

#### *Use of copyright material for service of the State*

**58.**-(1) Copyright in a work is not infringed by anything done in relation to the work, by or on behalf of the State or by 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 member of the public.

(2) If an act is done under subsection (1), the State must pay reasonable remuneration to the copyright owner upon terms agreed between the State and the copyright owner.

(3) An act to which subsection (1) applies does not-

(a) constitute publication of a work; or

(b) affect the term of copyright in a work.

#### *Rights of third parties in respect of State use*

**59.**-(1) No provision of any assignment or licence in force between the copyright owner and a person other than a government department is effective to prevent any act being done in relation to a copyright work, if the act is done under section 58.

(2) If-

(a) an act is done under section 58; and

(b) an exclusive licence is in force in respect of the work in relation to which the act is done,

the State must pay reasonable remuneration to the licensee upon terms agreed between the State and the licensee.

(3) If-

(a) a person has a right in relation to a work by any licence other than an exclusive licence; and

(b) a payment is made, in respect of that work, under section 58 to the copyright owner or under subsection (2) of this section to the exclusive licensee,

the person is entitled to recover from the owner or exclusive licensee, as the case may be, such part of any payment as is agreed between that person and the copyright owner or the exclusive licensee, as the case may be.

#### ***Proceedings against the State***

**60.**-(1) If an employee or agent of the State infringes copyright in a work, and the infringement is committed with the authority of the State, civil proceedings in respect of the infringement lie against the State under the State Proceedings Act (Cap 24), but subject to this Act.

(2) Nothing in subsection (1) affects the rights of the State, or any person authorised by a government department, under section 58.

#### ***Acts done under statutory authority***

**61.**-(1) If the doing of a particular act is specifically authorised by a written law, the doing of that act does not infringe copyright unless the written law provides otherwise.

(2) Nothing in this section excludes any defence of statutory authority otherwise available under or pursuant to an enactment.

### ***DIVISION 5-LITERARY, DRAMATIC, MUSICAL, AND ARTISTIC WORKS***

*Acts permitted on assumptions as to expiry of copyright or death of author in relation to*

*anonymous or pseudonymous works*

**62.**-(1) Copyright in a literary, dramatic, musical, or artistic work is not infringed by any act done at a time when, or in pursuance of arrangements made at a time when-

(a) it is not possible for a person who wishes to do so to ascertain the identity of the author by reasonable inquiry; and

(b) it is reasonable to assume-

(i) that copyright has expired; or

(ii) that the author died 50 years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to-

(a) a work in which State copyright exists under section 26;

(b) a work-

(i) in which copyright originally vested in an international organisation under section 28; and

(ii) in respect of which an order made under that section specifies a copyright period longer than 50 years.

(3) In relation to a work of joint authorship-

(a) the reference in subsection (1)(a) to its being not possible to ascertain the identity of the author is a reference to the identity of any of the authors; and

(b) the reference in subsection (1)(b)(ii) to the author having died is a reference to all the authors having died.

*Use of recording of spoken words in certain cases*

**63.**-(1) If a recording of spoken words is made, in writing or otherwise, for the purpose of-

(a) reporting current events; or

(b) broadcasting or including in a cable programme service the whole or part of the work,

it is not an infringement of copyright in the words as a literary work to use the recording or material taken from it (or to copy the recording, or any such material, and use the copy) for that purpose, if the conditions in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are that-

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

(b) the making of the recording was not prohibited by the speaker and, if copyright already existed in the work, did not infringe copyright;

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

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

#### ***Public reading or recitation***

**64.**-(1) The reading in public or recitation in public by one person of a reasonable extract from a published literary or dramatic work is not to be treated as a performance in public for the purposes of section 32(1), if that reading or recitation is accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme, of a reading or recitation that pursuant to subsection (1) is not treated as a performance in public, if the recording, broadcast. or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

#### ***Abstracts of scientific or technical articles***

**65.** If an article on a scientific or technical subject is published in a periodical accompanied by an abstract indicating the contents of that article, it is not an infringement of copyright in the abstract, or in the article, to copy the abstract or to issue copies of the abstract to the public, unless there is a collective licence available of which the copier is or should be aware under which the copying can be done.

#### ***Recordings of folk-songs***

**66.**-(1) A sound recording of a performance of a song may be made for the purpose of including the song in an archive maintained by a body prescribed by regulations under section 229 without infringing copyright in the words as a literary work or in the accompanying musical work, if the conditions in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are that-

(a) the words are unpublished and of unknown authorship at the time the recording is made;

(b) the making of the recording does not infringe any other copyright; and

(c) the making of the recording is not prohibited by any performer.

(3) Copies of a sound recording made in reliance on subsection (1) and included in an archive maintained by a body prescribed by regulations made under this Act may, if the condition contained in subsection (4) is complied with, be made and supplied by the archivist without infringing copyright in the recording or the works included in it.

(4) The condition referred to in subsection (3) is that no person is furnished with more than one copy of the same recording.

#### ***Representation of certain artistic works on published display***

**67.**-(1) This section applies to-

(a) buildings; and

(b) works (being sculptures, models for buildings, or works of artistic craftsmanship) that are permanently situated in a public place or in premises open to the public.

(2) Copyright in a work to which this section applies is not infringed by-

(a) copying the work by making a graphic work representing it;

(b) copying the work by making a photograph or audiovisual work of it; or

(c) broadcasting, or including in a cable programme, a visual image of the work.

(3) Copyright is not infringed by the issue to the public of copies, or the broadcasting or communication to the public or inclusion in a cable programme, of anything the making of which was, under this section, not an infringement of copyright.

#### ***Special exception from protection of literary or artistic works***

**68.**-(1) The making of any object in 3 dimensions (including, subject to subsection (2), a copy in 2 dimensions reasonably required for the making of the object) does not infringe copyright in a literary or artistic work, if the work or a copy of it -

(a) forms part of-

(i) a patent specification that is open to public inspection in the Office of the Administrator-General in respect of a Fiji Islands patent that has ceased to exist; or

(ii) a representation or specimen of a design that is open to public inspection in the Office of the Administrator-General in respect of a design for which registered protection in the Fiji Islands has ceased; and

(b) is used for the purpose of making the object.

(2) Subsection (1) does not authorise-

(a) the making of a copy in 2 dimensions of an artistic work-

(i) to which subsection (1) applies; and

(ii) that is in 2 dimensions,

if the copy is made directly from that artistic work; or

(b) the making of a copy of a literary work to which subsection (1) applies, if the copy is made directly from that literary work.

***Special exception from protection of artistic work that has been applied industrially***

**69.**-(1) -The making of-

(a) any object in 3 dimensions; or

(b) a copy in 2-dimensions reasonably required for the making of the object,

does not infringe copyright in an artistic work, if, when the object or copy is made, the artistic work has been applied industrially, in the Fiji Islands or in any other country, by or with the licence of the copyright owner-

(i) in the case of a work of artistic craftsmanship - more than 25 years before the object or copy is made;

(ii) in the case of a sculpture that is a cast or pattern for an object that has a primarily utilitarian function -more than 25 years before the object or copy is made;

(iii) subject to subsection (2), in the case of any other artistic work -more than 25 years before the object or copy is made.

(2) Subsection (1) does not apply to-

(a) a sculpture that is not a cast or pattern for an object that has a primarily utilitarian function; or

(b) a work of architecture, being a building or a model for a building.

(3) Subsection (1) does not authorise the making of a copy in 2 dimensions of an artistic work that is in 2 dimensions, if the copy is made directly from that artistic work.

(4) For the purposes of subsection (1), an artistic work is applied industrially if-

(a) more than 50 copies in 3 dimensions are made of the work, for the purposes of sale or hire;

(b) the work is copied in 3 dimensions in one or more objects manufactured in lengths, for the purposes of sale or hire; or

(c) the work is copied as a plate that has been used to produce -

(i) more than 50 copies of an object in 3 dimensions for the purpose of sale or hire; or

(ii) one or more objects in 3 dimensions manufactured in lengths for the purposes of sale or hire.

(5) For the purposes of subsection (4), 2 or more copies in 3 dimensions that are of the same general character and intended for use together are a single copy.

***Special exception from protection of literary and artistic works relating to medicines***

**70.** The copying, adaptation or publication of a literary work or an artistic work does not infringe copyright in that work if the work-

(a) relates to a medicine that has been imported by the State pursuant to sections 2 and 2A of the Pharmacy and Poisons Act (Cap 115); and

(b) has been made, copied, published, adapted, or distributed in an overseas country by or with the licence of the owner of the copyright in the work in that country.

***Making of subsequent works by same artist***

**71.** If the author of an artistic work is not the copyright owner, the author does not infringe copyright in that work by copying the work in making another artistic work, if the main design of the earlier work is not repeated or imitated

***Reconstruction of buildings***

**72.** Anything done for the purposes of reconstructing a building does not infringe copyright-

(a) in the building; or

(b) in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

***Division 6-Computer Programs, Sound Recordings, and Audio Visual Works***

***Rental by educational establishments and libraries***

**73.** Copyright in a work (being a computer program, sound recording, or audio visual work) is not infringed by the rental of that work to any person by an educational establishment or a prescribed library within the meaning of section 49 if -

(a) the educational establishment or prescribed library does not effect the rental of the work for the purposes of making a profit; and

(b) the work that is the subject of the rental has previously been put into circulation with the licence of the copyright owner.

***Back-up copy of computer program***

**74.**-(1) Subject to subsection (3), copyright in a computer program is not infringed by the making of a copy of the computer program if-

(a) the copy is made by or on behalf of the lawful user of the copy of the program (in this section referred to as the "original copy") from which the first-mentioned copy is made;

(b) the copy is made solely for the purpose of being used by or on behalf of the lawful user of the original copy instead of the original copy if the original copy is lost, destroyed, or rendered unusable; and

(c) there is no collective licence available of which the lawful user is or should be aware under which the copy can be made.

(2) If an original copy is lost, destroyed or rendered unusable, a copy made pursuant to subsection (1) is to be deemed for the purposes of this section to be the original copy.

(3) Subsection (1) does not apply to the making of a copy of a computer program

(a) from an infringing copy of the computer program; or

(b) contrary to an express direction by or on behalf of the owner of the copyright in the computer program given to the lawful user of the original copy not later than the time when the lawful user of the original copy acquired that original copy.

(4) For the purposes of this section-

(a) a reference to a copy of a computer program is a reference to any object in which the program is reproduced in a material form; and

(b) a reference to an express direction, in relation to a copy of a computer program, includes a reference to a clearly legible direction printed on the copy or on a package in which the copy is supplied.

#### ***Playing of sound recordings for purposes of club, society, etc.***

**75.**-(1) It is not an infringement of copyright in a sound recording to play the recording as part of the activities of, or for the benefit of, a club, society, or other organisation, if the conditions contained in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are-

(a) that the club, society or organisation is not established or conducted for profit;

(b) that the main objects of the club, society, or organisation are charitable or are otherwise concerned with the advancement of religion, education, or social welfare; and

(c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the club, society or organisation.

#### ***Division 7-Broadcasts and Cable Programmes***

##### ***Recording for purposes of time shifting***

**76.**-(1) The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling the recording to be viewed or listened to at a more convenient time does not infringe copyright in the broadcast or cable programme or in any work included in the broadcast or cable programme.

(2) A recording that is-

(a) made under subsection (1); and

(b) retained for any longer than is reasonably necessary to enable the recording to be viewed or listened to at a more convenient time,

infringes copyright in the broadcast or cable programme recorded and in any work included in the recording, and is to be treated as an infringing copy.

*Incidental recording for purposes of broadcast or cable programme*

77.-(1) This section applies where, under an assignment or licence, a person is authorised to broadcast or include in a cable programme service-

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

(b) an artistic work; or

(c) a sound recording or audio visual work.

(2) Where this section applies, the person so authorised may, if the conditions contained in subsection (3) are complied with, do or authorise the doing of any of the following for the purposes of the broadcast or cable programme-

(a) in the case of a literary, dramatic, or musical work, or an adaptation of such a work - copy the work or adaptation by making a sound recording or audio visual work of the work or adaptation;

(b) in the case of an artistic work - copy the work by taking a photograph or making an audio visual work of the work;

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

(3) The conditions referred to in subsection (2) are-

(a) that the recording, audio visual work, photograph, or copy is not used for any other purpose; and

(b) that the recording, audio visual work, photograph, or copy is destroyed within 6 months of being first used for broadcasting the work or, as the case may be, including the work in a cable programme, unless the Minister has authorised the preservation of any recording, audio visual work; photograph or copy in the records of a government department or in the national archives because of its documentary character or exceptional importance.

(4) A recording, audio visual work, photograph, or copy made in accordance with this section is to be treated as an infringing copy-

(a) for the purposes of any use in breach of the condition contained in subsection (3) (a); and

(b) for all purposes after either of the conditions contained in subsection (3) is broken.

***Photographs of television broadcasts or cable programmes***

**78.** Copyright in-

(a) a television broadcast or cable programme; or

(b) any audio visual work included in that broadcast or programme,

is not infringed by the copying for private and domestic use of the whole or any part of an image forming part of the television broadcast or cable programme by-

(i) the taking of a photograph of the image; or

(ii) the making of a copy of such a photograph.

***Free public playing or showing of broadcast or cable programme***

**79.**-(1) The playing in public or showing in public of a broadcast or cable programme to an audience which has not paid for admission to the place where the broadcast or cable programme is to be heard or seen does not infringe any copyright in-

(a) the broadcast or cable programme; or

(b) any sound recording or audio visual work included in the broadcast or programme.

(2) For the purposes of subsection (1) an audience is to be treated as having paid for admission on to a place if-

(a) members of the audience have paid for admission to a place of which that place forms part;

(b) goods or services are supplied at that place, or at a place of which that place forms part at prices-

(i) that are substantially attributable to the facilities afforded for hearing or seeing the broadcast or cable programme; or

(ii) that exceed those usually charged there and that are partly attributable to those facilities; or

(c) if the place is a hotel, motel, camping ground or similar place and the audience consists of persons residing at the hotel, motel, camping ground or place.

(3) For the purposes of subsection (1) the following are not to be treated as having paid for admission to a place-

(a) persons admitted as residents or inmates of a place (other than a hotel, motel, or camping ground);

(b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing broadcasts or cable programmes is only incidental to the main purposes of the club or society.

(4) If the making of the broadcast or inclusion of the programme in a cable programme service was an infringement of the copyright in a sound recording or audio visual work, the fact that the broadcast or programme was heard or seen in public by the reception of the broadcast or cable programme must be taken into account in assessing the damages for that infringement.

#### ***Reception and re-transmission of broadcast in cable programme service***

**80.**-(1) This section applies where a broadcast made from a place in the Fiji Islands is, by reception and immediate re-transmission, included in a cable programme service.

(2) Where this section applies-

(a) copyright in the broadcast is not infringed if and to the extent that the broadcast-

(i) is made for reception in the area in which the cable programme service is provided; and

(ii) is not a satellite transmission or an encrypted transmission;

(b) copyright in any work included in the broadcast is not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided;

(c) where the making of the broadcast was an infringement of the copyright in any work included in the broadcast, the fact that the broadcast was retransmitted as a programme in a cable programme service is to be taken into account in assessing the damages for that infringement.

(3) This section does not apply if or to the extent that a licence authorising the reception and immediate re-transmission of a broadcast is available under a licensing scheme to the person providing the cable programme service and the person providing the cable programme service knew or ought to have known that fact.

#### ***Provision of subtitled copies of broadcast or cable programme***

**81.**-(1) A body prescribed by regulations made under this Act may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally disabled in any other way, with copies that are subtitled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or programmes or works included in those broadcasts or programme.

(2) A body must not be prescribed for the purposes of subsection (1) if it is established or conducted for profit.

### ***Recording for archival purposes***

**82.**-(1) A recording of a broadcast or cable programme of a class prescribed by regulations made under this Act, or a copy of such a recording, maybe made for the purpose of being placed in an archive maintained by a body prescribed by regulations made under section 229 without infringing copyright in the broadcast or programme or in any work included in the broadcast or programme.

(2) A body must not be prescribed for the purposes of subsection (1) if it is established or conducted for profit.

### ***Division 8-Adaptations***

#### ***Adaptations***

**83.** An act that under this Act may be done without infringing copyright in a literary, dramatic, or musical work does not, if that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

### ***Division 9-Subsequent Dealings***

#### ***Subsequent dealings with copies made under this Part***

**84.**-(1) If a copy that would otherwise be an infringing copy is made in accordance with any of the provisions of this Act referred to in subsection (2) but is subsequently dealt with, it must be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

(2) The provisions referred to in subsection (1) are-

(a) section 43 (which relates to copying by educational establishments for the purposes of research or private study);

(b) section 44 (which relates to copying in the course of instruction);

(c) section 46 (which relates to recording by educational establishments of broadcasts and cable programmes);

(d) section 47 (which relates to things done for the purposes of an examination);

(e) section 49 (which relates to copying by librarians of parts of published works);

(f) section 50 (which relates to copying by librarians of articles in periodicals);

(g) section 51 (which relates to copying by librarians for supply to other libraries);

(h) section 52 (which relates to copying by librarians or archivists to replace copies of works);

(i) section 53 (which relates to copying by librarians or archivists of certain unpublished works);

(j) section 58 (which relates to use of copyright material for the service of the State);

(k) section 74 (which relates to back-up copy of computer programs);

(l) section 76 (which relates to recording for the purposes of time shifting).

(3) In subsection (1), the term "dealt with" mean-

(a) sold or let for hire in the course of a business or otherwise; or

(b) offered or exposed for sale or hire in the course of a business.

## **Part V**

### **MORAL RIGHTS**

#### ***Division 1-Right to be Identified as Author or Director***

##### ***Right to be identified as author or director***

**85.**-(1) Subject to section 87-

(a) the author of a literary, dramatic, musical, or artistic work that is a copyright work has the right to be identified as the author of the work; and

(b) the director of an audiovisual work that is a copyright work has the right to be identified as the director of the work,

in the circumstances described in this section.

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

(a) the work is published commercially, performed in public, broadcast or included in a cable program; or

(b) copies of an audio visual work or sound recording including the work are issued to the public.

(3) The author of-

(a) a literary work (other than words intended to be sung or spoken with music); or

(b) a dramatic work,

from which an adaptation is made has the right to be identified as the author of the work from which the adaptation is made whenever any of the events described in subsection (2) occurs in relation to the adaptation of the work.

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

(a) the work is published commercially;

(b) copies of a sound recording of the work are issued to the public;

(c) an audio visual work the sound track of which includes the work is shown in public;  
or

(d) copies of such an audio visual work are issued to the public.

(5) The author of-

(a) a musical work; or

(b) a literary work consisting of words intended to be sung or spoken with music,

from which an adaptation is made has the right to be identified as the author of the work from which the adaptation is made whenever any of the events described in subsection (4) occurs in relation to the adaptation of the work.

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

- (a) the work is published commercially or exhibited in public;
  - (b) a visual image of the work is broadcast or communicated to the public;
  - (c) a public performance is given of an audio visual image of the work;
  - (d) in the case of an audio visual work - copies are issued to the public;
  - (e) in the case of a sculpture, a work of architecture in the form of a building or a model for a building, or a work of artistic craftsmanship - copies of a graphic work representing the work, or of a photograph of the work, are issued to the public.
- (7) The author of a work of architecture in the form of a building has the right to be identified as such on the building as constructed or, if more than one building is constructed to the design, on the first to be constructed.
- (8) The director of an audio visual work has the right to be identified as the director of the work whenever-
- (a) the work is shown in public, broadcast, or included in a cable programme; or
  - (b) copies of the work are issued to the public.

#### *Content of right to be identified*

**86.**-(1) The right conferred by section 85 on an author or director is the right-

- (a) in the case of commercial publication or the issue to the public of copies of an audio visual work or sound recording-
  - (i) to be identified clearly and reasonably prominently in or on each copy; or
  - (ii) if identification in or on each copy is not appropriate, to be identified in some other manner likely to bring the identity of the author or director to the attention of a person acquiring a copy;
- (b) in the case of identification on a building - to be identified by appropriate means visible to persons entering or approaching the building;
- (c) in any other case - to be identified clearly and reasonably prominently in a manner likely to bring the identity of the author or director to the attention of a person seeing or hearing the performance, exhibition, showing, broadcast, or cable programme.

(2) For the purposes of subsection (1), any reasonable form of identification may be used.

#### *Exceptions to right to be identified*

**87.**-(1) The right conferred by section 85 (in this section called "the right") is subject to the exceptions set out in this section.

(2) The right does not apply in relation to

(a) a computer program; or

(b) a computer generated work.

(3) The right is not infringed by an act that would not infringe copyright in the work under-

(a) section 40 (which relates to the incidental copying of a work in an artistic work, sound recording, audio visual work, broadcast, or cable program);

(b) section 41 (which relates to criticism, review and news reporting);

(c) section 47 (which relates to things done for the purposes of an examination);

(d) section 54 (which relates to parliamentary and judicial proceedings);

(e) section 55 (which relates to commissions of inquiry and statutory inquiries);

(f) section 62 (which relates to acts permitted on assumptions as to the expiry of copyright or the death of the author in relation to anonymous or pseudonymous works).

(4) The right does not apply in relation to any work made for the purpose of reporting current events.

(5) The right does not apply in relation to the publication in

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

(b) an encyclopedia, dictionary, year-book, or other collective work of reference,

of a literary, dramatic, musical, or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

(6) The right does not apply to any act done by or with the licence of the copyright owner in relation to a work in which copyright first vested in the author's employer under section 21 (2) or in the director's employer under section 5(2)(b) if-

(a) the author or director cannot readily be identified at the time of the act; or

(b) in the case of a literary, dramatic, musical, or artistic work-

(i) more than 2 persons were involved in the creation of the work and it is impracticable at the time of the act to identify the respective contributions of each person to the work; and

(ii) the authors have not previously been identified in or on published copies of the work.

(7) The right does not apply in relation to-

(a) a work in which State copyright exists under section 26; or

(b) a work in which copyright first vested in an international organisation under section 28,

unless the author or director has previously been identified as such in or on published copies of the work.

### ***Division 2-Right to Object to Derogatory Treatment of Work***

#### ***Right to object to derogatory treatment of work***

**88.**-(1) For the purposes of this section and section 89-

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

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

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

(b) the treatment of a work is derogatory if, whether by distortion or mutilation of the work or otherwise, the treatment is prejudicial to the honour or reputation of the author or director,

and in the following provisions of this section any reference to a derogatory treatment of a work is to be construed accordingly.

(2) Subject to section 90-

(a) the author of a literary, dramatic, musical, or artistic work that is a copyright work; and

(b) the director of an audio visual work that is a copyright work,

has the right not to have his or her work subjected to a derogatory treatment.

*Content of right to object to derogatory treatment*

**89.**-(1) In the case of a literary, dramatic, or musical work, the right conferred by section 88(2) is infringed by a person who-

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

(b) issues to the public copies of-

(i) an audio visual work or sound recording of; or

(ii) an audio visual work or sound recording that includes,

a derogatory treatment of the work.

(2) In the case of an artistic work, the right conferred by section 88(2) is infringed by a person who-

(a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable program a visual image of a derogatory treatment of the work;

(b) shows in public an audio visual work that includes a visual image of a derogatory treatment of the work or issues to the public copies of such an audio visual work; or

(c) in the case of-

(i) a sculpture;

(ii) a work of architecture in the form of a model for a building; or

(iii) a work of artistic craftsmanship,

issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

(3) Subsection (2) does not apply to a work of architecture in the form of a building, but if the author of such a work is identified on the building and it is the subject of (5) derogatory treatment the author has the right to require the identification to be removed.

(4) In the case of an audio visual work, the right conferred by section 88(2) is infringed by a person who-

(a) shows in public, broadcasts or includes in a cable program a derogatory treatment of the audio visual work;

(b) issues to the public copies of a derogatory treatment of the audio visual work; or

(c) along with the audio visual work-

(i) plays in public, broadcasts, or includes in a cable program; or

(ii) issues to the public copies of,

a derogatory treatment of the sound-track of the audio visual work.

(5) The right conferred by section 88(2) extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author or director of the work, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

(6) The right conferred by section 88(2) is infringed by a person who, in the course a business-

(a) possesses;

(b) sells or lets for hire;

(c) offer or exposes for sale or hire; or

(d) exhibits in public or distributes,

an object that is, and that the person knows or has reason to believe is, an infringing object.

(7) In subsection (6) the term "infringing object" means a work, or a copy of a work that-

(a) has been subjected to derogatory treatment; and

(b) has been, or is likely to be, the subject of any of the acts described in this section in circumstances infringing the right conferred by section 88(2).

(8) The right conferred by section 88(2) is infringed by a person who does an act described in subsection (1), (2), (4) or (6) or who authorises another person to do such an act.

### *Exceptions to right to object to derogatory treatment*

**90.**-The right conferred by section 88 is subject to the exceptions set out in this section.

(2) The right does not apply to-

(a) a computer program; or

(b) a computer-generated work.

(3) The right does not apply in relation to any work made for the purpose of reporting current events.

(4) The right does not apply in relation to the publication, in-

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

(b) an encyclopaedia, dictionary, year-book or other collective work of reference,

of a literary, dramatic, musical, or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication.

(5) The right does not apply in relation to any subsequent exploitation elsewhere, without any modification of the published version, of a work to which subsection (4) applies.

(6) The right is not infringed by an act that, under section 61, would not infringe copyright.

(7) The right is not infringed by any act done for the purpose of-

(a) avoiding the commission of an offence; or

(b) complying with a duty imposed by or under an enactment, if-

(i) where the author or director is identified at the time of the act - there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the work has been subjected to treatment to which the author or director has not consented; or

(ii) where the author or director has previously been identified in or on published copies of the work - there is a clear and reasonably prominent indication, given at the time of the act, that the work has been subjected to treatment to which the author or director has not consented.

(8) The right does not apply to any act done, by or with the licence of the copyright owner, in relation to-

(a) a work in which copyright first vested in the author's employer under section 21 or in the director's employer under section 5(2)(b); or

(b) a work in which State copyright exists under section 26; or

(c) a work in which copyright first vested in an international organisation under section 28,

unless the author or director-

(i) is identified at the time of the act; or

(ii) has previously been identified in or on published copies of the work.

(9) If the right applies under subsection (8), the right is not infringed if

(a) where the author or director is identified at the time of the act - there is a clear and reasonably prominent indication, given at the time of the act and appearing with the identification, that the work has been subjected to treatment to which the author or director has not consented; or

(b) where the author or director has previously been identified in or on published copies of the work - there is a clear and reasonably prominent indication, given at the time of the act, that the work has been subjected to treatment to which the author or director has not consented.

### ***Division 3-False Attribution***

#### ***False attribution of identity of author or director***

**91.**-In this section, the term "attribution", in relation to a literary, dramatic, musical or artistic work or an audio visual work, means an express or implied statement as to the identity of the author of the work or the director of the audio visual work.

(2) A person has the right-

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

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

(3) The right conferred by subsection (2) is infringed by a person who-

(a) issues to the public copies of-

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

(ii) an audio visual work,

in or on which there is a false attribution; or

(b) exhibits in public-

(i) an artistic work; or

(ii) a copy of an artistic work,

in or on which there is a false attribution, knowing, or having reason to believe, that the attribution is false.

(4) The right conferred by subsection (2) is infringed by a person who-

(a) in the case of a literary, dramatic, or musical work-

(i) performs the work in public;

(ii) broadcasts the work; or

(iii) includes the work in a cable program,

accompanied by a false attribution; or

(b) in the case of an audio visual work-

(i) shows the audio visual work in public;

(ii) broadcasts the audio visual work; or

(iii) includes the audio visual work in a cable program,

accompanied by a false attribution, knowing, or having reason to believe, that the attribution is false.

(5) The right conferred by subsection (2) is infringed by-

(a) the issue to the public; or

(b) the public display,

of material containing a false attribution in connection with any of the acts referred to in subsection (3) or (4).

(6) The right conferred by subsection (2) is infringed by a person who, in the course of a business-

(a) possesses a copy of-

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

(ii) an audio visual work,

in or on which there is a false attribution;

(b) sells or lets for hire, offers or exposes for sale or hire, exhibits in public, or distributes a copy of-

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

(ii) an audio visual work,

in or on which there is a false attribution; or

(c) in the case of an artistic work, possesses the work when there is a false attribution in or on the work; or

(d) sells, or lets for hire, offers or exposes for sale or hire, distributes, or exhibits in public an artistic work in or on which there is a false attribution,

knowing, or having reason to believe, that there is such an attribution and that the attribution is false.

(7) The right conferred by subsection (2) is infringed by a person who does an act described in this section or who authorises another person to do such an act.

***False representation as to literary, dramatic, or musical work***

**92.**-(1) In this section, the term "representation", in relation to a literary, dramatic, or musical work, means an express or implied statement as to the work being an adaptation of a work by a particular author.

(2) A person has the right not to have a literary, dramatic, or musical work falsely represented as being an adaptation of a work of which the person is the author.

(3) The right conferred by subsection (2) is infringed by a person who issues to the public copies of a literary, dramatic or musical work in or on which there is a false representation knowing, or having reason to believe, that the representation is false.

(4) The right conferred by subsection (2) is infringed by a person who performs in public broadcasts or includes in a cable program a literary, dramatic or musical work accompanied by a false representation knowing, or having reason to believe, that the representation is false.

(5) The right conferred by subsection (2) is infringed by-

(a) the issue to the public; or

(b) the public display,

of material containing a false representation in connection with any act mentioned in subsection (3) or (4).

(6) The right conferred by subsection (2) is infringed by a person who, in the course of a business-

(a) possesses a copy of a literary, dramatic or musical work, in or on which there is a false representation; or

(b) sells or lets for hire, offers or exposes for hire, distributes or exhibits in public a copy of a literary, dramatic or musical work in or on which there is a false representation,

knowing, or having reason to believe, that there is such a representation and that the representation is false.

(7) The right conferred by subsection (2) is infringed by a person who does an act described in this section or who authorises another person to do such an act.

#### ***False representation as to artistic work***

**93.**-(1) In this section, the term "representation" means an express or implied statement as to a matter referred to in paragraph (a), (b) or (c) of subsection (2).

(2) The author of an artistic work has the right-

(a) not to have the work falsely represented as the unaltered work of the author if the work has been altered after the author parted with possession of the work;

(b) not to have a copy of a work that has been altered after the author parted with possession of the work falsely represented as a copy of an unaltered work of the author; and

(c) not to have a copy of an artistic work falsely represented as being a copy made by the author of the artistic work.

(3) The right conferred by subsection (2) is infringed by a person who exhibits in public an artistic work, or a copy of an artistic work, as the case may be, in or on which there is a false representation knowing, or having reason to believe, that the representation is false.

(4) The right conferred by subsection (2) is infringed by-

(a) the issue to the public; or

(b) the public display,

of material containing a false representation in connection with any act referred to subsection (3).

(5) The right conferred by subsection (2) is infringed by a person who, in the course of a business-

(a) possesses an artistic work or a copy of an artistic work, as the case may be, in or on which there is a false representation; or

(b) sells or lets for hire, offers or exposes for sale or hire, distributes, or exhibits in public an artistic work or a copy of an artistic work, as the case may be, in or on which there is a false representation,

knowing, or having reason to believe, there is such a representation and that the representation is false.

(6) The right conferred by subsection (2) is infringed by a person who does an act described in this section or who authorises another person to do such an act.

#### ***Division 4-Right to Privacy of Certain Photographs and Audiovisual Works***

##### ***Right to privacy of certain photographs and audiovisual works***

**94.**-(1) A person who, for private and domestic purposes, commissions the taking of a photograph or the making of an audio visual work has, where copyright exists in the resulting work but is owned by some other person, the right-

(a) not to have copies of the work issued to the public;

(b) not to have the work exhibited or shown in public; and

(c) not to have the work broadcast or included in a cable program.

(2) Subject to subsection (3), the right conferred by subsection (1) is infringed by a person who does an act of the kind described in paragraph (a), (b) or (c) of subsection (1).

(3) The right conferred by subsection (1) is not infringed by an act that would not infringe copyright in the work under-

(a) section 40 (which relates to the identical copying of a work in an artistic work, audio visual work, broadcast or cable program);

- (b) section 54 (which relates to parliamentary and judicial proceedings);
  - (c) section 55 (which relates to commissions of inquiry and statutory inquiries);
  - (d) section 61 (which relates to acts done under statutory authority); or
  - (e) section 62 (which relates to acts permitted on assumptions as to expiry of copyright on the death of the author in relation to anonymous or pseudonymous works).
- (4) The right conferred by subsection (1) is infringed by a person who does an act described in subsection (2) or who authorises another person to do such an act.

### ***Division 5-Supplementary Provisions***

#### ***Duration of rights***

**95.**-(1) The rights conferred by the following sections expire when the copyright in any work that is the subject of the right expires -

- (a) section 85 (which relates to the right to be identified as author or director);
- (b) section 88 (which relates to the right to object to derogatory treatment of work);
- (c) section 94 (which relates to the right to privacy of certain photographs and audio visual works).

(2) The rights conferred by the following sections expire at the end of 20 years after the end of the calendar year in which the person who is entitled to the right dies-

- (a) section 91 (which relates to the false attribution of the identity of an author or director);
- (b) section 92 (which relates to a false representation as to a literary, dramatic or musical work);
- (c) section 93 (which relates to a false representation as to an artistic work).

#### ***Consent and waiver of rights***

**96.**-(1) It is not an infringement of any of the rights conferred by this Part to do any act to which the person who is entitled to the right has consented.

(2) Any of the rights conferred by this Part may be waived by an instrument in writing signed by the person waiving the right.

(3) A waiver given pursuant to subsection (2)-

(a) may relate to a specific work, or to works of a specified description that are in existence, in progress, or about to be commenced;

(b) must state the rights to which the waiver relates;

(c) may be expressed to be subject to revocation; and

(d) if made in favour of the owner or prospective owner of the copyright in the work or works to which the waiver relates, is presumed to extend to any licensee or successor in title unless a contrary intention is expressed.

***Application of provisions to joint works other than audio visual works***

**97.**-(1) Subsections (2) to (5) do not apply to an audio visual work.

(2) A consent or waiver under section 96 by one joint author does not affect the right of the other joint authors.

(3) The right conferred by section 85 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author.

(4) The right conferred by section 88 is, in the case of joint authorship of a work of joint authorship, a right of each joint author.

(5) The right conferred by section 91 is infringed, in the circumstances described in that section-

(a) by any false statement as to the authorship of a work of joint authorship; and

(b) by the false attribution of joint authorship in relation to a work of sole authorship.

and such a false attribution infringes the right of every person to whom authorship of any description is, whether rightly or wrongly, attributed.

(6) The right conferred by section 92 is infringed, in the circumstances described in that section, by any false representation as to an adaptation of a work of joint authorship, and such a false representation infringes the right of each joint author.

(7) The right conferred by section 93 is infringed, in the circumstances described in that section, by any false representation as to a matter referred to in paragraph (a), (b) or (c) of subsection (2) of that section, and such a false representation infringes the right of each joint author.

(8) The right conferred by section 94, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that-

- (a) the right of each person is satisfied if the person consents to the act in question; and
- (b) a waiver under section 96 by one person does not affect the rights of the other persons.

***Application of provisions to joint works that are audio visual works***

**98.**-(1) Subsections (2) to (5) of section 97 apply with any necessary modifications to an audio visual work that was, or is alleged to have been, jointly directed.

(2) For the purpose of subsection (1), an audio visual work is jointly directed if the audio visual work is made by the collaboration of 2 or more directors and the contribution of each director is not distinct from that of the other director or directors.

***Application of provisions to parts of works***

**99.**-(1) The rights conferred by section 85 or 94 apply in relation to the whole or any substantial part of a work.

(2) The rights conferred by the following apply in relation to the whole or any part of a work -

- (a) Section 88 (which relates to the right to object to derogatory treatment of a work);
- (b) section 91 (which relates to false attribution of the identity of an author or director);
- (c) section 92 (which relates to a false representation as to a literary, dramatic, or musical work);
- (d) section 93 (which relates to a false representation as to an artistic work).

**Part VI**

**DEALING WITH RIGHTS IN COPYRIGHT WORKS**

***Division 1-Licences to Deal with Copyright Works***

***Licence***

**100.**-(1) A licence granted by a copyright owner is binding on every successor in title to that person's 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 to doing anything-

- (a) with, or without, the licence of the copyright owner; or

(b) other than pursuant to a copyright licence,

are to be construed accordingly.

(2) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as that licensee has against the copyright owner.

### *Warranty implied in certain licences*

**101.**-(1) If a person grants a licence for-

(a) the performance, broadcast or inclusion in a cable programme of a copyright work that is a literary, dramatic or musical work or a sound recording or audio visual work; or

(b) the inclusion of a copyright work that is an artistic work in a performance, broadcast, or cable programme,

there is implied a warranty in the licence either-

(i) that the person by whom or on whose behalf the licence is granted is the owner of the copyright in the work, sound recording or audio visual work that is the subject of the licence; or

(ii) that the person by whom or on whose behalf the licence is granted is authorised to grant such a licence by the owner of the copyright in the work, sound recording or audio visual work that is the subject of the licence.

(2) If a court is satisfied that-

(a) a person falsely claiming to be, or to have the licence of, the owner of the copyright in a literary, dramatic, musical or artistic work or a sound recording or audio visual work has threatened or commenced proceedings designed to-

(i) prohibit, a performance or broadcast of that work, sound recording or audio visual work, or the inclusion of that work, sound recording or audio visual work in a cable programme; or

(ii) claim damages in respect of a performance or broadcast of that work, recording or audio visual work, or the inclusion of that work, recording or audio visual work in a cable programme; and

(b) as a result of the threat or commencement of proceedings the work, recording or audio visual work has not been so performed, broadcast or included in a cable programme,

the court may award damages sufficient to recompense the person threatened or the defendant in such proceedings, as the case may be, or any other person interested in the

proposed performance, broadcast, or cable programme, for any loss sustained because the performance, broadcast or cable programme did not proceed.

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

## ***Division 2-Transmission of Copyright***

### ***Transmission of Copyright***

**102.**-(1) Copyright is transmissible, as personal or moveable property, by-

(a) assignment;

(b) testamentary disposition; or

(c) operation of law.

(2) A transmission of copyright may be partial, that is, limited so as to apply-

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

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

### ***Assignment***

An assignment of copyright is not effective unless it is in writing signed by or behalf of the assignor.

### ***Copyright to pass under will with unpublished work***

**104.** If under a bequest (whether specific or general) a person is entitled, beneficially or otherwise to-

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

(b) an original material thing which contains a sound recording or audio visual work that was not published before the death of the testator,

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

### *Future copyright*

**105.**-(1) Future copyright is capable of being assigned, wholly or partially, in the same manner and in all respects as if the copyright were then in existence, and on coming into existence the copyright vests in the assignee or the assignee's successor in title accordingly.

(2) Sections 100(1), 102(2), and 103 apply to future copyright in the same manner as they apply to existing copyright.

(3) A licence granted by a person to whom future copyright has been assigned is binding on every successor in title to that person's 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 to doing anything-

(a) with, or without, the licence of the copyright owner; or

(b) other than pursuant to a copyright licence,

are to be construed accordingly.

### *Right to make conditions in respect of certain unpublished works*

**106.**-(1) This section applies where the owner of the copyright in an unpublished literary, dramatic or musical work, or an unpublished artistic work other than a photograph, has, whether before or after the commencement of this Act, transferred or bequeathed to an institution-

(a) the property in or possession of the manuscript of the literary, dramatic or musical work or a copy of the manuscript; or

(b) the property in or possession of the artistic work,

subject to any conditions prohibiting, restricting, or regulating publication of the work for a specified period or without any limit on the period.

(2) While the manuscript, copy or work is in the possession of the institution, any publication of the work in breach of such a condition by-

(a) the institution owning the manuscript, copy or work;

(b) the institution having possession of the manuscript, copy or work; or

(c) any other person,

is, even if the copyright in the work has expired, actionable as if copyright continued to exist in the work and the publication was an infringement of the copyright

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

(4) In this section, "institution" means the Government, a statutory authority, a local body, a prescribed library or archive within the meaning of section 48, or any other institution prescribed by regulations made under section 229.

### ***Division 3-Moral Rights***

#### ***Moral rights not assignable***

**107.** The rights conferred by Part V are not assignable.

#### ***Transmission of moral rights on death***

**108.**-(1) On the death of a person entitled to a right conferred by section 85, 88 or 94 (in this section referred to as "the right")-

(a) the right passes to any person the deceased person has by testamentary disposition specifically directed;

(b) if there is no such direction but the copyright in the work in question forms part of the estate - the right passes to the person to whom the copyright passes;

(c) if, or to the extent that, the right does not pass under paragraph (a) or (b), the right is exercisable by the personal representatives.

(2) If-

(a) under subsection (1)(b), a right passes to the person to whom the copyright passes; and

(b) the copyright passes in part to one person and in part to another,

the right passes in the same manner as the copyright.

(3) If under paragraph (a) or (b) of subsection (1) a right becomes exercisable by more than one person-

(a) in the case of a right conferred by section 85, the right may be asserted by any of those persons;

(b) in the case of a right conferred by section 88 or 94, the right is exercisable by each of those persons and is satisfied in relation to any of those persons if one of them consents to the treatment or act in question; and

(c) any waiver of the right in accordance with section 96 by one of those persons does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passes under subsection (1).

(5) Any infringement after a person's death of a right conferred by section 91, 92 or 93 is actionable by the person's personal representatives.

(6) Any damages recovered by personal representatives in respect of an infringement after the death of a person entitled to a right conferred by Part V devolves as part of the estate as if the right of action had existed and been vested in the person immediately before death.

## **Part VII**

### **REMEDIES FOR INFRINGEMENT**

#### ***Division 1-Rights and Remedies of Copyright Owner***

##### ***Infringement actionable by copyright owner***

**109.**-(1) An infringement of copyright is actionable by the copyright owner.

(2) In proceedings for infringement of copyright, the same relief by way of damages, injunctions, accounts, or otherwise is available to the plaintiff as is available in respect of the infringement of any other property right.

(3) This section has effect subject to the following provisions of this Part.

##### ***Provisions as to damages in infringement proceedings***

**110.**-(1) If, in proceedings for infringement of copyright, it is proved or admitted that at the time of the infringement a defendant did not know, and had no reason to believe, that copyright existed in the work to which the proceedings relate, the plaintiff is not entitled to damages against the defendant, but without prejudice to any other remedy, including an account of profits.

(2) In proceedings for infringement of copyright, a court may, having regard to all the circumstances and in particular to-

(a) the flagrancy of the infringement; and

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

(3) In proceedings for infringement of copyright in respect of the construction of a building, an injunction or other order must not be made-

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

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

### *Order for delivery up in civil proceedings*

**111.**-(1) If a person-

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

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

the owner of the copyright in the work may apply to a court for an order that the infringing copy or object be delivered up to the copyright owner or any other person the court directs.

(2) An order must not be made under subsection (1) unless the court also makes, or it appears to the court that there are grounds for making, an order under section 125.

(3) A person to whom an infringing copy or other object is delivered up in pursuance of an order under this section must, if an order under section 125 is not made, retain the copy or object pending the making of an order, or the decision not to make an order, under that section.

(4) Notwithstanding any rule of court, and even if other proceedings for infringement of copyright have not been commenced, an order may be made under this section on an ex parte application by the copyright owner, if service of the notice of the application would cause undue delay or other serious detriment to the copyright owner.

(5) Nothing in this section affects any other power of the court

### *Right to seize infringing copies*

**112.**-(1) An infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled

to apply for an order under section 111, may be seized and detained by the copyright owner or a person authorised by the copyright owner.

(2) The right to seize and detain under subsection (1) is exercisable subject to the following subsections and is subject to a decision of the court under section 125.

(3) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.

(4) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access but may not seize anything in the possession, custody or control of a person at his, her or its permanent or regular place of business and may not use any force.

(5) If anything is seized under this section, a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made must be left at the time and place of the seizure.

### ***Division 2-Rights and Remedies of Exclusive Licensee***

#### ***Rights and remedies of exclusive licensee***

**113.**-(1) An exclusive licensee has, except against the copyright owner, the same rights and remedies under sections 109, 110, 111 and 112 in respect of matters occurring after the grant of the licence as if the licence were an assignment.

(2) The rights and remedies of an exclusive licensee under sections 109, 110, 111 and 112 are concurrent with those of the copyright owner.

(3) In proceedings brought by an exclusive licensee pursuant to this section, any defence is available to the defendant that would have been available if the copyright owner had brought the proceedings.

#### ***Exercise of concurrent rights***

**114.**-(1) Where proceedings for infringement of copyright brought by the copyright owner or an exclusive licensee relate (wholly or partly) to an infringement in respect of which the copyright owner and the exclusive licensee have concurrent rights of action, the copyright owner or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed unless the other is either joined as a plaintiff or added as a defendant.

(2) A copyright owner or exclusive licensee who is joined as a plaintiff or added as a defendant pursuant to subsection (1) is not liable for any costs in the proceedings unless that person takes part in the proceedings.

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

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

(a) the court must, in assessing damages, take into account-

(i) the terms of the licence; and

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

(b) an account of profits must not be directed if an award of damages has been made, or an account of profits has been directed, in favour of either the copyright owner or the exclusive licensee in respect of the infringement; and

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

(5) The copyright owner must notify any exclusive licensee that has concurrent rights before applying for an order under section 111; and the court may on the application of the licensee make any order under that section it thinks fit having regard to the terms of the licence.

### ***Division 3-Rights and Remedies in Relation to Moral Rights***

#### ***Infringement of moral rights actionable***

**115.**-(1)An infringement of a right conferred by Part IV is actionable by the person entitled to the right.

(2) In proceedings for infringement of a right conferred by Part IV, relief by way of damages and injunction is available to the plaintiff.

(3) In proceedings for infringement of the right conferred by section 88, the court may, if it thinks it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in terms and in a manner approved by the court, disassociating the author or director from the treatment of the work.

### ***Division 4-Presumptions***

#### ***Presumptions relevant to literary, dramatic, musical and artistic works***

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

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

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

(b) to have made the work in circumstances not falling within subsections (2) to (4) of section 21, section 26 or section 28.

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

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

(a) the work qualifies for copyright under section 19; and

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

the person whose name appeared is presumed, until the contrary is proved, to represent the author and is entitled to protect and enforce the author's rights.

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

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

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

#### *Presumptions relevant to certain artistic works*

**117.**-(1) This section applies to any proceedings for infringement of copyright in any artistic work of which copies in 3 dimensions have been issued to the public by or with the licence of the owner of the copyright in that artistic work.

(2) If, in proceedings to which this section applies, a copy as issued to the public, in the Fiji Islands or elsewhere, bears a clear and legible label or other mark indicating-

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

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

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

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

it is presumed until the contrary is proved

(i) that at all material times the defendant had knowledge of each of the claims specified in paragraphs (a) to (d); and

(ii) that the copy was first made available to the public in the year specified.

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

(4) Nothing in this section limits or affects section 116.

***Presumptions relevant to computer programs, sound recordings and audio visual works***

**118.**-(1) In proceedings brought under this Act with respect to a computer program, if a copy of a program as issued to the public in electronic form bears a statement-

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

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

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

(2) In proceedings brought under this Act with respect to a sound recording, if a copy of the recording as issued to the public bears a label or other mark stating-

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

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

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

(3) In proceedings brought under this Act with respect to a film, if a copy of the film as issued to the public bears a statement-

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

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

(c) that the film was first published in a specified year or in a specified country,

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

(4) The presumptions created in subsections (1) to (3) apply in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public in the same manner as they apply in proceedings relating to an infringement alleged to have occurred after the date on which the copies were issued to the public.

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

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

(b) that a named person was the owner of copyright in the film immediately after it was made,

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

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

#### ***Presumptions relevant to works subject to State copyright***

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

#### ***Unjustified proceedings***

**120.**-(1) If a person brings proceedings alleging an infringement of copyright, a court may, on the application of any person against whom the proceedings are brought-

(a) make a declaration that the bringing of proceedings was unjustified; and

(b) make an order for the payment of damages for any loss suffered by the person against whom the proceedings are brought.

(2) A court must not grant relief under this section if the person who brought the proceedings proves that the acts in respect of which proceedings were brought constituted, or would have constituted if they had been done, an infringement of the copyright concerned.

(3) Nothing in this section makes a legal practitioner liable to any proceedings under this section in respect of any act done in a professional capacity on behalf of a client.

### **Division 5-Offences**

#### ***Criminal liability for making or dealing with infringing objects***

**121.**-(1) A person who, other than pursuant to a copyright licence-

(a) makes for sale or hire;

(b) imports into the Fiji Islands otherwise than for that person's private and domestic use;

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

(d) in the course of a business-

(i) offers or exposes for sale or hire;

(ii) exhibits in public; or

(iii) distributes;

(e) in the course of a business or otherwise, sells or lets for hire; or

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

an object that is, and that the person knows or ought reasonably to know is, an infringing copy of a copyright work, commits an offence.

(2) A person who-

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

(b) has such an object in the person's possession,

when the person knows or ought reasonably to know that the object is to be used to make infringing copies for sale or hire or for use in the course of a business, commits an offence.

(3) Subject to subsection (4), a person who-

(a) causes a literary, dramatic, or musical work to be performed, if the performance infringes copyright in the work; or

(b) causes a sound recording or film to be played in public or shown in public, if the playing or showing infringes copyright in the sound recording or film,

and who knows or ought reasonably to know that copyright in the work or in the sound recording or visual image, as the case may be, would be infringed by the performance, playing or showing respectively, commits an offence.

(4) Nothing in subsection (3) applies in respect of infringement of copyright by the reception of a broadcast or cable programme.

(5) A person who commits an offence under this section is liable on conviction-

(a) in the case of an offence against subsection (1), to a fine of \$5,000 for every infringing copy to which the offence relates, but not exceeding \$50,000 in respect of the same transaction, and to imprisonment for 12 months;

(b) in the case of an offence against subsection (2) or (3) to a fine of \$50,000 and to imprisonment for 12 months,

(c) in the case of a second or subsequent offence against subsection (2) or (3), to a fine of \$100,000 and to imprisonment for 2 years.

(6) Sections 116 to 119 (which relate to presumptions) do not apply to proceedings for an offence against this section.

(7) Nothing in subsection (1) applies in relation to a literary work or an artistic work that-

(a) relates to a medicine that has been imported by the State pursuant to section 2 or 2A of the Pharmacy and Poisons Act (Cap 115); and

(b) has been made, copied, published, adapted or distributed in a place outside the Fiji Islands by or with the licence of the owner of the copyright in the work in that place.

### *Search warrants*

**122.**-(1) If a magistrate is satisfied by information on oath by a police officer that there are reasonable grounds for believing-

(a) that an offence under paragraph (a), (b), (e) or (f) of section 121 (1) has been or is about to be committed in any premises; and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

the magistrate may issue a warrant authorising a police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section-

(a) may authorise persons to accompany the police officer executing the warrant, and

(b) remains in force for 28 days from the date of its issue.

(3) In-executing a warrant issued under this section a police officer may seize any article which the officer reasonably believes is evidence that an offence under section 121(1) has been or is about to be committed.

### *Order for delivery up in criminal proceedings*

**123.**-(1) The court before which proceedings are brought against a person for an offence against section 121 may, if satisfied that, at the time of the defendant's arrest or charge-

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

(b) the defendant had in his, her or its possession, custody, or control an object specifically designed or adapted for making copies of a particular copyright work, knowing that the object had been or was to be used to make infringing copies,

order that the infringing copy or object be delivered up to the copyright owner or to any other person the court directs.

(2) An order may be made under subsection (1) by the court of its own motion or on the application of the prosecution, and may be made whether or not the defendant is convicted of the offence, but must not be made-

(a) more than 6 years after the date on which the infringing copy or object was made; or

(b) if it appears to the court unlikely that an order will be made in the proceedings under section 125.

(3) Sections 116 to 119 (which relate to presumptions) apply to proceedings for an order under this section.

(4) A person to whom an infringing copy or other object is delivered up pursuant to an order under this section must retain the copy or object pending the making of an order, or a decision not to make an order, under section 125.

### *Liability of officers of body corporate*

**124.** If a body corporate is convicted of an offence against section 121, every director and every person concerned in the management of the body corporate is guilty of the offence, if it is proved that the act that constituted the offence took place with his or her authority, permission, or consent.

### *Division 6-Disposal of Infringing Copy or Other Object*

#### *Order as to disposal of infringing copy or other object*

**125.**-(1) An application may be made to the court for an order that an infringing copy or other object delivered up pursuant to an order under section 111 or 123 or seized pursuant to section 112 or 122 be-

(a) forfeited to the copyright owner; or

(b) destroyed or otherwise dealt with as the court thinks fit.

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

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

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

(3) Before making an order under subsection (1), a court must issue directions as to the service of notice on persons who have an interest in the copy or other object.

(4) A person who has an interest in a copy or other object which is the subject of an application under subsection (1) is entitled-

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

(b) to appeal against any order made, whether or not the person appears in the proceedings.

(5) An order made under subsection (1) does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(6) If there is more than one person interested in a copy or other object, a court may direct that the object be sold, or otherwise dealt with, and the proceeds divided, and make any other order it thinks just.

(7) If a court decides that no order should be made under this section, the person in whose possession, custody, or control the copy or other object was before being delivered up is entitled to its return.

#### *Affidavit evidence of subsistence and ownership of copyright*

**126.**-(1) At the trial of a cause, being-

(a) an action brought under of this Part; or

(b) a prosecution for an offence against this Act,

proof of-

(i) the subsistence, at a particular time, of copyright in the work or other subject-matter to which the action or prosecution relates; or

(ii) the ownership, at a particular time, of the copyright in that work or other subject-matter,

may, subject to subsection (2), be given by affidavit.

(2) If a party to a cause referred to in subsection (1) desires in good faith that the person who made an affidavit referred to in that subsection that is proposed to be used in the cause be cross-examined with respect to the matters in the affidavit, the affidavit may not be used in the cause unless the person who made it appears as a witness for such cross-examination or the court in which the cause is being tried, in its discretion, permits the affidavit to be used without the person so appearing.

### **Part VIII**

## **BORDER PROTECTION MEASURES**

### *Definitions*

**127.** In this Part, unless the context otherwise requires-

"claimant" means a person who gives a notice under section 136(1);

"comptroller" has the same meaning as in section 2(1) of the Customs Act 1986;

"control of the Customs" has the same meaning as it has in section 16 of the Customs Act 1986;

"court" means the High Court;

"officer of customs" has the same meaning as in section 2(1) of the Customs Act 1986;

"pirated copy"-

(a) means any copy of a copyright work that is a literary, dramatic, musical or artistic work, or of the typographical arrangement of a published edition, or of a sound recording or of an audio visual work, where the copy is made-

(i) directly or indirectly from the copyright work;

(ii) without the licence of the person who owns, in the place where the copy is made, the copyright in the work; and

(iii) in circumstances in which the making of the copy would, if it had been done in the Fiji Islands, have constituted an infringement of copyright under this Act; and

(b) includes any illicit recording within the meaning of section 164 including any illicit recording that is a copyright work in a country other than the Fiji Islands by or with the licence of the owner of the copyright in the work in that country; but

(b) does not include-

(i) any other copyright work sold in a place outside the Fiji Islands by, or with the licence of, the owner of the copyright in the work in that country; or

(ii) any copyright work in transit to a place outside the Fiji Islands.

*Notice may be given to Comptroller of Customs*

**128.**-(1) A person who owns the copyright in any literary, dramatic, musical or artistic work, in the typographical arrangement of a published edition, in a sound recording or in an audio visual work may by notice in writing to the Comptroller-

(a) claim that an item is a work in which the person owns the copyright; and

(b) request the Comptroller to detain any pirated copies of the item that are in, or at any time come into, the control of the Customs.

(2) A notice under subsection (1) must-

(a) contain the prescribed particulars in support of the claim that the item is a pirated copy; and

(b) specify the period for which the notice is to be in force, being a period

(i) not longer than 5 years from the date of notice; or

(ii) if copyright in the work to which the notice relates will expire within 5 years after the date of the notice - not longer than the period for which the copyright will last.

(3) The Comptroller must, upon receiving a notice under subsection (1)-

(a) accept the notice if the claimant and the notice comply with the requirements of this section and any regulations;

(b) decline the notice if the claimant or the notice does not comply with the requirements of this section and any regulations,

and must within a reasonable period of receiving the notice advise the claimant whether the notice has been accepted or declined.

(4) A notice accepted under subsection (3)(a) remains in force for the period specified in the notice unless-

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

(b) it is discharged by a court under section 133(1).

***Determination whether item is pirated copy***

**129.**-(1) Where-

(a) a notice that has been accepted under section 128(3)(a) is in force; and

(b) a Comptroller forms the opinion that any item that has been imported and that is in the control of the Customs may be a pirated copy to which the notice relates,

the Comptroller may conduct any investigation he or she considers necessary in order to establish whether or not the item appears to be a pirated copy to which the notice relates.

(2) If the Comptroller conducts an investigation under subsection (1), he or she may, subject to section 130, require-

(a) the claimant; or

(b) any other person appearing to the Comptroller to have an interest in the item,

to supply any information the Comptroller may specify for the purpose of the investigation within 10 working days of being required to do so.

(3) Whether or not the Comptroller conducts an investigation under subsection (1), he or she must, within a reasonable period of forming an opinion under subsection (1), make a determination as to whether or not the item appears to be a pirated copy to which the notice given under section 128(1) relates.

(4) Nothing in this section applies to an item that has been imported for private and domestic use.

#### ***Limitations on requirement to supply information***

**130.**-(1) The Comptroller must not require any person to supply information under section 129(2) unless the Comptroller believes that the information is reasonably necessary for the purposes of an investigation under section 129(1).

(2) A person who is required to supply information to the Comptroller under section 129(2) has the same privileges in relation to the giving of the information as a witness has in court.

(3) If a person refuses or fails to supply information required by the Comptroller under section 129(2), the Comptroller may, subject to subsection (2), take that refusal or failure into account in forming an opinion under section 129(1) or in making a determination under section 129(3).

#### ***Notice of determination***

**131.**-(1) Written notice of a determination under section 129(3) must as soon as practicable be served on-

(a) the claimant; and

(b) any other person appearing to the Comptroller to have an interest in the item.

(2) A notice required to be served on a claimant or other person under subsection (1) may be served-

(a) by personal delivery to the claimant or other person;

(b) by posting it to the last known address of the claimant or other person, in which case it is deemed to have been served on the claimant or other person at the time at which it would have been delivered in the ordinary course of post in which case-

(i) it is sufficient to prove that the notice was properly addressed; and

(ii) it is presumed, until the contrary is proved, that the notice was posted on the day on which it was dated; or

(c) by sending it by facsimile to the last known facsimile number of the claimant or other person, in which case it is deemed to have been served on the claimant or other person on the day after the day on which it was sent; and, in proving sending, it is sufficient to prove that a facsimile machine generated a record of the transmission of the notice to the facsimile number.

(3) The detention of an item under section 132 is not rendered illegal by a failure to serve a notice under subsection (1) of this section.

#### *Detention of pirated copy*

**132.**-(1) If the Comptroller is of the opinion that an item that has been imported and that is in the control of the Customs may be a pirated copy to which a notice accepted under section 128(3)(a) relates, the item must be detained in the custody of the Comptroller or any officer of Customs until-

(a) the Comptroller is served with an order under section 133(1) that the notice be discharged;

(b) the Comptroller is served with an order under section 133(2) that the item be released;

(c) proceedings under section 133(3) in respect of the item, including any appeal, are determined by a decision that the item is not a pirated copy that has been imported other than for private and domestic use;

(d) proceedings under section 133(3) in respect of that item, including any appeal, are abandoned; or

(e) 10 working days have elapsed since notice was served under section 128 and the Comptroller has not been served with notice of proceedings under section 133(3) by a person other than the importer or consignee,

whereupon the item must, subject to subsection (3), be released to the person entitled to it.

(2) The Comptroller may in any particular case extend the period referred to in subsection (1)(e) to 20 working days if he or she considers it appropriate to do so in all the circumstances.

(3) Neither the Comptroller nor any officer of Customs may release an item under subsection (1) unless-

(a) all other legal requirements as to importation of the item are satisfied;

(b) any requirement by or under this or any other Act for the deposit of a security has been satisfied; and

(c) the release of the item is not otherwise contrary to law.

### *Proceedings*

**133.**-(1) Any person may apply to a court for an order that a notice accepted under section 128(3)(a) be discharged, and the court may make such an order accordingly.

(2) Any person may apply to a court for an order that an item detained under section 132 be released, and the court may make such an order accordingly.

(3) Any person may apply to a court for a decision on whether or not an item which is the subject of a determination under section 129(3) is a pirated copy that has been imported other than for private and domestic use, and the court must make such a decision accordingly.

(4) Notice of proceedings under subsection (3) must be served on the Comptroller.

(5) In proceedings under subsection (3), the court [sic] must issue directions as to the service of notice on persons having an interest in the item that is the subject of proceedings, and any such person is entitled-

(a) to appear in those proceedings, whether or not the person was served with notice under section 131; and

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

(6) An order made under subsection (3) does not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

### *Powers of Court*

**134.**-(1) If, in proceedings under section 133(3), a court decides that an item the subject of a determination under section 129(3) is a pirated copy that has been imported other than for private and domestic use, the court may order that the item be-

(a) forfeited to the claimant;

(b) destroyed; or

(c) otherwise dealt with as the court thinks fit.

(2) In considering what order to make under subsection (1), the court must have regard to-

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

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

(3) If more than one person is interested in an item which is the subject of an order under subsection (1), the court may direct that the item be sold, or otherwise dealt with, and the proceeds divided, and may make any other order it thinks just.

(4) If, in proceedings under section 133(3), the court decides that an item which is the subject of a determination under section 129(3) is not a pirated copy that has been imported other than for private and domestic use, the court may order any person who is a party to the proceedings to pay compensation in an amount the court thinks fit to the importer, consignee or owner of the item.

### *Inspection of item*

**135.**-(1) The Comptroller or an officer of Customs must, in respect of any item in his or her possession that is or may be the subject of-

(a) a notice under section 128(1);

(b) an investigation under section 129 or

(c) proceedings under section 133,

allow any person claiming to have an interest in-

(i) the item; or

(ii) any investigation under section 129, or any proceedings under section 133, in relation to the item,

to inspect the item.

(2) A person who under subsection (1) must be allowed to inspect an item may-

(a) inspect the item during normal office hours; or

(b) with the approval of the Comptroller or an officer of Customs, remove the item or an example of the item to a place, for a period, and on conditions the Comptroller or officer specifies, for the purpose of inspecting it.

(3) A person who intends to inspect an item under subsection (2) must give the Comptroller or an officer of Customs not less than 72 hours' notice of his or her intention to inspect the item.

*Notice of parallel import may be given to Comptroller of Customs*

**136.**-(1) A person who owns the copyright in any literary, dramatic, musical or artistic work, in the typographical arrangement of a published edition, in a sound recording, or in an audio visual work, may by notice in writing to the Comptroller-

(a) claim-

(i) that an object specified in the notice is an infringing copy under section 12(3); and

(ii) that the person is the person whose copyright would be infringed by the importation of the object; and

(b) request the Comptroller to inform the person-

(i) if the Comptroller becomes aware that any such object is intended to be imported into the Fiji Islands; or

(ii) if any such object is in, or at any time comes into, the control of the Customs.

(2) A notice under subsection (1) must-

(a) contain the particulars in support of the claims referred to in subsection (1)(a) required by the Comptroller in a form approved by the Comptroller;

(b) specify the period for which the notice is to be in force, being a period

(i) not longer than 5 years after the date of the notice; or

(ii) if copyright in the work to which the notice relates will expire within 5 years after the date of the notice, not longer than the period for which copyright will last; and

(c) be accompanied by the prescribed fee.

(3) The Comptroller must, in relation to a notice under subsection (1)-

(a) accept the notice if it is given by a person mentioned in subsection (1) and complies with subsection (2);

(b) decline the notice if it is not given by a person mentioned in subsection (1) or does not comply with subsection (2); and

(c) within a reasonable time after receiving the notice advise the claimant whether the notice has been accepted or declined.

(4) A notice accepted under subsection (3)(a) remains in force for the period specified in the notice unless-

(a) it is revoked by the person who gave it by notice in writing; or

(b) it is discharged by the court under section 133.

(5) Sections 129 to 135 apply to an object which is the subject of a notice under subsection (1) of this section as they apply to an item which is the subject of a notice under section 128(1).

### ***Delegation of powers, duties, and functions***

**137.** With the written consent of the Minister responsible for finance, the Comptroller may from time to time, either generally or in particular, in writing delegate to any officer of Customs all or any of the powers, duties and functions conferred or imposed on the Comptroller by or under this Part.

### ***Protection of persons acting under authority of Act***

**138.** Neither the State, the Comptroller nor any officer of Customs is liable for any loss or damage occasioned by anything done or omitted to be done or purporting to have been done in the exercise of any power, duty or function under this or under any regulations

made under section 229 for the purposes of this Part, unless the Comptroller or the officer of Customs has not acted in good faith.

## **Part X**

### **COPYRIGHT LICENSING**

#### ***Division 1-Works of more than one Author***

##### ***Works of more than one author***

**139.**-(1) References in this Part to licences or licensing schemes covering works of more than one author do not include licences or licensing schemes covering only-

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

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

(2) For the purposes of subsection (1), a group of companies means a holding company and its subsidiaries within the meaning of section 156 of the Companies Act (Cap 247).

#### ***Division 2-References and Applications with respect to Licensing Schemes***

##### ***Licensing schemes to which sections 141 to 147 apply***

**140.** Sections 141 to 147 apply to-

(a) a licensing scheme that-

(i) is operated by a licensing body;

(ii) relates to copyright in a literary, dramatic, musical or artistic work, an audio visual work, or a sound-track when accompanying an audio visual work;

(iii) covers works of more than one author; and

(iv) relates to licences for copying the work or performing, showing or playing the work in public, broadcasting the work or including the work in a cable programme or in a communication to the public;

(b) a licensing scheme in relation to copyright in a sound recording (other than an audio visual work sound-track when accompanying an audio visual work), broadcast or cable programme, or in the typographical arrangement of a published edition;

(c) a licensing scheme that relates to copyright in a computer programme, sound recording or audio visual work;

(d) a licensing scheme that authorises

(i) copying of a literary, dramatic, musical, or artistic work or of the typographical arrangement of a published edition by or on behalf of an educational establishment;

(ii) the inclusion in a cable programme service of a broadcast or communication to the public made from a place in the Fiji Islands by reception and immediate retransmission; and

(e) any other licensing scheme provided for by this Act,

and in those sections the term "licensing scheme" means a licensing scheme of any of those descriptions.

### ***Reference of proposed licensing scheme to Tribunal***

**141.**-(1) The terms of a licensing scheme that-

(a) is proposed to be operated by a licensing body; and

(b) is proposed to apply generally or in relation to any description of cases, may be referred to the Tribunal by-

(i) the operator of the proposed scheme; or

(ii) an organisation which represents persons claiming to require licences in cases of a description to which the scheme would apply.

(2) Upon receipt of a reference under subsection (1) the Tribunal must first decide whether to entertain the reference and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain a reference, it must consider the matter referred and make such order either confirming or varying the proposed scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal considers to be reasonable in the circumstances.

(4) An order under subsection (3) maybe made so as to be in force indefinitely or for such period as the Tribunal decides.

### ***Reference of licensing scheme to Tribunal***

**142.**-(1) If, while a licensing scheme is in operation, a dispute arises between the operator of the scheme and-

(a) a person claiming to require a licence in a case of a description to which the scheme applies; or

(b) an organisation which represents such persons,

the operator or that person or organisation may refer the scheme, in so far as it relates to cases of that description, to the Tribunal.

(2) A scheme that has been referred to the Tribunal under this section remains in operation until proceedings on the reference are concluded.

(3) The Tribunal must consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal considers reasonable in the circumstances.

(4) An order under subsection (3) may be made so as to be in force indefinitely or for such period as the Tribunal decides.

#### *Further reference of scheme to Tribunal*

**143.**-(1) If the Tribunal has on a previous reference of a licensing scheme under this section, section 141 or section 142 made an order with respect to the scheme, then, subject to subsection (2), while the order remains in force-

(a) the operator of the scheme;

(b) a person claiming to require a licence in a case of the description to which the order applies; or

(c) an organisation which represents such persons,

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

(2) Except with the special leave of the Tribunal, a licensing scheme must not be referred again to the Tribunal under subsection (1) in respect of the same description of cases earlier than-

(a) 12 months after the date of the order on the previous reference; or

(b) if the order was made so as to be in force for 15 months or less - 3 months before the expiry of the order,

whichever occurs first.

(3) A scheme that has been referred to the Tribunal under this section remains in operation until proceedings on the reference are concluded.

(4) The Tribunal must consider the matter in dispute and make such order, either confirming, varying, or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Tribunal considers reasonable in the circumstances.

(5) An order under subsection (4) maybe made so as to be in force indefinitely or for such period as the Tribunal decides.

### *Effect of order of Tribunal made on reference*

**144.**-(1) A licensing scheme that has been confirmed or varied by an order of the Tribunal under section 141, 142 or 143 remains in operation, so far as it relates to cases of the description in respect of which the order was made, for as long as the order remains in force.

(2) While an order under this Part is in force, a person who, in a case of a class to which the order applies-

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

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

is in the same position as regards infringement of copyright as if the person had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

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

(4) If a direction is given under subsection (3)-

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

(b) the reference in subsection (2)(a) to the charges payable under the scheme are to be construed as a reference to the charges payable under the order.

***Application for grant of licence in connection with licensing scheme***

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

(2) A person who claims, in a case excluded from a licensing scheme-

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

(b) that the operator of the scheme proposes terms for a licence that are unreasonable,  
may apply to the Tribunal.

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

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

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

(4) If the Tribunal is satisfied that a claim under subsection (1) or (2) is well-founded, it must make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal considers are applicable in accordance with the scheme or, as the case may be, are reasonable in the circumstances.

(5) An order under subsection (4) maybe made so as to be in force indefinitely or for such period as the Tribunal decides.

***Application for review of order as to entitlement to licence***

**146.**-(1) If the Tribunal has made an order under section 145 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may from time to time apply to the Tribunal to review the order.

(2) Except with the special leave of the Tribunal, an application must not be made under subsection (1) earlier than-

(a) 12 months after the date of the order, or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section, is due to expire within 15 months of that decision, 3 months before the expiry date,

whichever occurs first.

(3) The Tribunal must on an application for review under this section confirm or vary its order as the Tribunal considers reasonable, having regard to the terms of the licensing scheme or, as the case may be, the circumstances of the case.

### ***Effect of order of Tribunal made on application***

**147.** If the Tribunal has made an order under section 145 which remains in force, the person in whose favour the order is made is, if the person-

(a) pays to the operator of the scheme any charges payable in accordance with the order; or

(b) if the amount cannot be ascertained - gives an undertaking to pay the charges when ascertained; and

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

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

### ***Division 3-References and Applications with respect to Licensing by***

#### ***Licensing Bodies***

#### ***Licences to which sections 149 to 152 apply***

**148.** Sections 149 to 152 apply to the following descriptions of licence granted by a licensing body otherwise than under a licensing scheme-

(a) a licence that-

(i) relates to copyright in a literary, dramatic, musical or artistic work, in an audio visual work, or in a sound-track when accompanying an audio visual work;

(ii) covers works of more than one author; and

(iii) authorises the copying of the work or the performance, showing or playing of the work in public, or the broadcasting of the work, or the inclusion of the work in a cable programme or communication to the public;

(b) a licence relating to copyright in a sound recording (other than an audio visual work), in a sound-track when accompanying an audio visual work, broadcast, or cable programme, or in the typographical arrangement of a published edition;

(c) a licence that authorises the copying of a literary, dramatic, musical or artistic work or the typographical arrangement of a published edition by or on behalf of an educational establishment,

and in those sections the term "licence" means a licence of any of those descriptions.

### ***Reference to Tribunal of proposed licence***

**149.**-(1) The terms on which a licensing body proposes to grant a licence may be referred to the Tribunal by the licensing body or the prospective licensee.

(2) Upon receipt of a reference under subsection (1) the Tribunal must first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Tribunal decides to entertain a reference, it must consider the terms of the proposed licence and may make such order, either confirming or varying the terms, as it considers reasonable in the circumstances.

(4) An order under subsection (3) maybe made so as to be in force indefinitely or for such period as the Tribunal decides.

### ***Reference to Tribunal of expiring licence***

**150.**-(1) A licensee under a licence that is due to expire, either by effluxion of time or as a result of notice given by the licensing body, may refer the licence to the Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) A reference under subsection (1) may not be made earlier than 3 months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Tribunal under this section remains in operation until proceedings on the reference are concluded.

(4) If the Tribunal finds a reference well-founded, it must make an order declaring that the licensee continues to be entitled to the benefit of the licence on such terms as the Tribunal considers reasonable in the circumstances.

(5) An order under subsection (4) maybe made so as to be in force indefinitely or for such period as the Tribunal decides.

### *Application for review of order as to licence*

**151.**-(1) If the Tribunal has made an order under section 149 or 150, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review the order.

(2) Except with the special leave of the Tribunal, an application cannot be made under subsection (1) earlier than-

(a) 12 months after the date of the order, or of the decision on a previous application under this section; or

(b) if the order was made so as to be in force for 15 months or less, or, as a result of the decision on a previous application under this section, is due to expire within 15 months of that decision, 3 months before the expiry date,

whichever occurs first.

(3) The Tribunal must on an application for review under this section confirm or vary its order as it considers reasonable in the circumstances.

### *Effect of order of Tribunal as to licence*

**152.**-(1) If the Tribunal has made an order under section 149 or 150 and the order remains in force, the person entitled to the benefit of the order is, if the person-

(a) pays to the licensing body any charges payable in accordance with the order; or

(b) if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and

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

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

(2) The benefit of an order under this Part may be assigned-

(a) in the case of an order under section 145, if assignment is not prohibited under the terms of the Tribunal's order; and

(b) in the case of an order under section 150, if assignment was not prohibited under the terms of the original licence.

(3) The Tribunal may direct that an order under section 149 or 150, or an order under section 151 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which the order is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or as the case may be, was due to expire.

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

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

(b) the reference in subsection (1)(a) to the charges payable in accordance with the order is to be construed, where the order is varied by a later order, as a reference to the charges payable under the later order.

#### ***Division 4-Factors to be Taken into Account in Certain Classes of Cases***

##### ***Unreasonable discrimination***

**153.** In determining what is reasonable on a reference or application under this Part relating to a licensing scheme or licence, the Tribunal must have regard to-

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

(b) the terms of those schemes or licences,

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

##### ***Licences for reprographic copying***

**154.** If a reference or application is made under this Part relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or of the typographical arrangements of published editions, the Tribunal must have regard to-

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

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

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

***Licences for educational establishments in respect of works included in broadcasts or cable programmes***

**155.**-(1) This section applies to a reference or application made under this Part in relation to a licence for-

(a) the recording, by or on behalf of an educational establishment, of a broadcast or cable programme that includes a copyright work; or

(b) the making of copies of such a recording,

for educational purposes.

(2) Where this section applies, the Tribunal must, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of copyright in the work included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

***Licences to reflect conditions imposed by promoters of events***

**156.**-(1) In respect of a licence relating to a sound recording, audio visual work, broadcast or cable programme that includes, or is to include, any entertainment or other event, the Tribunal-

(a) must have regard to any conditions imposed by the promoters of the entertainment or other event; and

(b) must not hold a refusal or failure to grant a licence to be unreasonable if the licence could not have been granted consistently with any such conditions.

(2) Nothing in this section requires the Tribunal to have regard to any conditions in so far as they-

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

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

***Licences to reflect payments in respect of underlying rights***

**157.**-(1) In considering what charges (if any) should be paid for a licence on a reference or application under this Part in relation to a licence for the rental to the public of copies of a computer program, sound recording or audio visual work, the Tribunal must take into account any reasonable payments that the owner of copyright in the computer program, sound recording or audio visual work is liable to make, in consequence of the granting of

the licence or of the acts authorised by the licence, to owners of copyright in works included in the program, recording, or audio visual work.

(2) On a reference or application under this Part in relation to licensing in respect of copyright in a sound recording, audio visual work, broadcast or cable programme, the Tribunal must take into account, in considering what charges (if any) should be paid for a licence, any reasonable payments that the copyright owner is liable to make, in consequence of the granting of the licence or of the acts authorised by the licence, in respect of any performance included in the recording, audio visual work, or cable programme.

### *Licences in respect of works included in retransmissions*

**158.**-(1) This section applies to a reference or application under this Part in relation to a licence to include in a broadcast, communication to the public or cable programme-

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

(b) a sound recording or audio visual work,

where one broadcast communication to the public or cable programme ("the first transmission") is, by reception and immediate retransmission, to be further broadcast, communicated to the public or included in a cable programme ("the further transmission").

(2) So far as the further transmission is to the same area as the first transmission, the Tribunal must, in considering what charges (if any) should be paid for licences for either transmission, have regard to the extent to which the copyright owner has already received, or is entitled to receive, payment for the other transmission that adequately remunerates the copyright owner in respect of transmissions to that area.

(3) So far as the further transmission is to an area outside that to which the first transmission is made, the Tribunal must not take the further transmission into account in considering what charges (if any) should be paid for licences for the first transmission.

### *Division 5-Reprographic copying by Educational Establishments*

#### *Power to extend coverage of scheme or licence*

**159.**-(1) This section applies to-

(a) a licensing scheme to which, by virtue of section 140, sections 141 to 147 apply; and

(b) a licence to which, by virtue of section 148, sections 149 to 152 apply,

so far as the scheme provides for the grant of licences, or the licence is a licence authorising the making by or on behalf of an educational establishment for the purposes of instruction of reprographic copies of a published literary, dramatic, musical or artistic work, or of the typographical arrangement of a published edition.

(2) If it appears to the Minister with respect to a scheme or licence to which this section applies that-

(a) works of a description similar to those covered by the scheme or licence are unreasonably excluded from it; and

(b) making them subject to the scheme or licence would not conflict with the normal exploitation of the works or unreasonably prejudice the legitimate interests of the copyright owners,

the Minister may by order provide that the scheme or licence extends to those works.

(3) If the Minister proposes to make an order under subsection (2), the Minister must give notice of the proposal to-

(a) the copyright owners;

(b) the licensing body in question; and

(c) such persons or organisations representative of educational establishments, and any other persons or organisations, as the Minister thinks fit.

(4) A notice under subsection (3) must inform the persons notified of their right to make written or oral representations to the Minister about the proposal within 6 months from the date of the notice; and if any of them wishes to make oral representations, the Minister must appoint a person to hear the representations and report to the Minister.

(5) In considering whether to make an order under subsection (2) the Minister must take into account any representations made under subsection (4), and any other matters which appear to the Minister to be relevant.

#### *Variation or discharge of order extending scheme or licence*

**160.**-(1) The owner of the copyright in a work in respect of which an order is in force under section 159 may apply to the Minister for the variation or discharge of the order, stating the reasons for making the application.

(2) The Minister must not entertain an application under subsection (1) made within 2 years of the making of the original order, or of the making of an order on a previous application under this section, unless it appears to the Minister that the circumstances are exceptional.

(3) After considering an application under subsection (1) the Minister may

(a) confirm the order forthwith; or

(b) give notice of the application to-

(i) the licensing body in question, and

(ii) such persons or organisations representative of educational establishments, and such other persons or organisations, as the Minister thinks fit.

(4) A notice under subsection (3)(b) must inform the persons notified of their right to make written or oral representations to the Minister concerning the application within 2 months from the date of the notice; and if any of them wishes to make oral representations, the Minister must appoint a person to hear the representations and report to the Minister.

(5) In considering an application under this section the Minister must take into account the reasons for the application, any representations made under subsection (4), and any other matters which appear to the Minister to be relevant.

(6) The Minister may make any order the Minister thinks fit confirming or discharging an order under section 159 (or, as the case may be, the order as previously varied), or varying (or further varying) it so as to exclude works from it.

### *Appeals against orders*

**161.**-(1) The owner of the copyright in a work which is the subject of an order under section 159 may appeal to the Tribunal and the Tribunal may confirm or discharge the order, or vary it so as to exclude works from it, as it thinks fit having regard to the considerations mentioned in subsection (2) of that section.

(2) If the Minister has made an order under section 160-

(a) the person who applied for the order; or

(b) any person or organisation representing an educational establishment which was given notice of the application for the order and which made representations in accordance with subsection (4) of that section,

may appeal to the Tribunal and the Tribunal may confirm or discharge the order or make any other order which the Minister might have made.

(3) An appeal under this section cannot be brought later than 6 weeks after the making of the order appealed against or such later time, as the Tribunal allows.

(4) An order under section 159 or 160 does not come into effect until the end of 6 weeks after the making of the order or, if an appeal is brought before the end of that period, until the appeal proceedings are disposed of or withdrawn.

(5) If an appeal is brought after the end of the period mentioned in subsection (4), a decision of the Tribunal on the appeal does not affect the validity of anything done in reliance on the order appealed against before the decision takes effect.

### ***Division 6-Implied Indemnity in Schemes or Licences for Reprographic Copying***

#### ***Implied indemnity in certain schemes and licences for reprographic copying***

**162.**-(1) This section applies to-

(a) every scheme for licensing reprographic copying of a published literary, dramatic, musical or artistic work, or of the typographical arrangement a published edition; and

(b) every licence granted by a licensing body for such copying,

if the scheme or licence does not specify the works to which it applies with such particularity as to enable a licensee to determine whether a work falls within the scheme or licence by inspection of the scheme or licence and the work.

(2) There is implied-

(a) in every scheme to which this section applies an undertaking by the operator of the scheme to indemnify a person granted a licence under the scheme; and

(b) in every licence to which this section applies an undertaking by the licensing body to indemnify the licensee,

against any liability incurred by the licensee by reason of the licensee having infringed copyright by making or authorising the making of reprographic copies of a work in circumstances within the apparent scope of the licence.

(3) For the purposes of this section, the circumstances of a case are within the apparent scope of a licence if-

(a) it is not apparent from inspection of the licence and the work in question that the work does not fall within the description of works to which the licence applies; and

(b) the licence does not expressly provide that it does not extend to copyright of the description infringed.

(4) In this section, the term "liability" means liability to pay-

(a) any sum payable in respect of an infringement of copyright;

(b) costs reasonably incurred by a licensing body in connection with actual or contemplated proceedings against the licensee for infringement of copyright.

(5) A scheme or licence to which this section applies may contain reasonable provision-

(a) with respect to the manner in which, and the time within which, claims under the undertaking implied by this section are to be made;

(b) enabling the operator of the scheme or, as the case may be, the licensing body to take over the conduct of any proceedings affecting the amount of the operator's or, as the case may be, the licensing body's liability to indemnify under such an undertaking.

### *Determination of equitable remuneration*

**163.**-(1) If-

(a) a copyright owner and a librarian cannot agree as to the remuneration to be paid to the copyright owner under section 51(3)(d);

(b) a copyright owner and the State cannot agree as to the remuneration to be paid to the copyright owner under section 58(2);

(c) an exclusive licensee and the State cannot agree as to the remuneration to be paid to the exclusive licensee under section 59(2);

(d) a licensee and the copyright owner or exclusive licensee, as the case may be, cannot agree on the part of the payment to be paid to the licensee under section 59(3); or

(e) a copyright owner and a person who makes a recording of a broadcast or cable programme cannot agree as to the remuneration to be paid to the copyright owner under this Act,

either party may apply to the Tribunal to determine the remuneration to be paid.

(2) The Tribunal must consider a matter referred to it under subsection (1) and make an order it considers reasonable in the circumstances.

(3) Either party to an order made under this section may apply to the Tribunal to review its order.

(4) Except with the special leave of the Tribunal, an application under subsection (3) cannot be made earlier than 12 months after the date of the original order or of the order on a previous application under that subsection.

(5) The Tribunal must on an application for review under this section confirm or vary its original order as it considers reasonable in the circumstances.

(6) An order under subsection (5) has effect from the date on which it is made or a later date specified by the Tribunal.

## **Part X**

### **PERFORMERS' RIGHTS**

#### *Division 1-General*

#### *Definitions*

**164.** In this Part of this Act, unless the context otherwise requires-

"copy", in relation to a recording,

(a) means a copy of a recording made directly from that recording; and

(b) includes a copy of a recording made indirectly from that recording;

"illicit recording" -

(a) means a recording of the whole or any substantial part of a performance made without the performer's consent and otherwise than for private and domestic use; and

(b) includes a copy, made without the performer's consent and otherwise than for private and domestic use, of a recording where-

(i) the recording was made with the performer's consent, but the copy is made for purposes different from those for which the performer gave his or her consent to the recording; or

(ii) the recording was made in accordance with one or more of the exemptions in sections 170 to 174 or sections 179 to 181 but the copy is made for different purposes;

"performance" -

(a) means-

(i) a dramatic performance, including a dance, a mime, and a performance given with the use of puppets;

(ii) a musical performance;

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

(iv) a performance of a variety act or any similar presentation,

being in any such case either-

(A) a live performance given in any country by a Fiji Islands citizen or a person domiciled or resident in the Fiji Islands, or by a citizen or subject of or a person domiciled or resident in a Convention country;

(B) a live performance given in the Fiji Islands or in a Convention country;

(C) a performance to which this Part applies pursuant to section 165(2) or 200 or to regulations made under section 201; but

(b) does not include-

(i) a performance referred to in section 45(1),

(ii) a reading, recital, or delivery of any item of news and information:

(iii) a performance of a sporting activity; or

(iv) participation in a performance as a member of an audience;

"recording" in relation to a performance, includes a recording or audio visual work

(a) made directly from the performance; or

(b) made from a broadcast or communication to the public, or a cable programme, that includes the performance.

### *Application*

**165.**-(1) This Part applies to any act done on or after the commencement of this Act in relation to a performance given on or after such commencement.

(2) Notwithstanding subsection (1), if a performance was given

(a) in the Fiji Islands;

(b) in a Convention country in respect of which section 200 applies;

(c) in a country or other place in respect of which a regulation under section 201 is in force;

(d) in any place by a Fiji Islands citizen or a person domiciled or resident in the Fiji Islands, or by a citizen or subject of or a person domiciled or resident in a Convention country,

this Part of this Act also applies in relation to a performance given before the commencement of this Act if-

(i) not more than 50 years has elapsed from the end of the calendar year in which the performance was given; or

(ii) in the case of a performance given in a Convention country, or in another country by a citizen or subject of or a person domiciled or resident in a Convention country, any period of protection given to that performance in the Convention country has not expired.

(3) Notwithstanding that, by virtue of subsection (2), this Part applies to a performance given before the commencement of this Act, nothing in this Part applies to-

(a) any act done, in relation to that performance, before the commencement of this Act or in pursuance of arrangements made before the commencement of this Act; or

(b) the sale, letting for hire, or offer or exposure for sale or hire, after the commencement of this Act, of any recording or copy of a recording in existence in the Fiji Islands immediately before the commencement of this Act.

(4) The rights conferred by this Part are independent of-

(a) any copyright in, or moral rights relating to, any work performed or any sound recording or audio visual work of, or a broadcast, communication to the public or cable programme that includes, the performance; and

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

(5) The rights conferred by this Part on a performer are conferred only in relation to performances by that performer, whether alone or with others.

### ***Division 2-Performers' Rights***

#### ***Consent required for recording or live transmission of performance***

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

(a) makes, otherwise than for the person's private and domestic use, a recording of the whole or any substantial part of a performance; or

(b) broadcasts live, or communicates to the public, the whole or any substantial part of a performance.

(2) In proceedings for infringement of a performer's rights brought under this section, a defendant who shows that at the time of the infringement the defendant believed on reasonable grounds that the performer's consent had been given is not liable to pay damages.

### *Infringement by use of illicit recording*

**167.** A performer's rights are infringed by a person who, without the performer's consent-

(a) presents for public performance the whole or any substantial part of a performance; or

(b) broadcasts, communicates to the public or includes in a cable programme the whole or any substantial part of a performance,

by means of a recording that is, and that the person knows or has reason to believe is, an illicit recording.

### *Copying of recordings*

**168.**-(1) A performer's rights are infringed by a person who, without the performer's consent and otherwise than for that person's private and domestic use, copies a recording if the person knows or has reason to believe that the recording was made without the performer's consent.

(2) In proceedings for infringement of a performer's rights brought under this section, a defendant who shows that at the time of the infringement the defendant believed on reasonable grounds that the performer's consent to the recording had been given is not liable to pay damages.

(3) A performer's rights are infringed by a person who, without the performer's consent and otherwise than for the person's private and domestic use, copies a recording-

(a) if the copy is made for purposes different from those for which the performer gave consent to the recording; or

(b) if the recording was made in accordance with one or more of the exemptions contained in sections 170 to 174 or sections 176 to 181, but the copy is made for different purposes.

(4) In proceedings for infringement of a performer's rights brought under this section, a defendant who shows that at the time of the infringement the defendant believed on reasonable grounds that the performer's consent to the copying of the recording had been given is not liable to pay damages.

***Infringement by importing, possessing, or dealing with illicit recording***

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

(a) imports into the Fiji Islands otherwise than for the person's private and domestic use;  
or

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

a recording that is, and that the person knows or has reason to believe is, an illicit recording.

(2) If, in proceedings for infringement of a performer's rights brought under this section, a defendant shows that the recording was innocently acquired by the defendant or a predecessor in title of the defendant, the only remedy available against the defendant in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

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

***Division 3-Acts Permitted in relation to Performances***

***Incidental copying of performance or recording***

**170.**-(1) The rights conferred by this Part are not infringed by-

(a) the incidental copying of a performance or recording in a sound recording, audio visual work, broadcast, or cable programme;

(b) the public performance of a sound recording or audio visual work, the making of a broadcast or the communication of a cable programme to the public, if the performance or recording has been incidentally copied in that sound recording, audio visual work, broadcast, or programme; or

(c) the issue to the public of copies of such a sound recording audio visual work, broadcast, or cable programme.

(2) For the purposes of this section, a performance or recording, so far as it consists of-

(a) music; or

(b) words spoken or sung with music,

is not incidentally copied in another work if the performance or recording is deliberately copied.

***Permitted Acts in relation to performances, criticism, reviews, and news reporting***

**171.** Copying of a performance or recording-

(a) for the purposes of criticism or review, of that or another performance, or of a work.,

(b) for the purposes of reporting current events,

does not infringe any of the rights conferred by this Part.

***Things done for Purposes of instruction or examination***

**172.**-(1) The rights conferred by this Part are not infringed by the copying of a recording of a performance if-

(a) the copying is done-

(i) in preparing a course of instruction;

(ii) for use during a course of instruction;

(iii) during a course of instruction; or

(iv) after a course of instruction,

if the instruction is on how to make audio visual works or audio visual sound-tracks or relates to the learning of a language or is conducted by correspondence;

(b) the copying is done by or on behalf of a person who is to give, is giving, or has given the lesson, or by or on behalf of a person who is to receive, is receiving, or has received the lesson; and

(c) no charge is made for the supply of a copy to any student or other person who is to receive, is receiving, or has received the lesson.

(2) The rights conferred by this Part are not infringed-

(a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or

(b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

***Playing or showing sound recording, audio visual work, broadcast or cable programme at educational establishment.***

**173.**-(1) The public performance of a sound recording, audio visual work, broadcast or cable programme at an educational establishment for the purposes of instruction, before an audience consisting of persons who are students or staff members at the establishment or persons directly connected with the activities of the establishment, does not infringe any of the rights conferred by this Part.

(2) For the purposes of this section, a person is not a person directly connected with the activities of an educational establishment by reason only that the person is a parent or guardian of a student at that educational establishment.

***Recording of broadcasts and cable programmes by educational establishment***

**174.** A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational establishment for the educational purposes of the establishment without infringing any of the rights conferred by this Part in relation to any performance or recording included in the recording or copy.

***Subsequent dealings***

**175.**-(1) If a recording, or a copy of a recording, that would otherwise be an illicit recording-

(a) is made in accordance with section 172 or 174; and

(b) is subsequently dealt with, in terms of subsection (2) of this section,

it is an illicit recording-

(i) for the purposes of the dealing referred to in paragraph (b) unless the dealing is authorised by the performer; and

(ii) for the purposes of any dealing that is subsequent to the dealing referred to in paragraph (b), unless the first-mentioned dealing is authorised by the performer.

(2) In subsection (1) the term "dealt with" means sold or let for hire, or offered or exposed for sale or hire, in the course of a business.

***Parliamentary and judicial proceedings***

**176.** The rights conferred by this Part are not infringed by anything done for purposes of-

(a) parliamentary or judicial proceedings; or

(b) reporting such proceedings.

### *Commissions of inquiry and statutory inquiries*

**177.** The rights conferred by this Part are not infringed by anything done for purposes of-

(a) the proceedings of a commission of inquiry a ministerial inquiry or a statutory inquiry;

(b) reporting any such proceedings that are held in public.

### *Acts done under statutory authority*

**178.**-(1) If the doing of a particular act is specifically authorised by a written law, the doing of the act does not infringe the rights conferred by this Part unless the law provides otherwise.

(2) Nothing in this section excludes any defence of statutory authority otherwise available under or pursuant to any written law.

### *Use of recordings of spoken words in certain cases*

**179.**-(1) If a recording of the reading or recitation of a literary work is made-

(a) for the purpose of reporting current events; or

(b) for, the purpose of broadcasting, or communicating to the public, the whole or part of the reading or recitation,

it is not an infringement of the rights conferred by this Part to use the recording (or to copy the recording and use the copy) for that purpose, if the conditions contained in subsection (2) are complied with..

(2) The conditions referred to in subsection (1) are that-

(a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;

(b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;

(c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and

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

### *Recordings of folk-songs*

**180.**-(1) A recording of a performance of a song may be made for the purpose of including the song in an archive maintained by a prescribed body without infringing any of the rights conferred by this Part, if the conditions in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are that-

(a) the words are unpublished and of unknown authorship at the time the recording is made;

(b) the making of the recording does not infringe any copyright; and

(c) the making of the recording is not prohibited by any performer.

(3) Copies of a recording made in reliance on subsection (1) and included in an archive maintained by a prescribed body may, if the condition in subsection (4) is complied with, be made and supplied by the archivist without infringing any of the rights conferred by this Part.

(5) The condition referred to in subsection (3) is that no person is furnished with more than one copy of the same recording.

### *Playing of sound recording for purposes of club, society, etc.*

**181.**-(1) It is not an infringement of any right conferred by this Part to play a sound recording as part of the activities of, or for the benefit of, a club, society, or other organisation, if the conditions in subsection (2) are complied with.

(2) The conditions referred to in subsection (1) are-

(a) that the club, society, or organisation is not established or conducted for profit;

(b) that the main objects of the club, society, or organisation are charitable or are otherwise concerned with the advancement of religion, education, or social welfare; and

(c) that the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the club, society, or organisation.

### *Incidental recording for purposes of broadcast or cable programme*

**182.**-(1) A person who proposes to-

(a) broadcast a recording of a performance; or

(b) communicate to the public a recording of a performance,

in circumstances not infringing the rights conferred by this Part is to be treated as having obtained consent for the purposes of this Part to the making of a recording for the purposes of the broadcast or cable programme.

(2) The consent referred to in subsection (1) is subject to the conditions that the recording-

(a) must not be used for any other purpose; and

(b) must be destroyed within 6 months of being first used for broadcasting the performance or, as the case may be, communication to the public of the performance,

unless the Minister has authorised the preservation of the recording in the records of a government department or in the National Archives because of its documentary character or exceptional importance, in which case it may be kept and used for archival purposes.

(3) A recording made in accordance with this section is an illicit recording-

(a) for the purposes of any use in breach of the condition in subsection (2)(a); and

(b) for all purposes if either of the conditions in subsection (2) is broken.

#### ***Free public performance of broadcast or cable programme***

**183.**-(1) The public performance of a broadcast (other than a broadcast to which subsections (5) to (7) apply), the communication of a cable programme to an audience, or any other communication to an audience which has not paid for admission to the place where the broadcast, cable programme or communication is to be heard or seen, does not infringe any right conferred by this Part in relation to a performance or recording included in-

(a) the broadcast, cable programme or communication; or

(b) any sound recording or audio visual work that is played or shown in public by reception of the broadcast, cable programme or other communication.

(2) For the purposes of subsection (1) an audience is to be treated as having paid for admission to a place if-

(a) members of the audience have paid for admission to a place of which that place forms part;

(b) goods or services are supplied at that place, or at a place of which that place forms part, at prices-

(i) that are substantially attributable to the facilities afforded for hearing or seeing the broadcast, cable programme or other communication to the public; or

(ii) that exceed those usually charged there and that are partly attributable to those facilities; or

(c) the place is a hotel, motel, camping ground or similar place and the audience consists of persons residing at the hotel, motel, camping ground or place.

(3) For the purposes of subsection (1) the following are not to be treated as having paid for admission to a place

(a) persons admitted as residents or inmates of a place (other than a hotel, motel, camping ground, or other place to which subsection (2)(c) applies);

(b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing broadcasts or cable programmes is only incidental to the main purposes of the club or society.

(4) Subsections (5) to (7) apply in respect of the public performance of a broadcast-

(a) that is made for reception in the area in which it is played or shown;

(b) that is not a satellite transmission or an encrypted transmission; and

(c) that is shown or played simultaneously upon reception of the transmission of the broadcast.

(5) The public performance of a broadcast to which subsection (4) applies to an audience which has not paid for admission to the place where the broadcast is to be heard or seen does not infringe any right conferred by this Part in relation to a performance or recording included in-

(a) the broadcast; or

(b) any sound recording or audio visual work included in the broadcast.

(6) For the purposes of subsection (5) an audience is to be treated as having paid for admission to a place if-

(a) members of the audience have paid for admission to a place of which that place forms part; or

(b) goods or services are supplied at that place, or a place of which that place forms part-

(i) at prices that are substantially attributable to the facilities afforded for bearing or seeing the broadcast; or

(ii) at prices exceeding those usually charged there and that are partly attributable to those facilities.

(7) For the purposes of subsection (5) the following are not to be treated as having paid for admission to a place-

(a) persons admitted as residents or inmates of a place (including, without limitation, persons residing in a hotel, motel, camping ground, or similar place;

(b) persons admitted as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing broadcasts or cable programmes is only incidental to the main purposes of the club or society.

(8) If the making of a broadcast or communication to the public was an infringement of the rights conferred by this Part in relation to a performance or recording, the fact that the broadcast or communication was heard or seen in public by the reception of a broadcast or cable programme must be taken into account in assessing the damages for that infringement.

#### ***Reception and retransmission of broadcast in cable programme service***

**184.**-(1) This section applies where a broadcast made from a place in the Fiji Islands is, by reception and immediate retransmission, communicated to the public.

(2) Where this section applies-

(a) the rights conferred by this Part in relation to a performance or recording included in the broadcast are not infringed if and to the extent that the broadcast is made for reception in the area in which the cable programme service is provided; and

(b) if the making of the broadcast was an infringement of any right conferred by this Part, the fact that the broadcast was retransmitted as a programme in a cable programme service must be taken into account in assessing the damages for the infringement.

#### ***Provision of subtitled copies of broadcast or cable programme***

**185.**-(1) A prescribed body may, for the purpose of providing people who are deaf or hard of hearing or physically or mentally handicapped in any other way, with copies that are subtitled or otherwise modified for their special needs, make recordings of television broadcasts or cable programmes without infringing any right conferred by this Part in relation to a performance or recording included in the broadcast or cable programme.

(2) A body must not be prescribed for the purposes of subsection (1) if it is established or conducted for-profit

### ***Recording of broadcast or cable programme for archival purposes***

**186.**-(1) A recording of a broadcast or cable programme of a prescribed class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a prescribed body without infringing any right conferred by this Part in relation to a performance or recording included in the broadcast or cable programme.

(2) A body must not be prescribed for the purposes of subsection( 1) if it is established or conducted for profit

### ***Division 4-Duration and Transmission of Rights***

#### ***Duration of rights***

**187.** The rights conferred by this Part exist in relation to a performance until the end of 50 years after the end of the calendar year in which the performance takes place.

#### ***Transmission of rights***

**188.**-(1) The rights conferred by this Part are not assignable, and are transmissible only in accordance with this section.

(2) On the death of a person entitled to performers' rights-

(a) if the deceased person by testamentary disposition specifically directed that the rights should pass to any person or persons, the rights so pass.

(b) if or to the extent that there is no such direction, the rights are exercisable by the personal representatives of the deceased person,

and references in this Part to the performer, in the context of the person having performers' rights, are to be construed as references to the person for the time being entitled to exercise those rights.

(3) If under subsection (2)(a) a right becomes exercisable by more than one perso, it is exercisable by each of them independently of the other or others.

(4) Any damages recovered by personal representatives under this section in respect of an infringement after a person's death devolve as part of the estate of that person as if the right of action had existed and been vested in the person immediately before death.

### ***Division 5-Consent***

## *Consent*

**189.**-(1) Consent for the purposes of this Part may be given in relation to a specific performance, a specified description of performances, or performances generally, and may relate to past or future performances.

(2) If a right conferred by this Part passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by that person.

### *Power of Tribunal to give consent on behalf of performer*

**190.**-(1) If a person wishes to make a copy of a recording but-

(a) the consent of a performer to the making of such a copy is required; and

(b) either

(i) the identity or whereabouts of the performer cannot be ascertained by reasonable inquiry; or

(ii) the performer unreasonably withholds his or her consent,

the person may apply to the Tribunal for consent to make the copy.

(2) The Tribunal may, subject to this section, make an order giving consent to the making of the copy and may attach any conditions to the order it thinks fit.

(3) The consent given by the Tribunal under subsection (2) has effect as the consent of the performer for the purposes of the provisions of this Part relating to performers' rights.

(4) The Tribunal must not give consent under subsection (2) unless satisfied that any directions as to the service or publication of notices the Tribunal gives have been complied with.

(5) The Tribunal must not give consent under subsection (2) unless satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interests of the performer; but it is for the performer to show what the reasons are for withholding consent, and in default of evidence as to the reasons the Tribunal may draw any inferences it thinks fit.

(6) In any case before it the Tribunal must take into account the following factors

(a) whether the recording of which the applicant seeks to make a copy was made with the performer's consent and as lawfully in the possession or control of the person proposing to make the copy:

(b) whether the making of the copy is consistent with the obligations of the parties to the arrangements under which the recording was made, or is otherwise consistent with the purposes for which the recording was made.

(7) If the Tribunal gives consent under this section, it must, in default of agreement between the applicant and the performer, make any order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.

### ***Division 6-Remedies for Infringement***

#### ***Proceedings for infringement of performers' rights***

**191.**-(1) An infringement of any of the rights conferred by this Part is actionable by the performer in whom the right is vested.

(2) An infringement of any of the rights conferred by this Part is actionable, on behalf of a performer, by a person having recording rights, without any need to obtain the consent of the performer to the bringing of the proceedings, unless the performer (when conferring the recording rights) expressly requires his or her consent to be obtained.

(3) In proceedings for infringement of any of the rights conferred by this Part the relief that a court may grant includes-

(a) an injunction (subject to any terms the court thinks fit); and

(b) damages.

(4) If, in proceedings under this Part-

(a) an infringement is established; and

(b) the court is satisfied that it is proper to do so, having regard to-

(i) the flagrancy of the infringement;

(ii) any benefit accruing to the defendant as a result of the infringement; and

(iii) all other relevant matters,

the court may award any additional damages the justice of the case requires.

#### ***Order for delivery up in civil proceedings***

**192.**-(1) If a person has an illicit recording of a performance in his, her or its possession, custody, or control in the course of a business-

- (a) any person having performers' rights in relation to the performance under this Part; or
- (b) any person having recording rights in relation to the performance under this Part,

may apply to a court for an order that the illicit recording be delivered up to the applicant or any other person the court may direct, notwithstanding that other proceedings for infringement of this Act have not been commenced.

(2) An order must not be made under subsection (1) unless the court also makes, or it appears to the court that there are grounds for making, an order under section 199.

(3) A person to whom an illicit recording is delivered up in pursuance of an order under this section must, if an order under section 199 is not made, retain the illicit recording pending the making of an order, or the decision not to make an order, under that section.

(4) Notwithstanding any rule of court, an order may be made under this section on an ex parte application if service of notice of the application would cause undue delay or other serious detriment to the applicant.

(5) Nothing in this section affects any other power of the court.

#### ***Right to seize illicit recordings***

**193.**-(1) An illicit recording which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 192, may be seized and detained by that person or a person authorised by that person.

(2) The right to seize and detain under subsection (1) is exercisable subject to the following subsections and is subject to any decision of the court under section 199.

(3) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.

(4) A person may for the purpose of exercising the right conferred by this section enter premises to which the public have access, but may not seize anything in the possession, custody or control of a person at his, her or its permanent or regular place of business and may not use any force.

(5) If anything is seized under this section, a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made must be left at the time and place of the seizure.

#### ***Division 7-Offences***

*Criminal liability for making, dealing with, using, or copying illicit recordings*

**194.**-(1) A person who, without the consent of the performer

(a) makes for sale or hire;

(b) imports into the Fiji Islands otherwise than for that person's private and domestic use;

(c) possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part;

(d) in the course of a business-

(i) offers or exposes for sale or hire;

(ii) sells or lets for hire;

(iii) distributes; or

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

a recording that is, and that the person knows is, an illicit recording, commits an offence.

(2) A person who causes a recording that is, and that the person knows is, an illicit recording, to be-

(a) subject to a public performance or communicated to the public, or

(b) broadcast or included in a cable programme service,

commits an offence.

(3) A person who, otherwise than for that person's private and domestic use, copies a recording-

(a) without the consent of the performer, if the person knows that the recording was made without the performer's consent;

(b) where the copy is made for purposes different from those for which the performer gave consent, and the person knows that the performer has not consented to the copying of the recording for different purposes;

(c) where the original recording was made in accordance with one or more of the exemptions contained in sections 170 to 174 or sections 176 to 181, the copy is made for

different purposes, and the person knows that the performer has not consented to the copying of the recording for those different purposes,

commits an offence.

(4) A person who commits an offence under this section is liable on conviction-

(a) in the case of an offence under subsection (1) - to a fine of \$5,000 for every illicit recording to which the offence relates, but not exceeding \$50,000 in respect of the same transaction, and to imprisonment for 3 months;

(b) in the case of an offence against subsection (2) or (3) to a fine of \$50,000 and to imprisonment for 3 months.

(6) If a person is convicted of an offence against this section in circumstances where the offence involves the making of profit or gain, the offence is deemed to have caused a loss of property for the purposes of section 165 of the Criminal Procedure Code (Cap. 21) and the provisions of that Act relating to restitution apply accordingly.

#### ***Order for delivery up in criminal proceedings***

**195.**-(1) The court before which proceedings are brought against a person for an offence under section 194 may, if satisfied that, at the time of the defendant's arrest or charge, the defendant had in his, her or its possession, custody, or control in the course of a business an illicit recording, order that the recording be delivered up to a person having performers' rights in relation to the performance or to any other person the court may direct.

(2) An order made under subsection (1) by the court of its own motion or on the application of the prosecution and may be made whether or not a person is convicted of the offence, but must not be made if it appears to the court unlikely that any order will be made in the proceedings under section 199.

(3) A person to whom an illicit recording is delivered up pursuant to an order made under this section must retain the recording pending the making of an order, or the decision not to make an order, under section 192.

#### ***Search warrants***

**196.**-(1) If a magistrate is satisfied by information on oath given by a police officer that there are reasonable grounds for believing-

(a) that an offence under paragraph (a), (b), (d)(iii) or (e) of section 194(1) has been or is about to be committed in any premises; and

(b) that evidence that such an offence has been or is about to be committed is in those premises,

the magistrate may issue a warrant authorising a police officer to enter and search the premises, using such reasonable force as is necessary.

(2) A warrant under this section -

(a) may authorise persons to accompany any police officer executing the warrant; and

(b) remains in force for 28 days from the date of its issue.

(3) In executing a warrant issued under this section a police officer may seize an article if he or she reasonably believes that it is evidence that an offence under section 194 (1) has been or is about to be committed.

#### ***False representation of authority to give consent***

**197.** A person who represents falsely that he or she is authorised by any other person to give consent for the purposes of this Part in relation to a performance, unless the first mentioned person believes on reasonable grounds that he or she is so authorised, commits an offence and is liable on conviction to a fine of \$10,000 and to imprisonment for 3 months.

#### ***Liability of officers of body corporate***

**198.** If a body corporate is convicted of an offence against section 194 every director and every person concerned in the management of the body corporate is guilty of the offence if it is proved-

(a) that the act that constituted the offence took place with his or her authority, permission, or consent; and

(b) that he or she-

(i) knew, or could reasonably be expected to have known, that the offence was to be or was being committed; and

(ii) failed to take all reasonable steps to prevent or stop it.

#### ***Order as to disposal of illicit recording***

**199.**-(1) An application may be made to a court for an order that an illicit recording delivered up pursuant to an order under section 192 or 195 or seized under section 193 be-

(a) forfeited to any person who has performers' rights in relation to the performance as the court directs; or

(b) destroyed or otherwise dealt with as the court thinks fit.

(2) In considering what order (if any) should be made under subsection (1) the court must have regard to

(a) whether other remedies available in proceedings for infringement of the rights conferred by this Part would be adequate to compensate the person or persons entitled to the rights and to protect the interests of that person or of those persons; and

(b) the need to ensure that no illicit recording is disposed of in a manner that would adversely affect a person having performers' rights in the performance.

(3) The court must issue directions as to the service of notice under this section on persons having an interest in a recording.

(4) Any person having an interest in a recording is entitled-

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

(b) to appeal against any order made under subsection (1), whether or not the person appears in the proceedings,

and such an order does not take effect until the end of the period within which notice of appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(5) If there is more than one person interested in a recording, the court may direct that the recording be sold, or otherwise dealt with, and the proceeds divided, and may make any other order as it thinks just.

(6) If the court decides that no order should be made under this section, the person in whose possession, custody, or control the recording was before being delivered up is entitled to its return.

### ***Division 8-Extraterritorial Application***

#### ***Extraterritorial application of Part X***

**200.** This Part applies in respect of a performance given in any place outside the Fiji Islands by a citizen or subject of, or a person domiciled or resident in, a country or place outside the Fiji Islands, if the performance was given after the coming into force in

respect of that country or place of a regulation made under section 201 which applies to the performance.

### ***Regulations***

**201.**-(1) The Minister may by regulations apply in relation to any country or place outside the Fiji Islands any provision of this Part specified in the regulations.

(2) Regulations made under this section may-

(a) apply any provision of this Part subject to specified exceptions and modifications; and

(b) direct that any provision of this Part applies either generally or in relation to a specified class of performances.

(3) The Minister must not make regulations under this section in relation to a country or place unless satisfied-

(a) in the case of a country - that it is a Convention country; or

(b) in either case - that reciprocal provision has been or will be made under the law of the country or place in respect of the class of performances to which the regulations relate.

(4) Regulations under this section may be made to apply generally to a country, or to any territory for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such territories, or to a place, other than a country, which has its own laws and jurisdiction in respect of performers' rights.

## **Part X**

### **COPYRIGHT TRIBUNAL**

#### ***Division 1-Constitution***

##### ***Copyright Tribunal***

**202.** This section establishes the Copyright Tribunal.

##### ***Membership of Tribunal***

**203.**-(1) Subject to subsection (4), the Tribunal consists of a Chairman and 2 other members.

(2) The Chairman of the Tribunal-

(a) must be appointed by the Judicial Service Commission; and

(b) must -be a legal practitioner of not less than 7 years' standing.

(3) The Judicial Service Commission must appoint the other 2 members of the Tribunal.

(4) The Judicial Service Commission may appoint a Resident Magistrate to be the Tribunal and a reference in this Part to a member of the Tribunal includes a Resident Magistrate appointed as the Tribunal.

### *Term of office of members of Tribunal*

**204.**-(1) A member of the Tribunal may be appointed for a term not exceeding 5 years.

(2) A member of the Tribunal may hold office concurrently with any other office held by him or her and may be reappointed.

(3) Upon the expiry of the term for which a member was appointed, the member, unless he or she earlier vacates or is removed from office under section 205, continues in office until-

(a) he or she is reappointed; or

(b) a successor is appointed.

(4) The powers of the Tribunal are not affected by any vacancy in its membership.

### *Vacation of office*

**205.**-(1) A member of the Tribunal may at any time resign office by notice in writing to the Judicial Service Commission.

(2) A member of the Tribunal is deemed to have vacated office if he or she dies, or is adjudged bankrupt under the laws of any country.

(3) A member of the Tribunal may at any time be removed from office by the Judicial Service Commission for disability affecting performance of duty, for neglect of duty, or for misconduct.

### *Deputies of members*

**206.**-(1) 1) If a member of the Tribunal-

(a) becomes incapable of acting by reason of illness, absence, or other cause; or

(b) deems it not proper or desirable to act in any particular proceedings,

the Judicial Service Commission may appoint a person to act as deputy to the member for the period or purpose stated in the appointment.

(2) A person must not be appointed as deputy to the Chairman unless he or she is eligible for appointment as Chairman.

(3) A deputy, while acting as such, is deemed to be a member of the Tribunal, and the deputy to the Chairman while acting as such has the powers of the Chairman.

(4) No appointment of a deputy, no act done by a deputy as such, and no act done by the Tribunal while any deputy is acting as such, may in any proceedings be questioned on the ground that the occasion for the appointment had not arisen or had ceased.

### ***Remuneration and travelling allowances***

**207.**-(1) Members of the Tribunal are entitled to be paid remuneration by way of fees, salary or allowances and travelling allowances and expenses to be fixed by the Public Service Commission.

(2) Subsection (1) does not apply to an appointment made under section 203 (4).

### ***Division 2-Jurisdiction and Procedure***

#### ***Jurisdiction of Tribunal***

**208.** The Tribunal has the functions conferred on it by this Act and any other written law.

#### ***Parties to proceedings***

**209.**-(1) The operator of a licensing scheme or a proposed licensing scheme which is the subject of a reference or application to the Tribunal under section 141, 142, 143, 145, 146, 149,150, or 151 must be included as a party in the proceedings before the Tribunal.

(2) The Tribunal may direct that an organisation or person be added as a party to any proceedings before the Tribunal if the Tribunal is satisfied that the organisation or person has a substantial interest in the matter in dispute and either-

(a) the organisation or person applies to be made a party to the proceedings; or

(b) the Tribunal of its own motion adds the organisation or person as a party.

(3) If in the opinion of the Attorney-General the public interest is or maybe affected by any proceedings before the Tribunal, the Attorney General may, on giving such notice to other parties as the Tribunal directs, appear and be heard, or may present submissions in writing.

### *Sittings of Tribunal*

**210.**-(1) The Tribunal must fix a time and place for the hearing of proceedings and cause notice to be given to the parties of the time and place so fixed.

(2) A sitting of the Tribunal must not take place, except for the purposes of interlocutory or other ancillary matters, unless all members are present.

(3) Sittings of the Tribunal must be held 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 a sitting or any part of it should be held in private.

(4) The Tribunal may prohibit the publication of any report or description of the proceedings or of any part of the proceeding before the Tribunal.

(5) A person who contravenes an order made under subsection (5) commits an offence and is liable on conviction to a fine of \$5,000.

(6) Sittings of the Tribunal may be adjourned from time to time and from place to place.

### *Procedure of Tribunal*

**211.**-(1) A party to proceedings before the Tribunal may appear personally or by a legal practitioner or agent.

(2) The Tribunal may appoint a legal practitioner to appear and be heard in any proceedings as counsel assisting the Tribunal.

(3) The decision of the majority of members is the decision of the Tribunal, unless the Tribunal consists of a single judge.

(4) A decision of the Tribunal must be in writing and must state the reasons for the decision.

(5) Except as otherwise provided in this Part, the Tribunal determines its own procedure.

### *Evidence in proceedings before Tribunal*

**212.**-(1) Subject to this section, the Evidence Act (Cap 41) applies to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.

(2) The Tribunal may receive as evidence any statement, document, information or matter that may in its opinion assist it to deal effectively with a matter before it, whether or not the same would be admissible in a court of law.

(3) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.

(4) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.

### *Witness summons*

**213.**-(1) The Tribunal may of its own motion, or on the application of any party to the proceedings, issue a witness summons to a person requiring the person to attend before the Tribunal to give evidence at the hearing of the proceedings.

(2) A witness summons under subsection (1) must state-

(a) the place where the person is to attend;

(b) the date and time when the person is to attend;

(c) the papers, documents, records, or things that the person is required to bring and produce;

(d) that the person is entitled to be tendered or paid a sum in respect of allowances and travelling expenses; and

(e) the penalty for failing to attend.

(3) The power to issue a witness summons under this section may be exercised by the Tribunal or the Chairperson, or by any officer of the Tribunal purporting to act by the direction or with the authority of the Tribunal or the Chairperson.

### *Service of summons*

**214.**-(1) A witness summons under section 213 may be served

(a) by delivering it personally to the person summoned; or

(b) by posting it by registered letter addressed to the person summoned at that person's usual place of residence.

(2) A summons must

(a) if served under subsection (1)(a) be served at least 24 hours before the attendance of the witness is required; or

(b) if it is served under subsection (1)(b) be served at least 10 days before the date on which the attendance of the witness is required.

(3) If a summons is posted by registered letter, it is deemed for the purposes of subsection (2)(b) to have been served at the time when the letter would be delivered in the ordinary course of post.

### *Witnesses' allowances*

**215.**-(1) A witness attending before the Tribunal to give evidence pursuant to a summons is entitled to be paid witnesses' fees, allowances and travelling expenses either as prescribed by regulations or, if there are no such regulations, as the Tribunal determines in each case.

(2) When the Tribunal issues a summons under section 213 the Tribunal, or the person exercising the power of the Tribunal under subsection (3) of that section, must fix an amount that, on the service of the summons, or at some other reasonable time before the date on which the witness is required to attend, is to be paid or tendered to the witness.

(3) The amount to be fixed under subsection (2) is the estimated amount of the allowances and travelling expenses to which, in the opinion of the Tribunal or person, the witness is entitled if the witness attends at the time and place specified in the summons.

(4) If a party to the proceedings has requested the issue of a witness summons, the fees, allowances, and travelling expenses payable to the witness must be paid by that party.

(5) If the Tribunal has of its own motion issued a witness summons, the Tribunal may direct that the amount of the fees, allowances, and travelling expenses-

(a) form part of the costs of the proceedings; or

(b) be paid out of public funds.

### *Privileges and immunities*

**216.** Witnesses appearing before the Tribunal have the same privileges and immunities as witnesses have in proceedings in a Magistrates Court.

### *Non-attendance or refusal to co-operate*

**217.**-(1) A person who, after being summoned to attend to give evidence before the Tribunal or to produce to the Tribunal any papers, documents, records, or things, without sufficient cause-

(a) fails to attend in accordance with the summons;

(b) refuses to be sworn or to give evidence, or, having been sworn, refuses to answer any question that the person is lawfully required by the Tribunal or any member of it to answer concerning the proceedings; or

(c) fails to produce any such paper, document, record, or thing,

commits an offence and is liable on conviction to a fine of \$2,000.

(2) -A person summoned to attend before the Tribunal must not be convicted of an offence under subsection (1) unless there was tendered or paid to that person travelling expenses in accordance with section 215.

### *Contempt of Tribunal*

**218.**-(1) A person who

(a) assaults, threatens, intimidates or intentionally insults the Tribunal or any member of it or any special adviser to or officer of the Tribunal, during a sitting of the Tribunal, or in going to or returning from any sitting;

(b) intentionally interrupts the proceedings of the Tribunal or otherwise misbehaves while the Tribunal is sitting; or

(c) intentionally and without lawful excuse disobeys an order or direction of a member of the Tribunal in the course of any proceedings before the Tribunal,

commits an offence and is liable on conviction to a fine of \$2,000.

(2) A member of the Tribunal may order the exclusion from a sitting of the Tribunal of any person whose behaviour, in that member's opinion, constitutes an offence under subsection (1), whether or not the person is charged with the offence; and a police officer may take such steps as are reasonably necessary to enforce such exclusion.

### *Costs*

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

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

### *Stating case for High Court*

**220.**-The Tribunal may, at any time, before or during the hearing or before delivering its decision, on the application of any party to the proceedings or of its own motion, state a case for the opinion of the High Court on any question of law arising in any proceedings before the Tribunal.

(2) The Tribunal must give notice to the parties to the proceedings of the Tribunal's intention to state a case under this section.

(3) Except where the Tribunal intends to state a case of its own motion, the question on a case must be in the form of a special case to be drawn up by the parties to the proceedings, and, if the parties do not agree, to be settled by the Tribunal.

(4) If the Tribunal intends to state a case of its own motion, it must itself state and sign a case setting forth the facts and questions of law arising for the determination of the High Court.

(5) Every case stated for the High Court under this section must be dealt with in accordance with the High Court Rules.

(6) The High Court must hear and determine any question submitted to it under this section, and must remit the case with its opinion to the Tribunal.

### *Appeal on question of law*

**221.**-(1) If a party to any proceedings before the Tribunal is dissatisfied with any determination of the Tribunal as being erroneous in point of law, the party may appeal to the High Court on that question of law.

(2) An appeal under this section must be dealt with in accordance with the Court Rules.

## **Part XII**

### **MISCELLANEOUS**

#### **Division 1-Other Laws**

##### *Rights and privileges under other enactments or common law*

**222.**-(1) Nothing in this Act affects-

(a) any right or privilege of any person under any other enactment;

(b) any right or privilege of Parliament;

(c) any right or privilege of the State existing otherwise than under a written law;

(d) the right of the State or any person deriving title from the State to sell, use, or otherwise deal with objects forfeited under the laws relating to customs and excise; or

(e) the operation of any rule of equity relating to breaches of trust or confidence.

(2) Subject to subsection (1) no copyright or right in the nature of copyright exists otherwise than under this Act or a written law.

(3) Nothing in this Act affects any rule of law preventing or restricting the enforcement of copyright on grounds of public interest or otherwise.

(4) Nothing in this Act affects any right of action or other remedy, whether civil or criminal, available otherwise than under this Act in respect of acts infringing any of the rights conferred by part IV

### *Division 2-Devices Designed to Circumvent Copy-Protection*

#### *Devices designed to circumvent copy-protection*

**223.**-(1) If copies of a copyright work are issued to the public, by or with the licence of the copyright owner, in an electronic form that is copy-protected-

(a) the person issuing the copies to the public has the same rights against a person specified in subsection (2) as a copyright owner has in respect of an infringement of copyright; and

(b) the person issuing the copies to the public has the same rights under section 111 or 123 in relation to any device or means (of the kind referred to in subsection (2)(a) of this section) that a person has in his, her or its possession, custody, or control with the intention that it should be used to make infringing copies of copyright works, as a copyright owner has in relation to an infringing copy.

(2) For the purpose of subsection (1) (a) the following are specified-

(a) a person who makes, imports, sells, lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, any device or means specifically designed or adapted to circumvent the form of copy-protection employed;

(b) a person who publishes information intended to enable or assist persons to circumvent that form of copy-protection,

knowing or having reason to believe that the devices, means, or information will be used to make infringing copies.

(3) References in this section to copy-protection include any device or means intended to prevent or restrict copying of a work or to impair the quality of copies made.

(4) Sections 116 to 119 apply in relation to proceedings under this section.

(5) Section 125 applies, with all necessary modifications, in relation to the disposal of anything delivered up under subsection (1)(b) of this section.

#### *Offence of fraudulently receiving programmes*

**224.**-(1) A person who, with intent to avoid payment of any charge applicable to the reception of a programme included in a broadcasting service or cable programme service provided from a place in the Fiji Islands, receives such a programme, commits an offence and is liable on conviction to a fine of \$500.

(2) If a body corporate is convicted of an offence against this section, every director and every person concerned in the management of the body corporate is guilty of the offence if it is proved that the act that constituted the offence took place with his or her authority, permission, or consent.

***Rights and remedies in respect of apparatus, etc., for unauthorised reception of transmissions***

**225.**-(1) A person who-

(a) makes charges for the reception of programmes included in a broadcasting service or cable programme service provided from a place in the Fiji Islands; or

(b) sends encrypted transmissions of any other description from a place in the Fiji Islands,

is entitled to the rights and remedies in subsections (2) and (3).

(2) A person to whom subsection (1) applies-

(a) has the same rights and remedies against a person referred to in subsection (3) as a copyright owner has in respect of an infringement of copyright; and

(b) has the same rights under section 111 or section 123 in relation to any apparatus or device (of the kind referred to in subsection (3)(a)) as a copyright owner has in relation to an infringing copy.

(3) For the purpose of subsection (2)(a) the following are specified-

(a) a person who makes, imports, sells or lets for hire any apparatus or device designed or adapted to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so; or

(b) a person who publishes any information that is calculated to enable or assist persons to receive the programmes or other transmissions when they are not entitled to do so.

(4) In section 110(1) as it applies to proceedings for infringement of the rights conferred by this section, the reference to the defendant not knowing or having reason to believe that copyright existed in the work is to be construed as a reference to not knowing or having reason to believe that the acts complained of infringed the rights conferred by this section.

(5) Section 125 applies, with necessary modifications, in relation to the disposal of anything delivered up under subsection (2)(b) of this section.

### ***Division 3-Places outside the Fiji Islands***

#### ***Supplementary provisions as to fraudulent reception***

**226.**-(1) The Minister may by regulations

(a) provide that section 224 applies in relation to programmes included in services provided from a country or place outside the Fiji Islands; and

(b) provide that section 225 applies in relation to such programmes and to encrypted transmissions sent from such a country or place.

(2) Regulations must not be made under subsection (1) in respect of a country or place unless it appears to the Minister that provision has been or will be made under the laws of the country or place giving adequate protection to persons making charges for programmes included in broadcasting services or cable programme services provided from the Fiji Islands or, as the case may be, for encrypted transmissions sent from the Fiji Islands.

(3) If sections 224 and 225 apply in relation to a broadcasting service or cable programme service, they also apply to any service run for the person providing that service, or a person providing programmes for that service, if the service so run consists wholly or mainly in the sending by means of a telecommunications system of sounds or visual images, or both.

#### ***Application to places outside the Fiji Islands***

**227.**-The Minister may by regulations apply in relation to any country or place outside the Fiji Islands any of the provisions of this Act specified in the regulations (except Part X and sections 224 and 225 in respect of which powers are given by sections 201 and 226 respectively.)

(2) Regulations made under this section may apply a specified provision-

(a) in relation to persons who are citizens or subjects of a country, or who are domiciled or resident in a place - as it applies in relation to persons who are Fiji Islands citizens or are domiciled or resident in the Fiji Islands;

(b) in relation to bodies incorporated under the law of a country or place - as it applies in relation to bodies incorporated under the law of the Fiji Islands, or, in the case of an audio visual work, as it applies to a body which has its headquarters in a prescribed foreign country;

(c) in relation to works first published in a country or place - as it applies in relation to works first published in the Fiji Islands;

(d) in relation to broadcasts made from, or cable programmes sent from, a country or place - as it applies in relation to broadcasts made from, or cable programmes sent from, the Fiji Islands.

(3) Regulations made under this section may -

(a) apply any provision of this Act subject to specified exceptions and modifications; and

(b) direct that any provision of this Act applies either generally or in relation to a specified class of works, or other class of cases.

(4) The Minister must not make any regulations under this section in relation to a country or place unless satisfied-

(a) in the case of a country - that it is a Convention country; or

(b) in either case - that provision has been or will be made under the law of the country or place, in respect of the class of works to which the regulation relates, giving adequate protection to copyright owners under this Act.;

(5) Regulations under this section may be made to apply generally to a country, or to any territory for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such territories, or to a place, other than a country, which has its own laws and jurisdiction in respect of copyright.

(6) If-

(a) an unpublished work is of unknown authorship but there are reasonable grounds to suppose that the author of the work was at the material time a citizen or subject of a country other than the Fiji Islands or was domiciled or resident in a place other than the Fiji Islands;

(b) provision has been made by regulations under this section for applying any of the provisions of this Act in relation to persons who are citizens or subjects of that other country or are domiciled or resident in that place; and

(c) under the law of that other place a person is authorised to represent the author, or to protect and enforce the rights of the author in relation to that work,

the person so authorised must be treated as if the person were the author of the work for the purposes of the application of any provisions of this Act under the regulations.

(7) In subsection (6), the term "at the material time" has the meaning given to it in section 18 (5).

***Denial of Copyright to persons connected with places not giving adequate protection to Fiji Islands work***

**228.**-(1) If it appears to the Minister that the law of a place, other than a Convention country, fails to give adequate protection to copyright in a Fiji Islands work, or to one or more classes of such works, the Minister may by regulation make provision in accordance with this section restricting the rights conferred by this Act in relation to that place.

(2) Regulations made under this section must designate the place concerned and provide that, for the purposes specified in the regulations, a work first published after a date specified in the regulations is not to be treated as qualifying for copyright by virtue of such publication if at that time the author is-

(a) a citizen or subject of that place, if it is a country, or domiciled or resident in that place, and not domiciled or resident in the Fiji Islands; or

(b) a body incorporated under the law of that place,

and the regulations may make such provision for all purposes of this Act or for a specified purpose and either generally or in relation to a specified class of cases, having regard to the nature and extent of the failure referred to in subsection (1).

(3) Regulations under this section may be made to apply generally to a country, or to any territory for whose international relations the Government of that country is responsible, or to the country exclusive of all or any such territories, or to a place, other than a country, which has its own laws and jurisdiction in respect of copyright.

(4) In this section "Fiji Islands work" means a work by a Fiji Islands citizen or which originates in the Fiji Islands.

***Division 4-Regulations***

***Regulations***

**229.** The Minister may make regulations for all or any of the following purposes-

(a) prescribing a body as a judicial body for the purposes of this Act;

(b) prescribing classes of libraries for the purposes of section 48;

(c) prescribing institutions for the purposes of section 106;

- (d) prescribing bodies for the purposes of section 66, 81,82,180,185 or 186;
- (e) prescribing classes of broadcasts or cable programmes for the purposes of section 82 or 186;
- (f) prescribing the form in which a notice is to be given under section 112, 128, or 193;
- (g)prescribing the particulars to be contained in a notice given under section 128 and 193;
- (h) requiring a person giving a notice under section 112, 128 or 193 either at the time of giving the notice or subsequently, to furnish evidence in support of the claim;
- (i) requiring-
  - (i)a person giving a notice under section 112, 128 or 193 either at the time of giving the notice or subsequently; or
  - (ii)a person to whom an item is to be or has been released from detention under section 132(1),  
to give security or an indemnity, or both, to such persons, of any amount, and on terms and conditions to be determined by the Comptroller of Customs;
- (j) providing for exceptions to any requirement to give security or an indemnity imposed by any regulations made under paragraph (i);
- (k) providing for the disposition of any security given under any regulations made under paragraph (i);
- (l) providing for the forfeiture to the claimant, by consent, of an item detained under section 132(1);
- (m) prescribing a fee for the purposes of section 136(2)(c);
- (n) imposing requirements in respect of licensing bodies or any specified class or classes of licensing body or any specified licensing body, in relation to all or any of the following-
  - (i) the contents of the constitution or other form of rules of the licensing body or bodies;
  - (ii)the representation of copyright owners in the management of the licensing body or bodies;
  - (iii) the collection, holding, and distribution of money by the licensing body or bodies;
  - (iv) the disclosure of the financial affairs of the licensing body or bodies;

- (v) access to, and disclosure of, records held by the licensing body or bodies;
- (vi) any other matter relating to the conduct or the operation of the licensing body or bodies;
- (o) authorising, subject to specified conditions, the rental to the public of copies of-
  - (i) any specified class or classes of computer program;
  - (ii) any specified class or classes of sound recording; or
  - (iii) any audio visual work or specified class or classes of audio visual work,without the consent of the owner of the copyright in the work;
- (p) regulating the making, importation, sale, hire, or use of decoding equipment;
- (q) prescribing offences in respect of the contravention of or non-compliance with any provision of regulations made under paragraph (p) and prescribing fines, not exceeding \$5,000, that may, on conviction, be imposed in respect of any such offence;
- (r) providing for any other matters contemplated by or necessary for giving full effect to this Act and for its due administration.

#### ***Division 5-Jurisdiction***

##### ***Jurisdiction of Magistrates Court***

**230.** Proceedings for an offence under this Act may be heard and determined by a Resident Magistrate and a Resident Magistrate may impose the maximum sentence under this Act notwithstanding any limitation on a magistrate's jurisdiction under any other Act, and the Magistrates Courts Rules and the Criminal Procedure Code (Cap. 21) are amended accordingly.

#### ***Division 6-Repeals***

##### ***Repeals***

**231.**-(1) The Acts specified in Part A of the Schedule are repealed.

(2) The Orders specified in Part B of the Schedule are revoked in their application to the Fiji Islands.

(3) The regulations specified in Part C of the Schedule are repealed.

(4) The Interpretation Act (Cap.7) applies to the revocation of certain Orders effected by subsection (2) as if it were the repeal of an Act.

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**SCHEDULE**

*(Section 231)*

**Enactments repealed**

Part A

Performers Protection Act (Cap. 243)

Copyright (Broadcasting of Gramophone Records) Act (Cap. 244)

PART B

Copyright (Fiji) Order 1961(UK)

Copyright (International Organisations) Order 1961(UK)

Copyright (Broadcasting Organisations) Order 1961(UK)

Copyright (International Conventions) Order 1964(UK)

PART C

Copyright (Customs) Regulations

Copyright (Libraries) Regulations

Copyright (Notice of Publication) Regulations

Copyright Royalty System (Records) Regulations.

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Passed by the House of Representatives this 4th day of February 1999.

Passed by the Senate this 9th day of March 1999.

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