

TRINIDAD AND TOBAGO

THE COPYRIGHT ACT, 1985

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Fourth Session Second Parliament Republic of Trinidad  
and Tobago

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REPUBLIC OF TRINIDAD AND TOBAGO

**Act No. 13 of 1985**

AN ACT to make provision in respect of copyright and neighbouring rights, in substitution for the Copyright Act and the Copyright Act, 1911 of the United Kingdom; and for purposes connected therewith. Chap. 82:80  
1 & 2 Geo. V  
c. 46

[ , 1985]

WHEREAS it is enacted by section 13(1) of the Constitution, that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though

inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly;

And whereas it is provided by section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all members of that House;

And whereas it is necessary and expedient that the provisions of this Act shall have effect notwithstanding sections 4 and 5 of the Constitution.

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:—

#### PART I—PRELIMINARY

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|-----------------------------------|--|
| Short title                       | 1. (1) This Act may be cited as the Copyright Act, 1985.   |
| Act at variance with Constitution | (2) This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.   |
| Commencement                      | 2. This Act shall come into operation on a date to be fixed by the President by Proclamation.  |
| Interpretation                    | 3. (1) For the purposes of this Act, the expression “adaptation” means—  |
|                                   | (a) in relation to a literary work in a non-dramatic form, a version of the work (whether in its original language or in a different language) in a dramatic form; |
|                                   | (b) in relation to a literary work in a dramatic form, a version of the work (whether in its original language or in a different language) in a non-dramatic form; |
|                                   | (c) in relation to a literary work (whether in a non-dramatic form or in a dramatic form)—   |
|                                   | (i) a translation of the work; or  |

(ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures; and

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

“artistic work” means—

(a) a painting, sculpture, drawing, engraving or photograph, whether the work is of artistic quality or not;

(b) a building or a model of a building, whether the building or model is of artistic quality or not; or

(c) a work of artistic craftsmanship to which neither paragraph (a) nor paragraph (b) applies;

“audio-visual production” means the aggregate of a series of related visual images, together with accompanying sounds, if any, which is capable of being shown by means of a mechanical, electronic or other device and irrespective of the nature of the material support on which the visual images and sounds if any, are carried, but does not include a broadcast;

“author” means—

(a) in relation to a literary work, the author of the work;

(b) in relation to a musical work, the composer;

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

(d) in relation to a photograph, the person taking the photograph;

“a broadcast” means the aggregate of sounds, or of sounds and visual images, embodied in a programme as transmitted by radio or television broadcasting;

“to broadcast” means to transmit, by the emission of electro-magnetic energy otherwise than over a path that is provided by a material substance, visual images or sounds, or both, for reception by the public notwithstanding that—

- (i) subsequent to the initial transmission, but before reception by the public, the images or sounds may be carried on a path provided by a material substance;
  - (ii) the public receiving, or capable of receiving, the images or sounds is in a country other than that from which the original transmission took place;
  - (iii) no member of the public actually receives the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them;
- and “broadcasting” and “re-broadcasting” have corresponding meanings;

“building” includes a structure of any kind;

“communication by cable” in relation to a protected work, production or performance, means the transmission to the public over wires, or other paths provided by a material substance, of the work, production or performance;

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

“copy” in relation to an audio-visual production or a broadcast, means any print, negative, tape or other article on which the production or broadcast, or a part thereof, is recorded;

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“copyright” means copyright subsisting under Part II of this Act;

“country” includes any territory;

“distribution” means the distribution to the public, for commercial purposes, of copies of a work or production by way of rental, lease, hire, loan or similar arrangement and distributing has a corresponding meaning;

“dramatic work” includes—

(a) a choreographic show or entertainment in dumb show; and

(b) a scenario or script for an audio-visual production but does not include an audio-visual production as distinct from the scenario or script, for an audio-visual production;

“drawing” includes a diagram, map, chart or plan;

“engraving” includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;

“future copyright or neighbouring rights” means copyright or neighbouring rights which will or may come into existence in respect of any future work, production, performance or edition, or on the coming into operation of this Act, or in any other future event, and “prospective owner” shall be construed accordingly and, in relation to any such copyright or neighbouring rights, includes a person prospectively entitled thereto by virtue of such an agreement as is mentioned in section 21(1);

“infringing copy” means—

(a) in relation to a protected work, a reproduction of the work not being a copy of an audio-visual production incorporating the work;

(b) in relation to a sound recording, a record embodying the recording not being a sound-track associated with visual images forming part of an audio-visual production;

- (c) in relation to an audio-visual production, a copy of the production;
- (d) in relation to a television broadcast, an audio-visual production incorporating the broadcast, or a copy of such a production;
- (e) in relation to a sound broadcast, a record embodying a sound recording of the broadcast;
- (f) in relation to a performance, a copy of a record of the performance, and
- (g) in relation to an edition, a reproduction of the edition;

being an article the making of which constituted an infringement of the copyright or neighbouring rights in the protected work, production, performance, or edition or, in the case of an imported article, would have constituted an infringement of that copyright or those neighbouring rights if the article had been made in Trinidad and Tobago by the importer;

“literary work” includes—

- (a) a dramatic work;
- (b) a written table or compilation;
- (c) computer software;

“maker” means—

- (a) in relation to a sound recording, the person who owns the first record embodying the sound recording;
  - (b) in relation to an audio-visual production, the person by whom the arrangements necessary for the making of the production are undertaken;
  - (c) in relation to a broadcast, the broadcasting organisation by which the visual images or sounds in question, or both, as the case may be, are first broadcast;
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- “manuscript” in relation to a work, means the original document embodying the work whether written by hand or not;
- “Minister” means the Minister responsible for copyright;
- “neighbouring rights” means rights subsisting under Part III of this Act;
- “performer” means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in or otherwise performs a literary, musical or artistic work;
- “performance” includes any mode of visual or acoustic presentation, including any such presentation by the exhibition of an audio-visual production, or by the operation of apparatus for receiving broadcasts or communications by cable, or by the use of a record or by any other means and, in relation to a lecture, includes the delivery of such lecture;
- “photograph” includes photolithograph and any work produced by any process analogous to photography but does not include any part of an audio-visual production;
- “plate” means any material object in which a work, production, performance or edition has been embodied and by the use of which copies or reproductions of the work, production, performance or edition may be made;
- “prospective owner” has the meaning assigned to it in the definition of “future copyright or neighbouring rights”;
- “protected edition” means an edition to which section 16 applies;
- “protected performance” means a performance in which rights subsist under section 14;
- “protected production” means a sound recording, or an audio-visual production or a broadcast in which rights subsist under section 11;
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“protected work” has the meaning assigned to it by section 6(4);

“qualified person”—

(a) in the case of an individual, means a person who is a citizen of Trinidad and Tobago or who is domiciled or resident in Trinidad and Tobago; and

(b) in the case of a body corporate, means a body incorporated or established under any written law of Trinidad and Tobago;

“record” means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a soundtrack associated with an audio-visual production, but includes, in relation to a performance, an audio-visual production incorporating the performance;

“reproduction”—

(a) in the case of a literary or musical work, includes a reproduction in the form of a record or audio-visual production;

(b) in the case of an artistic work, includes a version produced by converting the work into a three-dimensional form; or, if it is in three dimensions, by converting it into a two-dimensional form;

(c) in the case of a sound recording, means a record of the recording; and references to reproducing a work or sound recording shall be construed accordingly;

“sculpture” includes a cast or model made for purposes of sculpture;

“sound recording” means the aggregate of sounds embodied in, and capable of being reproduced by means of, a record of any description, other than a soundtrack associated with an audio-visual production;

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“wireless telegraphy” means the emitting or receiving, otherwise than over a path that is provided by a material substance, of electromagnetic energy transmitting visual images or sounds, or both;

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

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

(2) References in this Act to the time at which, or the period during which, a literary or musical work was made are references to the time or period at or during which it was first written down, recorded or expressed in some other material form. <sup>Making of work</sup>  
<sub>—duration</sub>

(3) This Act is binding on the State but nothing in this Act shall render the State liable to prosecution. <sup>Act binding on</sup>  
<sub>State</sub>

4. (1) Subject to this section, for the purposes of this Act— <sup>Publication</sup>

(a) a literary, musical or artistic work, or an edition of such a work, shall be deemed to have been published, if, but only if, reproductions of the work or edition have been made available (whether by sale or otherwise) to the public;

(b) an audio-visual production shall be deemed to have been published if, but only if, copies of the production have been made available (whether by sale or otherwise), to the public; and

(c) a sound recording shall be deemed to have been published if, but only if, records embodying the recording have been made available (whether by sale or otherwise) to the public.

(2) For the purposes of this Act, the performance of a literary or musical work, the exhibition of an artistic work, the construction of a building or of a model of a building, or the making available (whether by sale or otherwise) to the public of photographs or engravings of a building, of a model of a building or of a sculpture does not constitute publication of the work.

(3) A publication that is merely colourable and is not intended to satisfy the reasonable requirements of the public shall be disregarded for the purposes of this Act except in so far as it may constitute an infringement of copyright or neighbouring rights or may constitute an offence under this Act.

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

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

- (a) whether a work, production or edition has been published;
- (b) whether a publication of a work, production or edition was the first publication of the work, production or edition; or
- (c) whether a work, production or edition was published or otherwise dealt with in the lifetime of a person,

any unauthorised publication or the doing of any other unauthorised act shall be disregarded.

(6) Subject to section 35(2)(j) a publication or other act shall, for the purposes of subsection (5), be taken to have been unauthorised if, but only if—

- (a) copyright or neighbouring rights subsisted in the work, production or edition and the act concerned was done otherwise than by, or with the licence of, the owner of the copyright or the neighbouring rights, or
- (b) copyright or neighbouring rights did not subsist in the work, production or edition and the act concerned was done otherwise than by, or with the licence of—

- (i) the author or, in the case of a sound recording, audio-visual production, broadcast or edition of a work, the maker or publisher, as the case may be; or
- (ii) persons lawfully claiming under the author, maker or publisher.

(7) Nothing in either subsection (5) or subsection (6) affects any provisions of this Act relating to the acts comprised in copyright or any neighbouring rights or to acts constituting infringements of copyright or neighbouring rights or offences under this Act.

5. (1) For the purposes of this Act, the broadcasting or the communication by cable of a work, production or performance shall not be taken to constitute performance or to constitute causing visual images or sounds to be seen or heard; and where visual images or sounds are displayed or emitted by any receiving apparatus, to which they are conveyed by the transmission of electro-magnetic signals (whether over paths provided by a material substance or not)—

Broadcasting,  
communication  
by cable not to  
constitute  
performance

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

(2)(a) Without prejudice to subsection (1), and subject to subsection (3), where a work or production is performed, or visual images or sounds are caused to be seen or heard, by the operation of any apparatus to which this subsection applies, being apparatus provided by or with the consent of the occupier of the premises where the apparatus is situated, the occupier of those premises shall for the purposes of this Act, be taken to be the person giving the performance or causing the images or sounds to be seen or heard, whether he is the person operating the apparatus or not but this subsection shall not apply where the apparatus was provided by or with the consent of the occupier gratuitously or for a consideration which was only nominal.

(b) This subsection applies to any such receiving apparatus as is mentioned in subsection (1) and to any apparatus for reproducing sounds by the use of a record.

(3) Nothing in subsection (2) shall affect the liability of any person who, not being the occupier, supplies apparatus to which subsection (2) applies if he has, within the meaning of section 8 authorised the public performance of the work or production by the use of the apparatus.

## PART II—COPYRIGHT

### Categories of protected works

6. (1) Subject to this section, the categories of works in which copyright under this Act may subsist are:

- (i) literary works;
- (ii) musical works;
- (iii) artistic works.

(2) Copyright shall not subsist in a work unless—

- (a) it is original, and
- (b) it has been written down, recorded or otherwise expressed in some material form.

(3) Copyright may subsist in a work notwithstanding that the making of the work involved an infringement of copyright subsisting in some other work or of the neighbouring rights in some protected production, performance or edition.

(4) References in this Act to a protected work are references to a work which—

- (a) belongs to a category mentioned in subsection (1), and
- (b) complies with subsection (2).

### Qualifications for protection

7. (1) Subject to subsection (2), copyright shall subsist in any protected work—

- (i) of which the author was a qualified person when the work was made or, if the making of the work extended over a period, was a qualified person for a substantial part of that period; or
- (ii) in the case of a published work—
  - (a) if the first publication took place in Trinidad and Tobago; or

- (b) if the author was a qualified person when the work was first published; or
- (c) if the author had died before publication but was a qualified person immediately before his death;
- (iii) in the case of an artistic work which is a building or is incorporated in a building, if the building is erected in Trinidad and Tobago.

(2) In relation to a work of joint authorship, the references in subsection (1) to the author shall be construed as references to any one of the authors.

8. Subject to this Act, copyright means the exclusive right to do, or to authorise other persons to do, in Trinidad and Tobago or on any ship or aircraft registered in Trinidad and Tobago, any of the following acts:

Nature of  
copyright

- (a) in relation to a literary or musical work—
  - (i) the adaptation,
  - (ii) the reproduction in any material form,
  - (iii) the publication,
  - (iv) the public performance,
  - (v) the communication by cable,
  - (vi) the broadcasting, or
  - (vii) the distribution of copies of the whole or a substantial part of the work and includes, in relation to an adaptation of the work, any of the acts specified in subparagraphs (ii) to (vii) of this paragraph;
- (b) in relation to an artistic work—
  - (i) the reproduction in any material form, or
  - (ii) the publication of the whole or a substantial part of the work, and includes
  - (iii) the inclusion of the work, or a substantial part of it, in a communication by cable or in a television broadcast.

Duration of  
copyright

9. Copyright subsisting in a work under this Part shall continue to subsist until the end of the period of fifty years immediately following the calendar year in which the author died, but—

(a) in the case of a literary or musical work, if before the death of the author—

- (i) the publication of the work,
- (ii) the performance of the work in public,
- (iii) the offer for sale to the public of records of the work,
- (iv) the broadcasting of the work, or
- (v) the communication by cable of the work

had not taken place, the copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which one of those acts first takes place, or until the end of the period of one hundred years immediately following the year in which the author died, whichever period first comes to an end;

(b) in the case of an engraving, if it had not been published before the death of the author, the copyright shall continue to subsist until the end of the period of fifty years immediately following the end of the calendar year in which it is first published;

(c) in the case of a photograph, the copyright shall continue to subsist until the end of the period of fifty years immediately following the end of the calendar year in which it is first published;

(d) in the case of an anonymous or pseudonymous work (other than a photograph), the copyright shall subsist until the expiration of fifty years from the end of the year in which the work was first published, but—

- (i) a work shall not be treated as anonymous or pseudonymous if, before the end of the period mentioned in this paragraph, the identity of the author is generally known or can be ascertained by reasonable enquiry;

- (ii) a work which has been published under two or more names shall not be treated as pseudonymous unless all those names are pseudonyms;
- (e) in the case of a work of joint authorship, any reference in this subsection to the death of the author of a work shall be a reference to the death of the author who died last, whether or not he was a qualified person for the purposes of section 7(1).

### PART III—NEIGHBOURING RIGHTS

10. (1) Subject to this Act, the categories of productions Categories of protected productions in which neighbouring rights under this Part may subsist are—

- (i) sound recordings,
- (ii) audio-visual productions,
- (iii) broadcasts.

(2) Neighbouring rights may subsist in a production notwithstanding that the making of the production involved an infringement of copyright subsisting in a protected work or of the neighbouring rights in some other protected production or in a protected performance or edition.

11. Neighbouring rights under this Part shall subsist in Qualifications for protection every production—

- (i) in the case of a sound recording or audio-visual production if—
  - (a) the maker thereof was a qualified person for the whole or a substantial part of the period during which the sound recording or audio-visual production was made; or
  - (b) if the sound recording or audio-visual production has been published, and the first publication thereof took place in Trinidad and Tobago;
- (ii) in the case of a broadcast, if the broadcast is made by a broadcasting organisation in possession of a valid licence granted to it by or under the law regulating wireless telegraphy in force in Trinidad and Tobago.

Nature of  
protection

**12.** Subject to this Act, the neighbouring rights subsisting in a protected production are the exclusive rights to do, or to authorise other persons to do, in relation to the production or a substantial part thereof, in Trinidad and Tobago or on any ship or aircraft registered in Trinidad and Tobago any of the following acts—

- (a) in the case of a sound recording, reproducing or distributing copies of it;
- (b) in the case of an audio-visual production—
  - (i) making a copy of it,
  - (ii) distributing copies of it,
  - (iii) causing it to be publicly performed,
  - (iv) broadcasting it,
  - (v) communicating it by cable;
- (c) in the case of a broadcast—
  - (i) being a television broadcast in so far as it consists of visual images, making an audio-visual production of it or a copy of such a production,
  - (ii) being a sound broadcast or a television broadcast in so far as it consists of sounds, making a sound recording of it or a record embodying such a recording,
  - (iii) being either a television broadcast or a sound broadcast, re-broadcasting it or communicating it by cable.

Duration of  
protection

**13.** Neighbouring rights subsisting in a protected production under this Part shall,

- (a) in the case of a sound recording, continue to subsist until the end of the period of fifty years immediately following the calendar year in which the sound recording was first published;
- (b) in the case of an audio-visual production, continue to subsist until the end of the period of fifty years immediately following the calendar year in which it was first published, publicly performed, broadcast or communicated by cable or at the end of the period of fifty years following the calendar year in which the production was made if by that date none of these acts had taken place;

- (c) in the case of a broadcast, continue to subsist until the end of the period of fifty years immediately following the year in which it was first broadcast.

14. (1) Neighbouring rights under this Part shall subsist <sup>Performers' rights</sup> in every performance of a literary or musical work—

- (a) by a performer who is a qualified person, and  
(b) which takes place on or after the date on which this Act comes into operation.

(2) Subject to this Act and in particular to section 36(4), the neighbouring rights subsisting in a protected performance shall be the exclusive right to authorise any person to do, in relation to the performance or a substantial part thereof, in Trinidad and Tobago or on any ship or aircraft registered in Trinidad and Tobago, any of the following acts:

- (a) the making of a record of the performance,  
(b) otherwise than by the use of an authorised record—  
(i) the broadcasting of the performance,  
(ii) the use of a record of the performance for the purpose of giving a public performance,  
(iii) the communication by cable of the performance.

(3) Where a protected performance has been reproduced on an authorised sound recording, the maker of the sound recording shall be entitled to receive a share not exceeding one-half, or such other proportion as may be prescribed, of any remuneration received by the performer in respect of the use of the sound recording for the purpose of broadcasting the performance, giving a public performance of it or communicating it by cable.

(4) For the purposes of this section, an authorised record, in relation to a performance, is a record incorporating with the consent of the performer, the performance.

15. The neighbouring rights enjoyed by a performer <sup>Duration of performers' rights</sup> under this Part shall continue to subsist until the end of the period of twenty-five years immediately following the calendar year in which the performance was given.

Rights in  
published editions

16. (1) Neighbouring rights under this Part shall subsist in every published edition of any one or more literary or musical work or works in the case of which either—

(a) the first publication of the edition took place in Trinidad and Tobago, or

(b) the publisher of the edition was a qualified person at the date of the first publication thereof;

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

(2) The neighbouring rights subsisting in an edition under this section shall continue to subsist until the end of the period of twenty-five years immediately following the end of the calendar year in which the edition was first published.

(3) The act restricted by the neighbouring rights subsisting by virtue of this section in a published edition is the making of a reproduction of the typographical arrangement of the edition, or of a substantial part thereof.

Copyright and  
neighbouring  
rights to subsist  
independently

17. Where by virtue of this Part neighbouring rights subsist in a protected production, performance or edition, nothing in this Part shall be construed as affecting the operation of Part II in relation to any protected work from which the protected production is wholly or partly derived, or which is wholly or partly the work performed, or which is wholly or partly the subject matter of the edition; and the neighbouring rights subsisting by virtue of this Part shall be additional to, and independent of, any copyright subsisting by virtue of Part II.

#### PART IV—OWNERSHIP AND ASSIGNMENT

Ownership of  
copyright and  
other rights

18. (1) Subject to this Act—

(a) the author of a protected work,

(b) the maker of a protected production,

(c) the performer of a protected performance,

(d) the publisher of a protected edition,

shall be the first owner of any copyright or neighbouring rights subsisting therein.

(2) Where a person commissions the taking of a photograph or the painting or drawing of a portrait or the making of an engraving, and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the person who so commissioned the work shall be entitled to any copyright subsisting therein.

(3) Where a protected work, sound recording, audio-visual production or edition has been made by or under the direction or control of the Government and, apart from this subsection no copyright or neighbouring rights would subsist in the work, production or edition, then the copyright or neighbouring rights shall subsist therein by virtue of this subsection and shall belong to the State.

(4) The copyright or neighbouring rights subsisting in a protected work, sound recording, audio-visual production or edition which has, with the author's or maker's written consent, been first published in Trinidad and Tobago by or under the direction or control of the Government shall belong to the State.

(5) Subsections (2), (3) and (4) shall have effect subject to any agreement whereby it is agreed that the copyright or neighbouring rights in the work, sound recording, audio-visual production or edition shall vest in the author, maker or some other person designated in the agreement. For the purposes of this section the term "agreement" includes any conditions regulating or applying to the employment of a person in the service of the State.

19. (1) Subject to this section, copyright or neighbouring rights shall be transmissible by assignment, by testamentary disposition or by operation of law, as personal or movable property. Assignments and licences

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

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

the copyright or neighbouring rights but falling within any of the classes of acts so designated);

- (b) so as to apply to any one or more, but not all, of the countries in relation to which the owner of the copyright or neighbouring rights has, by virtue of this Act, that exclusive right;
- (c) so as to apply to part, but not the whole, of the period for which the copyright or neighbouring rights is or are to subsist;

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

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

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

Meaning of owner  
of copyright or  
neighbouring  
rights

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

(a) to the doing of different acts or classes of acts, or

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

the owner of the copyright or neighbouring rights, for any purpose of this Act, shall be taken to be the person who is entitled to the copyright or neighbouring rights in respect of its application to the doing of the particular act or class of acts, or as the case may be, to the doing thereof in the

particular country or at the particular time, which is relevant to the purpose in question; and, in relation to any future copyright or neighbouring rights to which different persons are prospectively entitled, references in this Act to the prospective owner of the copyright or neighbouring rights shall be construed accordingly.

(2) Without prejudice to the generality of subsection (1), where under any provision of this Act a question arises whether an article of any description has been imported or sold, or otherwise dealt with, without the licence of the owner of any copyright or neighbouring rights, the owner of the copyright or neighbouring rights, for the purpose of determining that question, shall be taken to be the person entitled to the copyright or neighbouring rights in respect of its application to the making of articles of that description in the country into which the article was imported or in which it was sold or otherwise dealt with, as the case may be.

21. (1) Where, by an agreement made in relation to any future copyright or neighbouring rights and signed by or on behalf of the prospective owner of the copyright or neighbouring rights, the prospective owner purports to assign the future copyright or neighbouring rights (wholly or partially) to another person (in this subsection referred to as "the assignee"), then if, on the coming into existence of the copyright or neighbouring rights, the assignee or a person claiming under him would apart from this subsection, be entitled as against all other persons to require the copyright or neighbouring rights to be vested in him (wholly or partly, as the case may be), the copyright or neighbouring rights shall, on coming into existence, vest in the assignee or his successor in title accordingly by virtue of this subsection and without further assurance.

Prospective owner  
of copyright and  
neighbouring  
rights

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

(3) Section 19(4) shall apply, in relation to a licence granted by a prospective owner of any copyright or neighbouring rights, as it applies in relation to a licence granted by

the owner of a subsisting copyright or neighbouring rights, and as if any reference in that subsection to the owner's interest in the copyright or neighbouring rights included a reference to his prospective interest therein.

Devolution by will of rights in unpublished manuscripts or other original records

22. Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to an artistic work or to the manuscript or other support on which a protected literary or musical work was first expressed in material form, or to the material support in which a protected production or performance was first embodied, and the work, production or performance, as the case may be, had not been published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil thereto, be construed as including the copyright or the neighbouring rights in the work, production or performance, as the case may be, in so far as the testator was the owner of the copyright or neighbouring rights immediately before his death.

#### PART V—INFRINGEMENTS

Action—  
definition of

23. For the purposes of this Part, the expression "action" includes a counterclaim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.

Infringements

24. (1) The copyright or neighbouring rights in a protected work or a protected production, performance or edition is or are infringed by any person who, not being the owner of the copyright or neighbouring rights and without the licence of the owner thereof—

by exercise of  
unauthorised acts

(a) in respect of the work, production, performance or edition, or a substantial part thereof, does, or authorises another person to do, any of the acts mentioned in section 8, section 12, section 14 or section 16 in relation to protected works, protected productions, protected performances or protected editions, respectively;

by importation  
of infringing  
articles

(b) imports an article (otherwise than for his private and domestic use) into Trinidad and Tobago if the making of that article constituted

an infringement of that copyright or those neighbouring rights, or would have constituted such an infringement if the article had been made in Trinidad and Tobago by the importer;

- (c) in Trinidad and Tobago, or on any ship or aircraft registered in Trinidad and Tobago— by commercial dealings in such articles
- (i) sells, lets for hire, or by way of trade offers or exposes for sale or hire any article, or
  - (ii) by way of trade exhibits any article in public,

if the making of the article constituted an infringement of that copyright or those neighbouring rights, or in the case of an imported article, would have constituted such an infringement if the article had been made in Trinidad and Tobago by the importer.

(2) Subsection (1)(c) shall apply, in relation to the distribution of any article either— Infringement by distribution of infringing articles

- (a) for the purposes of trade, or
- (b) for other purposes, but only to such an extent as to affect prejudicially the owner of the copyright or the neighbouring rights,

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

25. (1) In this section, the expression "place of public entertainment" includes any premises which are occupied mainly for other purposes but are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment. Definition of "place of public entertainment"

(2) The copyright in a protected work is infringed by any person who, not being the owner of the copyright and without the licence of the owner thereof, permits a place of public entertainment to be used for a performance in public of the work where the performance constitutes an infringement of the copyright in the work; but this section shall not apply in a case where the person permitting the place to be used gave the permission gratuitously or for a consideration which was only nominal. Proprietor of place of public entertainment liable for infringement

Action by owner  
of copyright or  
neighbouring  
rights for  
infringement

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

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

(a) an infringement was committed, but

(b) at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that the copyright or neighbouring rights subsisted in the work, production, performance or edition to which the action relates,

the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(3) Where in an action under this section an infringement of copyright or neighbouring rights is proved or admitted, the court, having regard (in addition to all other material considerations) to the flagrancy of the infringement, shall have power in assessing damages for the infringement, to award such additional damages as the court may consider appropriate in the circumstances.

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

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

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

27. Where, in an action under this Part—

Wide injunction  
available to  
licensing bodies

- (a) the infringement of copyright or neighbouring rights is proved or admitted, and
- (b) the plaintiff is a licensing body (as defined in section 54), and
- (c) the court, having regard to all material circumstances, is satisfied that effective relief would not otherwise be available to the plaintiff,

the court may grant an injunction extending to all the protected works, productions or performances, as the case may be, of which the plaintiff is the owner of the copyright or neighbouring rights, notwithstanding that the infringement related to only one or some of the said works, productions or performances.

28. (1) For the purpose of this section, the expression—

Proceedings in  
case of copyright  
or neighbouring  
rights subject to  
exclusive licence

“exclusive licence” means a licence in writing, signed by or on behalf of an owner or prospective owner of copyright or neighbouring rights, authorising the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exerciseable exclusively by the owner of the copyright or neighbouring rights, and “exclusive licensee” shall be construed accordingly;

“if the licence had been an assignment” means if, instead of the licence, there had been granted (subject to terms and conditions corresponding as nearly as may be with those subject to which the licence was granted) an assignment of the copyright or neighbouring rights in respect of its or their application to the doing, at the places and times authorised by the licence, of the acts so authorised; and

“the other party”, in relation to the owner of the copyright or neighbouring rights, means the exclusive licensee, and, in relation to the exclusive licensee, means the owner of the copyright or neighbouring rights.

(2) This section shall have effect as to proceedings in the case of any copyright or neighbouring rights in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

(3) Subject to the following provisions of this section, the exclusive licensee shall (except against the owner of the copyright or neighbouring rights) have the same rights of action, and be entitled to the same remedies, under section 26 as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright or neighbouring rights under that section.

(4) Where an action is brought either by the owner of the copyright or neighbouring rights or by the exclusive licensee, and the action, in so far as it is brought under section 26, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant; but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

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

(6) Where an action is brought in the circumstances mentioned in subsection (4) and the owner of the copyright or neighbouring rights and the exclusive licensee are not both plaintiffs in the action, the court, in assessing damages in respect of any such infringement as is mentioned in that subsection—

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

- (b) whether the plaintiff is the owner of the copyright or neighbouring rights or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 26 in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(7) Where an action, in so far as it is brought under section 26, relates (wholly or partly) to an infringement in respect of which the owner of the copyright or neighbouring rights and the exclusive licensee have concurrent rights of action under that section, and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the court is aware whereby the application of those profits is determined as between the owner of the copyright or neighbouring rights and the exclusive licensee, the court shall apportion the profits between them as the court may consider just and shall give such directions as the court may consider appropriate for giving effect to that apportionment.

(8) In an action brought either by the owner of the copyright or neighbouring rights or by the exclusive licensee—

- (a) no judgment or order for the payment of damages in respect of an infringement of copyright or neighbouring rights shall be given or made under section 26, if a final judgment or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and
- (b) no judgment or order for an account of profits in respect of an infringement of copyright or neighbouring rights shall be given or made under that section, if a final judgment or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.
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(9) Where, in an action brought in the circumstances mentioned in subsection (4), whether by the owner of the copyright or neighbouring rights or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or subsequently) but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

Presumptions as to subsistence and ownership of copyright and neighbouring rights

29. In an action brought by virtue of this Part—

(a) copyright or neighbouring rights shall be presumed to subsist in the work, production, performance or edition to which the action relates if the defendant does not put in issue the question whether copyright or neighbouring rights subsist therein; and

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

Presumptions in relation to authorship of protected works

30. (1) Subject to section 29, where, in the case of a protected work, a name purporting to be that of the author appears on copies of the work as published or, in the case of an artistic work, appeared on the work when it was made the person whose name so appears (if it is his true name or a name by which he is commonly known) shall, in any action brought by virtue of this Part, be presumed, unless the contrary is proved—

(a) to be the author of the work, and

(b) to have made the work in circumstances not falling within subsection (2), (3) or (4) of section 18.

(2) In the case of a work alleged to be work of joint authorship, subsection (1) shall apply in relation to each person alleged to be one of the authors of the work, as if references in that subsection to the author were references to one of the authors.

(3) Where, in an action brought by virtue of this Part in relation to a photograph—

- (a) it is established that, at the time when the photograph was taken, a person was the owner of the apparatus by which the photograph was taken; or
- (b) the ownership, as at the time when the photograph was taken, of the apparatus by which it was taken is not established, but it is established that at the time of the death of a person, the photograph was owned by that person or if the ownership of the photograph as at that time is not established, was in the possession or custody of that person,

that person shall be presumed, unless the contrary is proved, to have been the person who took the photograph.

(4) Where, in an action brought by virtue of this Part with respect to a protected work, subsection (1) does not apply, but it is established—

- (a) that the work was first published in Trinidad and Tobago and was so published within the period of fifty years ending with the beginning of the calendar year in which the action was brought, and
- (b) that a name purporting to be that of the publisher appeared on copies of the work as first published,

then, unless the contrary is proved, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.

(5) Where in an action brought by virtue of this Part with respect to a protected work it is established that the author of the work is dead—

- (a) the work shall be presumed to be an original work unless the contrary is proved, and
- (b) if it is alleged by the plaintiff that a publication specified in the allegation was the first publication of the work and that it took place in a country and on a date so specified, that

publication shall be presumed, unless the contrary is proved, to have been the first publication of the work and to have taken place in that country and on that date.

(6) For the purposes of this section, a fact shall be taken to be established if it is proved or admitted or if it is presumed in pursuance of this section.

Evidence in  
relation to  
recordings

**31.** In an action brought by virtue of this Part in relation to the neighbouring rights in a sound recording, if records embodying the recording or a part of the recording have been made available (whether by sale or otherwise) to the public and, at the time when records embodying the recording or part of the recording were first so made available, the records or their containers bore a label or other mark containing a statement—

- (a) that a specified person was the owner of the neighbouring rights in the recording;
- (b) that the recording was first published in a specified year; or
- (c) that the recording was first published in a specified country,

that label or mark shall be sufficient evidence of the facts as stated, unless the contrary is proved.

Evidence in  
relation to  
audio-visual  
productions

**32.** In an action brought by virtue of this Part in relation to the neighbouring rights in an audio-visual production, if copies of the production or a part of the production have been made available (whether by sale or otherwise) to the public and, at the time when the copies were first so made available, the copies or their containers bore a label or other mark containing a statement—

- (a) that a specified person was the owner of the neighbouring rights in the production;
- (b) that the production was first published in a specified year; or
- (c) that the production was first published in a specified country,

that label or mark shall be sufficient evidence of the facts as stated, unless the contrary is proved.

33. (1) In this section—

“related offence”, in relation to any proceedings to which subsection (2) applies, means—

Withdrawal of privilege against incrimination of self or spouse in infringement and related proceedings

(a) in the case of proceedings within subsection (3)(a) or (b)—

(i) any offence committed by or in the course of the infringement to which those proceedings relate; or

(ii) any offence not within subparagraph (i) committed in connection with that infringement, being an offence involving fraud or dishonesty;

(b) in the case of proceedings within subsection (3)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;

“related penalty”, in relation to any proceedings to which subsection (2) applies, means—

(a) in the case of proceedings within subsection (3)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement to which those proceedings relate;

(b) in the case of proceedings within subsection (3)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the plaintiff relies in those proceedings.

(2) In any proceedings to which this subsection applies a person shall not be excused, by reason that to do so would tend to expose that person, or his or her spouse, to proceedings for a related offence or for the recovery of a related penalty—

(a) from answering any question put to that person in the first-mentioned proceedings; or

(b) from complying with any order made in those proceedings.

(3) Subsection (2) applies to the following civil proceedings in the High Court, namely—

- (a) proceedings for infringement of copyright or neighbouring rights;
- (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights; and
- (c) proceedings brought to prevent any apprehended infringement of such rights.

(4) Subject to subsection (5), no statement or admission made by a person—

- (a) in answering a question put to him in any proceedings to which subsection (2) applies; or
- (b) in complying with an order made in any such proceedings,

shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person.

(5) Nothing in subsection (4) shall render any statement or admission made by a person as therein mentioned inadmissible in evidence against that person in proceedings for perjury or contempt of court.

(6) Any reference in this section to civil proceedings in the High Court of any description includes a reference to proceedings on appeal arising out of civil proceedings in the High Court of that description.

Provision for  
restricting  
importation of  
infringing copies

34. (1) The owner of the copyright in any published literary or musical work or of neighbouring rights in any audio-visual production or in any published sound recording may give notice in writing to the Comptroller of Customs and Excise—

- (a) that he is the owner of the copyright or neighbouring rights in the work, production or sound recording, and

(b) that he requests the Comptroller, during a period specified in the notice, to treat as prohibited goods copies of the work, production or sound recording to which this section applies, but the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright or neighbouring rights may subsist.

(2) This section applies, in the case of a work, production or sound recording, to any copy made outside Trinidad and Tobago which, if it had been made in Trinidad and Tobago by the importer, would be an infringing copy of the work, production or sound recording.

(3) Where a notice has been given under this section in respect of a work, production or sound recording, and has not been withdrawn, the importation into Trinidad and Tobago, at a time before the end of the period specified in the notice, of any copy of the work, production or sound recording to which this section applies shall, subject to the following provisions of this section, be prohibited; but this subsection shall not apply to the importation of any article by a person for his private and domestic use.

(4) The owner of the copyright or neighbouring rights in a work, production or sound recording who gives notice to the Comptroller under this section shall comply with such conditions with respect to—

- (i) the form of the notice,
  - (ii) the furnishing of evidence,
  - (iii) the payment of fees,
  - (iv) the giving of security, and
  - (v) any other incidental or supplementary matters,
- as may be prescribed.

(5) Notwithstanding anything in the Customs Chap. 32:02 Ordinance, a person shall not be liable to any penalty under that Ordinance (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section.

#### PART VI—EXCEPTIONS

35. (1)(a) For the purposes of this section, the expression “sufficient acknowledgement” means an acknowledgement Acts which do not constitute infringement

identifying the work, production, performance or edition in question by its title or other description and, unless the work is anonymous or the author has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

(b) In this subsection, the term "author" means—

- (i) in relation to a protected work, the author,
- (ii) in relation to a protected production, the maker,
- (iii) in relation to a protected performance, the performer,
- (iv) in relation to an edition, the publisher.

(2) The following acts shall not constitute an infringement of copyright or neighbouring rights, namely—

- (a) fair dealing with a protected work, production, performance or edition for purposes of research or private study;
- (b) fair dealing with a protected work, production, performance or edition for purposes of criticism or review, whether of that or any other work, production, performance or edition, and accompanied by a sufficient acknowledgement;
- (c) fair dealing with a protected work, production, performance or edition for the purpose of reporting current events—
  - (i) in a newspaper, magazine or similar periodical, if accompanied by a sufficient acknowledgement, or
  - (ii) by broadcasting, by communication by cable or by the use of an audio-visual production;
- (d) the reproduction, recording, or making a copy of a protected work, production, performance or edition for the purpose of a judicial proceeding, or any proceeding before a tribunal established by or pursuant to any written law, or for the purpose of a report of a judicial proceeding or of any other such proceedings;

- (e) the reproduction, recording, making a copy of or the publication of a protected work, production, performance or edition by order of either House of Parliament for the use exclusively of the members of that House;
  - (f) the reading or recitation in public of any reasonable extract from a published literary work, accompanied by a sufficient acknowledgement;
  - (g) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of educational institutions, and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published literary or musical works, or small parts of artistic works, not themselves published for the use of educational institutions, in which copyright subsists; but only if—
    - (i) not more than two such passages, or parts, from works by the same author are published by the same publisher during any period of five years, and
    - (ii) the publication is accompanied by a sufficient acknowledgement;
  - (h) the reproduction of a protected work or protected production—
    - (i) by a teacher or pupil in the course of instruction, provided that the reproduction is not made by means of an appliance capable of producing multiple copies;
    - (ii) as part of the questions to be answered in an examination; or
    - (iii) in answer to such questions;
  - (i) the reproduction of a literary or musical work, or of an artistic work being a photograph or engraving, in which copyright subsists, at a time more than fifty years from the end of the
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calendar year in which the author died, and more than seventy-five years after the time, or the end of the period, at or during which the work was made, but only if—

- (i) the work has not been published, or
  - (ii) the manuscript or a copy of the work is kept in a library or other institution where it is (subject to the rules governing the library or institution) open to public inspection, and
  - (iii) the reproduction is made either for purposes of research or private study, or with a view to publication, or in order to preserve the manuscript or copy from damage or destruction by replacing it with the reproduction;
- (j) where a published literary or musical work (in this paragraph referred to as “the new work”) incorporates the whole or part of a work (in this paragraph referred to as “the old work”) in the case of which the circumstances specified in subparagraphs (i) and (ii) of paragraph (i) existed immediately before the new work was published, and—
- (i) before the new work was published, such notice of the intended publication as may be prescribed had been given, and
  - (ii) immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publisher of the new work,

for the purposes of this Act, the first publication of the new work, and any subsequent publication of the new work, either in the same or in an altered form in so far as it constitutes a publication of the old work, or an unauthorised publication of the old work but this paragraph shall not apply to a subsequent

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publication incorporating a part of the old work which was not included in the new work as originally published, unless (apart from this paragraph) the circumstances specified in paragraph (i), and in subparagraphs (i) and (ii) of this paragraph, existed immediately before that subsequent publication;

- (k) in so far as the publication of a work, or of part of a work, is, by virtue of paragraph (j), not to be treated as an infringement of the copyright in the work, a subsequent broadcast of the work or that part thereof as the case may be, or a communication by cable, performance in public, or a record of it made by any person;
  - (l) the performance in the course of the activities of any school or other educational institution designated by order of the Minister, of a literary or musical work or of an audio-visual production or broadcast or the use of a record of a protected performance, by the staff and students of such a school or institution if the audience is composed exclusively of—
    - (i) the staff and students of the school or institution, or
    - (ii) the parents and guardians of the students, or
    - (iii) other persons directly connected with the activities of the school or institution;
  - (m) the inclusion in an audio-visual production or in a broadcast or in a communication by cable, or the making of a painting, drawing, engraving, or photograph—
    - (i) of an artistic work permanently situated in a public place or in any premises to which the public has access, or
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- (ii) of any other artistic work, if the inclusion or the painting, drawing, engraving or photograph of the artistic work is only incidental to the principal matters represented in the audio-visual production or the broadcast, or communication by cable, or in the painting, drawing, engraving or photograph;
- (n) the publication of a painting, drawing, engraving or photograph of an artistic work or of an audio-visual production in which the artistic work has been included, if by virtue of paragraph (m) the making of that painting, drawing, engraving or photograph or the inclusion of the artistic work in the audio-visual production did not constitute an infringement of the copyright in the artistic work;
- (o) (i) where copyright subsists in a building as an artistic work, a reconstruction of that building;
- (ii) where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists and has been so constructed by, or with the licence of the owner of that copyright, a later reconstruction of the building by reference to those drawings or plans;
- (p) the making by the author of an artistic work of a subsequent artistic work, notwithstanding that part of the earlier work—
- (i) is reproduced in the subsequent work, and
  - (ii) is so reproduced by the use of a mould, cast, sketch, plan, model or study made for the purposes of the earlier work,
- if in making the subsequent work the author does not repeat or imitate the main design of the earlier work.
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(3) Each of the exceptions enumerated in paragraphs (a) to (p) of subsection (2) shall apply only to the particular category of work, production, performance or edition mentioned therein, so that an act may constitute an infringement of copyright or neighbouring rights notwithstanding that, by virtue of an exception contained in one of those paragraphs, it does not constitute an infringement of rights mentioned in that paragraph.

(4) For the purpose of determining whether an act in relation to a protected work, production, performance or edition constitutes fair dealing, the court determining the question shall take account of all factors which appear to it to be relevant, including—

- (a) the nature of the work, production, performance or edition in question;
- (b) the purpose and character of the act, and in particular whether the act is of a commercial nature;
- (c) the extent and substantiality of that part of the work, production, performance or edition affected by the act in relation to the whole of the work, production, performance or edition;
- (d) the effect of the act upon the potential market for, or the commercial value of, the work, production, performance or edition.

36. (1) Subject to this subsection, where by virtue of an assignment or licence a person is authorised to broadcast or communicate by cable a literary, musical work or audiovisual production or a performance from a place in Trinidad and Tobago but (apart from this subsection) would not be entitled to make reproductions, copies or records of it, the authority contained in the assignment or licence shall be deemed to extend—

Statutory licences  
—recordings for  
broadcasting

- (a) to making a reproduction, copy or record of the work, production or performance solely for the purpose of the broadcasting or communicating by cable of it by the assignee or licensee, or
  - (b) to making one reproduction, copy or record only for archival purposes;
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but this subsection shall not apply if—

- (i) the reproduction, copy or record is used for making any further reproductions, copies or records therefrom or for any other purpose except either for broadcasting or communicating by cable in accordance with the assignment or licence or for archival purposes; or
- (ii) the reproduction, copy or record (unless kept for archival purposes) is not destroyed before the end of the period of ninety days beginning with the day on which it is first used for broadcasting or communicating by cable the work, production or performance in pursuance of the assignment or licence, or such extended period (if any) as may be agreed between the person who made the production, copy or record and the person who (in relation to the making of reproductions, copies or records of the description in question) is the owner of the copyright or neighbouring rights.

Records of works  
already recorded

(2) Where records of a literary or musical work have, with the licence or consent of the owner of the copyright in the work, been previously—

- (i) made in Trinidad and Tobago, or
- (ii) imported into Trinidad and Tobago,

for the purposes of retail sale, any person may after the expiry of the period of four months immediately following upon the date of the first authorised manufacture in, or importation, into Trinidad and Tobago of such records, and without first obtaining the consent or licence of the owner of the copyright in the work, make or authorise the making of records of it provided that—

- (a) the person intends to sell the records by retail, or to supply them for the purpose of being sold by retail by another person, or intends to use them for making other records which are to be so sold or supplied; and
  - (b) the person pays royalties calculated at the rates set out in the Schedule or at such other rates as may from time to time be prescribed in *lieu* thereof; and
  - (c) complies with such conditions relating to notice, method and time of payment, administration
-

of royalties paid and other matters, as may be prescribed; and

- (d) the person who makes or authorises the making of records pursuant to this subsection shall not make or authorise the making of any alterations in, or omissions from the work, unless records of that work containing similar alterations and omissions have been previously made by, or with the licence or consent of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the record in question.

(3) (a) Where a protected literary or musical work, audio-visual production or performance is broadcast with the licence of the owner of the copyright or neighbouring rights, any person may, without obtaining the licence of the owner of the copyright or neighbouring rights, incorporate (by means of the reception of the broadcast) the work, production or performance, in a communication by cable: Provided that—

Communication  
by cable of  
authorised  
broadcasts

- (i) the communication by cable takes place simultaneously with the reception of the broadcast, and
- (ii) the broadcast programme in which the literary or musical work, audio-visual production or performance is incorporated, is communicated without any alteration of any kind, and
- (iii) the owner of the copyright or neighbouring rights shall be entitled to receive from the person providing or authorising the communication by cable equitable remuneration in respect of the communication to be fixed, in default of agreement, by the High Court.

(b) For the purposes of this subsection an alteration to a programme includes the addition thereto of new material not contained in the programme as broadcast, or the omission from the communication of any material contained in the programme as broadcast; and the term "material" includes a commercial advertisement.

Public  
performance,  
broadcast or  
communication by  
cable of authorised  
records

(4) Where a record has, with the consent of the performer, been made of a performance, the performer's authority shall not be required for any public performance, broadcast or communication by cable made by means of that record save that the performer shall, in respect of such public performance, broadcast or communication by cable, be entitled to receive from the person giving, or authorising the public performance, broadcast or communication by cable equitable remuneration which, in the absence of agreement, shall be fixed by the High Court.

Reproduction by  
designated  
libraries

(5) (a) A literary, musical or artistic work or a sound recording may, without the licence or consent of the owner of the copyright or neighbouring rights in the work or production having been obtained, be reproduced by or under the direction of the person in charge of a designated library provided that the reproduction is made, and used, in accordance with such conditions as shall be prescribed.

(b) Regulations prescribing conditions for the purpose of this subsection shall make provision that—

- (i) in the case of the reproduction of an extract from a published work in the custody of a designated library, the person in charge of the library shall be responsible for ensuring that any person who makes such a reproduction on the premises of the library is aware of the conditions imposed by this Act and by any Regulations on the making of such reproductions and that any facilities provided by the library for making reproductions are withdrawn from any person who does not comply with such conditions;
- (ii) in the case of the reproduction of an entire work or of an extract from an unpublished work, the person in charge of a designated library shall be responsible for ensuring that no such reproduction is made on the premises of the library without the consent of the copyright owner, unless there is reasonable evidence that subsection 35(2)(a) would apply to the making of the reproduction or that the

reproduction cannot reasonably be obtained in any other way, or unless the reproduction is required exclusively for archival purposes.

(c) A designated library is any library which the Minister, having been satisfied that the facilities of the library are available generally to members of the public and that it is not conducted for profit, has designated by order as a public library for the purposes of this Act.

(d) For the purposes of paragraph (c) the Minister is the Minister to whom is assigned responsibility for education.

(6) (a) Subject to this subsection, the President may make regulations providing for the grant by a competent authority designated in the regulations of licences authorising—

Translation and reproduction licences under Berne and U.C.C.

- (i) the translation of published literary works in which copyright subsists;
- (ii) the reproduction of—
  - (a) published literary works in which copyright subsists;
  - (b) audio-visual productions, broadcasts and editions (including any protected works incorporated in such audio-visual productions, broadcasts or editions) in which neighbouring rights subsist.

(b) Regulations made under this subsection shall be consistent with the terms and conditions regulating the grant of such licences contained in the Appendix to the Paris Act, 1971 of the Berne Convention for the Protection of Literary and Artistic Works and in Article *v bis*, *v ter* and *v quater* of the Universal Copyright Convention as revised at Paris on 24th July, 1971, and with the terms of the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations established in 1961.

#### PART VII—OFFENCES

37. (1) A person who, at a time when copyright or neighbouring rights subsist in a protected work, production, performance or edition—

Dealings infringing Penalties in respect of

- (a) makes for sale or hire, or

- (b) sells or lets for hire or, by way of trade, offers or exposes for sale or hire, or
- (c) by way of trade, exhibits in public, or
- (d) imports into Trinidad and Tobago, otherwise than for his private and domestic use, or
- (e) has in his possession in the course of trade, or
- (f) distributes—
  - (i) for the purpose of trade, or
  - (ii) for any other purpose, but to such an extent as to affect prejudicially the owner of the copyright or neighbouring rights,

any article that is an infringing copy of the work, production, performance or edition, or any plate used or intended to be used for making infringing copies of such a work, production, performance or edition is, unless he proves to the satisfaction of the court that he did not know and that he had no reason to believe that the article was an infringing copy of such a work, production, performance or edition or that the plate was used or intended to be used for making an infringing copy of such a work, production, performance or edition, guilty of a summary offence and is liable—

- (i) on first conviction of an offence under this section, to a fine of two thousand dollars for each article to which the offence relates and to imprisonment for six months; and
- (ii) on a second or subsequent conviction of an offence under this section, to a fine of ten thousand dollars for each article to which this offence relates and to imprisonment for two years,

but a fine imposed by virtue of this subsection shall not exceed fifty thousand dollars in respect of articles comprised in the same transaction.

(2) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy of a work, production, performance or edition in which copyright or neighbouring rights subsist under this Act or a plate used

for making infringing copies of such a work, production, performance or edition shall be destroyed or delivered up to the owner of the copyright or neighbouring rights in question or otherwise dealt with as the court may think fit.

38. A person who at a time when copyright or neighbouring rights subsists in a literary or musical work or audiovisual production causes the work or production to be performed in public, is, unless he proves to the satisfaction of the court that he did not know and that he had no reason to believe that copyright or neighbouring rights subsisted in the work or production, as the case may be, or that the performance would constitute an infringement of the copyright or neighbouring rights, liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for two years.

Penalties in respect of unauthorised public performances

39. (1) Subject to this Act, a person who—

- (a) makes a record, directly or indirectly, from or by means of the performance of a protected work without the consent in writing of the performer,
- (b) sells or lets for hire, or distributes for the purposes of trade, or by way of trade exposes or offer for sale or hire, such record made without such consent, or
- (c) uses for the purposes of a public performance a record so made,

Penalties in respect of records made without consent of performers

is liable on summary conviction to a fine of two thousand dollars for each record in respect of which an offence is proved and to imprisonment for six months, but a fine imposed by virtue of this section shall not exceed twenty thousand dollars in respect of any one transaction.

(2) For the purposes of paragraphs (b) and (c) of subsection (1) a record made in a country outside Trinidad and Tobago directly or indirectly from or by means of a protected performance shall be deemed to have been made in contravention of this Act if, whether knowingly or not, it was made without the consent in writing of the performer.

Records made abroad

40. Where a person is charged with an offence under section 39(1)(a), it shall be a defence to prove that the record was made for his private and domestic use only.

Special defences in case of private and domestic use

Penalty for  
broadcasting or  
communicating by  
cable without  
consent of  
performers

41. Subject to this Act, a person who, otherwise than by the use of a record or audio-visual production, broadcasts or communicates by cable a protected performance, or a substantial part thereof, without the consent in writing of the performer, is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.

Penalty for  
making or  
possessing plates  
used for  
contravening s. 39

42. A person who makes, or has in his possession, a plate or similar contrivance for the purpose of making records in contravention of section 39, is liable on summary conviction to a fine of five thousand dollars for each plate or similar contrivance in respect of which an offence is proved and to imprisonment for twelve months, but a fine imposed by virtue of this subsection shall not exceed fifty thousand dollars.

Power of court to  
order destruction  
of records made  
in contravention  
of Act

43. Where a person has been convicted of an offence under section 38, section 39, section 41 or section 42, the court may order that all records, audio-visual productions, plates or similar contrivances in the possession of the offender which appear to the court to have been made in contravention of any of these sections, or to be adapted for the making of records in contravention of any of these sections, and in respect of which the offender has been convicted, be destroyed or otherwise dealt with as the court may think fit.

Special defences

44. Notwithstanding anything in the preceding provisions of this Part, it shall be a defence to any proceedings under this Part to prove that—

- (a) the record, audio-visual production, communication by cable or broadcast to which the proceedings relate was made only for the purpose of reporting current events, or
- (b) the inclusion of the performance in question in the record, audio-visual production, communication by cable or broadcast to which the proceedings relate was only incidental to the principal matters comprised or represented in the record, audio-visual production, communication by cable or broadcast.

45. Where in any proceedings under this Part (otherwise than under section 46) it is proved that—

Performer's  
consent—by  
agent

- (a) the record, audio-visual production, communication by cable or broadcast to which the proceedings relate was made with the consent in writing of a person who, at the time of giving the consent, represented that he was authorised by the performers to give it on their behalf, and
- (b) the person making the record, audio-visual production, communication by cable or broadcast had no reasonable grounds for believing that the person giving the consent was not so authorised,

this Part shall apply as if it had been proved that the performers had themselves consented in writing to the making of the record, audio-visual production, communication by cable or broadcast.

46. Where—

- (a) a record, audio-visual production, communication by cable or broadcast is made with the consent in writing of a person who, at the time of giving the consent, represented that he was authorised by the performers to give it on their behalf when to his knowledge he was not so authorised, and
- (b) if proceedings were brought against the person to whom the consent was given, the consent would by virtue of section 45 afford a defence to those proceedings,

An offence if  
performer's  
consent given  
without his  
authority

the person giving the consent is liable on summary conviction to a fine of two thousand dollars and to imprisonment for six months.

47. (1) Any police officer not below the rank of Inspector may—

Powers of police  
officers

- (a) (i) subject to section 48, enter and search any premises or place;
- (ii) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or

- (iii) stop and search any vehicle, in which he reasonably suspects that there is an infringing copy of a work, production, performance or edition in which copyright or neighbouring rights subsist or a plate used or intended to be used for making infringing copies of any such work, production, performance or edition; and
  - (b) seize, remove or detain—
    - (i) any article which appears to him to be an infringing copy of a work, production, performance or edition in which copyright or neighbouring rights subsist or any plate which appears to him to be intended for use for making infringing copies of any such work, production, performance or edition; and
    - (ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.
  - (2) Any police officer not below the rank of Inspector may—
    - (a) break open any outer or inner door of any place which he is empowered or authorised by this Act to enter and search;
    - (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Act to stop, board and search;
    - (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
    - (d) detain any person found in any place which he is empowered or authorised by this Act to search until such place has been searched;
    - (e) detain any vessel or aircraft which he is empowered by this Act to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
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- (f) detain any vehicle which he is empowered by this Act to stop and search until it has been searched.

48. (1) In this section "domestic premises" means any premises, or any part thereof, used exclusively or mainly as a dwelling.

Restrictions on the entry and search of domestic premises

(2) No domestic premises shall be entered and searched by a police officer unless a magistrate has issued a warrant under subsection (3).

(3) A magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any domestic premises any article which may be seized, removed or detained under section 47(1)(b), issue a warrant authorising a police officer not below the rank of Inspector to enter and search the premises.

(4) A police officer not below the rank of Inspector authorised under subsection (3) to enter and search any domestic premises may call upon any police officer to assist him in entering and searching the premises.

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

Obstruction of Police Officers

- (a) wilfully obstructs a police officer in the exercise of his powers or the performance of his duties under this Act;
- (b) wilfully fails to comply with any requirement properly made to him by any such police officer; or
- (c) without reasonable excuse, fails to give such police officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

is liable on summary conviction to a fine of five thousand dollars and to imprisonment for twelve months.

(2) A person who, when required to give information to a police officer in the exercise of his powers or the performance of his duties under this Act, knowingly gives false or misleading information to any such police officer is liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months.

(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

Power to arrest  
without warrant

50. Any constable may arrest without a warrant any person who—

- (a) has committed, or attempted to commit, or
- (b) is reasonably suspected of having committed or having attempted to commit,

an offence under this Act, if—

- (i) he has reasonable grounds for believing that the person will abscond unless arrested, or
- (ii) if the name and address of the person are unknown to him and cannot be ascertained by him, or
- (iii) if he has reason to believe and believes that the name and address given by the person are false.

Offences by  
bodies corporate

51. Where an offence under any of the preceding sections of this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.

Time limited for  
prosecution

52. No prosecution for an offence under this Act shall be commenced after the expiration of five years after the commission of the offence or one year after the discovery thereof, whatever date last occurs.

#### PART VIII—MORAL RIGHTS

Authors' moral  
rights

53. (1) For the purposes of this section the expression "name" includes initials or a monogram.

(2) Subject to this section where copyright subsists in a protected work, no person may, without the consent of the author, or, after the author's death, of his personal representative, do or authorise the doing of any of the following acts—

- (a) the presentation of the work to the public, by any means whatsoever, under a name other than that of the author, or
- (b) the presentation of the work to the public, by any means whatsoever, in a modified form if the modification—
  - (i) significantly alters the work, and
  - (ii) is such that it might reasonably be regarded as adversely affecting the reputation and status of the author in his profession.

(3) Where a person is authorised, whether by virtue of an assignment, a licence or otherwise, to publish, reproduce, perform in public, broadcast or communicate by cable a protected work, that person may make modifications to the work if it would be reasonable to expect that the authorised publication, reproduction, public performance, broadcast or communication by cable, as the case may be, could not take place without the modifications; but nothing in this subsection shall authorise a modification to a work which would constitute a contravention of subsection (2).

(4) The author or, after his death, his personal representative, may exercise the rights conferred by this section notwithstanding that the copyright in the work is not at the time of the act complained of, vested in the author or personal representative, as the case may be.

(5) Any contravention, or threatened contravention, of this section in respect of a protected work shall be actionable at the suit of the author of the work, or if he is dead, at the suit of his personal representative, as a breach of statutory duty.

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

(7) Where in an action brought under this section a contravention of the restrictions imposed by this section is proved or admitted, the court may order the offender to publish such correction in such manner as the court may direct.

(8) Nothing in this section shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this section; but this subsection shall not be construed as requiring any damages recovered by virtue of this section to be disregarded in assessing damages in any proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

PART IX—SPECIAL JURISDICTION OF  
THE HIGH COURT

Interpretation

54. For the purposes of this Part, the expression—  
“general licence” means a licence extending to—  
(a) the works of several authors, or  
(b) to the productions of several makers, or  
(c) to the performances of several performers, and which does not apply different terms and conditions as between the several authors, makers or performers, as the case may be;

“licensing body” means any society or organisation which has as its main object, or one of its main objects, the negotiation or granting of general licences in respect of protected works, productions or performances either as the owner or prospective owner of the copyright or neighbouring rights therein, or as agent for the owners or prospective owners thereof.

Jurisdiction of  
High Court

55. Subject to this Act, the High Court shall have jurisdiction—

- (i) to determine any dispute which may be referred to it pursuant to section 57;
- (ii) to fix the amount of equitable remuneration or compensation which by any provision of this Act is required to be fixed by the High Court, in any case where there has been no agreement between a person and the owner of the copyright or neighbouring rights as to the amount of remuneration or compensation payable in respect of the use of the work, production or performance.

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

Procedure in  
proceedings  
before High Court

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

(3) Where—

(a) the High Court makes an order by way of determination of a dispute referred to it pursuant to section 57, the High Court may, in its discretion, direct that the order shall have effect retroactively to such date as the Court specifies; but no order shall have effect from a date prior to the date on which the dispute was formally referred to the High Court;

(b) the High Court fixes an amount of equitable remuneration or compensation pursuant to paragraph (ii) of section 55, the Court may also give directions as to the method and time of payment and may stipulate such other conditions of payment as it considers reasonable.

57. (1) Where a dispute arises between any person and a licensing body with respect to—

Disputes with  
licensing bodies

(a) the refusal of the licensing body to grant to that person a general licence to which this section applies, or

(b) the terms and conditions on which the licensing body is prepared to grant such a licence—

either that person or the licensing body may refer the dispute to the High Court.

(2) This section applies to a general licence authorising the licensee—

- (a) in the case of literary or musical works, to reproduce, perform in public, communicate by cable, or broadcast the works;
- (b) in the case of audio-visual productions, to make copies of them, broadcast or communicate them by cable, or cause them to be publicly performed;
- (c) in the case of performances, to make records of or broadcast the performance or communicate them by cable.

(3) For the purposes of this section, a licensing body shall be deemed to have refused to grant a general licence to a person if the licensing body has failed, within a reasonable time from the date when that person has made a written request to the licensing body for such a licence, to grant a licence or to state in writing the terms and conditions on which it is prepared to grant the licence.

(4) While an order made by the High Court by way of determination of a dispute referred to it pursuant to subsection (1) remains in force, either party to the dispute may refer the matter back to the High Court for further consideration, but, except with the special leave of the Court—

- (a) an order made so as to be in force for not more than two years from the date it took effect may not be referred back to the Court under this subsection,
- (b) an order made so as to be in force indefinitely or for more than two years from the date it took effect may not be referred back to the Court before the expiry of twelve months from the date when the order was made.

Rights of appeal

**58.** (1) Save as provided in subsection (2), the hearing and determination of any proceedings before the High Court in the exercise of the jurisdiction conferred on it by this Part shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever.

(2) Any party to proceedings before the High Court in virtue of the jurisdiction conferred on it by this Part is

entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other—

- (a) that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;
- (b) that the Court has exceeded its jurisdiction in the matter;
- (c) that the order or award has been obtained by fraud;
- (d) that any finding or decision of the Court in any matter is erroneous in point of Law; or
- (e) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

(3) On the hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power—

- (a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or
- (b) to order a new hearing on any question without interfering with the finding or decision upon any other question,

and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(4) The Court of Appeal may in any matter brought on appeal before it dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred notwithstanding that it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

#### PART X—INTERNATIONAL ARRANGEMENTS

59. (1) Subject to this section, the President may by order make provisions applying any of the provisions of Application of Act to other countries

this Act specified in the order, in relation to a country so specified, in any one or more of the following ways:

- (a) so that the provisions apply in relation to literary, musical or artistic works or editions first published, or sound recordings or audio-visual productions made or first published, in that country in like manner as those provisions apply in relation to literary, musical or artistic works or editions first published, or sound recordings or audio-visual productions made or first published in Trinidad and Tobago;
  - (b) so that the provisions apply in relation to artistic works that are buildings erected in that country or are incorporated in buildings situated in that country in like manner as those provisions apply in relation to artistic works that are buildings erected in Trinidad and Tobago or are incorporated in buildings situated in Trinidad and Tobago;
  - (c) so that the provisions apply in relation to persons who, at a material time, are citizens or nationals of that country in like manner as those provisions apply in relation to persons who, at such time, are citizens of Trinidad and Tobago;
  - (d) so that the provisions apply in relation to persons who, at a material time, are domiciled or resident in that country in like manner as those provisions apply in relation to persons who, at such times, are domiciled or resident in Trinidad and Tobago;
  - (e) so that the provisions apply in relation to bodies incorporated under the law of that country in like manner as these provisions apply in relation to bodies incorporated or established under any written law;
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(f) so that the provisions apply in relation to television broadcasts and sound broadcasts made from places in that country by persons entitled under the law of that country to make such broadcasts in like manner as those provisions apply in relation to television broadcasts and sound broadcasts made by broadcasting organisations in possession of valid licences granted by or under the law regulating wireless telegraphy.

(2) An order applying a provision of this Act in relation to a country other than Trinidad and Tobago in accordance with subsection (1)—

- (a) may apply the provision without exception or modification or subject to such exceptions or modifications as are specified in the order; and
- (b) may apply the provision either generally or in relation to such classes of works, productions, performances or editions, or other classes of cases, as are specified in the order.

(3) An order applying any of the provisions of this Act in relation to a country not being a country that is a party to a Convention relating to copyright or to neighbouring rights in which Trinidad and Tobago is also a party, shall not be made unless the President is satisfied that, in respect of the class of works, productions, performances or editions to which those provisions relate, provision has been or will be made under the law of that country by virtue of which adequate protection is or will be given to owners of copyright or neighbouring rights under this Act.

(4) Where—

- (a) the identity of the author of an unpublished work is unknown but there are reasonable grounds for believing that the author of the work was, at the time when or for a substantial part of the period during which the work was made, a citizen or national of a country other than Trinidad and Tobago; and

(b) under the law of that country, a person is authorised to represent the author, or to protect and enforce the rights of the author, in relation to that work; and

(c) provision is made by the order applying any of the provisions of this Act in relation to works made by citizens or nationals of that country,

that person shall, for the purposes of those provisions as so applying, be treated as if he were the author of the work.

**Denial of copyright or neighbouring rights to citizens of countries not giving adequate protection to Trinidad and Tobago works or performances**

**60. (1)** For the purposes of this section, the expression—

“author”, in relation to a sound recording or an audio-visual production, means the maker of the recording or production;

“Trinidad and Tobago work or performance” means a work the author of which was, at the time when the work was made, a qualified person for the purposes of the relevant provision of this Act, or a performance by a performer who was at the time of the performance such a qualified person;

“the relevant provision of this Act” means—

(a) in relation to a literary, musical or artistic work, section 7; and

(b) in relation to a sound recording or an audio-visual production, section 11; and

(c) in relation to a performance, section 14;

“work” means a literary, musical or artistic work, a sound recording or an audio-visual production.

(2) Where it appears to the President that the law of a country does not give adequate protection to Trinidad and Tobago works or performances, or does not give adequate protection in relation to a class or classes of such works or performances (whether the lack of protection relates to the nature of the work or performance or the nationality, citizenship or country of residence of its author or performer or all of those matters), the President may, by order, make provision in relation to that country in accordance with subsection (3).

(3) An order made for the purposes of this section may provide, either generally or in such classes of cases as are specified in the order, that copyright or neighbouring rights shall not subsist in works first published or in performances first given after a date specified in the order (which may be a date before the commencement of this Act) if, at the time of the first publication of those works or the giving of the performances, the authors of the works or the performers were or are—

- (a) citizens or nationals of a country specified in the order, not being at that time persons resident in Trinidad and Tobago; or
- (b) in the case of works being sound recordings or audio-visual productions, bodies incorporated under the law of a country specified in the order.

(4) In making an order for the purposes of this section, the President shall have regard to the nature and extent or the lack of protection for Trinidad and Tobago works and performances by reason of which the order is made.

61. (1) Where it appears to the President that it is desirable that this Act should apply in relation to an organisation—

Application  
of Act to  
international  
organisations

- (a) of which two or more countries, or the Governments of two or more countries, are members; or
- (b) that is constituted by persons representing two or more countries, or representing the Governments of two or more countries;

he may by order declare that organisation to be an international organisation to which this Act applies.

(2) An international organisation to which this Act applies which otherwise does not have, or at some material time otherwise did not have, the legal capacities of a body corporate has, and shall be deemed at all material times to have had, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright or neighbouring rights and for the purposes of all legal proceedings relating to copyright or such neighbouring rights.

Original works  
made or first  
published by  
international  
organisations

62. (1) Where an original literary, musical or artistic work is made by, or under the direction or control of, an international organisation to which this Act applies in such circumstances that copyright would not, apart from this subsection, subsist in the work, then—

- (a) copyright shall subsist in the work, and shall continue to subsist so long as the work remains unpublished; and
- (b) the organisation shall be, subject to Part IV, the owner of that copyright.

(2) Where an original literary, musical or artistic work is first published by, or under the direction or control of, an international organisation to which this Act applies in such circumstances that copyright would not, apart from this subsection, subsist in the work immediately after the first publication of the work, then—

- (a) copyright shall subsist in the work, or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist in the work; and
- (b) the copyright shall subsist until the expiration of fifty years after the expiration of the calendar year in which the work was first published; and
- (c) the organisation shall be, subject to Part IV, the owner of that copyright.

(3) Save in so far as other provision is made by this section, Part II shall apply in relation to copyright subsisting by virtue of this section in like manner as it applies in relation to copyright subsisting by virtue of that Part.

Recordings and  
audio-visual  
productions made  
or first published  
by international  
organisations

63. (1) Where a sound recording or an audio-visual production is made by, or under the direction or control of, an international organisation to which this Act applies in such circumstances that neighbouring rights would not, apart from this subsection, subsist in the recording or audio-visual production, then—

- (a) neighbouring rights shall subsist in the recording or production, and shall subsist so long as the recording or production remains unpublished; and
- (b) the organisation shall be, subject to Part IV, the owner of the rights.

(2) Where a sound recording or an audio-visual production is first published by, or under the direction or control of, an international organisation to which this Act applies in such circumstances that neighbouring rights would not, apart from this subsection, subsist in the recording or production immediately after the first publication of the recording or work, then—

- (a) neighbouring rights shall subsist in the recording or production, or if such rights in the recording or production subsisted immediately before its first publication, shall continue to subsist in the recording or production;
- (b) neighbouring rights shall subsist until the expiration of fifty years after the expiration of the calendar year in which the recording or production was first published; and
- (c) the organisation shall be, subject to Part IV, the owner of the neighbouring rights.

(3) Where an edition of a literary or musical work or two or more literary or musical works, other than an edition that reproduces a previous edition of the same work or works, is published by, or under the direction or control of, an international organisation to which this Act applies in such circumstances that neighbouring rights would not, apart from this subsection, subsist in the edition immediately after the first publication of the edition, then—

- (a) neighbouring rights shall subsist in the edition and shall continue to subsist until the expiration of twenty-five years after the expiration of the calendar year in which the edition was first published; and
- (b) subject to Part IV, the organisation shall be the owner of the neighbouring rights.

(4) Save in so far as other provision is made by this section, Part III shall apply in relation to neighbouring rights subsisting by virtue of this section in like manner as it applies in relation to neighbouring rights subsisting by virtue of that Part.

## PART XI—MISCELLANEOUS

## Regulations

64. (1) Save for matters required to be prescribed by rules of court for the purposes of Part IX, the Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of the power conferred by subsection (1), regulations made under this section with respect to the making of records pursuant to section 36(2) may be expressed to apply also to the making of records of literary or musical works that are made otherwise than pursuant to section 36(2).

## Copyright and neighbouring rights to subsist only under statute law

65. Subject to this Act, no copyright or right in the nature of copyright shall subsist in any literary, musical or artistic work and no neighbouring rights or right in the nature of neighbouring rights shall subsist in any sound recording, audio-visual production or broadcast or in the performance of a literary or musical work or in an edition of any literary or musical work, otherwise than by virtue of this Act or of some other enactment in that behalf.

Repeals  
Chap. 82:80  
1 & 2 Geo. V  
c. 46.

66. (1) The Copyright Act, other than Part I, and the Copyright Act 1911 of the United Kingdom in so far as it has effect as part of the law of Trinidad and Tobago are hereby repealed.

## Ch. 3:01

(2) Without prejudice to section 29 of the Interpretation Act, the repeals effected by subsection (1) include the repeal of—

1 & 2 Geo. V  
c. 46

- (a) any Order-in-Council made under the Copyright Act 1911 of the United Kingdom so repealed, in so far as it has effect as part of the law of Trinidad and Tobago;
- (b) any subsidiary legislation made under the Acts so repealed, or in so far as it has effect as part of the law of Trinidad and Tobago, made under any Order-in-Council so repealed.

67. (1) Where immediately prior to the commencement of this Act copyright subsists in Trinidad and Tobago in a literary, musical or artistic work by virtue of the Copyright Act 1911 of the United Kingdom, such copyright shall continue to subsist, and the person entitled thereto by virtue of that Act shall be the owner thereof, under and subject to this Act, and in particular—

Transitional provisions

1 & 2 Geo. V  
c. 46

- (a) the duration of such copyright;
- (b) the acts comprised within the exclusive rights attaching to such copyright; and
- (c) the effect upon the ownership of such copyright of any event or transaction occurring, or of any contract or agreement made, after the commencement of this Act;

shall be governed by this Act.

(2) Where, at the commencement of this Act, copyright subsists in Trinidad and Tobago, by virtue of section 19(1) of the Copyright Act 1911 of the United Kingdom, in any record, perforated roll or other contrivance by virtue of which sounds may be mechanically produced, such copyright shall continue—

1 & 2 Geo. V  
c. 46

- (a) to subsist for the remainder of the period for which it would have subsisted if this Act had not been passed; and
- (b) in relation to any such record, perforated roll or contrivance, to have the meaning and effect it would have had if this Act had not been passed.

(3) Nothing in this Act shall be construed as reviving any copyright which subsisted by virtue of the Copyright Act 1911 of the United Kingdom or as creating a neighbouring right in relation to any work in which such copyright subsisted, where, prior to the commencement of this Act, such copyright had ceased to subsist.

1 & 2 Geo. V  
c. 46

(4) Where any person has, before the commencement of this Act, incurred any expenditure or liability in connection with, or in contemplation of, the doing of an act in relation to a protected work, production, performance or edition, being an act which prior to that date would have been lawful, nothing in this Act shall diminish or prejudice any rights or interests which, in relation to that work, production, performance or edition, are subsisting and valuable on the date of the commencement of this Act, unless the

person who, by virtue of this Act, is the owner of the copyright or neighbouring rights, agrees to pay such compensation as, in default of agreement, may be fixed by the High Court.

(5) Subject to this subsection—

- (a) proceedings under this Act for infringement may be taken notwithstanding that the alleged infringement occurred before the commencement of this Act;
- (b) proceedings for infringement of copyright instituted and not disposed of before the commencement of this Act shall be disposed of as if this Act had not been passed;
- (c) where an act done before the commencement of this Act was then an infringement of copyright but is not an infringement of copyright or neighbouring rights under this Act, proceedings in respect of that act may be taken as if this Act had not been passed;
- (d) nothing in this Act shall render any act done before the commencement of this Act an infringement of copyright or neighbouring rights under this Act if that act would not, but for the passing of this Act, have constituted an infringement.

Savings

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

Chap. 32:02

(2) Nothing in this Act affects the right of the State, or any person deriving title from the State, to sell, use or otherwise deal with articles forfeited under the Customs Ordinance including any article so forfeited by virtue of this Act or an enactment repealed by this Act.

Section 36(2)

#### THE SCHEDULE

##### RATES OF ROYALTIES

##### PAYABLE FOR RECORDING MUSICAL AND LITERARY WORKS

The royalties payable by a producer in respect of records made pursuant to section 36(2) shall be calculated at the rate of royalty, and in the manner, set out in the following paragraphs.

Normal basis of calculation

- (i) The standard amount of royalty shall be the product of multiplying the number of records made by six per cent of the retail selling price at which the producer intends each record to be sold.

- (ii) Subject to paragraph (iii), if the standard royalty for one record as calculated according to paragraph (i) of this Schedule is less than the sum produced by multiplying every minute (or part thereof) of the playing time of the record by five cents, then the royalty payable for each record shall be that sum. <sup>Minimum royalty</sup>
- (iii) Where a record consists partly of copyright and partly of non-copyright material, the amount of royalty payable shall be reduced to the proportion of the standard royalty, or the minimum royalty as the case may be, which the duration of copyright material bears to the total duration of the record. <sup>Apportionment</sup>
- (iv) Where it is established that records are being sold at a retail price in excess of the price upon which the standard amount of royalties payable was calculated, additional royalties shall be payable equivalent to the amount by which the royalties, as calculated on the highest actual retail price, exceeds the standard royalties. <sup>Additional royalties</sup>

Passed in the Senate this 13th day of November, 1984.

*Clerk of the Senate*

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate that is to say by the votes of 25 Senators.

*Clerk of the Senate*

Passed in the House of Representatives this 14th day of March, 1985.

*Clerk of the House*

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of 29 members of the House.

*Clerk of the House*

House of Representatives Amendments agreed to by the Senate on the 3rd April, 1985.

*Clerk of the House*