

# **THE COPYRIGHT ACT, 2002**

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## **SCHEDULE**

**ANTIGUA AND BARBUDA**

**No. of 2002**

**BILL FOR**

**AN ACT** to make provision with respect to copyright, to confer rights in performances on performers and other, to repeal the Copyright Act Cap. 104 and the Copyright Act of 1911 of the United Kingdom in so far as it applies to Antigua and Barbuda and for related matters.

**ENACTED** by the Parliament of Antigua and Barbuda as follows –

**PART I - PRELIMINARY**

- |                        |           |     |   |
|------------------------|-----------|-----|---|
| <b>Short title</b>     | <b>1.</b> | (1) | This Act may be cited as the Copyright Act, 2002.   |
| <b>and</b>             |           |     |   |
| <b>Commence-</b>       |           | (2) | The Act shall come into force on a day to be appointed by the Minister  |
| <b>ment.</b>           |           |     | by notice published in the Gazette.   |
| <b>Interpretation.</b> | <b>2.</b> | (1) | In this Act –   |
|                        |           |     | “adaptation” means –  |
|                        |           | (a) | in relation to a literary or dramatic work –  |
|                        |           | (i) | a translation of the work which, as respects a computer program, includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code, otherwise than incidentally in the course of running the program; |

- (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;
  - (iii) a version of a work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;
- (b) in relation to a musical work, an arrangement or transcription of the work;

“article” in the context of an article in a periodical, includes an item of any description;

“artistic work” means –

- (a) a graphic work, photograph, sculpture or collage, 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;

“audiovisual work” is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds susceptible of being made audible.

“author” in relation to a work, means the natural person who creates it, being in relation to –

- (a) a literary or dramatic work, the author of the work;
- (b) a musical work, the composer;
- (c) an artistic work (other than a photograph) the artist;
- (d) a photograph, the person taking the photograph;
- (e) a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
- (f) the typographical arrangement of a published edition, the publisher;
- (g) a broadcast, the person making the broadcast as described in section 4(2) or, in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person making that other broadcast;
- (h) a cable programme, the person providing the cable programme service in which the programme is included;
- (i) a computer-generated literary, dramatic, musical or artistic work, the person by whom the arrangements necessary for the creation of the work are undertaken,

and in relationship to a work of a joint authorship, references in this Act to the author of a work shall, except as otherwise provided, be construed as references to all the authors of the work;

“a broadcast” means the communication of a work a performance or a phonogram to the public by a transmission by wireless including transmission by satellite, sounds or other information which –

- (a) having regard to section 4, is capable of being lawfully received by members of the public; or
- (b) is transmitted for presentation to members of the public;

“to broadcast” means to transmit by wireless telegraphy visual images or sounds, or both, for reception by the public notwithstanding that –

- (a) 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;
- (b) 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; or
- (c) no member of the public actually received 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 fixed structure of any kind and a part of a building or fixed structure;

“business” includes a trade or profession;

“cable programme” means any item included in a cable programme service, and any reference in this Act –

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

“cable programme service” means a service which consists wholly or mainly in sending visual images, sounds or other information by means of a telecommunications system, otherwise than by wireless telegraphy, for reception-

- (a) at two or more places (whether for simultaneous reception or at different times in response to requests by different users); or
- (b) for presentation to members of the public, and which is not, or to the extent that it is not, excepted by regulations made under this Act;

“collective work” means a work created by two or more natural persons at the initiative and under the direction of a natural person or legal entity, with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing natural persons will not be indicated;

“communication to the public” is the transmission by wire or without wire of the images or sounds, or both, of a work, a performance, a phonogram or a broadcast in such a way that the images or sounds can be

perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places and/or times individually chosen by them;”

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

“computer-generated work” means a work generated by a computer in circumstances such that the work has no human author;

“computer program” 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 that the computer can read, 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 –

- (a) a work that is a literary, dramatic, musical or artistic work, means a reproduction of the work in any material form and, in respect of an artistic work, includes a reproduction in three-dimensions if the artistic work is a two-dimensional work and a reproduction in two-dimensions if the artistic work is a three-dimensional work;
- (b) a work that is a film, television broadcast or cable programme, includes a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme;

(c) a work that is a typographical arrangement of a published edition, means a facsimile copy of the arrangement; and

(d) any description of work, includes a copy of the work that is transient or incidental to some other use of the work,

and references to the copying of a work of any description shall be construed to include a reference to storing the work in any medium by electronic means;

“copyright” means copyright conferred by Part II of this Act;

“Copyright Tribunal” or “Tribunal” means the Tribunal established under section 103;

“country” includes any territory;

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

“dramatic work” includes a work of dance or mime;

“educational establishment” means any school, college or other educational body designated by the Minister by order either specifically or by reference to a class, for the purposes of this Act;

“economic rights” means the rights mentioned in section 9(1);

“exclusive licence” means a licence in writing signed by or on behalf of the owner of copyright in a work authorizing the licensee, to the exclusion of all other persons, including the person granting the licence,

to exercise a right which would otherwise be exercisable exclusively by the owner of the copyright;

“exclusive recording contract” means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons, including the performer, to make recordings of one or more of his performances with a view to their being shown or played in public, sold, let for hire or otherwise commercially exploited;

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

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

“graphic work” includes -

- (a) any painting, drawing, diagram, map, chart, or plan; and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“illicit recording” in relation to a performance means a recording wherever made, the making of which constitutes an infringement of the rights conferred on the performer or a person having recording rights in relation to the performance pursuant to Part IX, and which does not fall within any of the exceptions specified in or authorized pursuant to any provision of that Part;

“infringing copy” in relation to a protected work means –

- (a) any copy of the work, the making of which is not authorized under or by virtue of any provision of this Act;
- (b) any copy of the work that is or is proposed to be imported into Antigua and Barbuda and its making in Antigua and Barbuda would have constituted an infringement of the copyright in the work in question or a breach of an exclusive licence agreement relating to that work;

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

- (a) a written table or compilation;
- (b) a computer program;

“manuscript” in relation to a work, means the original document embodying the work whether written by hand or not;

“Minister” means the Minister to whom responsibility of this Act is assigned.

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

“performer” means any actor, singer, musician, dancer or other person who acts, signs, depicts, delivers, declaims, plays in or otherwise performs, a literary, dramatic, musical, artistic work or expressions of folklore; and references to the performer in the context of the person having performer’s rights, shall be construed to include references to the person who, pursuant to any provision of this Act, is for the time being entitled to exercise those rights;

“performance” in relation to –

- (a) the rights conferred under Part IX, means –
  - (i) a dramatic performance which includes dance and mime;
  - (ii) a musical performance; or
  - (iii) a reading or recitation of a literary work;
  - (iv) a performance of a variety act or any similar presentation, that is, or to the extent that it is, a live performance, given by one or more individuals; and
- (b) copyright in a literary, dramatic or musical work includes –
  - (i) delivery in the case of lectures, addresses, speeches and sermons;
  - (ii) any mode of visual acoustic presentation including presentation by means of a sound recording, film, broadcast or cable programme of the work;

“person having recording rights” in relation to a performance means a person who–

- (a) is a party to, and has the benefit of, an exclusive recording contract to which the performance is subject or to whom the benefit of such a contract has been assigned; and

(b) is a qualified person,

so, however, that where a performance is subject to an exclusive recording contract but the person mentioned in paragraph (a) is not a qualified person, the expression shall be deemed to extend to any qualified person who is licensed by the person mentioned in paragraph (a) to make recordings of the performance with a view to their being shown or played in public, sold, let for hire or otherwise commercially exploited or to whom the benefit of such a licence has been assigned;

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

“place of public entertainment” includes any premises which are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment, including premises that are occupied mainly for other purposes;

“prospective owner” has the meaning assigned to it in the definition of “future copyright”;

“public performance is –

(a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;

- (b) in the case of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and
- (c) in the case of a sound recording, making the recording sounds audible, in each case at a place or at places where persons outside the normal circle of a family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places and/or times, and where the performance can be perceived without the need for communication to the public;”

“publication” and “commercial publication” have the meaning assigned to those expressions, respectively, by section 3;

“published edition” in relation to copyright in the typographical arrangement of a published edition, means the published edition of the whole or any part of one or more literary, dramatic, musical, or artistic works;

“qualified person”-

- (a) in the case of an individual, means a person who is a citizen of, or whose habitual residence is in, Antigua and Barbuda or a specified country; and
- (b) in the case of a body corporate, means a body incorporated or established under any written law of Antigua and Barbuda or a specified country;

“qualifying performance” means a performance that –

- (a) is given by an individual who is a qualified person; or

- (b) takes place in Antigua and Barbuda or a specified county;

“record” means any disc, tape, perforated roll or other device in which sounds on the representations thereof are embodied so as to be capable of being reproduced there from, other than a soundtrack associated with a film, but includes, in relation to a performance, a film incorporating the performance;

“recording” in relation to a performance means a film or sound recording-

- (a) made directly from the live performance;
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made directly or indirectly from another recording of the performance;

“rental” means any arrangement under which the transfer of the possession of the original or a copy of a work or phonogram is made available-

- (a) for payment in money or money’s worth; or
- (b) in the course of a business, as part of services or amenities for which payment is made,

on terms that it will or may be returned;

“reproduction” means the making of one or more copies of a work or phonogram in any manner or form, including any permanent or temporary storage of the work or phonogram in electronic form;

“reprographic process” means a process –

- (a) for making facsimile copies; or
- (b) involving the use of an appliance for making multiple copies,

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

“rights management information” means any information which identifies the author, the work, the performer, the performance of the performer, the producer of the sound recording, the sound recording, the broadcaster, the broadcast, the owner of any right under this Act, or information about the terms and conditions of use of the work, the performance, the sound recording or the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance, a sound recording or a fixed broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast;”

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

“sound recording” means -

- (a) a recording of sounds or of a representation of sounds from which sounds may be reproduced; or
- (b) a recording of the whole or any part of a literary, dramatic or musical work from which sounds reproducing the work or part may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced;

“specified country” means a country specified by the Minister by order pursuant to section 144;

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

“typeface” includes an ornamental motif used in printing;

“unauthorized” when used to describe any act done in relation to a work, means-

- (a) if copyright subsists in the work, done otherwise than by or with the licence of the owner of the copyright;
- (b) if copyright does not subsist in the work, done otherwise than by or with the licence of the author or person lawfully claiming under him;

“wireless telegraphy” means the sending of electromagnetic energy over paths not provided by a material substance constructed or arranged for that purpose;

“work” means-

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

and accordingly “protected work” means a work of any of such categories in which copyright subsists by virtue of this Act;

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

“writing” includes any form of notation, whether by hand or by printing, typewriting or any other process and regardless of the method by which or the medium in or on which it is recorded, and “written” shall be construed accordingly.

- (2) References in this Act to the time at which, or the period during which, a 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.

**Publication. 3.**

- (1) For the purposes of this Act and subject to this section publication in relation to a work means the issue of copies of the work to the public (whether by way of sale or otherwise) and, where the work is a literary, musical, dramatic or artistic work, the making available of copies to the public by means of an electronic retrieval system; and all related expressions shall be construed accordingly.
- (2) For the purposes of this Act “commercial publication” in relation to a literary, dramatic, musical or artistic work means-
- (a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public; or
  - (b) making the work available to the public by means of an electronic retrieval system,

and related expressions shall be construed accordingly.

- (3) In the case of a work of architecture in the form of a building or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.
- (4) The following do not constitute publication for the purposes of this Act-
  - (a) in case of a literary, dramatic or musical work –
    - (i) the performance of the work; or
    - (ii) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);
  - (b) in the case of an artistic work-
    - (i) the exhibition of the work;
    - (ii) the issue to the public of copies of a graphic work representing, or of photographs of a work of architecture in the form of a building or a model for a building a sculpture or a work of artistic craftsmanship;
    - (iii) the issue to the public of copies of a film including the work; or
    - (iv) the broadcasting of the work or its inclusion in a cable programme service (otherwise than for the purposes of an electronic retrieval system);
  - (c) in the case of a sound recording or film -

- (i) the playing or showing of the work in public; or
  - (ii) the broadcasting of the work or its inclusion in a cable programme service.
- (5) 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 rights conferred on performers or persons having recording rights or may constitute an offence under this Act.
- (6) For the purposes of this Act a publication in Antigua and Barbuda 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.
- (7) In determining for the purposes of any provision of this Act-
- (a) whether a work has been published;
  - (b) whether a publication of a work was the first publication of the work; or
  - (c) whether a work was published or otherwise dealt with in the lifetime of a person,
- any unauthorized publication or the doing of any other unauthorized act shall be disregarded.

**Lawful  
reception of  
broadcast.**

4. (1) In relation to the broadcast of a work, an encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been made available to members of the public by or with the authority of the person making the transmission or the person providing the contents of the transmission.

- (2) References in this Act to the person making a broadcast, broadcasting a work or including a work in a broadcast are references -
- (a) to the person transmitting the programme to the extent that he has responsibility for its contents; and
  - (b) to any person providing the programme who makes with the person transmitting it, the arrangements necessary for its transmission,
- and references in this Act to a programme, in the context of broadcasting, are to any item included in a broadcast.

## PART II- COPYRIGHT

### *Protected Work*

- Requirements 5. for protection.**
- (1) Unless otherwise specifically provided in this Act, copyright does not subsist in any work unless it satisfies the requirements specified in this Part as respects -
- (a) the category of work; and
  - (b) either –
    - (i) the qualification of the author; or
    - (ii) the country or place of first publication, or in the case of a broadcast or cable programme, the county or place where it is made or from which it is sent, as the case may be.

- (2) If the requirements of this Part or of section 146 are once satisfied in respect of a work, copyright does not cease to subsist by reason of any subsequent event.

**Category of 6.  
eligible works.**

- (1) Copyright is a property right which, subject to the provisions of this section, may subsist in the following categories of work –

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

and copyright may subsist in a work irrespective of its quality or the purpose for which it was created.

- (2) A compilation of data or other material (database), whether in machine-readable or other form, is eligible for protection as a literary work, but such compilation shall be regarded as original only if, by reason of the selection or arrangement of its contents, the compilation constitutes the author's own intellectual creation; but such protection does not extend to any data or other material forming part of the compilation and is without prejudice to any copyright subsisting in any such data or other material.
- (3) A literary, dramatic or musical work including a collection of expressions of folklore (provided that such collections are original by reason of the selection or arrangement of their content) shall not be eligible for copyright protection unless it is recorded in writing or otherwise, and any reference in this Act to the time at which a work is made is a reference to the time at which it is so recorded.
- (4) For the purposes of subsection (3), it is immaterial whether the work is recorded by or with the permission of the author; and where it is not

recorded by the author, nothing in that subsection shall affect the question whether copyright subsists in the record of the work as distinct from the work recorded.

- (5) Copyright does not subsist in a sound recording or film which is, or to the extent that it is, a copy taken from a previous sound recording or film.
- (6) Copyright does not subsist in a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme.
- (7) Copyright does not subsist in a cable programme-
  - (a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast; or
  - (b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.
- (8) Copyright does not subsist in the typographical arrangement of a published edition if, or to the extent that it reproduces the typographical arrangement of a previous edition.
- (9) Copyright protection does not extend to-
  - (a) an idea, concept, method of operation, process, principle, procedure, system or discovery or mere data even if expressed, described, explained, illustrated or embodied in a work;
  - (b) any official text of a legislative, administrative or legal nature as well as any official translation thereof.

- Qualification 7. for protection: author.**
- (1) A work qualifies for copyright protection if the author was a qualified person at the material time.
  - (2) A work of joint authorship qualifies for copyright protection if any of the authors satisfies the requirement of subsection (1), so, however, that where a work qualifies for copyright protection only under this section, only those authors who satisfy such requirement shall be taken into account for the purposes of sections 9 and 22.
  - (3) In this section ‘the material time’ means in relation to-
    - (a) an unpublished literary, dramatic, musical or artistic work, when the work was made or, if the work extended over a period, a substantial part of that period;
    - (b) a published literary, dramatic, musical or artistic work, when the work was first published or, if the author had died before that time, immediately before his death;
    - (c) a sound recording or film, when it was made;
    - (d) a broadcast, when the broadcast was made;
    - (e) a cable programme, when the programme was included in a cable programme service;
    - (f) the typographical arrangement of a published edition, when the edition was first published.

- Qualification 8. for protection: place of publication etc.**
- (1) A literary, dramatic, musical or artistic work, a sound recording or film, or the typographical arrangement of a published edition qualifies for copyright protection if, having regard to section 3, it is first published in Antigua and Barbuda or a specified country.

(2) A broadcast qualifies for copyright protection if it is made from a place in Antigua and Barbuda or a specified country by a broadcasting organization in possession of a valid licence granted to it under any law in Antigua and Barbuda or a specified country regulating broadcasting.

(3) A cable programme qualifies for copyright protection if it is sent from a place in Antigua and Barbuda or in a specified country in accordance with the law in force regulating transmission by cable.

**Nature of  
copyright  
protection  
economic  
and moral  
rights.**

9. (1) By virtue of and subject to the provisions of this Act, the owner of the copyright in a work shall have the exclusive right to do or to authorize other persons to do any of the following acts in Antigua and Barbuda
- (a) to copy the work;
  - (b) to issue copies of the work to the public by sale, rental public lending or otherwise of original or copy of the work that has not already been subject to distribution authorized by the owner of the copyright;
  - (c) to rent or lend to the public the original or a copy of an audio visual work, a work embodied in a phonogram, a computer programme, a database or musical work in the form of notation irrespective of the original or copy concerned;
  - (d) to perform the work in public or, in the case of a sound recording, film broadcast or cable programme, to play or show the work in public;
  - (e) to broadcast the work or include it in a cable programme service; or

- (f) to make an adaptation of the work arrangement or other transformation and, in relation to such adaptation, to do any or all of the foregoing acts;
- (g) to make a public display of the original or copy of the work;
- (h) other communication to the public of the work.

(2) For the purposes of subsection (1) references to the doing of any act in relation to any work means the doing of the act –

- (a) in relation to the whole or any substantial part of the work; and
- (b) either directly or indirectly,

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

(3) By virtue of and subject to the provisions of this Act -

- (a) the author of a literary, dramatic, musical or artistic work that is a protected work; or
- (b) the director of a film that is a protected work, shall have in respect of such work, whether or not he is the owner of the copyright in the work, the moral rights specified in Part III.

*Duration of Copyright Protection*

- Duration of copyright in literary, etc. works.**
- 10.**
- (1) Subject to this section, copyright in any literary, dramatic, musical or artistic work expires at the end of the period of fifty years from the end of the calendar year in which the author dies.
  - (2) Where the authorship of a work referred to in subsection (1) is unknown, copyright in that work expires at the end of the period of fifty years from the end of the calendar year in which the work was either made, was first made available to the public or first published whatever date is the latest, but subsection (1) applies if the identity of the author becomes known during that period.
  - (3) For the purpose of subsection (2) acts which constitute the making available of a work to the public include –
    - (a) in relation to a literary, dramatic or musical work, the performance of the work in public or is broadcast or inclusion in a cable programme service;
    - (b) in relation to an artistic work, exhibition of the work in public or its inclusion in a film shown to the public or in a broadcast or cable programme service,

so, however, that in determining for the purpose of this subsection whether a work has been made available to the public any unauthorized act shall be disregarded.
  - (4) Subsections (1) and (2) do not apply to computer generated work, the copyright in which expires at the end of the period of the fifty years from the end of the calendar year in which the work was made or published within fifty years from the making, whichever date is the latest.
  - (5) In relation to a work joint authorship –

- (a) the reference in subsection (1) to the death of the author shall be construed -
  - (i) where the identity of all the authors is known, as a reference to the death of the last of them to die;
  - (ii) where the identity of one or more of the authors is known and the identity of one or more others is not as a reference to the death of the last of the authors whose identity is known; and
- (b) the reference in subsection (2) to the identity of the author becoming known, shall be construed as a reference to the identity of any of the authors becoming known.

(6) This section does not apply to copyright which subsists by virtue of section 146.

**Duration of copyright in sound recordings and films.**

- 11.**
- (1) Copyright in a sound recording or film expires at the end of the period of fifty years from the end of the calendar year in which it was made or, where it is made available to the public or published before the end of the years from the end of the calendar year in which it is so made available or published whichever date is the latest.
  - (2) For the purposes of subsection (1) a sound recording or film is made available to the public when -
    - (a) it is first published, broadcast or included in a cable programme service;
    - (b) in the case of a film or film sound-track, the film is first shown in public,

but determining whether a sound recording or film has been made available to the public, any unauthorized act shall be disregarded.

- Duration of copyright in broadcasts and cable programmes.**
12. (1) Copyright in a broadcast or cable programme expires at the end of the period of fifty years from the end of the calendar year in which the broadcast was made or the programme included in a cable programme service.
- (2) Copyright in a repeat broadcast or a repeat cable programme expires at the same time as copyright in the original broadcast or cable programme; and accordingly, no copyright arises in respect of a repeat broadcast or a repeat cable programme service after the expiry of the copyright in the original broadcast or cable programme.
- (3) Reference in subsection (2) to a repeat broadcast or a repeat programme means one which is a repeat of a broadcast previously made or as the case may be, of a cable programme previously included in a cable programme service.
- Duration of copyright in typographical arrangements.**
13. Copyright in the typographical arrangement of a published edition expires at the end of the period of twenty-five years from the end of the calendar year in which the edition was first published.

### PART III – MORAL RIGHTS

#### *Identification with Work*

- Right to be identified as author etc.**
14. (1) Subject to subsection (9) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right to be identified by name as the author or, as the case may be, director of the work in the circumstances specified in this section.

- (2) The author of a literary work (other than words intended to be sung or spoken with music) or a dramatic work has the right to be identified by name as such whenever –
- (a) the work or an adaptation thereof is published commercially, performed in public broadcast, communicated to the public or included in a cable programme service; or
  - (b) copies of a film or sound recording including the work or an adaptation thereof are issued to the public.
- (3) The author of a musical work or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified by name as such whenever –
- (a) the work or an adaptation thereof is published commercially;
  - (b) copies of a sound recording of the work or an adaptation thereof are issued to the public; or
  - (c) a film, the sound-track of which includes the work, is shown in public or copies of such film are issued to the public.
- (4) The author of an artistic work has the right to be identified by name as such whenever –
- (a) the work is published commercially or exhibited in public or a visual image of it is broadcast, communicated to the public or included in a cable programme service;
  - (b) a film including a visual image of the work is shown in public or copies of such a film are issued to the public; or

- (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship, copies of a graphic work representing it or of a photograph of it, are issued to the public.
- (5) In addition to the right specified in paragraph (c) of subsection (4), the author of a work of architecture in the form of a building has the right to be identified by name on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.
- (6) The director of a film has the right to be identified by name as such whenever the film is shown in public, broadcast, communicated to the public or included in a cable programme service or copies of the film are issued to the public.
- (7) The right of an author or director under this section is -
  - (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
  - (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
  - (c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, film, broadcast, communicated to the public or cable programme in question,

and the identification must, in each case, be clear and reasonably prominent.

- (8) For the purposes of this section, any reasonable form of identification may be used.
- (9) Except as may otherwise be explicitly provided by contract, the right conferred by this section does not apply in relation to-
  - (a) a computer program, the design of a typeface or a computer-generated work;
  - (b) any work made for the purpose of reporting current events;
  - (c) the publication in a newspaper, magazine or similar periodical or in an encyclopaedia, dictionary, yearbook or other collective work of reference, of a literary, dramatic, musical or artistic work made for the purposes of such publication or made available with the consent of the author for purposes of such publication;
  - (d) a work in which copyright originally vested in an international organization by virtue of section 146, unless the author or director has previously been identified as such in or on published copies of the work.
- (10) For the purpose of this section the right to be identified includes a right not to be identified and the right to use a pseudonym.

*Objection to Treatment of Work***Right to object to derogatory treatment of work.**

15. (1) Subject to subsections (2) and (3) and to such exceptions as may be specified in or pursuant to any other provision of this Act, the author of a literary dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to have the work or any part thereof subjected to derogatory treatment, and such right is infringed by any person who does any of the acts specified in section 37 in the circumstances of so specified.
- (2) The right does not apply in relation to -
- (a) a computer program or to a computer-generated work;
  - (b) fair dealing with any work made for the purpose of reporting current events;
  - (c) the publication in any newspaper, magazine or similar periodical or in an encyclopaedia, dictionary, yearbook or other collective work of reference, of a literary, dramatic musical or artistic work made for the purposes of such publication, or made available with the consent of the author for the purposes of such publication, subject, in any particular case, to any agreement excluding the operation of the foregoing provisions of this paragraph to that case;
  - (d) any subsequent publication elsewhere of such work as is referred to in paragraph (c), subject to any such agreement as is referred to in that paragraph.
- (3) The right does not apply to anything done by or with the authority of the copyright owner in relation to works in which copyright originally vested in an international organization by virtue of section 146 unless the author or director-

- (a) is identified at the time of the relevant act; or
- (b) has previously been identified in or on published copies of the work, and where in such a case the right does apply, it is not infringed if there is a sufficient disclaimer.

(4) In this section -

- (a) “derogatory treatment” in relation to a work, means any addition to, deletion from, alteration to or adaptation of the work (not being a translation of a literary or dramatic work or an arrangement or transcription of a musical work involving no more than a change of key or register) which amounts to a distortion or mutilation of the work, or modification of, or is otherwise prejudicial to the honour or reputation of the author or director, as the case may be; and
- (b) “sufficient disclaimer” means a clear and reasonably prominent indication -
  - (i) given at the time of the act; and
  - (ii) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented.

**False attribution of work.**

**16.** (1) A person has the right -

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

- (b) not to have a film falsely attributed to him as director, and in this section “attribution”, in relation to such work, means a statement, whether express or implied, as to the identity of the author or director.

- (2) The right conferred by subsection (1) is infringed in the circumstances specified in section 40.

**Right to  
privacy of  
photographs  
and films.**

- 17. Subject to section 41, a person who for private and domestic purposes commissions the taking of a photograph or the making of a film has, where the resulting work is a protected work, the right not to have-

- (a) copies of the work issued to the public;
- (b) the work exhibited or shown in public; or
- (c) the work broadcast or included in a cable programme service.

*Supplementary*

**Duration of  
moral rights  
and related  
rights.**

- 18. (1) The rights conferred by sections 14, 15 and 17 subsists so long as copyright subsists in the work.
- (2) The right conferred by section 16 subsists until the end of the period of twenty years from the end of the calendar year in which the person dies.

**Consent and  
waiver of  
rights.**

- 19. (1) A person having a right conferred under this Part may consent to the doing of any act affecting such right or may waive the right.
- (2) A right to which subsection (1) refers may be waived by instrument in writing signed by the person giving up the right, and the waiver –

- (a) may relate to works generally or to a specific work or class of works and may relate to existing or future works; and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation.

- (3) Where a waiver is made in favour of the owner or prospective owner of the copyright in the work or works, to which it relates, it shall be presumed to extend to his licensees and successors in title, unless a contrary intention is expressed.
- (4) Nothing in this Part shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informal waiver or other transaction in relation to any of the rights to which this Part relates.

**Application 20.  
of provisions  
to joint  
works.**

- (1) The right conferred under section 14 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author.
- (2) The right conferred by section 15 is, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.
- (3) A waiver of rights under section 19 by one joint author does not affect the rights of the other joint authors.
- (4) Subsections (1), (2) and (3) also apply, with such modifications as are necessary, in relation to a film which was, or is alleged to have been, jointly directed as they apply to a work which is, or alleged to be, a work of joint authorship; and for the purpose of this subsection, a film is “jointly directed” if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director or directors.

- (5) The right conferred by section 17 is, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that -
- (a) the right of each is satisfied if he consents to the act in question; and
  - (b) a waiver under section 19 by one of them does not affect the rights in the others.

**Application of provisions to parts of work.** 21. The rights conferred by –

- (a) sections 14 and 17 apply in relation to the whole or any Substantial part of a work; and
- (b) sections 15 and 16 apply in relation to the whole or any part of a work.

## PART IV - OWNERSHIP AND ASSIGNMENT OF RIGHTS

### *Ownership of Copyright*

- Ownership of copyright.** 22. (1) The author of a protected work is the original owner of any copyright in that work.
- (2) Subsection (1) does not apply to ownership of copyright which subsists in a work made under section 146.
- (3) The joint authors of a protected work are the original co-owners of the copyright in that work.

- (4) Where a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part is the original owner of the part of the copy he has created.
- (5) The natural person or legal entity at whose initiative and direction of whom or which the work has been created is the original owner of the copyright.
- (6) The original owner of work created by natural person or a legal entity in the course of his employment is, unless otherwise provided in a contract, of the employer.
- (7) The original owner of an audiovisual work is the producer unless otherwise provided in a contract.

**Assignment and licences.** 23.

- (1) Copyright in a work may be transferred as personal or moveable property by –
  - (a) assignment;
  - (b) testamentary disposition; or
  - (c) operation of law.
- (2) Any transfer by way of assignment and any licence to do an Act subject to the authorization by the author or owner of a copyright shall not be effective unless it is in writing and signed by or on behalf of the assignor or the licensor and the licensee.
- (3) An assignment or other transfer of copyright may be partial, that is to say, limited so as to apply-
  - (a) to one or more, but not all, of the things the owner of the copyright has the exclusive right to do;

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

- (4) A licence granted by the owner of copyright in a work shall be binding on every successor in title to his interest in copyright except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act to doing anything with or without the licence of the owner of the copyright shall be construed accordingly.
- (5) Any assignment of a copyright or a licence to do an act subject to authorization by the author or the owner of a copyright does not include or be deemed to include the assignment or license of any other right that is not specifically referred to in the instrument of assignment.

**Prospective ownership of copyright.**

24. (1) Where by an agreement made in relation to future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person, then, if on the coming into existence of the copyright the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, the copyright shall vest in the assignee or his successor in title by virtue of this subsection.
- (2) A licence granted by a prospective owner of copyright is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act to doing anything with or without the licence of the copyright owner shall be construed accordingly.

- Rights of exclusive licensee.** 25. (1) The licensee under an exclusive licence has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.
- Copyright in manuscript passes under will.** 26. (1) Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to –
- (a) an original document or other material thing that records or embodies a literary, dramatic, musical or artistic work which was not published before the death or the testator; or
  - (b) an original material thing containing a sound recording or film which was not published before the death or the testator,
- then, unless a contrary intention is indicated in the testator's will or a codicil to it, the bequest shall be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.
- Moral rights not assignable.** 27. The rights conferred under Part III are not assignable during the life of the author.
- Transmission of moral rights etc. on death.** 28. (1) On the death of a person entitled to the right conferred by section 14, 15 or 17 –
- (a) the right passes to such person as he may by testamentary disposition specifically direct; or
  - (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes,

and if, or to the extent that, the right does not pass under paragraph (a) or (b), it is exercisable by his personal representatives.

- (2) Where copyright forming part of a person's estate passes in part to one person and in part to another any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.
- (3) Where by virtue of paragraph (a) or (b) of subsection (1) a right becomes exercisable by more than one person, then –
  - (a) where the right is conferred by section 15 or 17, it is a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
  - (b) any waiver of the right in accordance with section 19 by one of them does not affect the rights of the others.
- (4) A consent or waiver previously given binds any person to whom a right passes by virtue of subsection (1).
- (5) Any infringement after a person's death of the right conferred by section 16 is actionable by his personal representatives.
- (6) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

## **PART V - INFRINGEMENT OF RIGHTS**

*General Provisions*

- Meaning of “action”.** 29. In this Part “action” includes a counterclaim and references to the plaintiff and to the defendant in an action shall be construed accordingly.
- Part subject to other provisions.** 30. This Part shall have effect subject to such provisions of this Act as –
- (a) authorize the doing of specified acts in relation to a protected work; or
  - (b) provide for the licensing of a protected work.

*Infringement of Copyright*

- Acts infringing copyright.** 31. (1) The copyright in a work is infringed by any person who, without the licence of the copyright owner, does, in relation to that work, any of the acts which the copyright owner has the exclusive right to do pursuant to section 9.
- (2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, imports into Antigua and Barbuda for any purpose other than for his private and domestic use, an article which he knows or has reason to believe is, an infringing copy of the work.
- (3) Copyright in a work is infringed by a person who, without the licence of the copyright owner -
- (a) possesses in the course of a business;
  - (b) sells or lets for hire or offers or exposes for sale or hire;
  - (c) exhibits in public or distributes in the course of a business; or

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

an article which is, and which he knows or has reason to believe is an infringing copy of the work.

- (4) Copyright in a work is infringed by a person who, without the licence of the copyright owner –

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

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

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

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

- (8) Where copyright in a work is infringed by a public performance of the work or by the playing or showing of the work in public by means of apparatus for playing sound recordings or showing films or receiving visual images or sounds conveyed by electronic means, the persons specified in subsection (8) are also liable for the infringement.
- (9) The persons referred to in subsection (7) are –
- (a) persons who supplied the apparatus or any substantial part of it, if when he supplied the apparatus or part -
    - (i) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; or
    - (ii) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright;
  - (b) an occupier of premises who gave permission for the apparatus to be brought onto the premises, if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; and
  - (c) a person who supplied a copy of a sound recording or film used to infringe copyright, if when he supplied it he knew or had reason to believe that what he supplied or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

*Remedies of Copyright Owner*

- Action by owner of copyright.**
32. (1) An infringement of copyright shall be actionable at the suit of the copyright owner, and subject to the provisions of this section, 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 respect of the infringement of other proprietary rights.
- (2) Where in an action under this section an infringement of copyright is proved or admitted the court, having regard to any benefit accruing to the defendant by reason of the infringement, to the flagrancy of the infringement and to all other material considerations, shall have power to award such additional damages as the court may consider appropriate in the circumstances.
- (3) Where in an action for infringement of copyright it is shown that at the time of the infringement the defendant did not know and had no reason to believe that copyright subsisted in the work to which the action relates, then, the plaintiff is not entitled to damages against him, but without prejudice to any other remedy.
- Order for delivery up in civil proceedings.**
33. (1) Subject to the provisions of this section and section 35 (6), where a person –
- (a) in the course of his business has an infringing copy of a work in his possession, custody or control; or
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies,

the copyright owner may apply to the court for an order that the infringing copy or article be delivered up to him or to such other person as the court may direct.

- (2) An application under subsection (1) shall not be made after the end of the period specified in section 138 (1); and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 137 for the disposal of the infringing copy or article, as the case may be.
- (3) A person to whom an infringing copy or other article is delivered up pursuant to an order made under this section shall, if an order under section 137 is not made, retain it pending the making of an order or the decision not to make an order, under that section.

*Remedies of Exclusive Licensee*

**Infringement of rights of exclusive licensee.** 34. An exclusive licensee has, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

**Infringement where rights concurrent.** 35. (1) The rights and remedies of an exclusive licensee are concurrent with those of the copyright owner and references in the relevant provisions of this Act to the copyright owner shall be construed accordingly.

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

(3) Where an action for infringement of copyright is brought by the copyright owner or by an exclusive licensee, and the action relates (wholly or partly) to an infringement in respect of which they have

concurrent rights of action, the copyright owner or the exclusive licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with action, 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.

- (4) A copyright owner or exclusive licensee who is added as a defendant in pursuance of subsection (2) is not liable for any costs in the action unless he takes part in the proceedings.
- (5) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action, then, whether or not the copyright owner and the exclusive licensee are both parties to the action, the court -
  - (a) shall, in assessing damages take into account the terms of the licence and any pecuniary remedy already awarded or available to either of them in respect of the infringement;
  - (b) shall not direct an account of profits if an award of damages has been made or an account of profits has been directed in favour of the other of them in respect of the infringement; and
  - (c) shall, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them.
- (6) The copyright owner shall notify any exclusive licensee having concurrent rights before applying under section 33 for an order for the delivery up of infringing copies of a work, and the court may, on the

application of the licensee, having regard to the terms of the licence, make such order under section 33 as it thinks fit.

*Infringement of Moral Rights and Related Rights -*

- Infringement of right to be identified as author or director.** 36.
- (1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.
- (2) The following acts shall not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work-
- (a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme;
  - (b) the incidental inclusion of the work in an artistic work, sound recording, film, broadcast or cable programme;
  - (c) the use of the work for examination purposes;
  - (d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;
  - (e) the use of design documents and models;
  - (f) the use of a design derived from artistic work;
  - (g) acts permitted in relation to anonymous or pseudonymous works on the assumption that copyright in the work has expired or that the author is dead.

- Infringement of right to object to derogatory treatment of work.**
37. (1) The right conferred on an author and a director by section 15 to object to derogatory treatment of his work is infringed where the acts described in subsections (2) to (5) are done in relation to that work; and for the purposes of this Part, “derogatory treatment” has the same meaning as that specified in section 15(4).
- (2) In the case of a literary, dramatic or musical work, the right is infringed by a person who-
- (a) publishes commercially, performs in public, broadcasts, communicated to the public or includes in a cable programme service, a derogatory treatment of the work; or
  - (b) issues to the public copies of a film or sound recording of or including a derogatory treatment of the work.
- (3) In the case of an artistic work, the right is infringed by a person who-
- (a) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work;
  - (b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film; or
  - (c) in the case of a work of architecture in the form of a model for a building or in the case of a sculpture or work of artistic craftsmanship, issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

- (4) Subsection (3) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed.
- (5) In the case of a film, the right is infringed by a person who –
- (a) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film; or
  - (b) issues to the public copies of a derogatory treatment of the film, or who, along with the film, plays in public, broadcasts it, communicated to the public or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film sound-track.

**Infringement 38.**  
**by possession**  
**of infringing**  
**article.**

- (1) The right conferred by section 15 is also infringed by a person who –
- (a) possesses in the course of a business; or
  - (b) sells or lets for hire or offers or exposes for sale or hire; or
  - (c) in the course of a business, exhibits in public or distributes;
  - (d) distributes otherwise than in the course of a business, so as to affect prejudicially the honour or reputation of the author or director,

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

- (2) An “infringing article” means a work or a copy of a work which-

- (a) has been subjected to derogatory treatment as defined in section 15; and
- (b) has been or is likely to be the subject of any of the acts mentioned in sections 37 in circumstances infringing that right.

**Act not  
infringing  
section 15.**

**39.** (1) The right conferred by section 15 is not infringed by any act done for the purpose of -

- (a) avoiding the commission of an offence; or
- (b) complying with a duty imposed by or under an enactment,

so, however, that where the author or director is identified at the time of the relevant act or has previously been identified in or on published copies of the work, there shall be a sufficient disclaimer.

(2) In subsection (1) “sufficient disclaimer” means a clear and reasonably prominent indication –

- (a) given at the time of the act; and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented.

**False attribution of work: infringement of right.**

40. (1) Subject to the provisions of this section, the right conferred on a person by section 16 not to have a literary, dramatic, musical or artistic work falsely attributed to him as author or a film falsely attributed to him as director, is infringed by a person who-
- (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution;
  - (b) exhibits in public an artistic work or a copy of an artistic work in or on which there is a false attribution.
- (2) The right is also infringed by a person who –
- (a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it, communicated to the public or includes it in a cable programme service as being the work of a person; or
  - (b) in the case of a film, shows it in public, broadcasts it, or communicated to the public includes it in a cable programme service as being directed by a person, knowing or having reason to believe that the attribution is false.
- (3) The right is also infringed by any person who issues to the public or displays in public any material containing a false attribution in connection with any act referred to in subsection (1) or (2).
- (4) The right is also infringed by a person who, in the course of a business –
- (a) possesses or deals with a copy of a work referred to in subsection (1) in or on which there is a false attribution;
- or

(b) in the case of an artistic work., possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is an attribution and that it is false.

(5) In the case of an artistic work, the right is also infringed by a person who in the course of a business-

(a) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author; or

(b) deals with a copy of such a work as being a copy of the unaltered work of the author,

knowing or having reason to believe that such is not the case.

(6) References in this section to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public or distributing.

(7) This section applies where a work is falsely represented as being an adaptation of the work of a person as it applies where the work is falsely attributed to a person as author.

**Infringement 41.  
of privacy  
right in  
photographs etc.**

The right conferred by section 17 in relation to a commissioned photograph or film is infringed by a person who does or authorizes the doing of any act mentioned in that section in relation to that work; but the right is not infringed by any act which, pursuant to Part VI, would not infringe copyright in the work.

**Effect of consent and waiver of rights.** 42. It is not an infringement of any right conferred by section 14, 15, 16 or 17 to do any act to which the person entitled to the right has consented pursuant to section 19 or in respect of which he has given a waiver pursuant to that section.

*Remedies for infringement of Moral Rights and Related Rights*

**Remedies for infringing moral rights etc.** 43. (1) The infringement of a right conferred under section 14, 15, 16 or 17 is actionable as a breach of statutory duty owed to the person entitled to the right.

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

(3) Where in any action an infringement of a right referred to in subsection (1) is proved or admitted, the court may order the defendant to publish such correction in such term and in such manner as the court may direct.

*Presumptions*

**Presumptions where action relates to literary works, etc.** 44. (1) In an action brought by virtue of this Part with respect to a literary, dramatic, musical or artistic work, the presumptions specified in this section shall apply.

(2) Where a name purporting to be that of the author appeared on the work when it was made or on copies of the work as published, it shall be presumed that the person whose name appeared is the author of the work and also the owner of the copyright in the work, until the contrary is proved.

- (3) Subsection (2) applies to pseudonym, where the pseudonym leaves no doubt as to the identity of the author.
- (4) In the case of a work alleged to be a work of joint authorship, subsection (2) applies in relation to each person alleged to be one of the authors.
- (5) Where no name purporting to be that of the author appeared as mentioned in subsection (2) but –
  - (a) pursuant to section 8(1), the work qualifies for copyright protection by virtue of the country of first publication; and
  - (b) a name purporting to be that of the publisher appeared on the copies of the work as first published,then, it shall be presumed that the person whose name appeared as the publisher was the owner of copyright at the time of publication, until the contrary is proved.
- (6) Where the author of the work is dead or where the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, until the contrary is proved –
  - (a) that the work is an original work; and
  - (b) that the plaintiff's allegations as to what was the first publication of the work and as to the country of first publication are correct.

**Presumptions 45.**  
**where action**  
**relates to**  
**sound record-**  
**ing, film or**  
**computer**  
**programme.**

(1) In an action brought by virtue of this Part with respect to a sound recording, film or computer program, the presumptions specified in this section shall apply.

(2) In an action brought by virtue of this Part with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating –

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

(b) that the recording was first published in a specified year or in a named country,

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

(3) In an action brought by virtue of this Part with respect to a film, where copies of the film as issued to the public bear a statement–

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

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

(c) that the film was first published in a specified year or in a named country,

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

- (4) In an action brought by virtue of this Part with respect to a computer programme, where copies of the programme are issued to the public in electronic form bearing a statement –
- (a) that a named person was the owner of copyright in the programme at the date of issue of the copies; or
  - (b) that the programme was first published in a named country or that copies of it were first issued to the public in electronic form in a specified year, the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.
- (5) The presumptions specified in subsections (2), (3) and (4) apply equally in an action relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.
- (6) In an action brought by virtue of this Part with respect to a film, where the film as shown in public, broadcast, communicated to the public or included in a cable programme service bears a statement –
- (a) that a named person was author or director of the film;
  - (b) that a named person was the owner of copyright in the film immediately after it was made,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved; and the presumption applies equally in an action relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast, communicated to the public or included in a cable programme service.

*Offences*

- Penalties in respect of dealings which infringe copyright.**
46. (1) Any person who at a time when copyright in a work subsists by virtue of this Act-
- (a) makes for sale or hire; or
  - (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes; or
  - (c) imports into Antigua and Barbuda for purposes other than his private and domestic use; or
  - (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,
- any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.
- (2) Any person who, at the time when copyright subsists in a work by virtue of this Act, makes or has in his possession an article specifically designed or adapted for making copies of that work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.
- (3) Any person who causes-
- (a) a literary, dramatic or musical work to be performed in public; or

- (b) a sound recording or film to be played, or as the case may be, shown in public, (otherwise than by reception of a broadcast or cable programme)

knowing or having reason to believe that copyright subsists in the work and that the performance, playing or showing, as the case may be, constitutes an infringement of the copyright, commits an offence.

- (4) Any person who is guilty of an offence under subsection (1) is liable-

- (a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment;

- (b) on conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

- (5) Any person who is guilty of an offence under subsection (2) or (3) is liable –

- (a) on summary conviction to a fine not exceeding two thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment;

- (b) on conviction on indictment to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(6) Any person who manufactures or imports into Antigua and Barbuda for sale or rental –

- (a) any device or means specifically designed or adopted to circumvent any device or means intended to prevent or restrict reproduction of a work, a phonogram or a broadcast or to impair the quality of copies made;
- (b) any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public including by satellite, by those who are not entitled to receive the programme;

commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years.

(7) Any person who -

- (a) removes or alters any electronic rights management information without authority; or
- (b) distributes or imports for distribution, broadcasting, communication to the public or making available to the public, without authority, of works performances, phonograms or broadcasts, knowing or having reason to know that electronic rights management information has been removed or altered without authority commits an offence and is liable on conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding two years.

**Presumptions not to apply.** 47. The presumptions specified in sections 44 and 45 do not apply to proceedings for an offence under section 46, but without prejudice to their application to proceedings for an order under section 48.

**Order to deliver up in criminal proceedings.** 48. (1) Subject to subsection (2), the court before which proceedings are brought against a person for an offence under section 46 may, if it is satisfied that at the time of his arrest or charge –

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

(b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work knowing or having reason to believe that it had been or was to be used to make infringing copies,

order that the infringing copy or article be delivered up to the copyright owner or to such other person as the court may direct.

(2) An order maybe made by the court of its own motion or on the application of the prosecution and may be made whether or not the person is convicted of the offence, so, however, that the court shall not make an order-

(a) after the time specified in section 138, or

(b) if it appears to the court unlikely that any order will be made under section 137.

(3) An appeal lies to the Court of Appeal from an order made under this section by a Magistrate's Court.

- (4) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order or the decision not to make an order under section 137.

*Supplementary*

**Application of provisions re entry etc.**     **49.**     For the purposes of this Part, sections 140 and 141 apply in respect of the entry and search of any premises.

**Restricting importation of infringing copies.**     **50.**     (1)     The owner of the copyright in any published literary, dramatic or musical work may give notice in writing to the Comptroller of Customs –

(a)     that he is the owner of the copyright in the work; and

(b)     that he requests the Comptroller of Customs to treat as prohibited goods under the Customs Control and Management Act, No. 7 of 1993 during a period specified in the notice, printed copies of the work which are infringing copies.

(2)     The period specified in a notice given under subsection (1) shall not exceed five years and shall not extend beyond the end of the period for which the copyright may subsist.

(3)     The owner of the copyright in a sound recording or film may give notice in writing to the Comptroller of Customs -

(a)     that he is the owner of the copyright in the work;

(b)     that infringing copies of the work are expected to arrive in Antigua and Barbuda at a time and a place specified in the notice; and

- (c) that he requests the Comptroller to treat the copies as prohibited goods under the Customs Control and Management Act.
- (4) Subject to subsection (5), where a notice has been given in accordance with this section, the importation into Antigua and Barbuda of goods to which the notice relates is prohibited; but-notwithstanding anything contained in the Customs Control and Management Act, No. 7 of 1993, a person is not liable to any penalty under that Act other than forfeiture of the goods, by reason that any goods are treated as prohibited goods by virtue of this section.
- (5) The importation of any article by a person for his private and domestic use is not prohibited under subsection (4).
- (6) A person giving a notice under this section shall –
  - (a) comply with such conditions as the Comptroller of Customs may by regulations prescribe; and
  - (b) satisfy such requirements as may be so prescribed in connection with the giving of the notice, including requirements relating to -
    - (i) the form of the notice;
    - (ii) the furnishing of evidence, whether on giving notice, or on the importation of the goods, or at both such times;
    - (iii) the payment of fees in respect of the notice;

- (iv) the giving of security in respect of any liability or expense which the Comptroller of Customs may incur in consequence of the notice by reason of the detention of any article or anything done to an article detained;
  - (v) the indemnification of the Comptroller of Customs against any such liability or expenses, whether security has been given or not; and
  - (vi) any incidental or supplementary matters, and the regulations may make different provisions as respect different classes of case.
- (7) Regulations made under subsection (6) is subject to negative resolution of the House of Representatives.

## PART VI- EXCEPTIONS TO INFRINGEMENT OF COPYRIGHT

### *Preliminary*

- Definition of “sufficient acknowledgment”.** 51. For the purposes of this Part “sufficient acknowledgment” means an acknowledgment identifying the work in question by its title or other description and identifying the author, unless –
- (a) in the case of a published work, it is published anonymously or the author has agreed or required that no acknowledgement of his name should be made;
  - (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry.

*General Exceptions*

- Research and private study.** 52. Subject to section 54, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.
- Criticism, review and reporting.** 53. (1) Subject to section 54 –
- (a) fair dealing with a protected work for the purposes of criticism or review of that or another work or of a performance of a work; or
- (b) fair dealing with a protected work ( other than a photograph) for the purpose of reporting current events,
- does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.
- (2) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.
- Determining fair dealing.** 54. For the purpose of determining whether an act done in relation to a work 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 in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and

- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

**Incidental inclusion of protected work.**

**55.** Copyright in a work is not infringed -

- (a) by its incidental inclusion in an artistic work, sound recording film, broadcast or cable programme; or
- (b) by the issue to the public of copies or the playing, showing, broadcasting or inclusion in a cable programme service of anything whose making was not an infringement of copyright by virtue of paragraph (a),

and for the purposes of this section, a musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable programme as includes a musical work or such words, shall not be regarded as incidentally included if it is deliberately included.

*Use of Work for Educational Purpose*

**Act done for purposes of instruction or examination.**

- 56.** (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by being copied in the course of instruction or of preparation for instruction, provided the copying is done by a person giving or receiving instruction and is not by means of a reprographic process.
- (2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film sound-track in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.
- (3) Copyright in a work is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to candidates or answering the questions.

- Anthologies for educational use.** 57. (1) The inclusion in a collection intended for use in educational establishments of a short passage from a published literary or dramatic work does not infringe copyright in the work if-
- (a) the collection is described in the title and in any advertisements thereof issued by or on behalf of the publisher, as being so intended;
  - (b) the work was not itself published for the use of educational establishments;
  - (c) the collection consists mainly of material in which no copyright subsists; and
  - (d) the inclusion is accompanied by a sufficient acknowledgement.
- (2) Subsection (1) does not authorize the inclusion of more than two excerpts from protected works by the same author in collections published by the same publisher over any period of five years.
- (3) In relation to any given passage, the reference in subsection (2) to excerpts from works by the same author -
- (a) shall be taken to include excerpts from works by him in collaboration with another; and
  - (b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

- Recording of broadcast, etc. by educational establishments.** 58. (1) A recording of a broadcast or cable programme or a copy of such a recording may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing the copyright in the broadcast or cable programme or in any work included in it.
- Restriction on reprographic copying by educational establishment.** 59. (1) Subject to the provisions of this section, reprographic copies of passages from published literary, dramatic or musical works may be made by or on behalf of an educational establishment for the purposes of instruction without infringing any copyright in the work or in the typographical arrangement.
- (2) Not more than five per cent of any work may be copied by or on behalf of an educational establishment by virtue of this section in any quarter, that is to say, in any period 1<sup>st</sup> January to 31<sup>st</sup> March, 1<sup>st</sup> April to 30<sup>th</sup> June, 1<sup>st</sup> July to 30<sup>th</sup> September or 1<sup>st</sup> October to 31<sup>st</sup> December.
- (3) Copying is not authorized by this section if, or to the extent that, licences are available authorizing the copying in question and the person making the copies know or ought to have been aware of that fact.
- (4) Where a licence is granted to an educational establishment authorizing the reprographic copying of passages from any published literary, dramatic or musical work, for use by the establishment, then, any term of that licence which purports to restrict the proportion of work which may be copied (whether on payment or free of charge) to less than that permitted under this section shall be of no effect.
- Subsequent dealings with authorized copies.** 60. (1) Where a copy of a work would be an infringing copy if the making thereof were not authorized under section 56, 58 or 59 and such copy is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

- (2) In subsection (1) “dealt with” means sold, or let for hire or offered or exposed for sale or hire.

*Exceptions affecting Libraries and Archives*

**Interpretation 61.  
of references;  
Regulations.**

- (1) In sections 62 to 65 references to the librarian or archivist include references to a person acting on his behalf.
- (2) Regulations may provide that a librarian or archivist who is, pursuant to sections 62 and 65, required to be satisfied as to a matter before making or supplying a copy of a work –
- (a) is entitled to rely on a declaration as to that matter, signed by the person requesting the copy, unless he is aware that the declaration is false in any material particular;
  - (b) in such cases as may be prescribed, shall not make or supply a copy to any person in the absence of a declaration by that person.
- (3) Where a person requesting a copy makes a declaration that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him, that person shall be liable for infringement of copyright as if he had made the copy himself, and the copy supplied shall be treated as an infringing copy.

**Supply by 62.  
librarian of  
copies of  
published  
work.**

- (1) The librarian of a prescribed library or archive may, if the prescribed conditions are complied with-
- (a) make and supply a copy of an article in a periodical; or

- (b) make and supply from a published edition, a copy of part of a literary, dramatic or musical, work, not being an article in a periodical,

without infringing any copyright subsisting in the text of the article or in the work, as the case may be, or in any illustrations accompanying such article or work, or in the typographical arrangement thereof.

- (2) The conditions prescribed pursuant to subsection (1) shall include the following -

- (a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;
- (b) in relation to an article, that no person shall be furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical;
- (c) in relation to a work referred to in paragraph (b) of subsection (1), that no person shall be furnished with more than one copy of the same material or of a copy of more than a reasonable proportion of any work; and
- (d) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production.

- Supply of copies to other libraries.**      **63.**      (1)      The librarian of a prescribed library or archive may, if the prescribed conditions referred to in subsection 64(2) are complied with, make and supply to another prescribed library or archive a copy of-
- (a)      an article in a periodical; or
  - (b)      the whole or part of a published edition of a literary, dramatic or musical work,
- without infringing any copyright in the text of the article or the work, or in any illustrations accompanying such article or work or, in the case of a published edition, in the typographical arrangement.
- (2)      Paragraph (b) of subsection (1) does not apply if, at the time the copy is made, the librarian making it knows or could, by reasonable inquiry, ascertain the name and address of a person entitled to authorize the making of the copy.
- Replacing copies of works.**      **64.**      (1)      The librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive for the purpose of-
- (a)      preserving or replacing the item by placing the copy in such permanent collection in addition to or in place of the item;
  - (b)      replacing in the permanent collection of another prescribed library or archive an item which has been lost, destroyed or damaged,

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.

- (2) The prescribed conditions shall include provisions restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question for the purpose.

**Copying of unpublished work.**

65. (1) Subject to subsection (2), the librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or in any illustrations accompanying it.
- (2) Subsection (1) does not apply where -
- (a) the work had been published before the document was deposited in the library or archive; or
  - (b) the copyright owner has prohibited copying of the work, and at the time of the making of the copy the librarian ought to have been aware of that fact.
- (3) The prescribed conditions include the following -
- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study and will not use them for any other purpose;
  - (b) that no person is furnished with any more than one copy of the same material; and

- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

*Exceptions Relating to Public Administration*

- Parliamentary 66. and judicial proceedings etc.**
- (1) Copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings or, subject to subsection (3), for the purposes of reporting such proceedings.
  - (2) Copyright in a work is not infringed by anything done for the purposes of the proceedings of a statutory inquiry or, subject to subsection (3), for the purposes of reporting any such proceedings held in public.
  - (3) The provisions of subsections (1) and (2) relating to the reporting of proceedings shall not be construed as authorizing the copying of a work which is itself a published report of the proceedings.
  - (4) Copyright in a work is not infringed by the issue to the public of copies of the report of a statutory inquiry containing the work or material from it.
  - (5) In this section, “statutory inquiry” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment.
- Public records. Cap. 375.**
67. Where any protected work or a reproduction of any such work is comprised in any public record (as defined in the Registration and Records Act) which is, by virtue of that Act under the charge of the Keeper of the Records and is open to public inspection, the copyright in the work is not infringed by the making or supplying to any person of any copy of the work by or under the direction of any officer appointed under the Registration and Records Act.

*Designs*

- Design documents and models.** 68. (1) It is not an infringement of any copyright in a design document or in a model that records or embodies a design for anything (except an artistic work or a typeface) to make an article to the design or to copy an article made to the design.
- (2) It is not an infringement of any copyright to issue to the public or to include in a film, broadcast or cable programme service anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

- (3) In this section -

“design” means the design of any aspect of the shape or configuration (whether internal or external) of the whole or part of an article, other than surface decoration; and

“design document” means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.

- Where design derived from artistic work is exploited.** 69. (1) Where an artistic work has been exploited by or with the licence of the copyright owner by-

- (a) making by an industrial process articles falling to be treated under from this Act as copies of the work; and
- (b) marketing such articles in Antigua and Barbuda or elsewhere,

then, after the end of the period of twenty-five years from the end of the calendar year in which such articles are first marketed, a person may, without infringing copyright in the work, copy the

work by making articles of any description or by doing anything for the purpose of making articles of any description, or by doing anything in relation to articles so made.

- (2) Where only part of an artistic work is exploited in the manner described in subsection (1), then, the provisions of that subsection apply only in relation to that part.
- (3) The Minister may by order make provision -
- (a) as to the circumstances, in which an article or any description of article is to be regarded for the purposes of this section as made by an industrial process;
  - (b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.
- (4) In this section -
- (a) references to articles do not include films; and
  - (b) references to the marketing of an article are references to its being sold or let for hire or offered or exposed for sale or hire.

*Exception Relating to Works in Electronic Form*

- Transfer of works in electronic form.** 70. (1) Where a work in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work or to adapt it or to make copies of an adaptation in connection with his use of it, then, in the absence of any express terms -

- (a) prohibiting the transfer of the copy by the purchaser, imposing obligations which continue after a transfer or prohibiting the assignment of any licence or terminating any licence on a transfer; or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of copyright.

- (2) Any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred after the transfer, be treated as an infringing copy for all purposes.
- (3) Subsections (1) and (2) apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.
- (4) This section applies also on a subsequent transfer, with the substitution for references in subsection (2) to the purchaser of references, to the subsequent transferor.

*Miscellaneous Exceptions Relating to Literary,  
Dramatic, Musical and Artistic Works*

- Anonymous and pseudonymous literary etc. works.** 71. (1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of an arrangement made at a time when -
- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
  - (b) it is reasonable to assume -

- (i) that the copyright has expired; or
  - (ii) that the author died fifty years or more before the beginning of the calendar year in which the act is done or the arrangements are made.
- (2) Subsection (1) (b) (ii) does not apply in relation to a work in which copyright originally vested in an international organization by virtue of section 146 and in respect of which an order under that section specifies a copyright period longer than fifty years.
- (3) In relation to a work of joint authorship -
- (a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and
  - (b) the reference in subsection (1) (b) (ii) to the author having died shall be construed as a reference to all the authors having died.

**Use of notes  
of recordings  
of spoken word.**

72. (1) Where a record of spoken words is made, in writing or otherwise, for the purpose of -
- (a) reporting current events; or
  - (b) broadcasting or including in a cable programme service the whole or part of the work,
- it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record or any such material and use the copy) for that purpose, providing the conditions specified in subsection (2) are met.

- (2) The conditions referred to in subsection (1) are that-
- (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast or cable programme;
  - (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
  - (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
  - (d) the use is by or with the authority of a person who is lawfully in possession of the record.

**Reading or recitation in public.** 73. (1) The reading or recitation in public of any reasonable extract from a published literary or dramatic work is not an infringement of copyright in the work, if accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service, of a reading or recitation which, by virtue of subsection (1), does not infringe copyright in the work.

**Representation of artistic works on public display.** 74. (1) This section applies to –

- (a) buildings;
- (b) sculptures, models of buildings and works or artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

- (2) The copyright in such work is not infringed by -
- (a) making graphic work representing it;
  - (b) making photograph or film of it; or
  - (c) broadcasting or including in a cable programme service a visual image of it.
- (3) The copyright of such a work is not infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of copyright.

**Reconstruction  
of buildings.**

75. Anything done for the purposes of reconstructing a building does not infringe any copyright in the building or in any drawings or plans in accordance with which the building was constructed by or with the licence of the copyright owner.

**Subsequent  
work by same  
artist.**

76. Where the author of an artistic work is not the copyright owner, he does not infringe the copyright in the work by copying it in making another artistic work, provided he does not repeat or imitate the main design of the earlier work.

*Miscellaneous Exceptions Relating to Sound Recordings,*

*Films and Computer Programmes*

**Making etc.,  
of recordings  
of musical  
work previously  
made or  
imported.**

77. (1) Where sound recordings of a musical work (and accompanying words, if any) have, with the licence or consent of the owner of the copyright in the work, been previously made in or imported into Antigua and Barbuda for the purposes of retail sale, then, any person may, after the expiry of the period of four months immediately following upon the date of the first authorized manufacture in, or importation into, Antigua and

Barbuda of such recordings, and without first obtaining the consent or licence of the owner of the copyright in the work, make or authorize the making of sound recordings of it if such person –

- (a) intends to sell the recordings 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 sound recordings which are to be so sold or supplied;
  - (b) pays royalties calculated at the prescribed rate; 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.
- (2) Any person who makes or authorizes the making of sound recordings pursuant to subsection (1) shall not make or authorize the making of any alterations in, or omissions from, the work unless sound recordings of that work containing similar alterations or omissions have been previously made by or with the licence or consent of the owner of the copyright or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the sound recording in question.

- Rental of films, etc.**      **78.**
- (1) The Minister may by order, subject to affirmative resolution, provide that in such cases as may be specified in the order, the rental to the public of copies of films shall be treated as licensed by the copyright owner subject only to the payment of such reasonable royalty or other payment as may be agreed or determined in default of agreement by the Copyright Tribunal.
  - (2) An order under subsection (1) shall not apply if, or to the extent that there is a licensing scheme certified under section 102 for the purposes of this section providing for the grant of licences.

- (3) An order may make different provision for different cases and may specify cases by reference to any factor relating to the work, the copies rented, the person renting or the circumstances of the rental.
- (4) Nothing in this section affects any liability under section 31 in respect of the rental of infringing copies.

**Playing of  
sound recording  
for purposes of  
charitable  
organization.**

79. It is not an infringement of the copyright in a sound recording to play it as part of the activities of, or for the benefit of, a club, society or other organization if-

- (a) the organization is not established or conducted for profit and its objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and
- (b) the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organization.

*Miscellaneous Exceptions Respecting Broadcasts  
and Cable Programmes*

**Incidental  
recording for  
purposes of  
broadcast or  
cable programme.**

80. (1) This section applies where by virtue of a licence or assignment of copyright a person is authorized to broadcast from a place in a specified country or to include in a cable programme service sent from Antigua and Barbuda or a specified country -

- (a) a literary, dramatic or musical work, or an adaptation of such a work;
- (b) an artistic work; or
- (c) a sound recording or film.

- (2) The person referred to in subsection (1) shall, by virtue of this section, be treated as licensed by the owner of the copyright in the work to do or authorize any of the following for the purposes of the broadcast or cable programme –
- (a) in the case of a literary, dramatic or musical work or an adaptation of such a work, to make a sound recording or film of the work or adaptation;
  - (b) in the case of an artistic work, to take a photograph or make a film of the work;
  - (c) in the case of a sound recording or film, to make a copy of it.
- (3) A licence under subsection (2) is subject to the following conditions -
- (a) the recording, film, photograph or copy in question shall not be used for any other purpose; and
  - (b) such recording, film, photograph or copy shall be destroyed within twenty-eight days of being first used for broadcasting the work or, as the case may be, including it in a cable programme service.
- (4) A recording, film, photograph or copy made in accordance with this section shall be treated as an infringing copy -
- (a) for the purposes of any use in breach of the condition mentioned in subsection (3) (a); and
  - (b) for all purposes after that condition or the condition mentioned in subsection (3) (b) is breached.

- Recording of broadcasts for programme control.** 81. (1) Copyright is not infringed by the making or use by a prescribed broadcasting organization, for the purpose of maintaining supervision and control over programmes and advertisements broadcast by that organization, of recordings of those programmes and advertisements.
- (2) Copyright is not infringed by the making or use by the Antigua Broadcasting Service of recordings of programmes in connection with and for the purpose of carrying out its functions under the law relating to Broadcasting.
- Recording for archival purposes.** 82. (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.
- (2) In subsection (1) “designated” means designated by the Minister, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.
- Reception and retransmission of broadcast in cable programme service.** 83. Where a literary, dramatic or musical work or film is broadcast with the licence of the copyright owner from a place in Antigua and Barbuda or a specified country, any person may, without obtaining the licence of the copyright owner, incorporate the work (by means of the reception of the broadcast) in a cable programme service:
- Provided that –
- (a) the transmission by the cable programme service takes place simultaneously with the reception of the broadcast; and
- (b) the programme in which the literary, dramatic or musical work or film is incorporated is transmitted without alteration of any kind; and

- (c) the copyright owner is entitled to receive from the person providing the cable programme service, equitable remuneration in respect of the transmission, to be determined in default of agreement by the Tribunal,

and, 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 transmission of any material contained in the programme as broadcast; and the term “material” includes a commercial advertisement.

- Recording for purpose of time shifting.** 84. The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

#### *Adaptations*

- Adaptations.** 85. An act which by virtue of this Part may be done without infringing copyright in a literary, dramatic or musical work does not, where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

#### *Prescribed Exceptions*

- Power of Minister to prescribe exceptions to infringement.** 86. (1) Subject to the provisions of this section, the Minister may, by order subject to negative resolution of the House of Representatives, provide that the copyright in a work of the description or category specified in the order is not infringed where, in relation to such work, such acts as are specified in the order are done in the circumstances so specified.
- (2) The Minister shall not make an order under subsection (1) unless he is satisfied that the acts specified in the order in relation to the work –

- (a) are necessary in the public interest in connection with an event of national importance;
  - (b) would not conflict with the normal exploitation of the work; and
  - (c) would not unreasonably prejudice the legitimate interest of the owner of the copyright in the work.
- (3) An order made under subsection (1) shall make provision for the payment of equitable remuneration to the copyright owner to be determined, in default of agreement, by the Copyright Tribunal; and such order may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the order.

## **PART VII - COPYRIGHT LICENSING**

### *Preliminary*

**Interpretation 87.  
for purposes  
of Part.**

- (1) In this Part -

“licence” means any licence that is issued or offered by a licensing body authorizing, in relation to works in which copyright subsists, the doing of any of the acts restricted by copyright;

“licensing body” means a society or other organization which has as its main object or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of licences, and whose objects include the granting of licences covering works of more than one author;

‘licensing scheme’ means a scheme setting out -

- (a) the classes of case in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant licences; and
- (b) the terms on which licences would be granted in those classes of case,

and for this purpose a “scheme” includes anything in the nature of a scheme, whether described as a scheme or as a tariff or by any other name.

(2) References in this Part to licences or licensing schemes covering works of more than one author do not include licences or schemes covering only -

- (a) a single collective work or collective works of which the authors are the same; or
- (b) works made by, or by employees commissioned by, a single individual, firm, company or group of companies.

(3) For the purpose of subsection (2) “group” in relation to a company means that company and -

- (a) any other company which is its holding company or subsidiary;
- (b) any other company which is a subsidiary of the holding company;

- (c) any company which directly or indirectly controls or is controlled by any company referred to in paragraph (a) or (b); and
- (d) any company which is controlled by a person who directly or indirectly controls a company referred to in paragraph (a), (b) or (c).

**Licensing schemes to which sections 89 to 94 apply.**

**88.** The provision of sections 89 to 94 apply to licensing schemes of the following descriptions -

- (a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) or performance which cover works of more than one author, so far as they relate to licences for -
  - (i) copying the work;
  - (ii) performing, playing or showing the work in public; or
  - (iii) broadcasting the work or including it in a cable programme service;
- (b) all licensing schemes in relation to the copyright in sound recordings (other than film sound-tracks when accompanying a film), broadcasts or cable programmes or the typographical arrangement of published editions; and
- (c) all licensing schemes in relation to the copyright in sound recordings, films or computer programmes so far as they relate to licences for the rental of copies to the public.

*References and Applications Respecting Licensing Schemes*

- Reference of proposed licensing scheme.**    **89.**
- (1) The terms of a licensing scheme which a licensing body proposes to operate may be referred to the Copyright Tribunal by an organization claiming to be representative of persons claiming that they require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.
  - (2) The Tribunal shall first decide whether to entertain the reference and decline to do so on the ground that the reference is premature.
  - (3) Where the Tribunal decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme either generally or so far only as it relates to cases of the description to which the reference relates, as the Tribunal thinks reasonable in the circumstances.
  - (4) An order may be made under subsection (3) so as to be in force indefinitely or for such period as the Tribunal may determine.
- Reference of existing licensing scheme.**    **90.**
- (1) Where during the operation of a licensing scheme a dispute arises between the operator of the scheme and -
    - (a) the person claiming that he requires a licence in a case of a description to which the scheme applies; or
    - (c) an organization claiming to be representative of such persons,

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

- (2) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.
- (3) The Tribunal shall consider the matter in dispute and make such order, either confirming or varying the scheme so far only as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**Further  
reference of  
scheme.**

- 91.**
- (1) Where the Copyright Tribunal has on a previous reference of a licensing scheme under section 89 or 90, or under this section, made an order with respect to the scheme then, while the order remains in force -
    - (a) the operator of the scheme;
    - (b) a person claiming that he requires a licence in a case of the description to which the order applies; or
    - (c) an organization claiming to be representative of such persons, may refer the scheme again to the Tribunal so far as it relates to cases of that description.
  - (2) A licensing scheme shall not, except with the special leave of the Tribunal, be referred again to the Tribunal in respect of the same description of cases -
    - (a) within twelve months from the date of the order on the previous reference; or
    - (b) if the order was made so as to be in force for fifteen months or less, until the last three months before the expiry of the order.

- (3) A scheme which has been referred to the Tribunal under this section shall remain in operation until proceedings on the reference are concluded.
- (4) The Tribunal shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far only as it relates to cases of the description to which the reference relates, as the Tribunal may determine to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**Application 92.  
for grant of  
licence in  
connection with  
licensing  
scheme.**

- (1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Copyright Tribunal.
- (2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either -
  - (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that a licence should not be granted; or
  - (b) proposes terms for a licence which are unreasonable, may apply to the Copyright Tribunal.
- (3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if -

- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
- (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

- (4) If the Tribunal is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms as the Tribunal may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.
- (5) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**Application for review as to entitlement to licence.** 93.

- (1) Where the Copyright Tribunal has made an order under section 92 that a person is entitled to a licence under a licensing scheme, the operator of the scheme or the original applicant may apply to the Tribunal to review its order.
- (2) An application shall not be made, except with the special leave of the Tribunal -
  - (a) within twelve months from the date of the order or of the decision on a previous application under this section; or
  - (b) if the order was made so as to be in force for fifteen months or less or, as a result of the decision on a previous application under this section, is due to expire within fifteen months of that decision, until the last three months before the expiry date.

**Effect of  
order of  
Tribunal as  
to licensing  
scheme.**

- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

94. (1) A licensing scheme which has been confirmed or varied by the Copyright Tribunal under section 89 or 90 shall be in force, or as the case may be, remain in operation so far as it relates to the description of case in respect of which the order is made, so long as the order remains in force.

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

(a) pays to the operator of the scheme any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the operator to pay them when ascertained; and

(b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

- (3) The Tribunal may direct that the order, so far as it varies the amount of charges payable, shall have effect from a date before that on which it is made, not being a date earlier than the date on which the reference was made or, where the scheme came into operation after the reference was made, not being a date earlier than the date on which the scheme came

into operation; but no such direction may be made where subsection (5) applies.

- (4) If a direction is made under subsection (3) -
  - (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and
  - (b) the reference in paragraph (a) of subsection (2) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.
- (5) An order of the Tribunal under section 89 or 90 made with respect to a scheme which is certified for any purpose under section 102 has effect, so far as it varies the scheme by reducing the charge payable for licences, from the date on which the reference was made to the Tribunal.
- (6) Where the Tribunal has made an order under section 92 and the order remains in force, the person in whose favour the order is made shall, if he satisfies the conditions specified in subsection (7), be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.
- (7) The conditions referred to in subsection (6) are that the person mentioned in that subsection shall -
  - (a) pay to the operator of the scheme any charges payable in accordance with the order or, if the amount cannot be ascertained, give an undertaking to pay the charges when ascertained; and
  - (b) comply with the other terms specified in the order.

*References and Applications Respecting Licences  
and Licensing Bodies*

- Licences to which sections 96 to 99 apply.**
- 95.** (1) Sections 96 to 99 apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme -
- (a) licences relating to the copyright in literary, dramatic, musical or artistic works or films (or film sound-tracks when accompanying a film) which cover works of more than one author, so far as they authorize –
    - (i) copying the work;
    - (ii) performing, playing or showing the work in public; or
    - (iii) broadcasting the work or including it in a cable programme service;
  - (b) any licence relating to the copyright in a sound recording (other than a film sound-track when accompanying a film), broadcast or cable programme, or the typographical arrangement of a published edition; and
  - (c) all licences in relation to the copyright in sound recordings, films or computer programmes so far as they relate to the rental of copies to the public.
- Reference to Tribunal of proposed licence.**
- 96.** (1) The terms on which a licensing body proposes to grant a licence may be referred to the Copyright Tribunal by the prospective licensee.
- (2) The Tribunal shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

- (3) If the Tribunal decides to entertain the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.
- (4) The order may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**Reference to Tribunal of expiring licence.**

- 97.**
- (1) A licensee under a licence which is due to expire by effluxion of time or as a result of notice given by the licensing body, may apply to the Copyright Tribunal on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.
  - (2) Such an application may not be made until the last three months before the licence is due to expire.
  - (3) A licence in respect of which a reference has been made to the Tribunal shall remain in operation until proceedings on the reference are concluded.
  - (4) If the Tribunal finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Tribunal may determine to be reasonable in the circumstances.
  - (5) An order of the Tribunal under this section may be made so as to be in force indefinitely or for such period as the Tribunal may determine.

**Tribunal may review order as to licence.**

- 98.**
- (1) Where the Copyright Tribunal has made an order under section 96 or 97, the licensing body or the person entitled to the benefit of the order may apply to the Tribunal to review its order.

- (2) An application shall not be made, except with the special leave of the Tribunal –
- (a) within twelve months from the date of the order or of the decision on a previous application under this section; or
  - (b) if the order was made so as to be in force for fifteen months or less or, as a result of the decision on a previous application under this section, is due to expire within fifteen months of that decision, until the last three months before the expiry date.
- (3) The Tribunal shall on an application for review confirm or vary its order as the Tribunal may determine to be reasonable in the circumstances.

**Effect of  
order of  
Tribunal as  
to licence.**

- 99.** (1) Where the Copyright Tribunal has made an order under section 96 or 97 and the order remains in force, the person entitled to the benefit of the order shall, if he satisfies the conditions specified in subsection (2), be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.
- (2) The conditions referred to in subsection (1) are that the person mentioned in that subsection shall -
- (a) pay to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, give an undertaking to pay the charges when ascertained; and
  - (b) comply with the other terms specified in the order.
- (3) The benefit of the order may be assigned -

- (a) in the case of an order under section 96, if assignment is not prohibited under the terms of the Tribunal's order; and
  - (b) in the case of an order under section 97, if assignment was not prohibited under the terms of the original licence.
- (4) The Tribunal may direct that an order under section 96 or 97, or an order under section 98 varying such an order, so far as it varies the amount of charges payable, shall have effect from a date before that on which it was made, not being a date earlier than the date on which the reference or application was made or, where a licence was granted or was due to expire after the reference was made, not being a date earlier than the date on which the licence was granted or, as the case may be, was due to expire.
- (5) If such a direction is made -
- (a) any necessary repayments or further payments, shall be made in respect of charges already paid; and
  - (b) the reference in paragraph (a) of subsection (1) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

*Supplementary*

- Matters prescribed for Tribunal.**      **100.** Regulations made under section 150 may prescribe the matters which the Copyright Tribunal shall take into account on a reference or application made under this Part in respect of any class or classes of case.

- Royalty payable for rental of sound recordings, etc.**
- 101.**
- (1) An application to settle the royalty or other sum payable in pursuance of section 78 may be made to the Copyright Tribunal by the copyright owner or the person claiming to be treated as licensed by him.
  - (2) The Tribunal shall consider the matter and make such order as it may determine to be reasonable in the circumstances.
  - (3) Either party may subsequently apply to the Tribunal to vary the order and the Tribunal shall consider the matter and make such order confirming or varying the original order as it may determine to be reasonable in the circumstances.
  - (4) An application under subsection (3) shall not, except with the special leave of the Tribunal, be made within twelve months from the date of the original order or of the order on a previous application under that subsection.
  - (5) An order under subsection (3) has effect from the date on which it is made or such later date as may be specified by the Tribunal.
- Ministerial order in relation to licensing scheme.**
- 102.**
- (1) On the application of any person operating or proposing to operate a licensing scheme for the purposes of sections 58, 78 and such other provisions as may be prescribed, the Minister shall by order certify the scheme if he is satisfied that it -
    - (a) enables the works to which it relates to be identified with sufficient certainty by persons likely to require licences; and
    - (b) sets out clearly the charges (if any) payable and the other terms on which licences will be granted.

- (2) The scheme shall be scheduled to the order and the scheme shall come into operation for the purposes of sections 58, 78 or such other provisions as may be prescribed -
- (a) on such date, being not less than eight weeks after the order is made, as may be specified in the order; or
  - (b) if the scheme is the subject of a reference under section 89, any later date on which the order of the Copyright Tribunal under that section comes into force or the reference is withdrawn.
- (3) A variation of the scheme is not effective unless the order is amended by the Minister; and the Minister shall make the amendment in the case of a variation ordered by the Copyright Tribunal on a reference under section 89,90 or 91 and may do so in any other case if he thinks fit.
- (4) The Minister may, by order revoke an order made under subsection (1) if it appears to him that the scheme to which the order relates is no longer being operated according to its terms, and shall revoke the order if the scheme ceases to be operated.

#### **PART VIII – THE COPYRIGHT TRIBUNAL**

- Establishment of Tribunal. 103.** (1) There is hereby established for the purposes of this Act a tribunal to be called the Copyright Tribunal.
- Schedule** (2) The provisions of the Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.
- Jurisdiction of Tribunal. 104.** (1) The functions of the Tribunal shall be -
- (a) to hear and determine -

- (i) any matter referred to it pursuant to any provision of Part VII relating to a licensing scheme or licence;
- (ii) an application under section 101 to settle the royalty or other sum payable for rental of a sound recording, film or computer programme;

- (b) to keep under review the prescribed rate of royalty payable to a performer in connection with an adaptation of an original recording of his performance; and
- (c) to make recommendations to the Minister on the rate of royalties or other payments payable in respect of the use or presentation in such national cultural event as he may by order designate of any works or performance in which copyright or other rights subsist.

- (2) In relation to its functions under subsection (1) (b), the Tribunal may from time to time on its own initiative and shall, on a request made in writing by the Minister, enquire into the appropriateness of such rate and make such recommendations to the Minister with respect thereto as it thinks fit.

**Regulations relating to proceedings of Tribunal.**

- 105.** (1) The Minister may make regulations relating to proceedings before the Copyright Tribunal and provisions shall be made in such regulations -
- (a) prohibiting the Tribunal from entertaining a reference under section 89, 90 or 91 by a representative organization unless the Tribunal is satisfied that the organization is reasonably of representative of the class of persons which it claims to represent;

- (b) specifying the parties to any proceedings and enabling the Tribunal to make a party to the proceedings any person or organization which the Tribunal is satisfied has a substantial interest in the matter; and
- (c) requiring the Tribunal to give the parties to the proceedings an opportunity to state their case, in writing or orally as the regulations may provide.

- (2) The regulations may prescribe any matter incidental to or consequential upon any appeal from the Tribunal under section 106.
- (3) Regulations made under this section shall be subject to negative resolution of the House of Representatives.

- Appeal on point of law.**      **106.**
- (1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the Court of Appeal.
  - (2) Regulations made under section 105 may limit the time within which an appeal may be brought.

#### **PART IX – RIGHTS IN PERFORMANCES**

- Conferment of rights in performances.**      **107.**
- (1) By virtue of, and subject to the provisions of this Part, rights are conferred on -
    - (a) a performer, requiring his consent to the exploitation of his performance; and
    - (b) a person having recording rights in relation to a performance, requiring his consent to the making of a recording of that performance.

- (2) The rights conferred by this Part are independent of -
- (a) any copyright in or moral rights relating to any work used or performed in the performance; and
  - (b) any other right or obligation arising otherwise than under this Part.

*Performers' Rights*

- Consent required for recording etc. of performance.**      **108.**      (1) A performer's rights are infringed by a person who, without his consent -
- (a) makes, otherwise than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance or makes copies, directly or indirectly, from such a recording; or
  - (b) broadcasts live, or includes live in a cable programme service, or communicates live to the public, the whole or any substantial part of a qualifying performance.
- (2) In an action for infringement of a performer's rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

- Infringement of performer's rights by use of recording**      **109.**      A performer's rights are infringed by a person who, without his consent -
- (a) shows or plays in public the whole or any substantial part of a qualifying performance; or
  - (b) broadcasts or includes in a cable programme service the whole or any substantial part of a qualifying performance,

by means of a recording which was made without the performer's consent and that person knows or has reason to believe that it was so made.

**Consent and royalty for adaptation of recording.** 110. (1) A performer's rights are infringed by a person who, without his consent and payment of royalty at the prescribed rate, uses an original recording of a qualifying performance (whether authorized or not) for the purpose of making an adaptation of the recording.

(2) In subsection (1) "an adaptation of the recording" means a recording in which the performance is accompanied by lyrics or music not contained in the original recording.

**Infringement of performer's rights by importing etc. illicit recording.** 111. (1) A performer's rights are infringed by a person who, without his consent -

- (a) imports into Antigua and Barbuda otherwise than for his private and domestic use; or
- (b) distributes to the public by sale or other transfer of ownership, of a fixation of his performance, or copies thereof, that has not already been subject to a distribution authorized by the performer;

recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the remedy in damages available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

- (3) In subsection (2) “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

*Rights of Person Having Recording Rights*

- Consent required for recording performance subject to exclusive contract.** 112. (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent, makes a recording of the whole or any substantial part of the performance otherwise than for his private and domestic use.
- (2) In an action for infringement of those rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.
- Infringement of recording rights by use of recording.** 113. (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent -
- (a) shows or plays in public the whole or any substantial part of the performance; or
- (b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance,
- by means of a recording which was, and which that person knows or has reason to believe was, made without the appropriate consent.
- (2) The reference in subsection (1) to the “appropriate consent” is to the consent of the person who at the time the consent was given had recording rights in relation to the performance (or, if there was more than one such person, of all of them).

- Infringement of recording rights by importing etc. illicit recording.** 114. (1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent -
- (a) imports into Antigua and Barbuda otherwise than for his private and domestic use; or
  - (b) in the course of a business possesses sells or lets for hire, offers or exposes for sale or hire or distributes,
    - a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.
- (2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the remedy in damages available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.
- (3) In subsection (2) “innocently acquired” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

*Exceptions to Infringement*

- Permitted acts in relation to performances.** 115. Notwithstanding the rights in performances conferred by this Part -
- (a) any act done in relation to a performance or recording in the circumstances specified hereunder does not constitute an infringement of the rights; and
  - (b) the Copyright Tribunal may give consent on behalf of a performer in the circumstances specified in section 128.

- Fair dealing for criticism, etc.**     **116.**     Fair dealing with a performance or recording -
- (a)     for the purpose of criticism or review of that or another performance or recording, or of a work; or
  - (b)     for the purpose of reporting current events,
- does not infringe any of the rights conferred by this Part, and the provisions of section 54 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.
- Incidental inclusion of performance or recording.**     **117.**     The rights conferred by this Part are not infringed -
- (a)     by the incidental inclusion in a sound recording, film, broadcast or cable programme of a performance or recording;
  - (b)     by anything done in relation to copies of, or the playing, showing, broadcasting or inclusion in a cable programme service of, anything whose making was not an infringement of those rights, by virtue of paragraph (a),
- and for the purposes of this section, a performance or recording so far as it consists of music, or words spoken or sung with music, shall not be regarded as incidentally included in a sound recording broadcast or cable programme if it is deliberately included.
- Acts done to recording or performance for purposes of instruction etc.**     **118.**     (1)     The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.
- (2)     The rights conferred by this Part are not infringed-

- (a) by the copying of a recording of a performance for the purposes of setting or answering the questions in an examination; or
- (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with, it shall be treated as an illicit recording for the purposes of that dealing, and if that dealing infringes any right conferred by this Part, for all subsequent purposes.

(4) In subsection (3) and in section 119 (2) “dealt with” means sold or let for hire, or offered or exposed for sale or hire.

**Recording of 119.  
broadcast and  
cable programme  
by educational  
establishment.**

(1) A recording of a broadcast or cable programme or a copy of such recording, may be made by or on behalf of an educational establishment for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part in relation to any performance or recording included in it.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with (as defined in section 118 (4)) it shall be treated as an illicit recording for the purposes of that dealing and, if that dealing infringes any right conferred by this Part, for all subsequent purposes.

**Acts done to 120.  
performance of  
recording for  
Parliamentary  
Proceedings, etc.**

The rights conferred by this Part are not infringed by anything done for the purposes of –

- (a) parliamentary or judicial proceedings or the reporting of such proceedings; or

- (b) the proceedings of a statutory inquiry or the reporting of such proceedings held in public.

**Transfer or recording of performance in electronic form.**

- 121.** (1) Where a recording or a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allow the purchaser to make further recordings in connection with his use of the recording, then, in the absence of any express terms –

- (a) prohibiting the transfer of the recording by the purchaser;
- (b) imposing obligations which continue after a transfer;
- (c) prohibiting the assignment of any consent;
- (d) terminating any consent on a transfer; or
- (e) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

- (2) Subsection (1) applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.
- (3) This section also applies on a subsequent transfer, with the substitution for references in subsection (1) to the purchaser of references to the subsequent transferor.

- (4) This section does not apply in relation to a recording purchased before the commencement of this Act.

**Use of  
recordings  
of spoken  
words.**

- 122.** (1) Where a recording of the reading or recitation of a literary work is made the purpose of -

- (a) reporting current events; or
- (b) broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of the rights conferred by this Part to use the recording (or to copy the recording and use the copy) for that purpose, provided the conditions specified in subsection (2) are met.

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

- (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;
- (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;
- (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the recording.

- Playing sound recording for charitable purposes.** 123. It is not an infringement of any right conferred by this Part to play a sound recording as part of the activities of, or for the benefit of, a club, society or other organization if -
- (a) the organization is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and
  - (b) the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organization.
- Incidental recording for purposes of broadcast or cable programme.** 124. (1) Subject to subsection (2), a person who proposes to broadcast a recording of a performance, or to include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by this Part, shall be treated as having consent for the purposes of this Part for the making of a further recording for the purposes of the broadcast or cable cast or programme.
- (2) The consent given under subsection (1) is subject to the following conditions -
- (a) the further recording shall not be used for any other purpose; and
  - (b) such recording shall be destroyed within twenty-eight days of being first used for broadcasting the performance or including it in a cable programme service.
- (3) A recording made in accordance with this paragraph shall be treated as an illicit recording -

- (a) for the purposes of any use in breach of the condition mentioned in paragraph (a) of subsection (2); and
- (b) for all purposes after that condition or the condition mentioned in paragraph (b) of subsection (2) is breached.

**Recording for supervision and control of programmes.** 125. (1) The rights conferred by this Part are not infringed by the making or use by a prescribed broadcasting organization for the purpose of maintaining supervision and control over programmes broadcast by that organization, of recordings of those programmes.

(2) The rights conferred by this Part are not infringed by the making or use of recordings by the Antigua Broadcasting Service in connection with and for the purpose of carrying out its functions under the law relating to broadcasting.

**Recording of broadcast etc. for archival purpose.** 126. (1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any right conferred by this Part in relation to a performance or recording included in the broadcast or cable programme.

(2) In this section “designated” has the meaning assigned to that expression in section 82 (2).

**Order excepting acts from infringing rights under this Part.** 127. (1) Subject to the provisions of this section, the Minister may, by order, subject to negative resolution, provide that the rights conferred by this Part are not infringed by the doing of such acts in relation to the performance as are specified in the order, where such acts are done in the circumstances so specified.

(2) The Minister shall not make an order under subsection (1) unless he is satisfied that the acts specified in the order-

- (a) are necessary in the public interest in connection with an event of national importance;
- (b) would not conflict with the normal exploitation of the performance; and
- (c) would not unreasonably prejudice the legitimate interest of the performer or any person having rights in the performance.

- (3) An order made under subsection (1) shall make provision for the payment of equitable remuneration to any person having rights conferred by this Part to be determined, in default of agreement, by the Copyright Tribunal; and such order may contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving effect to the order.

**Tribunal may consent on behalf of performer. 128.**

- (1) Subject to the provisions of this section, the Copyright Tribunal may, on the application of a person who wishes to make a recording from a previous recording of a performance, give consent in a case where -
  - (a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry; or
  - (b) a performer unreasonably withholds his consent.
- (2) Consent given by the Tribunal has effect as consent of the performer for the purposes of -
  - (a) the provisions of this Part relating to performers' rights; and
  - (b) paragraph (a) of subsection (3) of section 134,

and may be given subject to such conditions as the Tribunal may specify in the order.

- (3) The Tribunal shall not give consent under paragraph (a) of subsection (1) except after the service or publication of such notices as may be required by regulations made under section 105 or as the Tribunal may in any particular case direct.
- (4) The Tribunal shall not give consent under paragraph (b) of subsection (1) unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his; but it shall be for the performer to show what his reasons are for withholding consent, and in default of evidence as to his reasons the Tribunal may draw such inferences as it thinks fit.
- (5) In any case the Tribunal shall take into account the following factors -
  - (a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;
  - (b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.
- (6) Where the Tribunal gives consent under this section it shall, in default of agreement between the applicant and the performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.

*Duration and Transmission of Rights in  
Performances; Consent*

- Duration of rights in performances.** 129. The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of fifty years from the end of the calendar year in which the performance was fixed in sound recording, or in the absence of such fixation, from the end of the calendar year in which the performance takes place.
- Transmission of rights in performances.** 130. (1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performers' rights are transmissible as provided in this section.
- (2) On the death of a person entitled to performer's rights -
- (a) the rights pass to such person as he may by testamentary disposition specifically direct; and
  - (b) if, or to the extent that there is no such direction, the rights are exercisable by his personal representative,
- and references in this Part to the performer, in the context of the person having performer's rights, shall be construed as references to the person for the time being entitled to exercise those rights.
- (3) Where by virtue of paragraph (a) of subsection (2) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.
- (4) Subsections (1), (2) and (3) are without prejudice to any rights conferred by this Act on a person to whom has been assigned the benefit of an exclusive recording contract or licence to make recordings of a performance.
- (5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

- Consent.**      **131.**    (1)      Consent for the purposes of this Part may be given in relation to a specific performance, a specified description of performances, or performances generally, and may relate to past or future performances.
- (2)      A person having recording rights in a performance is bound by any prior consent given by a person through whom he derives his rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by him.
- (3)      Where a right conferred by this Part passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

*Remedies for Infringement of Rights  
in Performances*

**Infringement as breach of duty.**    **132.**    An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty.

- Order for delivery up of illicit recording in civil proceedings.**    **133.**    (1)      Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights under this Part in relation to the performance may apply to the court for an order that the recording be delivered up to him or to such other person as the court may direct.
- (2)      An application shall not be made after the end of the period specified in section 138; and the court shall not make an order under this section unless it also makes an order under section 137 for the disposal of the recording, or it is of the opinion that there are grounds on which an order under that section could be made.

- (3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 137 is not made, retain it pending the making of an order, or the decision not to make an order under that section.
- (4) Nothing in this section affects any other power of the court.

*Offences*

**Criminal liability for making etc. illicit recordings.**

134. (1) A person commits an offence who without sufficient consent -
- (a) makes for sale or hire; or
  - (b) imports into Antigua and Barbuda otherwise than for his private and domestic use; or
  - (c) possesses in the course of a business with a view to doing any act infringing the rights conferred by this Part; or
  - (d) in the course of a business -
    - (i) sells or lets for hire; or
    - (ii) offers or exposes for sale or hire; or
    - (iii) distributes,
- a recording which is, and which he knows or has reason to believe is, an illicit recording.
- (2) A person commits an offence who causes a recording of a performance made without sufficient consent to be -

- (a) shown or played in public; or
  - (b) broadcast or included in a cable programme service, thereby infringing any of the rights conferred by this Part, if he knows or has reason to believe that those rights are thereby infringed.
- (3) In subsections (1) and (2) “sufficient consent” means -
- (a) in the case of a qualifying performance that is not subject to an exclusive recording contract, the consent of the performer; and
  - (b) in the case of a performance that is subject to an exclusive recording contract, the consent of the person having recording rights.
- (4) References in this section to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.
- (5) No offence is committed under subsection (1) or (2) by the doing of an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.
- (6) A person guilty of an offence under subsection (1) or (2) is liable -
- (a) on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding five years;
  - (b) on conviction on indictment to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

- Order for delivery up of illicit recording in criminal proceedings.**
- 135.** (1) The court before which proceedings are brought against a person for an offence under section 134 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performers' rights or recording rights in relation to the performance or to such other person as the court may direct.
- (2) An order may be made by the court of its own motion or on the application of the prosecution and may be made whether or not the person is convicted of the offence, but shall not be made
- (a) after the end of the period specified in section 138; or
- (b) if it appears to the court unlikely that any order will be made under section 137.
- (3) An appeal lies to the Court of Appeal from an order made under this section.
- (4) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 137.
- False representation of authority to give consent.**
- 136.** (1) It is an offence for a person to represent falsely that he is authorized by any person to give consent for the purposes of this Part in relation to a performance, unless he believes on reasonable grounds that he is so authorized.
- (2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

**PART X – GENERAL**

- Order for disposal of infringing copy or illicit recording.**
137. (1) An application may be made to the High Court for-
- (a) an order that an infringing copy or article delivered up in pursuance of an order under sections 33 and 48 shall be-
    - (i) forfeited to the copyright owner; or
    - (ii) destroyed or otherwise dealt with as the court may direct;
  - (b) an order that an illicit recording of a performance delivered up in pursuance of an order under section 133 or 135 shall be-
    - (i) forfeited to such person having performer's rights or recording rights in relation to the performance as the court may direct; or
    - (ii) destroyed or otherwise dealt with as the court thinks fit; or
  - (c) a decision that no order under paragraph (a) or (b) should be made.
- (2) In considering what order (if any) should be made, the court shall have regard to all the circumstances of the case and, in particular-
- (a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interest;

- (b) where the infringement relates to rights conferred under Part IX, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.
- (3) Provision shall be made by regulations as to the service of notice on persons having an interest in the infringing copy or other articles or the illicit recording, as the case may be, and any such person is entitled-
  - (a) to appear in proceedings for an order under this section whether or not he was served with notice; and
  - (b) to appeal against any order made, whether or not he appeared, and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.
- (4) Where there is more than one person interested in an infringing copy or other article, or as the case may be, an illicit recording, the court shall make such order as it thinks just and may, in particular, direct that such copy, article or recording be sold, or otherwise dealt with, and the proceeds divided.
- (5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or article or, as the case may be, the recording was before being delivered up or seized is entitled to its return.
- (6) References in this section to a person having an interest in a copy or other article or a recording include any person in whose favour an order

could be made in respect of the copy, article or, as the case may be, recording under this section.

**Period after which delivery up not available.** 138. (1) An application for an order under section 33 or 133 may not be made after the end of the period of six years from the date on which the infringing copy or article or, as the case may be, the illicit recording in question was made, subject to the following provisions.

(2) Notwithstanding subsection (1) a person who during the whole or any part of the period mentioned in subsection (1) is entitled to apply for an order –

(a) is under a disability; or

(b) is prevented by fraud or concealment from discovering the facts entitling him to apply,

may apply at any time before the end of the period of six years from the date on which he ceased to be under a disability or, as the case may be, could with reasonable diligence have discovered those facts.

**Time limit for prosecution.** 139. 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, whichever date last occurs.

**Powers of member of Police Force.** 140. (1) A Magistrate may, if satisfied by information on oath that there is reasonable cause to believe that an offence against this Act is being committed issue a warrant authorising a member of the police not below the rank of an inspector to –

(a) enter and search any premises or place;

- (b) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or
  - (c) stop and search any vehicle, in which the inspector reasonably suspects there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings; and
  - (d) seize, remove or detain -
    - (i) any article which appears to the inspector to be an infringing copy or an illicit recording or any other article which appears to him to be intended for use for making such copies or recordings; 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) An inspector to whom a warrant has been issued under subsection (1) may -
- (a) break open any outer or inner door of any place which he is authorized by this section to enter and search;
  - (b) forcibly board any vessel, aircraft or vehicle which he is authorized under this Act to stop, board and search;
  - (c) 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 authorized under this section to search until such place has been searched;
- (e) detain any vessel or aircraft which he is authorized under this section to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
- (f) detain any vehicle which he is authorized under this Act to stop and search until it has been searched;

(10) It shall be the duty of any inspector in the execution of any warrant given under subsection (1) to produce the warrant to the owner or occupier of any premises, place, vessel or aircraft entered or vehicle stopped, pursuant to such directions if required by such owner or occupier to do so

(11) An inspector to whom a warrant has been issued under subsection (1) may call upon any constable to assist him in execution of the warrant.

**Restrictions  
on entry and  
search of  
domestic  
premises.**

141. (1) 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 any provision of this Act, issue a warrant authorizing a member of the Police Force not below the rank of Sergeant to enter and search the premises, and such member may call upon any constable to assist him in entering and searching the premises.
- (2) In this section “domestic premises” means any premises or any part thereof, used exclusively or mainly as a dwelling house.

**Obstruction of member of Police Force.**

142. (1) Without prejudice to any other written law, any person who -
- (a) willfully obstructs a member of the Police Force in the exercise of his powers or the performance of his duties under this Act;
  - (b) willfully fails to comply with any requirement properly made to him by any such member; or
  - (c) without reasonable excuse fails to give such member 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 not exceeding five thousand dollars or to imprisonment for a term not exceeding two years.

- (2) A person who, when required to give information to a member of the Police Force in the exercise of his powers or the performance of his duties under this Act, knowingly gives false or misleading information to any such member is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years.
- (3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

**Offences by body corporate.**

143. Where an offence under this Act is committed by a body of persons whether corporate or incorporate, every person who at the time of the commission of the offence, acted in an official capacity for or on behalf of the body of persons in respect of that offence, whether as director, manager, secretary or other similar officer, or purporting to act in that capacity commits that offence and shall be tried under that offence.

**Power to  
apply  
provisions of  
Act to other  
country.**

- 144.** (1) Subject to the provisions of this section the Minister may by order provide that in respect of any country specified in the order, any provisions of this Act so specified shall apply -
- (a) in relation to persons who are citizens or habitual residents of that country as they apply to persons who are citizens or habitual residents of Antigua and Barbuda;
  - (b) in relation to bodies incorporated or established under the law of that country as they apply in relation to bodies incorporated or established under the laws of Antigua and Barbuda;
  - (c) in relation to literary, dramatic, musical or artistic works, sound recordings, films and editions first published in that country as they apply in relation to such works, sound recordings, films and editions first published in Antigua and Barbuda;
  - (d) in relation to broadcasts made from or cable programmes sent from that country as they apply in relation to broadcasts made from or cable programmes sent from Antigua and Barbuda;
  - (e) in relation to performances taking place in that country or given by an individual who is a citizen or habitual resident of that country, as they apply in relation to performances taking place in Antigua and Barbuda or given by an individual who is a citizen or habitual resident of Antigua and Barbuda.

(2) An order made under this section applying any provisions of this Act in relation to any country may apply that provision -

(a) without exception or modification or subject to such exceptions and modifications as may be specified in the order;

(b) generally or in relation to such classes of works or other classes of case as may be so specified.

(3) An order shall not be made under this section in relation to any country unless the country is -

(a) a Convention country; or

(b) a country as to which the Minister is satisfied that provision has been or will be made under its law in respect of the class of works or (as the case may be) the performances, to which the order relates, giving adequate protection to the owners of copyright under this Act or, as the case may be, to Antigua and Barbuda works and performances as defined in section 145 (4).

(4) In this section ‘Convention country’ means a country which is a party to a Convention relating to copyright or performers’ rights, as may be appropriate, to which Antigua and Barbuda is also a party.

**Denial of  
copyright or  
rights in  
performances.**

145. (1) If it appears to the Minister that the laws of a country fail to give adequate protection to Antigua and Barbuda works to which this section applies or to Antigua and Barbuda performances, or fail to give adequate protection in the case of one or more 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 its author or performer or all of those matters) the Minister may, by order,

make provision in relation to that country in accordance with subsection (2).

(2) An order made for the purposes of this section shall designate the country concerned and may provide either generally or in relation to such classes of case as are specified in the order, that copyright shall not subsist in works first published, or, as the case may be, that rights in performances shall not subsist 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 performance, as the case may be, the authors of the works or the performers were or are -

- (a) citizens or nationals of that country, not being at that time persons whose habitual residence is in Antigua and Barbuda or a specified country (excluding the country concerned); or
- (b) in the case of works, bodies incorporated or established under the laws of that country.

(3) The Minister shall, in making an order under this section, have regard to the nature and extent of the lack of protection for Antigua and Barbuda works or Antigua and Barbuda performances in consequence of which the order is being made.

(4) This section applies to literary, dramatic, musical and artistic works, sound recordings and films, and for the purposes of this section-  
 “Antigua and Barbuda performances” means -

- (a) performances given by individuals who are citizens or habitual residents of Antigua and Barbuda; or

- (b) performances that take place in Antigua and Barbuda;

“Antigua and Barbuda works” means works of which the author was a qualified person at the material time within the meaning of section 7 (3).

**International  
Organizations.**

- (1) This section applies to international organizations as to which the Minister by order has declared that it is expedient that this section should apply.

- (2) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an international organization to which this section applies in such circumstances that copyright would not, except by virtue of this subsection, subsist in the work immediately after the first publication thereof and-

- (a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright, if any, in the work; or
- (b) the work was made in such circumstances that, if it had been first published in Antigua and Barbuda, the organization would have been entitled to the copyright in the work,

then, copyright shall subsist in the work by virtue of this section and the organization shall be first owner of that copyright.

- (3) Copyright of which an international organization is first owner by virtue of this section shall subsist until the end of the period of fifty years from the end of the calendar year in which the work was made or such longer period as may be specified by the Minister, by order, for the purpose of complying with the international obligations of Antigua and Barbuda.

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

**Territorial waters and exclusive economic zone.**

- 147.** (1) For the purposes of this Act, the territorial sea and the exclusive economic zone of Antigua and Barbuda shall be treated as part of Antigua and Barbuda.
- (2) This Act applies to things done in the exclusive economic zone as it applies to things done in Antigua and Barbuda.
- (3) In this section -

“exclusive economic zone” means the zone established under section 10 of the Maritime Areas Act;

**Cap. 260.**

“territorial sea” means the waters described in section 5 of the Maritime Areas Act.

**Cap. 260.**

**Act applies to ship aircraft registered in state.**

- 148.** (1) This Act applies to things done on an “Antigua and Barbuda ship” or Antigua and Barbuda aircraft as it applies to things done in Antigua and Barbuda.
- (2) In this section “Antigua and Barbuda ship” and Antigua and Barbuda aircraft” mean, respectively, a ship or aircraft registered in Antigua and Barbuda.

**Act binds Crown.**

- 149.** This Act binds the Crown.

- Regulations.** 150. The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or as are necessary or desirable to be prescribed for giving effect to this Act.
- Repeals.** 151. The Copyright Act, Cap 104, and the Copyright Act, 1911 of the United Kingdom, in so far as it forms part of the laws of Antigua and Barbuda are hereby repealed.
- Savings.** 152. Nothing in this Act shall affect the operation of any rule of equity relating to a breach of trust or confidence.
- Transitional provisions.** 153. (1) Where immediately prior to the appointed day copyright subsists in Antigua and Barbuda in any literary, dramatic, musical or artistic work by virtue of the Copyright Act, 1911 of the United Kingdom, such copyright shall subsist, and the person entitled thereto by virtue of that Act shall be the owner thereof, under and subject to this Act, and in particular -
- (a) the duration of such copyright;
  - (b) the acts comprised within the exclusive rights attaching to such copyright; and
  - (c) the effect upon the ownership of such copyright of any event or transaction occurring or of any contract or agreement made on or after the appointed day, shall be governed by this Act.
- (2) Where, on the appointed day copyright subsists in Antigua and Barbuda 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, by virtue of section 12 (1) of the Copyright Act, 1956 of the United Kingdom in any sound recording, such copyright shall continue -

- (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, sound recording, to have the meaning and effect it would have had if this Act had not been passed.
  
- (3) The provisions of this Act shall also apply to works, performances, sound recordings and broadcasts which were made prior to the date of the coming into effect of this Act, provided that the term of protection has not expired under the former legislation or under the legislation of the country of origin of such works, performances, sound recordings, or broadcasts that are to be protected under an international treaty to which Antigua and Barbuda is a party.
  
- (4) No act done before the appointed day is actionable by virtue of the conferment of the rights specified in Part III.
  
- (5) The right conferred by section 14 to be identified as the author or, as the case may be, director of a work, and the right conferred by section 15 to object to derogatory treatment of such work, shall not apply -
  - (a) in relation to a literary, dramatic, musical or artistic work of which the author died before the appointed day; or
  - (b) in relation to a film made before the appointed day.
  
- (6) The rights in relation to a literary, dramatic, musical or artistic work existing before the appointed day do not apply -
  - (a) where copyright first vested in the author, to anything which, by virtue of an assignment of copyright made or

licence granted before the appointed day, may be done without infringing copyright;

- (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.

- (7) The right to privacy conferred by section 17 in respect of photographs and films does not apply to photographs taken or films made, before the appointed day.
- (8) Where before the appointed day any person has incurred any expenditure or liability in connection with or in contemplation of, the doing of an act in relation to a protected work or a performance in respect of which rights are conferred by this Act, 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 or performance, are subsisting and valuable on the appointed day, unless the person who, by virtue of this Act, is the owner of the copyright or the person having rights in the performance agrees to pay such compensation as, in default of agreement, may be determined by the Copyright Tribunal.
- (9) Where an act done before the appointed day was then an infringement of copyright but is not an infringement of copyright under this Act, then, proceedings in respect of that Act may be taken as if this Act had not been passed.
- (10) An act done before the appointed day shall not be an infringement of copyright or rights in performances conferred by this Act if that Act would not, but for the passing of this Act, have constituted an infringement.
- (11) Proceedings for infringement of copyright instituted but not disposed of before the appointed day shall be disposed of as if this Act had not been passed.

- (12) Proceedings under this Act for infringement may be taken notwithstanding that the alleged infringement occurred before the appointed day.
- (13) In this section “appointed day” means the day appointed pursuant to section 1.

## SCHEDULE

(Section 103 (2))

### *Copyright Tribunal*

- |                                  |    |  |
|----------------------------------|----|--|
| <b>Constitution of Tribunal.</b> | 1. | <p>(1) The Tribunal shall consist of a chairman and a deputy chairman and not more than three other members.</p> <p>(2) A person eligible for appointment as chairman or a deputy chairman shall be an attorney-at-law of not less than ten years standing or a person who has held the office of a judge.</p>   |
| <b>Appointment of members.</b>   | 2. | The members of the Tribunal shall be appointed by the Governor General by instrument in writing, and, subject to the provisions of this Schedule, shall hold office for such period, not exceeding three years, as may be specified in the instrument, but shall be eligible for reappointment.  |
| <b>Resignations.</b>             | 3. | A member of the Tribunal may at any time resign his office by instrument in writing and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.   |
| <b>Revocation.</b>               | 4. | <p>The Governor General may by instrument in writing at any time revoke the appointment of any member of the Tribunal if -</p> <p style="margin-left: 40px;">(a) he has become bankrupt; or</p> <p style="margin-left: 40px;">(b) he is incapacitated by physical or mental illness, or if he is, in the opinion of the Governor General, otherwise unfit to perform his duties as member.</p> |

**Proceedings  
of Tribunal.**

5. (1) The Copyright Tribunal shall sit in such number of divisions as may from time to time be necessary.
- (2) A division of the Tribunal shall consist of -
- (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal; and
  - (b) two or more ordinary members.
- (3) Where in any proceedings the members are not unanimous, the decision of the Tribunal shall be by a majority of the votes of the members, and in the event of an equality of votes, the chairman shall be entitled to a second or casting vote.
- (4) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.
- (12) If the chairman of the Tribunal is unable to continue he shall -
- (a) appoint one of the remaining members to act as chairman; and
  - (b) appoint a suitably qualified person to attend the proceedings and advise the members of any question of law arising.
- (13) For the purposes of paragraph (4) (b), a person is suitably qualified if he is or is eligible for appointment as a deputy chairman of the Tribunal.

(7) The decision of the Tribunal or a division thereof may be signified under the hand of the chairman.

(8) Subject to the provisions of this Schedule and to any regulations made pursuant to section 150, the Tribunal may regulate its own proceedings.

(9) The validity of the proceedings of the Tribunal shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of any member thereof.

**Power to award costs.** 6. The Tribunal may order that the costs or expenses of any proceedings before it 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.

**Officers and employees.** 7. The Minister shall make such arrangements in relation to the provision and remuneration of officers and employees of the Tribunal as may from time to time be necessary.

**Remuneration of members.** 8. The chairman and other members of the Tribunal and persons appointed under paragraph 5 (5) (b) shall be paid such remuneration (whether by way of honorarium, salary or fees) and such allowances as the Minister may determine.

**Expenses.** 9. The expenses of the Tribunal, including the remuneration and allowances referred to in paragraph 8 shall be paid out of moneys provided for the purpose by Parliament.

**Publication.** 10. The name of all members of the Tribunal as first constituted and every change in the membership thereof shall be published in the *Gazette*,

**Protection of Tribunal.** 11. Notwithstanding anything to the contrary, no act done or proceeding taken under this Act by the Tribunal shall be questioned on the ground of any omission, defect or irregularity not affecting the merits of the case.

- Disclosure of interest.**    **12.**    A member of the Tribunal who is interested directly or indirectly in any matter before the Tribunal –
- (a)    shall disclose the nature of his interest at any meeting of the Tribunal dealing with the matter; and
- (b)    shall not take part in any deliberation or decision of the Tribunal with respect to that matter.
- Protection of members.**    **13.**    No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Tribunal in respect of any act done *bona fide* in the execution or intended execution of the Tribunal's functions under this Act.

Passed the House of Representatives  
this        day of                    2002

Speaker

Clerk to the House of Representatives

Passed the Senate  
this        day of                    2002

President

Clerk to the Senate

## **COPYRIGHT BILL**

### EXPLANATORY MEMORANDUM

This Bill seeks to modernise the law relating to copyright.

The law currently in force in Antigua and Barbuda is substantially the Copyright Act, [1911] [1956] of the United Kingdom. Rapid and dramatic technological advances, especially over the last three decades, have revolutionized the modes of creating and disseminating information and extended the categories of works requiring copyright protection. Of critical importance to the development of national and cultural identity is the

promotion and encouragement of cultural expressions by nationals within a legal framework which provides protection from the unauthorized exploitation of their creative endeavours. Additionally, there have been significant developments on the international copyright scene, having effect worldwide, which point to the need for up-to-date domestic legislation reflecting international standards.

The provisions of the Bill are consistent with the principal international agreements affecting copyright, including the copyright section of the Agreement on the Trade – Related Aspects of Intellectual Property Rights. (TRIPS)

In style and content the Bill is consistent with the pattern of the updated copyright laws of several CARICOM states. The similarity in legislative approach facilitates collaboration and common action in this field, where necessary or desirable.

Part I (Clauses 1-4) contains the interpretation clauses.

Part II (Clauses 5 – 13) sets out the categories of works protected by copyright, the qualifications for protection and the nature and duration of the rights conferred under the Part.

Part III (Clauses 14 - 21) sets out the details of the moral rights and the related rights of the author of specified categories of works.

Part IV (Clauses 22 – 28) contains provisions dealing with the ownership and assignment of copyright.

Part V (Clauses 29 -50) specifies the acts which constitute infringements of copyright and the remedies available to the copyright owner and an

exclusive licensee in respect of such infringements.

Part VI (Clauses 51- 86) contains the exceptions to copyright infringement.

These include use of the protected work for research and private study, criticism and review, use for public administration and use by educational establishments, libraries and archives, subject to specified conditions.

Part VII (Clauses 87 - 102) contains provisions dealing with the licensing of protected work by licensing bodies, on behalf of copyright owners, and the referral to the Copyright Tribunal of licensing schemes for the use of such works.

Part VIII (Clauses 103 - 106) deals with the establishment and jurisdiction of the Copyright Tribunal and provides for the making of regulations governing its operation.

Part IX (Clauses 107 - 132) contains provisions which confer rights in performances, on a performer and on a person who has an exclusive recording contract in relation to a performance. Exceptions to these rights are specified and offences are created for dealing with illicit recordings.

Part X (Clauses 133 - 153) sets out general provisions. These include provisions making explicit the powers of the police as regards offences created under the law, authorizing the extension of the provisions of the law to nationals of other countries, as well as the denial of such protection in certain circumstances, and the making of regulations.

The Schedule contains provisions relating to the constitution and operation of the Copyright Tribunal.

Dated this                    day of November, 2002

Dr. L. Errol Cort  
Attorney General and  
Minister of Justice and  
Legal Affairs