SAINT LUCIA

No. 10 of 1995

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I ASSENT

L.S. STANISLAUS JAMES,
Governor-General.

6th September, 1995.

SAINT LUCIA

No. 10 of 1995

AN ACT to make a comprehensive copyright law for Saint Lucia; to afford better protection for literary, dramatic, musical, artistic and other works and creative products; to make provision as to the rights of performers and others in performances; to repeal the Copyright (St. Lucia) Order, 1965 of the United Kingdom; and to provide for matters connected therewith or incidental thereto.

[On Proclamation]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same, as follows :

PART I

PRELIMINARY

Short Title.

1. This Act may be cited as the Copyright Act, 1995.

Commencement.

2. This Act shall come into force on a day to be appointed by the Minister by Order published in the *Gazette*; and different days may be appointed for different provisions and different purposes.

Interpretation.

3.—(1) For the purposes of this Act —

"adaptation" includes —

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

(*b*) in relation to a literary work in a non-dramatic form, a version of the work (whether in its original language or in a different language) in a dramatic form;

(*c*) in relation to a literary work in a dramatic form, a version of the work (whether in its original language or in a different language) in a non-dramatic form;

(*d*) in relation to a literary work (whether in a non-dramatic form or in a dramatic form) —

(i) a translation of the work; or

(ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical; and

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

"article" in 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, irrespective of artistic quality;

(*b*) a work of architecture being a building or a model of a building, irrespective of artistic quality; or

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

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

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

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

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

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

and, where the context requires, shall be taken to be in relation to —

(*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 6 (2) or, in the case of a broadcast which relays another broadcast by reception and immediate re-transmission, 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;

"a broadcast" means a transmission by wireless telegraphy of visual images, sounds or other information which —

(*a*) having regard to section 6, 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 the emission of electromagnetic energy otherwise than over a path that is provided by a material substance, visual images or sounds, or other information, irrespective of the form in which the sounds, images or information are represented 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;

(*c*) no member of the public actually receives the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them;

and "broadcasting" and "re-broadcasting" have corresponding meanings;

"building" includes any fixed structure of any kind;

"business" includes a trade or profession;

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

(*a*) to the inclusion of a cable programme or work in a cable programme service is a reference to its transmission as part of the service; and

(*b*) to the person including it is a reference to the person providing the service;

"cable programme service" means a service which consists wholly or mainly in sending visual images, sounds or other information, irrespective of the form in which the images, sounds or information are represented, by means of a 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 works" means —

(*a*) a work of joint authorship, or

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

"Comptroller" means Comptroller of Customs;

"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, 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 a 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; and, in respect of a literary, dramatic or musical work, includes a reproduction in the form of a record or film;

(*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 category of work includes any copy of the work, however made and in whatever medium, that is transient or is incidental to some other use of the work;

and copy includes storing a work of any description in any medium by electronic means;

"copyright" means copyright subsisting under Part II of this Act;

"country" includes any territory;

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

"dramatic work" includes —

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

(*b*) a scenario or script for a film but does not include a film as distinct from the scenario or script;

"drawing" includes a diagram, map, chart or plan;

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

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

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

"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 coming into operation of this Act, or on the occurrence of any other 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 28 (1);

"graphic work" includes —

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

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

"High Court" means the High Court of Justice of the Eastern Caribbean Supreme Court;

"illicit recording" means —

(*a*) for the purposes of a performer's rights, a recording of the whole or a substantial part of a performance

of his, if it is made, otherwise than for private purposes, without his consent;

(*b*) for the purposes of the rights of a person having recording rights under an exclusive recording contract, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract, if it is made, otherwise than for private purposes, without his consent or that of the performer;

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

"infringing copy" in relation to a protected work means —

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

(*b*) any copy of the work that is or is proposed to be imported into Saint Lucia and its making in Saint Lucia would have constituted an infringement of the copyright in the work of a breach of an exclusive 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 responsible for copyright;

"performance" in relation to —

(*a*) copyright in a protected work includes —

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

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

(*b*) the rights conferred under part VIII, means —

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

(ii) a musical performance; or

(iii) a reading or recitation of a literary work,

which is, or to the extent that it is, a live performance given by one or more individuals;

"person having recording rights" in relation to a performance (as defined in paragraph (*b*) of the definition of that expression in this section) means a person who, being a qualified person —

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

(*b*) is licensed to make recordings of the performance with a view to their being sold or let for hire or shown or played in public, by a person who is within the definition in paragraph (*a*) but is not a qualified person;

"photograph" means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, irrespective of the form in which the recording is represented, and which is not part of a film;

"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";

"published edition" in the context of copyright in the typographic arrangement of a published edition, means a 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 Saint Lucia or who is domiciled or resident in Saint Lucia; and

(*b*) in the case of a body corporate, means a body incorporated or established under any written law of Saint Lucia;

"qualifying performance" means a performance that —

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

(*b*) takes place in Saint Lucia or a specified country;

"record" means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, irrespective of the form in which the sounds are represented, other than a sound-track 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 a copy of a work 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 for amenities for which payment is made,

on terms that it will or may be returned;

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

"sound recording" means —

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

(*b*) a recording of the whole or any part of a literary, dramatic or musical work from which sounds reproducing the work or part thereof may be produced,

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

"specified country" means a country specified by the Minister by Order pursuant to section 146;

"wireless telegraphy" means the emitting or receiving, otherwise than over a path that is provided by a material

substance, of electro-magnetic energy transmitting visual images or sounds, or both;

"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;

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

Making of work - duration.

(2) References in this Act to the time at which, or the period during which, a literary, dramatic or musical work was made are references to the time or period at or during which it was first written down, recorded or expressed in some other material form.

Act binding on the Crown.

4. This Act is binding on the Crown but nothing in this Act shall render the Crown liable to prosecution.

Publication.

5.—(1) In this Act "publication", in relation to work —

(*a*) means the issue of copies to the public, and

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

and related expressions shall be construed accordingly.

(2) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building, shall be treated as equivalent to publication of the work.

(3) The following do not constitute publication for the purposes of this Act —

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

(i) the performance of the work, or

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

(*b*) in the case of an artistic work —

(i) the exhibition of the work; or

(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; or

(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 work being played or shown in public; or

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

(4) 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 may constitute an offence under this Act.

(5) For the purposes of this Act, a publication in Saint Lucia 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.

(6) In determining, for the purposes 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 unauthorised publication or the doing of any other unauthorised act shall be disregarded.

(7) A publication or other act shall for the purposes of subsection (6), be taken to have been unauthorised if, but only if —

(*a*) copyright subsisted in the work and the act concerned was done otherwise than by, or with the licence of, the owner of the copyright; or

(*b*) copyright did not subsist in the work and the act concerned was done otherwise than by, or with the licence of —

(i) the author; or

(ii) persons lawfully claiming under the author.

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

Lawful reception of encrypted broadcasts.

6.—(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 lawfully 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.

Making a broadcast.

(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

Categories of protected works.

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

(*a*) original literary, dramatic, musical or artistic works;

(*b*) sound recordings, films, broadcasts or cable programmes;

(*c*) typographical arrangements of published editions.

(2) A literary, dramatic or musical work shall not be eligible for copyright protection unless it is written down, recorded or otherwise fixed in a material form; and the storage of the work in a computer shall be regarded as a recording of the work in a material form.

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

(4) Copyright may subsist in a work notwithstanding that the making of the work involved an infringement of copyright subsisting in some other work or of the rights in a performance.

Qualification for copyright protection.

8.—(1) A literary, dramatic, musical or artistic work or, subject to subsection (2), a typographical arrangement of a published edition, qualifies for copyright protection if —

(*a*) the author thereof was a qualified person at the time at which the work was made or, if the making of the work extended over a period, was a qualified person for a substantial part of that period; or

(*b*) in the case of a published work —

(i) if, having regard to section 5, the first publication took place in Saint Lucia or in a specified country;

(ii) if the author was a qualified person at the time at which the work was first published;

(iii) if the author had died before publication but was a qualified person immediately before his death; or

(*c*) in the case of an artistic work which is a building or is incorporated in a building, if the building is erected in Saint Lucia or in a specified country.

(2) Copyright shall 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.

(3) A sound recording or film qualifies for copyright protection if —

(*a*) the maker thereof was a qualified person for the whole or a substantial part of the period during which the sound recording or film was made; or

(*b*) having regard to section 5, if the sound recording or film has been published and the first publication took place in Saint Lucia or in a specified country.

(4) 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.

(5) (*a*) A broadcast qualifies for copyright protection if it is made in Saint Lucia by a transmitting station in respect of which there is a valid licence granted under the Wireless Telegraphy Ordinance or in a specified country in accordance with any law in force regulating the making of broadcasts.

(*b*) 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.

(6) A cable programme qualifies for copyright protection if it is sent from a place in Saint Lucia or in a specified country in accordance with any law in force regulating transmission by cable, so, however, that copyright shall not subsist in any 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.

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

(8) If the qualification requirements of this section are once satisfied in respect of a work, copyright does not cease to exist by reason of any subsequent event.

Nature of copyright - economic 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 authorise other persons to do any of the following acts in Saint Lucia or on any ship or aircraft registered in Saint Lucia —

(*a*) to make copies of the work;

(*b*) to issue copies of the work to the public;

(*c*) to perform the work in public or, in the case of a sound recording, film, broadcast or cable programme, to show or play the work in public;

(*d*) to broadcast the work or include it in a cable programme service; or

(*e*) to make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts.

(2) For the purposes of subsection (1) —

(*a*) references to the doing of any act in relation to any work means —

(i) the doing of the act in relation to the whole or any substantial part of the work; and

(ii) the doing of the act either directly or indirectly; and it is immaterial whether any intervening acts themselves infringe copyright;

(*b*) references in paragraph (*b*) of that subsection to issuing of copies to the public include the rental of copies to the public.

Duration of Copyright Protection

Duration of copyright in literary works, etc.

10.—(1) Subject to the provisions of 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 such work expires at the end of the period of fifty years from the end of the calendar year in which it was first made available to the public; and subsection (1) shall not apply if the identity of the author becomes known after the end of 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 its broadcast or inclusion in a cable programme service;

(*b*) in relation to an artistic work, the exhibition of the work in public or its inclusion in a film shown to the public or in a broadcast or cable programme,

so, however, that in determining for the purpose of this subsection whether a work has been made available to the public any unauthorised act shall be disregarded.

(4) The provisions of subsections (1) and (2) shall not apply to a computer-generated work, the copyright in which shall expire at the end of the period of fifty years from the end of the calendar year in which the work is made.

(5) In relation to a work of joint ownership —

(*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 them becoming known.

(6) A work is of unknown authorship if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(7) The identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; but if his identity is once known it shall not subsequently be regarded as unknown.

Duration of copyright in sound recording 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 before the end of that period, at the end of the period of fifty years from the end of the calendar year in which it is so made available.

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

Duration of copyright in broadcasts and cable programmes.

12. 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 was included in a cable programme service.

Duration of copyright in typographical arrangements of editions

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 AND RELATED RIGHTS

Moral rights.

14. 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 rights specified in sections 15 and 16.

Right to be identified as author, etc.

15.—(1) Subject to the provisions in this Part, and in particular to section 24, the author of a literary, dramatic, musical or an 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 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 as such whenever —

(a) the work or an adaptation thereof is published commercially, performed in public, broadcast 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 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 as such whenever —

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

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

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

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

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

and references to a derogatory treatment of a work shall be construed accordingly.

False attribution of work.

17.—(1) A person has the right —

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

(*b*) not to have a film falsely attributed to him as its director,

and in this section "attribution", in relation to such work, means a statement, whether expressed or implied, as to the identity of the author or director.

(2) The right conferred by subsection (1) is infringed by any person who does any of the acts specified in section 44.

Right to privacy-commissioned photographs and films.

18. 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.

Duration of moral rights and related rights.

19.—(1) The rights conferred by sections 15, 16 and 18 shall subsist so long as copyright subsists in the work.

(2) The right conferred by section 17 shall subsist 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.

20.—(1) A person entitled to a right conferred under this Part may waive the right or consent to the doing of any act in relation to the work in respect of which the right subsists and any act done in

pursuance of such waiver or consent is not an infringement of the right.

(2) A right 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.

(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 of provisions to joint works.

21.—(1) The right conferred by section 15 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 16 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 20 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 is 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 18 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 20 by one of them does not affect the rights of the others.

Application of provisions to part of work.

22. The rights conferred by —

(*a*) sections 15 and 18 apply in relation to the whole or any substantial part of a work; and

(*b*) sections 16 and 17 apply in relation to the whole or any part of a work.

Meaning of commercial publication.

23. In this Part "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.

Regulations.

24.—(1) The Minister may make Regulations for any or all of the following purposes —

(*a*) specifying certain works or classes of works in respect of which no specified rights shall subsist;

(*b*) prescribing conditions to which the exercise of any specified right shall be subject;

(*c*) regulating the way in which any of the specified rights of an author or a director shall be respected;

(*d*) specifying circumstances in which any of the specified rights of an author or a director may not be exercised.

(2) In this section "specified right" means a right conferred on an author or a director by section 15 or section 16.

PART IV

Ownership and Assignment

Ownership of copyright.

25.—(1) Subject to this Act, the author of a protected work is the first owner of any copyright in that work unless there is an agreement to the contrary.

(2) Subsection (1) shall not apply to copyright subsisting in a work pursuant to section 47.

(3) Where a protected work is a work of joint authorship the authors thereof shall be co-owners of any copyright in that work.

(4) Where a protected work has been made by or under the direction or control of the Government and, apart from this subsection no copyright would subsist in the work, then copyright shall subsist therein by virtue of this subsection and shall initially belong to the Crown.

(5) The copyright subsisting in a protected work which has, with the author's written consent, been first published in Saint Lucia by or under the direction or control of the Government shall initially belong to the Crown.

(6) Subsection (5) shall have effect subject to any agreement whereby it is agreed that the copyright in the work shall vest in the author or in some other person designated in the agreement.

(7) For the purposes of this section the term "agreement" includes any conditions regulating or applying to the employment of a person in the service of the Crown.

Assignments and licences.

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

(2) An assignment of copyright may be partial, that is, limited so as to apply —

(*a*) to one or more, but not all, of the things which, by virtue of this Act, the owner of the copyright has the exclusive right to do;

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

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

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

Meaning of copyright owner.

27. Where different persons are entitled (whether in consequence of a partial assignment or otherwise) to different aspects of copyright in a work, the copyright owner for any purpose of the Act is the person who is entitled to the aspect of copyright relevant for that purpose.

Prospective owner of copyright.

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

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

(3) Subsection (4) of section 26 shall apply, in relation to a licence granted by a prospective owner of any copyright, as it applies in relation to a licence granted by the owner of a subsisting copyright and as if any reference in that subsection to the owner's interest in the copyright included a reference to his prospective interest therein.

Copyright in unpublished works passes.

29. Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to —

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

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

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

Moral rights etc. not assignable.

30. The rights conferred under Part III are not assignable.

Transmission of moral rights etc. on death.

31.—(1) On the death of a person entitled to a right conferred by sections 15, 16, or 18 the right passes —

(*a*) to such person as he may by testamentary disposition specifically direct; or

(*b*) in the absence of any such direction, then if the copyright in the work in question forms part of his estate, 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 part 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 become exercisable by more than one person, then —

(*a*) where the right is conferred by section 15, it may be asserted by any of them;

(*b*) where the right is conferred by section 16 or 18, 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

(c) any waiver of the right in accordance with section 20 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 17 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

INFRINGEMENTS

Economic Rights

Action — definition of.

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

Infringement

33.—(1) The copyright in a protected work is infringed by any person who, not being the owner of the copyright and without the licence of the owner thereof —

by exercise of acts

(*a*) in respect of the work, does, or authorises another unauthorised person to do, any of the acts mentioned in section 9, in relation to that work;

by importation of infringing articles

(*b*) imports an article (otherwise than for his private and domestic use) into Saint Lucia which he knows or has reason to believe, is an infringing copy of the work;

by commercial dealing in such articles

(*c*) in Saint Lucia, or on any ship or aircraft registered in Saint Lucia —

(i) possesses in the course of business;

(ii) sells, lets for hire, or by way of trade offers or exposes for sale or hire; or

(iii) by way of trade exhibits in public, an article which he knows or has reason to believe, is an infringing copy of the work.

Infringement by distribution of infringing articles.

(2) Subsection (1) (*c*) shall apply, in relation to the distribution of any article either —

(*a*) for the purposes of trade; or

(*b*) for other purposes, but only to such an extent as to affect prejudicially the owner of the copyright,

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

(3) Copyright in a work is infringed by a person who, without the licence of the copyright owner —

(*a*) makes;

(*b*) imports into Saint Lucia;

(*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.

(4) 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 Saint Lucia or elsewhere.

Proprietor of place of public entertainment liable for infringement.

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

Infringement by providing apparatus etc. for giving infringing performances.

35.—(1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public by means of apparatus for —

(*a*) playing sound recordings;

(*b*) showing films;

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

the persons mentioned in the following subsections are also liable for the infringement.

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

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

(*b*) in the case of apparatus 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.

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

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

Remedies for Infringement of Economic Rights

Action by owner of copyright for infringement.

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

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

(*a*) an infringement was committed; but

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

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

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

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

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

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

Order for delivery up in civil proceedings.

37.—(1) Subject to the provisions of this section, 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 139; 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 138 for the disposal of the infringing copies.

(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 138 is not made, retain it until an order or decision is made by the court under that section.

Right to seize infringing copies, etc.

38.—(1) Subject to any decision of the court under section 138, and to the conditions specified in subsections (2), (3) and (4), an infringing copy of a work which is found exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 37 may be seized and detained by him or a person authorised by him.

(2) Before anything is seized under this section notice of the time and place of the proposed seizure shall be given to the nearest police station.

(3) At the time that anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

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

Wide injunction available to licensing bodies.

39. Where, in an action under this Part —

(*a*) the infringement of copyright is proved or admitted;

(*b*) the plaintiff is a licensing body (as defined in section 91); and

(*c*) the court, having regard to all material circumstances, is satisfied that effective relief would not otherwise be available to the plaintiff,

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

Proceedings in case of copyright subject to exclusive licence.

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

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

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

"the other party", in relation to the owner of the copyright, means the exclusive licensee; and, in relation to the exclusive licensee, means the owner of the copyright.

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

(3) Subject to the following provisions of this section, the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section 36 as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section.

(4) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 36, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant; but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

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

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

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

(*b*) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 36 in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(7) Where an action, in so far as it is brought under section 36, relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them as the court may consider just and shall give such directions as the court may consider appropriate for giving effect to that apportionment.

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

(*a*) no judgement or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 36, if a final judgement or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and

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

(9) Where, in an action brought in the circumstances mentioned in subsection (4), whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or subsequently) but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(10) The copyright owner shall notify any exclusive licensee having concurrent rights before applying under section 37 for an order for the delivery up of infringing copies of a work or before exercising the right of seizure under section 38; and the court may, on the application of the licensee, if it thinks fit, having regard to the terms of the licence, make an order under section 37 or make an order prohibiting or permitting the exercise by the copyright owner of the right conferred under section 38.

Moral and related rights

Infringement of right to be identified as author or director.

41. The right conferred on an author or director of a protected work by section 15 is infringed by any person who, in relation to the work, does, or authorises another person to do, any of the acts mentioned in subsections (2), (3), (4) or (5) of section 15 without the identification of the author or the director, as the case may be, in accordance with the requirements of that section.

Infringement of right to object to derogatory treatment of work.

42. The right conferred on an author or a director by section 16 to object to derogatory treatment of his work is infringed —

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

(i) publishes commercially (within the meaning specified in section 23), performs in public, broadcasts or includes in a cable programme service, a derogatory treatment of the work; or

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

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

(i) publishes commercially (within the meaning specified in section 23) 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;

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

(iii) in the case of a work of architecture in the form of a model for a building or in the case of a sculpture or work of craftsmanship, issues to the public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work;

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

(*d*) in the case of a film, the right is infringed by a person who —

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

(ii) issues to the public copies of a derogatory treatment of the film,

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

Infringement by possession of infringing article.

43.—(1) The right conferred by section 16 is also infringed by a person who —

(*a*) possesses in the course of a business;

(*b*) sells or let for hire or offers or exposes for sale or hire;

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

(*d*) distributes otherwise than in the course of a business, 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) In this section an "infringing article" means a work or a copy of a work which —

(*a*) has been subjected to derogatory treatment as defined in section 16 (2); and

(*b*) has been or is likely to be the subject of any of the acts mentioned in section 42 in circumstances infringing that right.

False attribution of work; infringement.

44.—(1) Subject to the provisions of this section, the right conferred on a person by section 17 not to have a literary, dramatic, musical or artistic work falsely attributed to him as its author or a film falsely attributed to him as its director, is infringed by any person who —

(*a*) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution;

(*b*) exhibits in public an artistic work or a copy of an artistic work in or on which there is a false attribution.

(2) The right is also infringed by a person who —

(*a*) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or

(*b*) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person,

knowing or having reason to believe that the attribution is false.

(3) The right is also infringed by any person who issues 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) In this section —

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

(*b*) references to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public or distributing.

(7) This section applies where, contrary to the fact —

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

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

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

Infringement of privacy right respecting photographs, etc.

45. The right conferred by section 18 in relation to a commissioned photograph or film is infringed by a person who does or authorises the doing of any act mentioned in that section in relation to that work; but the right is not infringed by any of the following

acts to the extent that, pursuant to Part VI, such act would not infringe copyright in the work —

(*a*) the incidental inclusion of the work in an artistic work, film broadcast or cable programme (section 59);

(*b*) acts done for the purposes of parliamentary or judicial proceedings, or statutory enquiries (section 74).

Remedies for Infringement of Moral Rights and Related Rights

Remedies for infringing moral rights, etc.

46.—(1) The infringement of a right conferred under sections 15, 16, 17 or 18 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 16, 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 terms and in such newspaper as the court may direct.

Presumptions

Presumptions as to subsistence and ownership of copyright.

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

(*a*) copyright shall be presumed to subsist in the work to which the action relates if the defendant does not put in issue the question whether copyright subsists therein;

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

(*c*) if the question arises whether an article is an infringing copy of a work and it is shown —

(i) that the article is a copy of the work; and

(ii) that copyright subsists in the work or has subsisted at any time,

it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.

Presumption in relation to - authorship of protected works.

48.—(1) Subject to section 47, where, in the case of a protected work, a name purporting to be that of the author appears on copies of the work as published or, in the case of an artistic work, appeared on the work when it was made the person whose name so appears (if it is his true name or a name by which he is commonly known) shall, in any action brought by virtue of this Part, be presumed, unless the contrary is proved, to be the author of the work.

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

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

(*a*) pursuant to paragraph (*b*) (i) of 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 copies of the work as first published,

- ownership

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

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

- originality

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

- publication

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

proved, to have been the first publication of the work and to have taken place in that country and on that date.

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

Presumptions where action relates to sound recordings, films and computer programmes.

49.—(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 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 - ownership

(*b*) that the recording was first published in a specified year in a specified country, - publication

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 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; - author/director

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

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

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 with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement —

(*a*) that a named person was the owner of copyright in the program at the date of issue of the copies; or - ownership

(*b*) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year, - publication

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 with respect to a film, where the film as shown in public, broadcast or included in a cable program service bears a statement —

- author/director

- ownership

(*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 as shown in public, broadcast or included in a cable programme service.

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

50.—(1) In this section —

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

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

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

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

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

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

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

(*b*) in the case of proceedings within subsection (3) (*c*), any penalty incurred in respect of any act or

omission revealed by the facts on which the plaintiff relies in those proceedings.

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

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

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

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

(*a*) proceedings for infringement of copyright;

(*b*) proceedings brought to obtain disclosure of information relating to any infringement of such rights; and

(*c*) proceedings brought to prevent any apprehended infringement of such rights.

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

(*a*) in answering a question put to him in any proceeding to which subsection (2) applies; or

(*b*) in complying with an order made in any such proceedings,

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

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

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

Provision for restricting importation of infringing copies.

51.—(1) The owner of the copyright in any published literary or musical work or in any film or published sound recording may give notice in writing to the Comptroller —

(*a*) that he is the owner of the copyright in the work, film or sound recording; and

(*b*) that he requests the Comptroller, during a period specified in the notice, to treat as prohibited goods copies of the work, film or sound recording to which this section applies,

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

(2) This section applies, in the case of a literary or musical work, film or sound recording, to any copy made outside Saint Lucia which is an infringing copy of the work, film or sound recording.

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

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

(i) the form of the notice;

(ii) the furnishing of evidence;

(iii) the payment of fees;

(iv) the giving of security; and

(v) any other incidental or supplementary matters,

as may be prescribed.

No. 23 of 1990.

(5) Notwithstanding anything in the Customs (Control and Management) Act 1990, a person shall not be 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.

Offences

Penalties in respect of dealings which infringe copyright.

52.—(1) Any person who, without the licence of the copyright owner, at a time when copyright in a work subsists by virtue of this Act —

(*a*) makes for sale or hire;

(*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;

(*c*) imports into Saint Lucia for purposes other than his private and domestic use;

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

(*e*) possesses in the course of business with a view to committing any act infringing 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 a particular protected 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 or that the performance constitutes an infringement of the copyright, commits an offence.

(4) Any person who is guilty of an offence under subsection (1) (*b*) shall be liable on summary conviction in the case of a first conviction, to a fine not exceeding Two thousand five hundred dollars for each article to which the offence related, and in the case of any subsequent conviction, to such a fine, or to imprisonment for a term not exceeding twelve months.

(5) Any person who is guilty of an offence under this section other than an offence referred to in subsection (4) shall be liable on summary conviction in the case of a first conviction, to a fine not exceeding One thousand dollars and in the case of any subsequent conviction, to such a fine, or to imprisonment for a term not exceeding six months.

Presumptions not to apply.

53. The presumptions specified in sections 48 and 49 do not apply to proceedings for an offence under section 52, but without prejudice to their application in proceedings for an order under section 54.

Order to deliver up in criminal proceedings.

54.—(1) Subject to subsection (2), the court before which proceedings are brought against a person for an offence under section 52 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 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, so, however, that the court shall not make an order —

(*a*) after the time specified in section 139; or

(*b*) if it appears to the court unlikely that any order will be made under section 138.

(3) An appeal lies from an order made under this section to the Court of Appeal.

(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 138.

PART VI

EXCEPTIONS TO INFRINGEMENTS OF COPYRIGHT

Preliminary

Definitions.

55. For the purposes of this Part —

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

"reprographic process" means a process —

(*a*) for making facsimile copies; or

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

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

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

General Exceptions

Research and private study.

56.—(1) Subject to subsection (2) and section 58, fair dealing with a protected work for the purposes of research or private study does not infringe copyright in the work.

(2) Copying by a person other than the researcher or student himself is not fair dealing if —

(*a*) in the case of a librarian, or a person acting on behalf of a librarian, he does anything which regulations under section 68 would not permit to be done under section 69 or 70 (articles or parts of published works: restriction on multiple copies of same material); or

(*b*) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

Criticism, review and reporting.

57.—(1) Subject to section 58, fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided it is accompanied by a sufficient acknowledgement.

(2) Subject to subsection (3) and section 58, 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.

(3) 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.

58. 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 effect of the act upon the potential market for or the commercial value of the work.

Incidental inclusion of protected work.

59. 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.

Anonymous and pseudonymous literary works etc.

60.—(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 work in which copyright originally vested in an international organisation by virtue of section 147 and in respect of which an order under that section specified a copyright period longer than fifty years.

(3) In relation to 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 words.

61.—(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 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 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.

Use of Work for Educational Purposes

Acts done for purposes of instruction or examination.

62.—(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by its being copied in the course of instruction or of preparation for instruction, provided the copying 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.

63.—(1) The inclusion, in a collection for use in educational institutions, 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 institutions;

(*c*) the collection consists mainly of material in which no copyright subsists;

(*d*) not more than one other such passage or part from works by the same author is published by the same publisher within the period of five years immediately preceding the publication of that collection; and

(*e*) the inclusion is accompanied by a sufficient acknowledgement.

(2) Subsection (1) does not authorise 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.

Performing, playing or showing works in course of educational activities.

64.—(1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment —

(*a*) by a teacher or pupil in the course of the activities of the establishment, or

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

is not a public performance for the purposes of infringement of copyright.

(2) The playing or showing of a sound recording, film, broadcast or cable programme before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes of infringement of copyright.

(3) A person is not for this purpose directly connected with the activities of the educational establishment simply because he is the parent of the pupil at the establishment.

Recording of etc. educational establishments.

65.—(1) Subject to subsection (2), a recording of a broadcast or cable broadcasts, 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.

(2) Subsection (1) shall not apply if or to the extent that, there is a licensing scheme under which licences are available authorising the making of such recordings or copies, and the person making the recordings knows or ought to have been aware of that fact.

Restriction on reprographic copying from published works.

66.—(1) Subject to the provisions of this section, reprographic copies of passages from published literary, dramatic or musical work 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 one 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 1st January to 31st March, 1st April to 30th June, 1st July to 30th September or 1st October to 31st December.

(3) Copying is not authorised by this section if, or to the extent that, there is a licensing scheme under which licences are available authorising 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 institution authorising the reprographic copying of passages from any published literary, dramatic or musical work, for use by the institution, 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 dealing with authorised copies.

67.—(1) Where a copy of a work would be an infringing copy if the making thereof were not authorised under sections 62, 65 and 66 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 of references, regulations.

68.—(1) In sections 69 to 72 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 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.

Where design derived from artistic work is exploited.

77.—(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 this Act as copies of the work; and

(*b*) marketing such articles in Saint Lucia 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 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.

78.—(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 or imposing obligation which continue after a transfer, or prohibiting the assignment of any licence; or

(*b*) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

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

(2) Any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall, 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 by references to the subsequent transferor.

Miscellaneous Exceptions relating to Literary, Dramatic, Musical and Artistic Works

Statutory licences: recordings for broadcasting.

79.—(1) Where by virtue of an assignment or licence a person is authorised to broadcast or include in a cable programme service, a literary, dramatic, musical or artistic work or a film or sound recording from a place in Saint Lucia but (apart from this subsection) would not be entitled to make copies of it, then, subject to the conditions specified in subsection (2), the authority contained in the assignment or licence shall be deemed to extend to making one copy only for the purposes, and subject to the conditions, in subsection (2).

(2) Subsection (1) shall apply only if the following conditions are satisfied —

(*a*) the copy shall not be used for making any further copies or for any other purpose except either for broadcasting or inclusion in a cable programme service in accordance with the assignment or licence, or for archival purposes; and

(*b*) the copy (unless kept for archival purposes) shall be destroyed before the end of the period of (ninety days) beginning with the day on which it is first used for broadcasting or included in a cable programme service in pursuance of the assignment or licence, or such extended period (if any) as may be agreed between the person who made the copy and the person who (in relation to the making of copies of the description in question) is the owner of the copyright.

(3) A copy made in accordance with subsection 91 shall be treated as an infringing copy —

(*a*) for the purposes of any use in breach of condition (*a*); and

(*b*) for all purposes after that condition or condition (*b*) has been broken.

making of records.

(4) Where records of a literary, dramatic or musical work have, with the licence of the owner of the copyright in the work, been previously made in Saint Lucia or imported into Saint Lucia, 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 authorised manufacture in, or importation into, Saint Lucia of such records, and without first obtaining a licence from the owner of the copyright in the work, make or authorise the making of records of it provided that —

(*a*) the person intends to sell the records by retail, or to supply them for the purpose of being sold by retail by another person, or intends to use them for making other records which are to be so sold or supplied;

(*b*) the person pays royalties calculated at the prescribed rates;

(*c*) complies with such conditions relating to notice, method and time of payment, administration of royalties paid and other matters, as may be prescribed; and

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

Simultaneous transmission by cable of broadcast.

(5) Where a literary, dramatic, musical or artistic work or film or sound recording is broadcast from a place within Saint Lucia or another country with the licence of the copyright owner, any person may, without obtaining the licence of the copyright owner incorporate (by means of the reception of the broadcast) the work in a cable programme service —

Provided that —

(*a*) the transmission by the cable service takes place simultaneously with the reception of the broadcast;

(*b*) the programme in which the literary, dramatic, musical or artistic work or film or sound recording is incorporated, is transmitted without any alteration of any kind; and

(*c*) the copyright owner shall be entitled to receive from the person providing the cable programme service, equitable remuneration in respect of the transmission, to be fixed in default of agreement, by the High Court,

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.

Reading or recitation in public.

80.—(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, provided that the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

Representation of artistic works on public display.

81.—(1) This section applies to —

(*a*) buildings;

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

(2) The copyright in such a work is not infringed by —

(*a*) making a graphic work representing it;

(*b*) making a photograph or film of it; or

(*c*) broadcasting or including in a cable programme service a visual image of it.

(3) The copyright in 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.

82. 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, by or with the licence of the copyright owner, constructed.

Subsequent work by same artist.

83. 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 Respecting Broadcasts

Recording broadcasts for programme supervision.

84. Copyright is not infringed by the making or use by a prescribed broadcasting organisation for the purpose of maintaining supervision and control over programmes, of recordings of those programmes.

Recording for purposes of time shifting.

85. 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.

Provision of subtitled copies of broadcast or cable programme.

86.—(1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.

(2) A "designated body" means a body designated for the purposes of this section by order of the Minister, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

Adaptations

Adaptations.

87. 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.

88.—(1) The Minister may, by order, provide that the copyright in a work, or in works within a category, specified in the order is not infringed where in relation to such work, or works, such acts as are specified in the order are done in certain circumstances specified in the order.

(2) An order made under subsection (1) may —

(*a*) contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the order;

(*b*) subject to section 104, prescribe the amount, or the formula by which the amount shall be calculated, which shall be paid by way of equitable remuneration to the owner of the copyright in any work to which the order relates.

(3) No order may be made under this section unless the Minister is satisfied —

(*a*) that the acts specified are to be done in the public interest in connection with an event of national importance, and

(*b*) that the effect of the order would not contravene any convention relating to copyright to which Saint Lucia is a party.

PART VII

COPYRIGHT LICENSING

Licensing schemes and licensing bodies

Jurisdiction of High Court.

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

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

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

(*c*) to grant consent on behalf of a performer pursuant to section 137.

Procedure in proceedings before High Court.

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

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

(3) Where —

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

(*b*) the High Court fixes an amount of equitable remuneration or compensation pursuant to paragraph (ii) of section 89, the Court may also give directions as to the method and time of payment and may stipulate such other conditions of payment as it considers reasonable.

Licensing schemes and licensing bodies.

91.—(1) For the purposes of this Act —

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

(*b*) "licensing body" means a society or other organisation 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 copyright licences, and whose objects include the granting of licences covering works of more than one author;

(*c*) "licensing scheme" means a scheme operated by a licensing body setting out —

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

(ii) the terms on which licenses 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 of or commissioned by, a single individual, firm, company or group of companies.

References and applications with respect to licensing schemes

Licensing schemes to which ss. 93 to 98 apply.

92. Sections 93 to 98 (references and applications with respect to licensing schemes) apply to —

(*a*) licensing schemes in relation 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 relate to licences for —

(i) copying the work;

(ii) performing, playing or showing the work in public; or

(iii) broadcasting the work or including it in a cable programme service;

(*b*) licensing schemes in relation to the copyright in sound recordings (other than film sound-tracks when accom-

panying a film), broadcasts or cable programmes, or the typographical arrangement of published editions; and

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

and in those sections "licensing scheme" means a licensing scheme of any of those descriptions.

Reference of proposed licensing scheme to High Court.

93.—(1) The terms of a licensing scheme proposed to be operated by a licensing body may be referred to the High Court by an organisation 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 Court 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 Court decides to entertain the reference it shall consider the matter referred and make such order, either confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

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

Reference of licensing scheme to High Court.

94.—(1) If while a licensing scheme is in operation a dispute arises between the licensing body and —

(*a*) a person claiming that he requires a licence in a case of a description to which the scheme applies; or

(*b*) an organisation claiming to be representative of such persons,

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

(2) A scheme which has been referred to the Court under this section shall remain in operation until proceedings on the reference are concluded.

(3) The Court shall consider the matter in dispute and make such order, either confirming or varying the scheme so far as it relates to

cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

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

Further reference to High Court.

95.—(1) Where the High Court has on a previous reference of a licensing scheme under section 93 or 94, or under this section, made an order with respect to the scheme, then, while the order remains in force —

(*a*) the licensing body;

(*b*) a person claiming that he requires a licence in a case of the description to which the order applies; or

(*c*) an organisation claiming to be representative of such persons,

may refer the scheme again to the Court so far as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Court, be referred again to the Court in respect of the same description of cases —

(*a*) within twelve months from the date of the order on the previous reference, or

(*b*) if the order was made so as to be in force for 15 months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Court under this section shall remain in operation until proceedings on the reference are concluded.

(4) The Court shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far as it relates to cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

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

Application for grant of licence in connection with licensing scheme.

96.—(1) A person who claims, in a case covered by a licensing scheme, that the licensing body 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 High Court.

(2) A person who claims, in a case excluded from a licensing scheme, that the licensing body 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 High Court.

(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 be dealt with in the same way.

(4) If the Court 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 Court may determine to be applicable in accordance with the scheme or, as the case may be, to be reasonable in the circumstances.

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

Application for review of order as to entitlement to licence.

97.—(1) Where the High Court has made an order under section 96 that a person is entitled to a licence under a licensing scheme, the licensing body or the original applicant may apply to the Court to review its order.

(2) An application shall not be made, except with the special leave of the Court —

(*a*) within twelve months from the date of the order, or of the decision on a previous application under this section; or

(*b*) if the order was made so as to be in force for 15 months or less, or as a result of the decision on a previous application under this section is due to expire within 15 months of that decision, until the last three months before the expiry date.

(3) The Court shall on an application for review confirm or vary its order as the Court 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.

Effect of order of Court as to licensing scheme.

98.—(1) A licensing scheme which has been confirmed or varied by the High Court —

(*a*) under section 93 (reference of terms of proposed scheme), or

(*b*) under section 94 or 95 (reference of existing scheme to Court),

shall be in force or, as the case may be, remain in operation so far as it relates to the description of the case in respect of which the order was made, so long as the order remains in force.

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

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

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

No such direction may be made where subsection (4) below applies.

(4) Where the Court has made an order under section 96 (order as to entitlement to licence under licensing scheme) and the order

(2) The High Court shall have regard to any conditions imposed by the promoters of the entertainment or other event; and, in particular, the Court shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

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

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

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

Licences to reflect payments in respect of underlying rights.

108.—(1) In considering what charges should be paid for a licence on a reference or application under this Part relating to licences for the rental to the public of copies of sound recordings, films, or computer programs, the High Court shall take into account any reasonable payments which the owner of the copyright in the sound recording, film or computer program is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Part relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the High Court shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable program.

Mention of the specific matters not to exclude relevant considerations.

109. The mention in sections 104 to 108 of the specific matters to which the High Court is to have regard in certain classes of case does not affect the Court's general obligation in any case to have regard to all relevant considerations.

PART VIII

RIGHTS IN PERFORMANCES

Conferment of rights in performance.

110.—(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, in respect of recordings made without his consent or that of the performer.

(2) The right 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.

(3) The rights conferred by this Part apply in relation to performances taking place before the commencement of this Part; but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.

Performer's Rights

Consent required for recording or live transmission of performance.

111.—(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

(*b*) broadcasts live, or includes live in a cable programme service, the whole of 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 made without consent.

112. 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, and which that person knows or has reason to believe was, made without the performer's consent.

Consent and royalty required for adaptation of recording.

113.—(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 authorised or not) for the purpose of making an adaptation of the recording.

(2) In subsection (2) "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, possessing, etc illicit recording.

114.—(1) A performer's rights are infringed by a person who, without his consent —

(*a*) imports into Saint Lucia otherwise than for his private and domestic use; or

(*b*) in the course of a business possesses, sells or lets for hire, offers for sale or hire, or distributes,

a 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 only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

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

Rights of Person having Recording Rights

Consent required of performance subject to exclusive contract.

115.—(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or that of the performer, 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 made without consent.

116.—(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer —

(*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 —

(*a*) the performer; or

(*b*) 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, possessing illicit recording.

117.—(1) A person infringes the rights of a person having rights in relation to a performance, who, without his consent or, in the case of a qualifying performance, that of the performer —

(*a*) imports into Saint Lucia 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 only remedy available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

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

Duration and Transmission of Rights in Performances; Consent

Duration of rights in performances.

118. The rights conferred by this Part subsist until the expiry of fifty years from the end of the calendar year in which the performance takes place.

Transmission of rights in performances.

119.—(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 performers' 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 Part on a person to whom the benefit of a contract or licence is assigned.

(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.

120.—(1) Consent for the purpose 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 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 actionable as breach of statutory duty.

121. 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 court.

122.—(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 139; 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 138.

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 138 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.

Rights to seize illicit recordings.

123.—(1) Subject to any decision of the court under section 138 and to the conditions specified in subsections (2), (3) and (4), an illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire, and in respect of which a person would be entitled to apply for an order under section 138 may be seized and detained by him or a person authorised by him.

(2) Before anything is seized under this section notice of the time and place of the proposed seizure must be given to a local police station.

(3) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

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

Offences in Relation to Performances

Criminal liability for making dealing with or using illicit recordings.

124.—(1) A person commits an offence who without sufficient consent —

(*a*) makes for sale or hire;

(*b*) imports into Saint Lucia otherwise than for his private and domestic use;

(*c*) possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part;

(*d*) in the course of a business —

(i) sells or lets for hire;

(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, the consent of the performer, and

(*b*) in the case of a non-qualifying performance subject to an exclusive recording contract —

(i) for the purpose of paragraph (*a*) of subsection (1), the consent of the performer or the person having recording rights; and

(ii) for the purposes of paragraphs (*b*), (*c*) and (*d*) of subsection (1) and subsection (2), the consent of the person having recording rights.

(4) References in this subsection 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) of (2) by the commission 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 paragraphs (*a*), (*b*) or (*d*) (iii) of subsection (1) is liable —

(*a*) on summary conviction to a fine not exceeding $2,500 dollars and to imprisonment for a term not exceeding ten months;

(*b*) on conviction on indictment to a fine not exceeding $50,000 or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(7) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding $1,000 and to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

Order for delivery up of illicit recording in criminal proceedings.

125.—(1) The court before which proceedings are brought against a person for an offence under section 124 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 139; or

(*b*) if it appears to the court unlikely that any order will be made under section 138.

(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 138.

False representation of authority to give consent.

126.—(1) It is an offence for a person to represent falsely that he is authorised 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 authorised.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding $2,500 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Exceptions to Infringement of Rights Conferred under this Part

Fair dealing for criticism, etc.

127. 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 58 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

Incidental inclusion of performance or recording.

128. The rights conferred by this Part are not infringed —

(*a*) by the incidental inclusion of performance or recording in a sound recording, film, broadcast or cable programme;

(*b*) by anything done in relation to copies of, or the playing, broadcasting or inclusion in a cable programme service of anything whose making was by virtue of paragraph (*a*), not an infringement; and for the purpose 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 of performance for purposes of instruction, etc.

129.—(1) The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of instruction, in the making of films or film soundtracks, 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 130 (2) "dealt with" means sold or let for hire, or offered or exposed for sale or hire.

Recording of broadcasts and cable programmes by educational establishments.

130.—(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 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 129 (4) it shall be treated as an illicit recording for the purpose of that dealing and if that dealing infringes any right conferred by this Part for all subsequent purposes.

Acts done to performance or recording for Parliamentary etc.

131. The rights conferred by this Part are not infringed by anything done for the purpose of —

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

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

Transfer of recording of performance in electronic form.

132.—(1) Where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allows 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, imposing obligations which continue after a transfer, prohibiting the assignment of any consent or terminating any consent 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 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) also 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 by 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 works.

133.—(1) Where a recording of the reading or recitation of a literary work is made for the purpose —

(*a*) of reporting current events; or

(*b*) of 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 following 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.

Incidental recording for purposes of broadcast or cable programme.

134.—(1) Subject to subsection (2), a person who proposes to broadcast a recording of a performance, or 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 purpose of this Part for the making of a further recording for the purposes of the broadcast or cable programme.

(2) The consent given under subsection (1) is subject to the condition that the further recording —

(*a*) shall not be used for any other purposes; and

(*b*) 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.

Recordings for supervision and control of programmes permitted.

135. The rights conferred by this Part are not infringed by the making or use by a prescribed broadcasting organisation for the purpose of maintaining supervision and control over programmes broadcast by that organisation, of recordings of those programmes.

Order excepting acts from infringing rights under this Part.

136.—(1) The Minister may, by order, provide that the rights conferred by this Part in relation to a performance specified in the order are not infringed by the doing of such acts as are specified in the order in the circumstances therein specified.

(2) An order made under subsection (1) may —

(*a*) contain consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the order;

(*b*) prescribe the amount, or the formula by which the amount shall be calculated, which shall be paid by way of equitable remuneration to the performer or other person whose rights under this Part are affected by the order.

(3) No order may be made under this section unless the Minister is satisfied —

(*a*) that the acts specified are to be done in connection with an event of national importance, and

(*b*) that the effect of the order would not contravene any convention relating to rights in respect of performances to which Saint Lucia is a party.

Court may consent on behalf of performer.

137.—(1) Subject to the provisions of this section, the High Court 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 Court has effect as consent of the performer for the purpose of —

(*a*) the provisions of this Part relating to performers' rights; and

(*b*) paragraph (*a*) of subsection (3) of section 124,

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

(3) The Court shall not give consent under paragraph (*a*) of subsection (1) except after the service or publication of such notices as may be required by rules made under section 90 or as the Court may in any particular case direct.

(4) The Court 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 Court may draw such inferences is it thinks fit.

(5) In any case the Court 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 Court 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.

PART IX

GENERAL

Supplementary provisions

Order for disposal of infringing copy or illicit recording.

138.—(1) An application may be made to the High Court for an order that —

(*a*) an infringing copy or article delivered up in pursuance of an order under section 37 or 54 or seized and detained in pursuant of the right conferred by section 38 shall be —

(i) forfeited to the copyright owner; or

(ii) destroyed or otherwise dealt with as the Court may direct,

(*b*) an illicit recording of a performance delivered up in pursuance of an order under section 122 or 125, or seized and detained in pursuance of the right conferred by section 123 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 for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the Court shall consider the following —

(*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 interests;

(*b*) where the infringement relates to rights conferred under Part VIII, 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 rules of Court as to the service of notice on persons having an interest in the copy or other articles or the recording, as the case may be, and any such person is entitled —

(*a*) to appear in proceedings for an order under this section;

(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 a copy or other article, or as the case may be, a recording, the Court shall make such order as it thinks just and may (in particular) direct that such copy, article or recording be sold, 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 remedy of delivery up not available.

139.—(1) An application for an order under section 37 or 122 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) If during the whole or any part of that period a person 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,

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

(3) An order under section 37 or 122 shall not, in any case, be made after 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.

Time limited for prosecution.

140. 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 police officers.

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

(*a*) subject to section 142, enter and search any premises or place;

(*b*) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or

(*c*) stop and search any vehicle,

in which he reasonably suspects that there is an infringing copy 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 him to be an infringing copy or an illicit recording or any article which appears to him to be intended for use for making such copies or recordings; and

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

(2) Any police officer not below the rank of Inspector may —

(*a*) break open any outer or inner door of any place which he is empowered or authorised by this Act to enter and search;

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

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

(*d*) detain any person found in any place which he is empowered or authorised by this Act to search until such place has been searched;

(*e*) detain any vessel or aircraft which he is empowered by this Act to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;

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

Restrictions on the entry and search of domestic premises.

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

(2) 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 authorising a police officer not below the rank of Inspector to enter and search the premises.

(3) A police officer not below the rank of Inspector authorised under subsection (2) to enter and search any premises may call upon any police officer to assist him in entering and searching the premises.

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

Obstruction of police officers

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

(*a*) wilfully obstructs a member of the police force in the exercise of his powers or the performance of his duties under this Act;

(*b*) wilfully fails to comply with any requirement properly made to him by any such member of the police force; or

(*c*) without reasonable excuse, fails to give such member of the police force any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding $2,500 or to imprisonment for a term not exceeding six months.

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

Offences by bodies corporate.

144. Where an offence under any of the preceding sections of this Act committed by a body corporate is proved to have been committed with the consent or connivance or, to be attributable to any neglect on the part of, any director, manager, secretary or other

similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished accordingly.

Power to make regulations.

145. The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or are necessary or desirable to be prescribed for giving effect to this Act.

PART X

INTERNATIONAL RELATIONS

Power to apply provisions of Act to other countries.

146.—(1) Subject to the provisions of subsection (3), the Minister may by order provide that, in relation to any country specified in the order, any of the provisions of this Act so specified shall apply —

(*a*) in relation to persons who, at a material time, are citizens or subjects of that country, as they apply in relation to persons who, at such a time, are citizens of Saint Lucia;

(*b*) in relation to persons who, at a material time, are domiciled or resident in that country, as they apply in relation to persons who, at such a time, are domiciled or resident in Saint Lucia;

(*c*) in relation to literary, dramatic, musical or artistic works, sound recordings, films or editions first published in that country, as they apply in relation to literary, dramatic, musical or artistic works, sound recordings, films or editions first published in Saint Lucia;

(*d*) in relation to bodies incorporated by or under the laws of that country, as they apply in relation to bodies incorporated by or under the laws of Saint Lucia;

(*e*) in relation to broadcasts made or cable programmes sent from places in that country by persons permitted or authorised by or under the laws of that country to make those broadcasts or send those cable programmes, as they apply in relation to broadcasts made or cable programmes sent from places in Saint Lucia by persons permitted or authorised by or under the laws of Saint Lucia to make those broadcasts or send those cable programmes;

(*f*) in relation to performances which take place in, or are given by persons who are citizens of, or are domiciled or resident in, that country, as they apply to performances which take place in, or are given by persons who are citizens of, or are domiciled or resident in, Saint Lucia.

(2) An order made under this section applying any provision of this Act in relation to any country other than Saint Lucia 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 such other classes or cases, as may be so specified.

(3) An order shall not be made under this section applying any provision of this Act in relation to any country which is not a party to a Convention relating to copyright or to the rights of performers or of the producers of phonograms to which Saint Lucia is also a party, unless the Minister is satisfied that in respect of the class of works to which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright or rights in performances conferred by this Act.

International organisations.

147.—(1) Where it appears to the Minister that it is expedient that the provisions of this section should apply to any organisation —

(*a*) of which two or more countries or the Governments of two or more countries are members; or

(*b*) that is constituted by persons representing two or more countries, or representing the Governments of two or more countries,

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

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

(*a*) copyright would not, except by virtue of this subsection, subsist in the work; but

(*b*) if the author of the work had been a citizen of, or domiciled or resident in, Saint Lucia at the time when it was made, copyright would have subsisted in the work

immediately after it was made and would thereupon have vested in the organisation,

then, copyright shall subsist in the work as if the author had been a citizen of, or domiciled or resident in, Saint Lucia when it was made, and shall continue to subsist so long as the work remains unpublished, and the organisation shall, subject to the provision of this Act, be entitled to the copyright.

(3) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an organisation 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 copyrights, if any, in the work; or

(*b*) the work was made in such circumstances that, if it had been first published in Saint Lucia, the organisation would have been entitled to the copyright in the work,

then, copyright shall subsist in the work (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) as if it had been first published in Saint Lucia, and shall subsist for a period of fifty years from the end of the calendar year in which the work was first published, and the organisation shall, subject to the provision of this Act, be entitled to that copyright.

(4) The provisions of Part II, except those provisions thereof relating to the subsistence, duration of ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section as they apply in relation to copyright subsisting by virtue of Part II.

(5) An organisation 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 for holding, dealing with and enforcing copyright and in connection will all legal proceedings relating to copyright.

Denial of copyright in performance or rights in performance.

148.—(1) If it appears to the Minister that the laws of a country fail to give adequate protection to Saint Lucia works or performances or failure 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 may provide either generally or in such classes of cases as are specified in the order, that copyright or rights in performances shall not subsist in works first published, or in performances first given after, a date specified in the order (which may be a date before the commencement of this Act) if, at the time of the first publication of those works or the giving of the performance, the authors of the works or the performers were or are —

(*a*) citizens or nationals of that country, not being at that time persons domiciled or resident in Saint Lucia; or

(*b*) in the case of works that are sound recordings or films, specified in the order, bodies incorporated 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 Saint Lucia works or performances in consequence of which the order is being made.

(4) In this section "Saint Lucia work or performance" means a work of which the author was, at the time when it was made, a qualified person for the purposes of this Act or a performance by a performer who was at the time of the performance such a qualified person.

PART XI

Repeals, Savings, Transition

Repeals.

149.—(1) The Copyright (St. Lucia) Order, 1965 and the Copyright Act 1956 of the United Kingdom in so far as it has effect as part of the law of Saint Lucia are hereby repealed.

(2) Without prejudice to section 27 of the Interpretation Act, the repeals effected by subsection (1) include the repeal of —

(*a*) any Order-in-Council made under the Copyright Act 1956 of the United Kingdom so repealed, in so far as it has effect as part of the law of Saint Lucia;

(*b*) any subsidiary legislation made under the Acts so repealed, or in so far as it has effect as part of the law of Saint Lucia, made under any Order-in-Council so repealed.

Savings.

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

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

Copyright subsists only under Act.

151. No copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act or some other enactment in that behalf.

Enforcement of copyright subject to public interest.

152. Nothing in this Act affects any rule of law preventing or restricting the enforcement of copyright or rights in the nature of copyright, on grounds of public interest or otherwise.

Transitional.

153.—(1) Where immediately prior to the appointed day copyright subsists in Saint Lucia in any literary, dramatic, musical or artistic work by virtue of the Copyright Act 1956 of the United Kingdom, such copyright shall continue to subsist and the person entitled thereto by virtue of this 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 after the appointed day,

shall be governed by this Act.

(2) 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 to 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 fixed by the High Court.

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

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

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

(6) Proceedings under this Act for infringement may be taken notwithstanding the alleged infringement occurred before the appointed day.

(7) In this section "appointed day" means the day appointed by the Minister pursuant to section 1.

Passed in the House of Assembly this 14th day of March, 1995.

W. ST. CLAIR-DANIEL,
Speaker.

Passed in the Senate this 21st day of March, 1995.

NEVILLE CENAC,
President.