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**An Bille Cóipchirt agus Ceart Gaolmhar (Nuálaíocht) (Leasú), 2015**  
**Copyright and Related Rights (Innovation) (Amendment) Bill 2015**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE CÓIPCHIRT AGUS CEART GAOLMHAR (NUÁLAÍOCHT) (LEASÚ), 2015  
COPYRIGHT AND RELATED RIGHTS (INNOVATION) (AMENDMENT) BILL 2015**

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## SCHEDULE

THE COPYRIGHT COUNCIL OF IRELAND

ACTS REFERRED TO

Broadcasting Act 2009 (No. 18)  
Companies Act 2014 (No. 38)  
Copyright and Related Rights Act 2000 (No. 28)  
Copyright and Related Rights Acts 2000 to 2015  
Courts (Supplemental Provisions) Act 1961 (No. 39)  
Courts of Justice Act 1924 (No. 10)  
Defamation Act 2009 (No. 31)  
Disability Act 2005 (No. 14)  
Equal Status Act 2000 (No. 8)  
Heritage Fund Act 2001 (No. 44)  
Industrial and Commercial Property (Protection) Act 1927 (No. 16)  
National Cultural Institutions Act 1997 (No.11)  
National Lottery Act 2013 (No. 13)  
Patents Act 1964 (No. 12)  
Qualifications and Quality Assurance (Education and Training) Act 2012 (No. 28)  
Statute Law (Restatement) Act 2002 (No. 33)  
Statute of Limitations 1957 (No. 6)  
Universities Act 1997 (No. 24)





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**AN BILLE CÓIPCHIRT AGUS CEART GAOLMHAR (NUÁLAÍOCHT) (LEASÚ), 2015  
COPYRIGHT AND RELATED RIGHTS (INNOVATION) (AMENDMENT) BILL 2015**

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# Bill

*entitled*

An Act to amend the Copyright and Related Rights Act 2000 and to make provision for related matters. 5

**Be it enacted by the Oireachtas as follows:**

## Definitions

1. (1) In this Act—

“Act of 1927” means the Industrial and Commercial Property (Protection) Act 1927; 10

“Act of 1964” means the Patents Act 1964;

“Act of 2009” means the Broadcasting Act 2009;

“Minister” means the Minister for Jobs, Enterprise and Innovation;

“Principal Act” means the Copyright and Related Rights Act 2000.

(2) Section 2 of the Principal Act is amended— 15

(a) in subsection (1)—

(i) by inserting a new definition before “dramatic work” as follows—

“ ‘digital publication’ includes any publication in media other than print, such as a website or any part of a website, or any publication in any digital or electronic or other similar or related technological form or format, but does not include a sound recording or film or both, or such other works as the Minister may from time to time determine;” 20

(ii) by inserting a new definition before “educational establishment” as follows—

“ ‘education’ means education, instruction, lectures, study, research, teaching or training either in an educational establishment or by any person acting under the authority of an educational establishment, and includes all activities necessary or expedient for or ancillary to such a programme, and “educational purposes” and similar or related phrases shall be construed accordingly;” 25 30

(iii) by inserting a new definition before “Minister” as follows—

- “ ‘metadata’ includes data information about a work, and in particular includes digital data (whether or not it is incorporated with the work or is otherwise associated with it) that—
- (a) provides information about the authorship, condition, content, context, origin, ownership, provenance, quality, or structure of the work, or rights pertaining to or associated with the work, or other similar or related matters, and 5
  - (b) enables the work to be controlled, listened to, located, manipulated, organised, presented, read, used, viewed, or otherwise worked with, provided that it does not include computer programs, and in particular does not include the program source code of websites;”, 10
- (iv) by inserting new definitions before “repeat broadcast” as follows—
- “ ‘publisher’ includes a person who issues or disseminates or otherwise makes available or causes to be made available, to the public, works in any form or format; and “publication” and other related expressions shall be construed accordingly; 15
  - “recognition order” is an order made by the Minister pursuant to section 377;”,
- (v) by substituting the following definition for the definition of “Controller”:
- “ ‘Controller’ means the Controller of Intellectual Property referred to in section 15A;”, 20
- (vi) by substituting the following definition for the definition of “educational establishment”:
- “ ‘educational establishment’ means—
    - (a) any school, 25
    - (b) any university to which the Universities Act 1997, applies,
    - (c) any other educational establishment prescribed by the Minister under section 55, and
    - (d) any other establishment which is a relevant provider of education or training for the purposes of the Qualifications and Quality Assurance (Education and Training) Act 2012;”, 30
- (vii) in the definition of “work”, before “a computer program” by inserting “a digital publication and”;
- (b) by substituting the following subsection for subsection (5):
- “(5) (a) ‘Intellectual property claim’ means— 35
    - (i) any action relating to copyright or a related right under this Act,
    - (ii) any action relating to design rights, geographical indications, patents, plant breeders’ rights, trade marks, and the like,
    - (iii) any action for breach of confidence or passing off, or for the

- protection of know-how or trade secrets, and
- (iv) any action which the court accepts is sufficiently similar or related to the other actions in this paragraph such that it is appropriate to treat it as an intellectual property claim.
- (b) ‘Intellectual property right’ and other related expressions shall be construed accordingly. 5
- (c) For the avoidance of doubt, an intellectual property claim includes:
- (i) any action which is ancillary to, or arising out of the same subject matter as, an action in paragraph (a);
- (ii) any action relating to any matter in paragraph (a) ; whether that matter is registered or not, or capable of registration or not; and 10
- (iii) any right to apply for, and any application for, any of the matters in paragraph (a).”.
- (3) Section 65(5) of the National Cultural Institutions Act 1997 (as inserted by section 199 of the Principal Act) is amended by substituting the following definition for the definition of “publisher”:
- “ ‘publisher’, for the purposes of this section, has the meaning assigned to it by section 2(1) of the Copyright and Related Rights Act 2000;”.
- (4) Section 173(2)(a) of the Principal Act is amended by substituting “rightsovers” for “rightsholders”. 20

## Copyright Council

2. (1) The Principal Act is amended by inserting the following Part after section 376:

### “PART 8

#### COPYRIGHT COUNCIL OF IRELAND

25

#### **Copyright Council of Ireland**

- 377.** (1) The Minister may by order declare that such body as is specified in the order shall be recognised for the purposes of this Act, and a body standing so recognised, for the time being, shall be known, and in this Act is referred to, as the ‘Copyright Council of Ireland’ (the Council). 30
- (2) Not more than one body shall stand recognised under this section for the time being.
- (3) No body (other than a body that stands recognised under this section for the time being) shall be known as, or describe itself as, the ‘Copyright Council of Ireland’. 35
- (4) The Minister or the Council may apply to the High Court for an injunction to restrain any body other than the Council from using the description ‘Copyright Council of Ireland’ in contravention of

subsection (3).

- (5) The Minister shall not make an order under subsection (1) unless he or she is satisfied that the body in respect of which he or she proposes to make the order complies with the minimum requirements specified in Schedule 4. 5
- (6) If the Minister is of the opinion that a body for the time being standing recognised by order under this section no longer complies with the provisions of Schedule 4, he or she may revoke that order.
- (7) The Minister shall, before making an order under subsection (6), allow the body for the time being standing recognised under this section to make representations to him or her. 10
- (8) Whenever an order is proposed to be made under this section a draft of the order shall be laid before each House of the Oireachtas and the order shall not be made unless a resolution approving of the draft has been passed by each such House. 15

### **Regulations and submissions**

- 378.** (1) When making regulations or orders pursuant to any provision of this Act other than the provisions of this Part, the Minister shall first consult with the Council.
- (2) The Council shall, from time to time, make such representations to the Minister on copyright and related issues as to it seem appropriate.” 20
- (2) In the Principal Act, insert after the Third Schedule and as a Fourth Schedule the text set out in the *Schedule* to this Act.

### **Jurisdiction of Courts**

- 3.** (1) The Principal Act is amended by inserting the following section after section 16: 25
- “District Court**
- 16A.**(1) The District Court shall have jurisdiction to hear and determine intellectual property claims.
- (2) The District Court may entertain an intellectual property claim pursuant to subsection (1) notwithstanding that no pecuniary remedy is sought. 30
- (3) The District Court Rules Committee, with the concurrence of the Minister and of the Minister for Justice and Equality, may make Rules of Court in relation to claims taken pursuant to this section.
- (4) Paragraph A of section 77 of the Courts of Justice Act 1924 is hereby amended by inserting at the end of the said paragraph a new clause as follows, that is to say: 35
- ‘(vi) in any intellectual property claim, within the meaning of the Copyright and Related Rights Acts 2000 to 2015, where the amount of the claim does not exceed such sum as stands specified by or under any Act of the Oireachtas to be the 40

jurisdiction of the District Court for actions in contract;’.

- (5) The Minister may, by order, make regulations for the purposes of this section fixing the day on which this section shall come into operation.

### **Circuit Court**

- 16B.**(1) The Circuit Court shall, concurrently with the High Court, have jurisdiction to hear and determine intellectual property claims, and shall, in relation to that jurisdiction, be known as the Intellectual Property Court of the Circuit Court (in this section referred to as ‘the Court’). 5
- (2) A judge permanently assigned to the Dublin Circuit shall be assigned by the President of the Circuit Court to exercise the jurisdiction of the Court. 10
- (3) The Court may entertain an intellectual property claim pursuant to subsection (1) notwithstanding that no pecuniary remedy is sought.
- (4) Nothing in this section shall be construed as affecting the ordinary jurisdiction of a Circuit Court. 15
- (5) Section 2 of the Courts (Supplemental Provisions) Act 1961 is amended, in subsection (1), by inserting, after ‘the High Court’ means the Court established by section 2 of the Principal Act; and before ‘justice of the District Court’, the following: 20
- ‘an intellectual property claim’ has the same meaning as in the Copyright and Related Rights Acts 2000 to 2015.
- (6) The Third Schedule to the Courts (Supplemental Provisions) Act 1961 is amended by inserting the following:
- |     |                                |   |   |    |
|-----|--------------------------------|---|---|----|
| 30. | An intellectual property claim | Where the amount of the claim does not exceed €75,000 | The judge of the Intellectual Property Court of the Circuit Court | 25 |
|-----|--------------------------------|---|---|----|
- (7) The Circuit Court Rules Committee, with the concurrence of the Minister and of the Minister for Justice and Equality, may make Rules of Court in relation to claims taken pursuant to subsection (1). 30
- (8) The Minister may, by order, make regulations for the purposes of this section fixing the day on which this section shall come into operation.
- (9) The Court shall have jurisdiction to hear appeals pursuant to section 16C. 35

### **Appeals to the Circuit Court**

- 16C.**(1) Without prejudice to the right of appeal to the High Court on a point of law provided in section 366, any party to proceedings before the Controller may, on giving notice in writing pursuant to section 14 to the Controller, require that an appeal shall be reheard by the Intellectual Property Court of the Circuit Court (in this section referred to as ‘the Court’). 40

- (2) In particular, any party to proceedings before the Controller under Regulation 14 of the Regulations of 2014 may, pursuant to subsection (1), appeal the determination of the Controller in those proceedings.
- (3) A party to proceedings before the Controller shall bring any appeal pursuant to this section not later than 4 weeks from the date of the service of the notice of the determination of the Controller in those proceedings on that party. 5
- (4) The party who makes the appeal under subsection (1) shall so notify the Controller as soon as may be after the appeal is brought and furnish the Controller with a copy of the appeal. 10
- (5) On receipt of a notice under subsection (4), the Controller shall suspend the operation of any order made by him or her which gives effect to the determination being appealed.
- (6) The Controller shall inform the persons directly affected by the order concerned by notice in writing of the suspension of the operation of the order. 15
- (7) Provisions may be made in the rules made under section 363 for appeals pursuant to this section; and such provisions shall include provisions for the modification, in relation to an order of the Controller the operation of which is suspended pursuant to subsection (5), of the operation of any provision of this Act as to the effect of that order. 20
- (8) Subject to subsections (9) and (10), a decision of the Court under this section shall be final and may not be appealed.
- (9) By leave of the High Court, an appeal from a decision of the Court under this section shall lie to the High Court on a question of law. 25
- (10) If the High Court grants leave pursuant to subsection (9), then section 366 subsections (2) and (3) shall apply to the decision of the Court in like manner as they apply to a decision of the Controller; and, without prejudice to Article 34.5.4° of the Constitution, a decision of the High Court on this appeal shall be final and may not be appealed. 30
- (11) In any proceedings before any court pursuant to subsection (2), the Controller shall not be awarded or be ordered to pay costs.
- (12) Regulation 15 of the Regulations of 2014 is repealed.
- (13) For the purposes of this section, ‘the Regulations of 2014’ are the European Union (Certain Permitted Uses of Orphan Works) Regulations 2014 (S.I. No. 490 of 2014).” 35

#### **The Controller of Intellectual Property**

4. (1) Section 77 of the Act of 1964 is repealed.
- (2) The Principal Act is amended by inserting the following after section 15: 40

## **“The Controller of Intellectual Property**

- 15A.**(1) The office of Controller of Industrial and Commercial Property continued in being by virtue of section 78(1) of the Act of 1964 shall be known as the Controller of Intellectual Property (in this Act referred to as ‘the Controller’), and the Controller may sue and be sued in that name. 5
- (2) There shall continue to be, for the purposes of this Act and for such other purposes as have been or may, from time to time, be assigned to it by the Oireachtas, an office for the registration of patents, designs and trade marks which shall be known as the Office of the Controller of Intellectual Property (in this Act referred to as ‘the Office’). 10
- (3) The Office shall be under the immediate control of the Controller who shall act under the general superintendence and direction of the Minister.
- (4) References in any other Act of the Oireachtas to the Industrial and Commercial Property Registration Office established under the Act of 1927 or to the Patents Office established under the Act of 1964 shall be construed as references to the Office. 15
- (5) References in any other Act of the Oireachtas to the Controller of Industrial and Commercial Property appointed under the Act of 1927 or to the Controller of Patents, Designs and Trade Marks appointed under the Act of 1964 shall be construed as references to the Controller. 20
- (6) If the Minister has made a recognition order, then the Controller shall consult with the Council as necessary or expedient.”. 25

### **Sound track accompanying a film**

- 5.** Section 17 of the Principal Act is amended by inserting the following subsection after subsection (6):

“(7) The sound track accompanying a film shall be treated as part of the film.”. 30

### **Unpublished works**

- 6.** (1) Section 24 of the Principal Act is amended, in subsection (1), by substituting “irrespective either of the date on which the work is first lawfully made available to the public or of whether the work is ever made available to the public.” for “irrespective of the date on which the work is first lawfully made available to the public.”. 35
- (2) Section 34 of the Principal Act is amended—
- (a) by designating it as subsection (1), and
- (b) by adding the following subsection:

“(2) For the purposes of subsection (1), a work is not lawfully made 40

available by a person who has obtained it without the express consent of the owner of the physical medium in which the work is embodied or on which it is recorded.”.

- (3) Section 9 of the First Schedule to the Principal Act is amended by inserting, after “the duration of copyright in works”, the following “which have been made available to the public”.

## Remedies

7. (1) Section 128 of the Principal Act is amended by substituting the following subsections for subsection (3):

“(3) Without prejudice to any other remedy, where, in an action for infringement of the copyright in a work, it is shown that the infringement by the defendant was unintentional or otherwise innocent, the plaintiff shall not normally be entitled to damages against the defendant; provided that, in exceptional cases where damages are awarded, such damages shall not exceed a reasonable payment in respect of the act complained of.

- (4) In exercising its powers under subsection (1) in addition to or as an alternative to compensating the plaintiff for financial loss, the court may award any or some or all of the following heads of damages:

- (a) aggravated damages,
- (b) restitutionary damages,
- (c) exemplary damages, or
- (d) punitive damages.

- (5) Having regard to the deterrent and retributive purposes of awards of exemplary or punitive damages, any award to the plaintiff made under paragraph (c) or (d) of subsection (5) shall bear some reasonable relation to any award made to the plaintiff under subsection (1) in respect of the same infringement.

- (6) An award of damages under subsection (5) shall not be excluded by reason only of the fact that the defendant has been convicted of an offence under this Act arising out of the same facts; provided that any such award shall be assessed having regard to any penalty, and in particular any financial penalty, for which the defendant was liable upon such conviction.”.

- (2) Section 203 of the Principal Act is amended by substituting the following subsections for subsection (5):

“(5) The court may, in an action for infringement of the rights of a performer brought under this section, award such damages as, having regard to all the circumstances of the case, it considers just.

- (6) Without prejudice to any other remedy, in an action for infringement of the rights of a performer brought under this section, damages shall

not be awarded against a defendant who shows that at the time of the infringement he or she did not know and had no reason to believe that consent had not been given.

- (7) Without prejudice to any other remedy, where, in an action for infringement of the rights of a performer brought under this section, it is shown that the infringement by the defendant was unintentional or otherwise innocent, the plaintiff shall not normally be entitled to damages against the defendant; provided that, in exceptional cases where damages are awarded, such damages shall not exceed a reasonable payment in respect of the act complained of. 5 10
- (8) In exercising its powers under subsection (5) in addition to or as an alternative to compensating the plaintiff for financial loss, the court may award any or some or all of the following heads of damages:
- (a) aggravated damages,
  - (b) restitutionary damages, 15
  - (c) exemplary damages, or
  - (d) punitive damages.
- (9) Having regard to the deterrent and retributive purposes of awards of exemplary or punitive damages, any award to the plaintiff made under paragraph (c) or (d) of subsection (8) shall bear some reasonable relation to any award made to the plaintiff under subsection (5) in respect of the same infringement. 20
- (10) An award of damages under subsection (8) shall not be excluded by reason only of the fact that the defendant has been convicted of an offence under this Act arising out of the same facts; provided that any such award shall be assessed having regard to any penalty, and in particular any financial penalty, for which the defendant was liable upon such conviction.”. 25
- (3) Section 216 of the Principal Act is amended by substituting the following subsections for subsection (2): 30
- “(2) The court may, in an action brought under this section for infringement of the rights referred to in subsection (1), award such damages as, having regard to all the circumstances of the case, it considers just.
  - (3) Without prejudice to any other remedy, in an action brought under this section for infringement of the rights referred to in subsection (1), damages shall not be awarded against a defendant who shows that at the time of the infringement he or she did not know and had no reason to believe that consent had not been given. 35
  - (4) Without prejudice to any other remedy, where, in an action brought under this section for infringement of the rights referred to in subsection (1), it is shown that the infringement by the defendant was unintentional or otherwise innocent, the plaintiff shall not normally be entitled to damages against the defendant; provided that, in 40

exceptional cases where damages are awarded, such damages shall not exceed a reasonable payment in respect of the act complained of.

- (5) In exercising its powers under subsection (2) in addition to or as an alternative to compensating the plaintiff for financial loss, the court may award any or some or all of the following heads of damages: 5
- (a) aggravated damages;
  - (b) restitutionary damages;
  - (c) exemplary damages; or
  - (d) punitive damages.
- (6) Having regard to the deterrent and retributive purposes of awards of exemplary or punitive damages, any award to the plaintiff made under paragraph (c) or (d) of subsection (5) shall bear some reasonable relation to any award made to the plaintiff under subsection (2) in respect of the same infringement. 10
- (7) An award of damages under subsection (5) shall not be excluded by reason only of the fact that the defendant has been convicted of an offence under this Act arising out of the same facts; provided that any such award shall be assessed having regard to any penalty, and in particular any financial penalty, for which the defendant was liable upon such conviction.”. 15 20
- (4) Section 304 of the Principal Act is amended by the substitution of the following subsections for subsection (3):
- “(3) Without prejudice to any other remedy, where, in an action for infringement of a performer's property rights, it is shown that the infringement by the defendant was unintentional or otherwise 25 innocent, the plaintiff shall not normally be entitled to damages against the defendant; provided that, in exceptional cases where damages are awarded, such damages shall not exceed a reasonable payment in respect of the act complained of.
- (4) In exercising its powers under subsection (1) in addition to or as an 30 alternative to compensating the plaintiff for financial loss, the court may award any or some or all of the following heads of damages:
- (a) aggravated damages;
  - (b) restitutionary damages;
  - (c) exemplary damages; or 35
  - (d) punitive damages.
- (5) Having regard to the deterrent and retributive purposes of awards of exemplary or punitive damages, any award to the plaintiff made under paragraph (c) or (d) of subsection (5) shall bear some reasonable relation to any award made to the plaintiff under subsection (1) in 40 respect of the same infringement.

(6) An award of damages under subsection (5) shall not be excluded by reason only of the fact that the defendant has been convicted of an offence under this Act arising out of the same facts; provided that any such award shall be assessed having regard to any penalty, and in particular any financial penalty, for which the defendant was liable upon such conviction.”. 5

(5) Section 372 of the Principal Act is amended, in subsection (1), by inserting, after “in cases of” the following: “unintentional or otherwise”.

### **Metadata**

8. (1) Section 37 of the Principal Act is amended, in subsection (3), by inserting, after “substantial part of the work”, of “or to metadata incorporated in the work or to any substantial part of the metadata incorporated in the work”. 10

(2) Section 43 of the Principal Act is amended by inserting the following subsection after subsection (3):

“(4) Without prejudice to the generality of section 37 (1)(c), in this Part, where a work includes metadata, ‘adaptation’ includes the reproduction of that work with some or all of its metadata removed.”. 15

### **Technological protection measures and rights management information**

9. (1) Section 370 of the Principal Act is amended, in subsection (2)—

(a) by substituting of “The rightsowner, and any” for “A”, 20

(b) by deleting, in paragraph (a)(iv), after “measures”, “ or”,

(c) by inserting, in paragraph (b), after “measures,” the following: “or”, and

(d) by inserting, after paragraph (b) and before “as a rightsowner has” the following paragraph:

“(c) circumvents rights protection measures in a work otherwise than for the purposes of undertaking a permitted act pursuant to section 374,”. 25

(2) Section 372 of the Principal Act is amended, in subsection (2), by substituting “The rightsowner, and any” for “A”.

(3) The Principal Act is amended by substituting the following section for section 374: 30

#### **“Rights protection measures and permitted acts**

**374.** (1) Nothing in this Chapter shall be construed as operating to prevent any person from undertaking the acts permitted—

(a) in relation to works protected by copyright under Chapter 6 of Part II, 35

(b) in relation to performances, by Chapter 4 of Part III, or

(c) in relation to databases, by Chapter 8 of Part V,

or from undertaking any act of circumvention required to effect such

permitted acts.

- (2) Where a technological protection measure has prevented a person ('the complainant') from undertaking in respect of a work any of the acts mentioned in subsection (1), then the complainant may invite the holder or licensee of the rights in that work ('the respondent') to provide an effective means of carrying out that act. 5
- (3) Where, within a period of 30 working days from the date of the complaint, the respondent declines or fails to provide such an effective means of allowing the complainant to undertake in respect of a work any of the acts mentioned in subsection (1), then the complainant may issue a notice of complaint to the Minister; provided that the complainant issues any such notice within a further period of 15 working days. 10
- (4) Following receipt of a notice of complaint, if the Minister has made a recognition order, then the Minister shall, within a period of 15 working days from the date of the notice of complaint, consult with the Copyright Council of Ireland; the Council shall respond to the Minister within a period of 15 working days from the date of the communication from the Minister; the Minister shall reply to the parties within a period of 15 working days from the date of the response from the Council; and in that reply to the parties, the Minister may give to the respondent such directions as appear to him or her to be necessary or expedient to resolve the matter. 15 20
- (5) Following receipt of a notice of complaint, if the Minister has not made a recognition order, then the Minister shall, within a period of 15 working days from the date of the notice of complaint, reply to the parties; and in that reply to the parties, the Minister may give to the respondent such directions as appear to him or her to be necessary or expedient to resolve the matter. 25
- (6) Where, within a period of 30 working days from the date of any directions given by the Minister, the respondent has failed to comply with or to give effect to such directions, then— 30
  - (a) the complainant may seek any remedy as would be available if the failure of the respondent amounted to a breach of statutory duty; and 35
  - (b) the Minister or the complainant or both may apply to the Circuit Court or the High Court for an Order directing the respondent to comply with and to give effect to the direction.
- (7) Any notice, invitation or response made or given pursuant to this section may be either in writing pursuant to section 14 or in any appropriate digital or electronic or other similar or related technological form or format. 40
- (8) The Minister may, by order, make regulations to implement and administer this section.”.

- (4) Section 375(1) of the Principal Act is amended by substituting “The rightsowner, and any” for “A”.

## **Broadcasting**

10. (1) Section 183 of the Act of 2009 is repealed.

- (2) Section 2 of the Principal Act is amended, in subsection (1)— 5

- (a) by substituting for the definition of “broadcast” the following:

“ ‘broadcast’ means an electronic transmission of sounds, images or data or any combination of sounds, images or data, or the representations thereof, for direct public reception or for presentation to members of the public;”, 10

- (b) by inserting, before the definition of “film”, the following:

“ ‘electronic transmission’ includes specified transmissions over the internet, and transmission by wireless means, including by terrestrial or satellite means, whether digital or analogue, but does not include transmission by means of MMDS and digital terrestrial retransmission;”, 15

- (c) by inserting, before “statutory inquiry” the following:

“ ‘specified transmissions over the internet’ means—

- (i) a transmission taking place simultaneously on the internet and by other means, 20

- (ii) a concurrent transmission of a live event, and

- (iii) a transmission of recorded moving images or sounds forming part of a programme service offered by the person responsible for making the transmission, being a service in which programmes are transmitted at scheduled times determined by that person;”, 25

- (d) in the definition of “cable programme service” by substituting “including MMDS and digital terrestrial retransmission” for “including MMDS”,

- (e) by inserting, before “digital publication” (inserted by section 1(2)), the following:

“ ‘digital terrestrial retransmission’ means the reception and immediate retransmission on an encrypted basis without alteration by means of a multiplex of a broadcast or a cable programme initially transmitted from another Member State of the EEA;”, 30

- (f) by inserting, before “musical work”, the following:

“ ‘multiplex’ has the meaning assigned to it in section 129 of the Act of 2009;”, 35

- (3) Section 99 of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(4) Where, by virtue of subsection (1), a person (‘the licensee’) is deemed

to be licensed by the owner of the copyright in a work to copy or authorise the copying of that work by means of his or her own facilities, such facilities shall include those of a person acting on behalf of and under the responsibility of the licensee.”.

- (4) Section 103 of the Principal Act is amended, in subsection (1)— 5
- (a) by designating it as paragraph (a), and
  - (b) by the addition of the following paragraph:

“(b) For the avoidance of doubt, this section does not apply to transmissions over the internet, whether or not such transmissions are by means of a cable programme service.”. 10
- (5) Section 251 of the Principal Act is amended, in subsection (1)—
- (a) by designating it as paragraph (a), and
  - (b) by the addition of the following paragraph:

“(b) For the avoidance of doubt, this section does not apply to transmissions over the internet, whether or not such transmissions are by means of a cable programme service.”. 15

### **Computer programs**

**11.** Section 49 of the Principal Act is amended—

- (a) by designating it as section (1), and
- (b) by adding the following section: 20

“(2) Except for sections 80 to 82, exceptions provided in this Chapter do not apply to computer programs.”.

### **Temporary copies**

**12.** (1) The Principal Act is amended by substituting the following section for section 87—

- “Temporary copies 25**
- 87.**(1) It is not an infringement of the rights conferred by this Part to undertake or conduct an act of reproduction which—
- (a) is temporary,
  - (b) is transient or incidental,
  - (c) has no independent economic significance, 30
  - (d) is an integral and essential part of a technological process, and
  - (e) has as its sole purpose the enabling of—
    - (i) a transmission in a network between third parties by an intermediary, or
    - (ii) a lawful use. 35

- (2) For the avoidance of doubt, it is not an infringement of the rights conferred by this Part to make or cause to be made a temporary reproduction of a work where that temporary reproduction is incidentally made as a necessary part of the technical process of doing an act which is permitted by this Act. 5
- (3) Where a copy, which would otherwise be an infringing copy, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.”. 10
- (2) The Principal Act is amended by substituting the following section for section 244—
- “Temporary copies**
- 244.** (1) It is not an infringement of the rights conferred by this Part to undertake or conduct an act of reproduction of a recording of a performance which— 15
- (a) is temporary,
- (b) is transient or incidental,
- (c) has no independent economic significance,
- (d) is an integral and essential part of a technological process, and
- (e) has as its sole purpose the enabling of— 20
- (i) a transmission in a network between third parties by an intermediary, or
- (ii) a lawful use.
- (2) For the avoidance of doubt, it is not an infringement of the rights conferred by this Part to make or cause to be made a temporary reproduction of a recording of a performance where that temporary reproduction is incidentally made as a necessary part of the technical process of doing an act which is permitted by this Act. 25
- (3) Where a recording which would otherwise be an illicit recording is made under this section but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes.”. 30

**Linking**

- 13.** (1) The Principal Act is amended by inserting after section 87 the following section: 35

**“Linking**

**87A.**(1) For the avoidance of doubt, it is not an infringement of the rights conferred by this Part to provide a link on a page on the internet that connects with a work elsewhere on the internet.

- (2) Subsection (1) shall not apply where the provider of the link, at the 40

time that he or she provided it, knew or ought to have been aware that it connects with an infringing copy, unless the provision of the link is in the public interest.

- (3) To provide appropriate context for a link permitted under subsection (1), it is not an infringement of the rights conferred by this Part to reproduce reasonably adjacent to the link a very small snippet of the linked work; provided that such reproduction does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author. 5
- (4) It shall be a matter of fact and degree in any given case as to whether the criteria in subsection (3) are satisfied. 10
- (5) Without prejudice to subsection (4), where the work being reproduced is a literary work, then an extract which is—
  - (a) no more than one hundred and sixty characters, and
  - (b) no more than forty words, 15shall constitute a very small snippet for the purposes of subsection (3).
- (6) Without prejudice to subsection (4), where the work being reproduced is a literary work, then an extract which is—
  - (a) no more than two and half per cent of the total number of words in the work, and 20
  - (b) no more than forty words,shall constitute a very small snippet for the purposes of subsection (3).
- (7) Where a copy, which would otherwise be an infringing copy, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.”. 25

(2) The Principal Act is amended by inserting the following section after section 244:

**“Linking**

- 244A.** (1) For the avoidance of doubt, it is not an infringement of the rights conferred by this Part to provide a link on a page on the internet that connects with a recording of a performance elsewhere on the internet. 30
- (2) Subsection (1) shall not apply where the provider of the link, at the time that he or she provided it, knew or ought to have been aware that it connects with an infringing copy, unless the provision of the link is in the public interest. 35
  - (3) To provide appropriate context for a link permitted under subsection (1), it is not an infringement of the rights conferred by this Act to reproduce reasonably adjacent to the link a very small snippet of a work accompanying a recording of a performance; provided that such reproduction does not conflict with a normal exploitation of the work 40

and does not unreasonably prejudice the legitimate interests of the author.

- (4) It shall be a matter of fact and degree in any given case as to whether the criteria in subsection (3) are satisfied.
- (5) Without prejudice to subsection (4), where the work being reproduced is a literary work, then an extract which is— 5
- (a) no more than one hundred and sixty characters, and
  - (b) no more than forty words,
- shall constitute a very small snippet for the purposes of subsection (3).
- (6) Without prejudice to subsection (4), where the work being reproduced is a literary work, then an extract which is— 10
- (a) no more than two and half per cent of the total number of words in the work, and
  - (b) no more than forty words,
- shall constitute a very small snippet for the purposes of subsection (3). 15
- (7) Where a copy, which would otherwise be an infringing copy, is made under this section and is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.”. 20

## News

14. (1) Section 51 of the Principal Act is amended by substituting the following subsection for subsection (2):

- “(2) (a) It is not an infringement of the rights conferred by this Part if works (other than photographs) on current economic, political or religious topics or other subject-matter of the same character are reproduced by the press and communicated by them to the public; provided that 25
- (i) such use is not expressly reserved, and
  - (ii) the reproduction and communication is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise. 30
- (b) In particular, fair dealing with a work (other than a photograph) for the purpose of reporting current events shall not infringe copyright in that work, where the report is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise. 35
- (c) Where a reproduction which would otherwise be an infringing copy is made under paragraphs (a) or (b), but is subsequently sold, 40

rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.”.

(2) The Principal Act is amended by substituting the following section for section 89: 5

**“Use of notes or recordings of spoken words in certain cases**

**89.** (1) Subject to compliance with the conditions specified in subsection (2), where a record is made, in writing or otherwise, for the purpose of—

(a) reporting current events, or

(b) broadcasting, or including in a cable programme service, or otherwise communicating to the public, the record or part of the record, 10

it is not an infringement of the rights conferred by this Part to use the record or material taken from it or to copy the record, or any such material, and to use the copy for the purposes referred to in paragraph (a) or (b). 15

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

(a) that the record relates to spoken words, including political speeches and extracts of public lectures or similar or related works or subject-matter, 20

(b) that the record is a direct record of the spoken words,

(c) that the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe the copyright in the work,

(d) that the use made of the record or material taken from it is not prohibited by or on behalf of the speaker or copyright owner before the record was made, 25

(e) that the use made of the record or material taken from it is by or with the authority of a person who is lawfully in possession of the record, and 30

(f) that the use made of the record or material taken from it is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise.

(3) Where a record which would otherwise be an infringing copy is made under subsection (1), but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes.”. 35

## Fair dealing

15. (1) Section 49 of the Principal Act is amended by inserting the following subsection after subsection (2) (inserted by section 12 of this Act):

“(3) In this Part, ‘lawful user’ means a person who, whether under a licence to undertake any act restricted by the copyright in the work or otherwise, has a right to use the work, and ‘lawful use’ shall be construed accordingly.”. 5

(2) Section 50 of the Principal Act is amended, in in subsection (4), by substituting “includes” for “means”.

(3) Section 52 of the Principal Act is amended by inserting the following subsections after subsection (4): 10

“(5) Fair dealing with a work for the purposes of use during religious celebrations or official celebrations organised by a public authority shall not infringe copyright in that work; provided that the use is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise. 15

(6) Fair dealing with a work for the purposes of caricature, parody, pastiche, or satire, or for other similar or related purposes, shall not infringe copyright in that work. 20

(7) Fair dealing with a work for the purposes of use in connection with the demonstration or repair of equipment shall not infringe copyright in that work.”.

(4) The Principal Act is amended by inserting the following sections after section 106:

### **“Reproduction on paper for private use 25**

**106A.**(1) It is not an infringement of the rights conferred by this Part if—

(a) the owner or lawful user of a work makes or causes to be made from it a reproduction on paper or any similar or related medium, effected by the use of any kind of photographic technique or by some other process having similar or related effects, 30

(b) the reproduction is made for his or her private and domestic use,

(c) the reproduction embodies the work in a form different from the form in which the work is embodied,

(d) at the time the owner makes the reproduction or causes it to be made, he or she has not made, and is not making, another copy that embodies the work in a form substantially identical to the form of reproduction, and 35

(e) the reproduction is accompanied by a sufficient acknowledgement.

(2) Subsection (1) shall not apply if the work being reproduced is

(a) sheet music, or 40

(b) an infringing copy, and the person making the reproduction had no

reasonable grounds to believe that the work was a lawful copy.

- (3) Where a reproduction which would otherwise be an infringing copy is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes. 5
- (4) For the avoidance of doubt, subsection (3) does not apply to a loan of the reproduction by the lender to a member of the lender's family or household for the member's private and domestic use.
- (5) Subsection (1) does not apply if the owner or lawful user of the work from which the reproduction was made disposes of, gives away, rents, or sells that work to another person without first destroying the reproduction. 10

**Format-shifting for private use**

- 106B.**(1) It is not an infringement of the rights conferred by this Part if— 15
  - (a) the owner or lawful user of a work makes or causes to be made a reproduction of that work in a different format,
  - (b) he or she owns or is a lawful user of the medium or device on which the reproduction is reproduced,
  - (c) the reproduction is made for his or her private and domestic use, and 20
  - (d) the reproduction is made for purposes that are neither directly nor indirectly commercial.
- (2) Subsection (1) shall not apply if—
  - (a) the work being reproduced is an infringing copy, and 25
  - (b) the person making the reproduction did not have reasonable grounds to believe that the work was not an infringing copy.
- (3) Where a reproduction which would otherwise be an infringing copy is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes. 30
- (4) For the avoidance of doubt, subsection (3) does not apply to a loan of the reproduction by the lender to a member of the lender's family or household for the member's private and domestic use. 35
- (5) Subsection (1) does not apply if the owner or lawful user of the work from which the reproduction was made disposes of, gives away, rents, or sells that work to another person without first destroying all reproductions of that work which he or she has made under that subsection. 40

### **Back-up copy**

- 106C.** (1) (a) It is not an infringement of the rights conferred by this Part if the owner or lawful user of a work makes or causes to be made a reproduction of that work as a back-up copy of it which it is necessary for him or her to have for the purposes of his or her lawful use. 5
- (b) In particular, it is not an infringement if the reproduction is made as a back-up copy in case the work is lost, damaged or otherwise rendered unusable.
- (2) Subsection (1) shall apply only if the owner or lawful user of the work being reproduced owns or is authorised to use the medium or device on which the reproduction is reproduced. 10
- (3) Subsection (1) shall not apply if—
- (a) the work being reproduced is an infringing copy, and
- (b) the person making the reproduction did not have reasonable grounds to believe that the work was not an infringing copy. 15
- (4) If the work is lost, damaged or otherwise rendered unusable, then a reproduction made under subsection (1) shall be treated as the work.
- (5) Where a reproduction which would otherwise be an infringing copy is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes. 20
- (6) For the avoidance of doubt, subsection (5) does not apply to a loan of the reproduction by the lender to a member of the lender's family or household for the member's private and domestic use. 25
- (7) Subsection (1) does not apply if the owner or lawful user of the work from which the reproduction was made disposes of, gives away, rents, or sells that work to another person without first destroying all reproductions of that work which he or she has made under that subsection. 30

### **Non-commercial user-generated content**

- 106D.** (1) It is not an infringement of the rights conferred by this Part for a person to use an existing work in the creation or communication of a new work; provided that— 35
- (a) any such use, creation or communication is done solely and exclusively for non-commercial purposes,
- (b) any such creation and communication is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise, and 40
- (c) the creation and communication of the new work does not have a

substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing work or on an existing or potential market for it, including that the new work is not a substitute for the existing one.

- (2) Subsection (1) shall not apply if— 5
- (a) the existing work is an infringing copy, and
  - (b) the person using the existing work did not have reasonable grounds to believe that it was not an infringing copy.”.
- (5) Section 220 of the Principal Act is amended— 10
- (a) by designating it as subsection (1), and
  - (b) by adding the following subsection:
    - “(2) In this Part, ‘lawful user’ means a person who, whether under a licence to undertake any act restricted by recording rights in relation to a performance or otherwise, has a right to use the recording of a performance, and ‘lawful use’ shall be construed accordingly.”. 15
- (6) Section 221 of the Principal Act is amended—
- (a) in subsection (2), by substituting “includes” for “means”, and
  - (b) by inserting the following subsections after subsection (2):
    - “(3) Fair dealing with a recording of a performance for the purposes of use during religious celebrations or official celebrations organised by a public authority shall not infringe the rights conferred by this Part; provided that the use is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise. 20
    - (4) Fair dealing with a recording of a performance for the purposes of caricature, parody, pastiche, or satire, or for other similar or related purposes, shall not infringe the rights conferred by this Part. 25
    - (5) Fair dealing with a recording of a performance for the purposes of use in connection with the demonstration or repair of equipment shall not infringe the rights conferred by this Part.”. 30
- (7) The Principal Act is amended by inserting the following sections after section 254:
- “Format-shifting for private use**
- 254A.** (1) It is not an infringement of the rights conferred by this Part if—
- (a) the owner or lawful user of a recording of a performance makes or causes to be made a reproduction of that recording in a different format, 35
  - (b) he or she owns or is a lawful user of the medium or device on which the reproduction is reproduced,
  - (c) the reproduction is made for his or her private and domestic use, and 40

- (d) the reproduction is made for purposes that are neither directly nor indirectly commercial.
- (2) Subsection (1) shall not apply if—
  - (a) the recording being reproduced is an infringement of the rights conferred by this Part, and 5
  - (b) the person making the reproduction or causing it to be made did not have reasonable grounds to believe that the recording was not such an infringement.
- (3) Where a reproduction which would otherwise be an illicit recording is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes. 10
- (4) For the avoidance of doubt, subsection (3) does not apply to a loan of the reproduction by the lender to a member of the lender’s family or household for the member’s private and domestic use. 15
- (5) Subsection (1) does not apply if the owner or lawful user of the recording of a performance from which the reproduction was made disposes of, gives away, rents, or sells that work to another person without first destroying all reproductions of that work which he or she has made under that subsection. 20

**Back-up copy**

- 254B.** (1) Without prejudice to section 242—
- (a) it is not an infringement of the rights conferred by this Part if the owner or lawful user of a recording of a performance makes or causes to be made a reproduction of that recording as a back-up copy of it which it is necessary for him or her to have for the purposes of his or her lawful use, and 25
  - (b) in particular, it is not an infringement if the reproduction is made as a back-up copy in case the recording is lost, damaged or otherwise rendered unusable. 30
  - (2) Subsection (1) shall apply only if the owner or lawful user of the recording being reproduced owns or is authorised to use the medium or device on which the reproduction is reproduced.
  - (3) Subsection (1) shall not apply if— 35
    - (a) the recording being reproduced is an infringement of the rights conferred by this Part, and
    - (b) the person making the reproduction or causing it to be made did not have reasonable grounds to believe that the recording was not such an infringement. 40
  - (4) If the recording is lost, damaged or otherwise rendered unusable, then a reproduction made under subsection (1) shall be treated as the

recording.

- (5) Where a reproduction which would otherwise be an illicit recording is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes. 5
- (6) For the avoidance of doubt, subsection (5) does not apply to a loan of the reproduction by the lender to a member of the lender's family or household for the member's private and domestic use.
- (7) Subsection (1) does not apply if the owner or lawful user of the recording from which the reproduction was made disposes of, gives away, rents, or sells that recording to another person without first destroying all reproductions of that work which he or she has made under that subsection. 10

**Non-commercial user-generated content** 15

- 254C.** (1) It is not an infringement of the rights conferred by this Part for a person to use an existing recording of a performance in the creation or communication of a new work or recording of a performance; provided that—
- (a) any such use, creation or communication is done solely and exclusively for non-commercial purposes, 20
  - (b) any such creation and communication is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise, and 25
  - (c) the creation and communication of the new work or recording does not have a substantial adverse effect, financial or otherwise, on the exploitation or potential exploitation of the existing recording or on an existing or potential market for it, including that the new work or recording is not a substitute for the existing recording. 30
- (2) Subsection (1) shall not apply if—
- (a) the existing recording is an infringement of the rights conferred by this Part, and
  - (b) the person using the existing work did not have reasonable grounds to believe that the recording was not such an infringement.”. 35

**Education**

- 16.** (1) The Principal Act is amended, except where the contrary intention appears or the context otherwise requires, by inserting “education,” before “research or private study”, wherever occurring.
- (2) The Principal Act is amended by substituting “education” for “instruction” or “instructions”, wherever occurring— 40

(a) in sections 53, 55, 63, 168, 171, 172, 223, 224, 230 and 330, and

(b) in the shoulder notes to sections 53 and 223.

(3) The Principal Act is amended by substituting the following sections for section 57:

**“Illustration for education, teaching and research**

57. (1) (a) It is not an infringement of the rights conferred by this Part to make or to cause to be made a reproduction or communication for the sole purpose of illustration for education, teaching or scientific research. 5
- (b) In particular, it is not an infringement of the rights conferred by this Part for an educational establishment, for the educational purposes of that establishment, to reproduce or cause to be reproduced a work, or to do or cause to be done, any other necessary act, in order to display it. 10
- (c) In particular, reprographic copies of passages from literary, dramatic or musical works or typographical arrangements of published editions or original databases which have been lawfully made available to the public may, to the extent permitted under this section, be made by or on behalf of an educational establishment for the educational purposes of that establishment without infringing any copyright in the work. 15 20
- (2) Subsection (1) shall apply only if the reproduction or communication is—
- (a) made for purposes that are neither directly nor indirectly commercial,
- (b) made only to the extent justified by the non-commercial purposes to be achieved, and 25
- (c) accompanied by a sufficient acknowledgement.
- (3) Subsection (1) shall not apply if—
- (a) the work being reproduced or communicated is an infringing copy, and 30
- (b) the person making the reproduction or communication did not have reasonable grounds to believe that the work was not an infringing copy.
- (4) Not more than 5 per cent of any work may be copied by or on behalf of an educational establishment under subsection (1)(c) in any calendar year. 35
- (5) Where a reproduction which would otherwise be an infringing copy is made under subsection (1), but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes. 40

- (6) Except in the case of manual reproduction, subsection (1) does not apply if the work is commercially available in a medium that is appropriate for the purposes referred to in that subsection.

**Distance learning provided by an educational establishment**

- 57A.** (1) For the avoidance of doubt, it is not an infringement of the rights conferred by this Part if— 5
- (a) an educational establishment, for the educational purposes of that establishment, communicates a lesson or examination to a registered student by telecommunication, and
  - (b) a student who has received such a lesson or examination reproduces it in order to be able to listen to or view it at a more convenient time. 10
- (2) Subsection (1) shall not apply if—
- (a) the work being reproduced or communicated is an infringing copy, and 15
  - (b) the person making the reproduction or communication did not have reasonable grounds to believe that the work was not an infringing copy.
- (3) Where a reproduction which would otherwise be an infringing copy is made under subsection (1)(b), but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes. 20

**Use by an educational establishment of work available through the internet**

- 57B.** (1) It is not an infringement of the rights conferred by this Part if an educational establishment, for the educational purposes of that establishment, reproduces or communicates a work that is available through the internet; provided that the reproduction or communication is accompanied by a sufficient acknowledgement. 25
- (2) (a) Subsection (1) does not apply if— 30
- (i) the work is protected by a technological protection measure,
  - (ii) the educational establishment knows or ought to have known that the work was made available through the internet without the consent of the copyright owner, or
  - (iii) a clearly visible notice, and not merely the copyright symbol, prohibiting that act is posted at the internet site where the work is posted or on the work itself. 35
- (b) The Minister may, by order, make regulations for the purposes of this subsection prescribing what constitutes a clearly visible notice.

**Licensing schemes for educational establishments**

- 57C.** (1) Any exemption in respect of education provided in sections 50, 50A, 40

57, 57A, 57B, 61(2), 62(2), 67(3), 92, 221, 225A, 225B, 225C, 229(2), 234(3), 245(3)(a) and 329 shall not apply if—

- (a) a licensing scheme which is certified under this Act and is applicable to the relevant exemption is in force, and
  - (b) the person making use of the work knew or ought to have been aware of the existence of the licensing scheme. 5
- (2) In the case of licences granted on foot of a licensing scheme certified pursuant to this Act, any term in such a licence which purports to limit or restrict the proportion of a work which may be reproduced or communicated (whether on payment or free of charge) to less than that which would be permitted pursuant to sections 57, 61 and 62, or which has that effect, shall be void. 10
- (3) If an exemption in respect of education is displaced by a licensing scheme pursuant to subsection (1)(a) and section 173, then sections 152 to 155 shall apply in relation to the scheme as if it were one to which those sections applied pursuant to section 150.”. 15
- (4) Section 221 of the Principal Act is amended by inserting, after “reporting current events” and before “shall not infringe” the following: “or for the purposes of education, research or private study,”. 5
- (5) The Principal Act is amended by inserting the following sections after section 225: 20

**“Illustration for education, teaching and research**

- 225A.** (1) (a) It is not an infringement of the rights conferred by this Part to make or to cause to be made a reproduction or communication of a recording of a performance for the sole purpose of illustration for education, teaching or scientific research. 25
- (b) In particular, it is not an infringement of the rights conferred by this Part for an educational establishment, for the educational purposes of that establishment, to reproduce or to cause to be reproduced a recording of a performance, or to do or to cause to be done any other necessary act, in order to display it. 30
- (2) Subsection (1) shall apply only if the reproduction or communication is—
- (a) made for purposes that are neither directly nor indirectly commercial,
  - (b) made only to the extent justified by the non-commercial purposes to be achieved, and 35
  - (c) accompanied by a sufficient acknowledgement.
- (3) Subsection (1) shall not apply if—
- (a) the recording being reproduced or communicated is an infringement of the rights conferred by this Part, and 40
  - (b) the person making the reproduction or communication or causing it

to be made did not have reasonable grounds to believe that the recording was not such an infringement.

- (4) Where a reproduction which would otherwise be an illicit recording is made under subsection (1), but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes. 5
- (5) Subsection (1) does not apply if the work is commercially available in a medium that is appropriate for the purposes referred to in that subsection. 10

#### **Distance learning provided by an educational establishment**

- 225B.** (1) For the avoidance of doubt, it is not an infringement of the rights conferred by this Part if—
- (a) an educational establishment, for the educational purposes of that establishment, communicates a lesson or examination to a registered student by telecommunication, and 15
- (b) a student who has received such a lesson or examination reproduces it in order to be able to listen to or view it at a more convenient time.
- (2) Subsection (1) shall not apply if— 20
- (a) the recording being reproduced or communicated is an infringement of the rights conferred by this Part, and
- (b) the person making the reproduction or communication or causing it to be made did not have reasonable grounds to believe that the recording was not such an infringement. 25
- (3) Where a reproduction which would otherwise be an illicit recording is made under subsection (1)(b), but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an illicit recording for those purposes and for all subsequent purposes. 30

#### **Use by an educational establishment of work available through the internet**

- 225C.** (1) It is not an infringement of the rights conferred by this Part if an educational establishment, for the educational purposes of that establishment, reproduces or communicates a recording of a performance that is available through the internet; provided that the reproduction or communication is accompanied by a sufficient acknowledgement. 35
- (2) (a) Subsection (1) does not apply if—
- (i) the recording is protected by a technological protection measure, 40
- (ii) the educational establishment knows or ought to have known that the recording was made available through the internet

without the consent of the copyright owner, or

- (iii) a clearly visible notice, and not merely the copyright symbol, prohibiting that act is posted at the internet site where the recording is posted or on the recording itself.
- (b) The Minister may, by order, make regulations for the purposes of this subsection prescribing what constitutes a clearly visible notice.”. 5

**Persons with a disability**

17. (1) The Principal Act is amended by substituting the following sections for section 104:

**“Personal copies for persons with a disability” 10**

- 104.** (1) It is not an infringement of the rights conferred by this Act if a person with a disability who is the owner or lawful user of a work (‘the master copy’) which is not accessible to him or her because of the disability makes or causes to be made an accessible copy of the master copy for his or her personal use. 15
- (2) For the avoidance of doubt, the acts which may be undertaken pursuant to subsection (1) include—
- (a) in the case of a master copy of an audio-visual work, the making of a copy of the work incorporating subtitles; and
  - (b) in the case of a master copy of a literary or musical work, performing the work and producing a sound recording of the performance. 20
- (3) Subsection (1) shall not apply if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database. 25
- (4) Subsection (1) shall not apply in relation to the making of an accessible copy for a person with a disability if, or to the extent that, copies of the work are commercially available—
- (a) by or with the authority of the copyright owner,
  - (b) within a reasonable time after first publication of the work, 30
  - (c) in a form that is accessible to that person, and
  - (d) at an ordinary commercial price.
- (5) An accessible copy made under this section shall be accompanied by
- (a) a statement that it is made under this section, and
  - (b) a sufficient acknowledgement. 35
- (6) If a person makes or causes to be made an accessible copy on behalf of a visually impaired person under this section and charges for it, the sum charged shall not exceed the cost of making and supplying the copy.

- (7) If a person holds an accessible copy made under subsection (1) when he or she is not entitled to have it made under that subsection, the copy is to be treated as an infringing copy, unless he or she is a person falling within subsection (8)(b).
- (8) A person who holds an accessible copy made under subsection (1) may transfer it to— 5
- (a) a person with a disability entitled to have the accessible copy made under subsection (1),
  - (b) a person who has lawful possession of the master copy and intends to transfer the accessible copy to a person falling within paragraph (a), or 10
  - (c) a designated body.
- (9) The transfer by a person ('the transferring person') of an accessible copy made under subsection (1) to another person or body ('the recipient') is an infringement of copyright by the transferring person unless— 15
- (a) subsection (8) applies, or
  - (b) the transferring person has reasonable grounds for believing that the recipient is a person or body falling within subsection (8).
- (10) Where a copy which would otherwise be an infringing copy is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes. 20

**Multiple copies made by designated bodies** 25

- 104A.** (1) It is not an infringement of the rights conferred by this Act if a designated body which is the owner or lawful user of a work ('the master copy')—
- (a) makes or causes to be made an accessible copy or accessible copies of the master copy for the personal use of persons with a disability to whom the master copy is not accessible because of their disability, 30
  - (b) supplies or causes to be supplied an accessible copy or accessible copies to such persons for their personal use,
  - (c) supplies or causes to be supplied an accessible copy or accessible copies to another designated body which is entitled to make accessible copies of the work, or 35
  - (d) receives from another designated body or from a person with a disability an accessible copy or accessible copies of a work of which it is entitled to make an accessible copy. 40
- (2) For the avoidance of doubt, the acts which may be undertaken pursuant to subsection (1) include:

- (a) in the case of a master copy of an audio-visual work, the making of a copy of the work incorporating subtitles; and
- (b) in the case of a master copy of a literary or musical work, performing the work and producing a sound recording of the performance. 5
- (3) Subsection (1) shall not apply if the master copy is of a database, or part of a database, and the making of an accessible copy would infringe copyright in the database.
- (4) Subsection (1) shall not apply in relation to the making of an accessible copy if, or to the extent that, copies of the work are commercially available at an ordinary commercial price, by or with the authority of the copyright owner, in a form that is accessible to the same or substantially the same degree. 10
- (5) Subsection (1) shall not apply in relation to the supply of an accessible copy to a particular person with a disability if, or to the extent that, copies of the work are commercially available— 15
  - (a) by or with the authority of the copyright owner,
  - (b) within a reasonable time after first publication of the work,
  - (c) in a form that is accessible to that person, and
  - (d) at an ordinary commercial price. 20
- (6) An accessible copy made under this section shall be accompanied by—
  - (a) a statement that it is made under this section, and
  - (b) a sufficient acknowledgement.
- (7) If a designated body charges for supplying a copy made under this section, the sum charged shall not exceed the cost of making and supplying the copy. 25
- (8) A designated body making copies under this section shall, if it is an educational establishment, ensure that the copies will be used only for its educational purposes. 30
- (9) If a designated body continues to hold an accessible copy made under subsection (1) when it would no longer be entitled to make or supply such a copy under that subsection, the copy is to be treated as an infringing copy.
- (10) Where a copy which would otherwise be an infringing copy is made under this section, but is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be treated as an infringing copy for those purposes and for all subsequent purposes. 35

**Intermediate copies and records**

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**104B.** (1) A designated body entitled to make accessible copies under section

- 104A may hold an intermediate copy of the master copy which is necessarily created during the production of the accessible copies, but only—
- (a) if, and for so long as, the approved body continues to be entitled to make accessible copies of that master copy, and 5
  - (b) for the purposes of the production of further accessible copies.
- (2) An intermediate copy which is held in breach of subsection (1) shall be treated as an infringing copy.
- (3) A designated body may lend or transfer the intermediate copy to another designated body which is entitled to make accessible copies of the work pursuant to section 104A. 10
- (4) The loan or transfer by a designated body of an intermediate copy to another person ('the recipient') is an infringement of copyright by the designated body unless it has reasonable grounds for believing that the recipient— 15
- (a) is another designated body which is entitled to make accessible copies of the work under section 104A; and
  - (b) will use the intermediate copy only for the purposes of the production of further accessible copies.
- (5) If a designated body charges for lending or transferring the intermediate copy, the sum charged shall not exceed the cost of the loan or transfer. 20
- (6) A designated body shall—
- (a) keep records of accessible copies made under section 104A and of the persons to whom or bodies to which they are supplied, 25
  - (b) keep records of any intermediate copy lent or transferred under this section and of the persons to whom or bodies to which it is lent or transferred, and
  - (c) allow the copyright owner or a person acting for him or her, on giving reasonable notice, to inspect the records at any reasonable time. 30
- (7) Within a reasonable time of making an accessible copy pursuant to section 104A(1), or of lending or transferring an intermediate copy pursuant to this section, or of supplying or causing to be supplied an accessible copy to another designated body pursuant to section 104A(1)(c), the designated body shall notify— 35
- (a) the Copyright Council of Ireland, if the Minister has made a recognition order, and
  - (b) each relevant licensing body, or, if there is no such body, the copyright owner. 40
- (8) The requirement to notify the copyright owner under subsection (7)(b)

shall not apply if it is not reasonably possible for the designated body to contact the copyright owner.

### **Licensing schemes**

- 104C.** (1) If, and to the extent that, a licensing scheme certified pursuant to section 173 is in force under which licences may be granted by a licensing body permitting the making and supply of copies of the work in that form, then section 104A shall not apply to the making of an accessible copy in a particular form by an educational establishment. 5
- (2) The terms of any such licence which—
- (a) purport to prevent, limit or restrict the steps that may be taken under section 104B, 10
  - (b) purport to exclude, limit or restrict the publishers' obligations pursuant to section 104E or 104F(4), or
  - (c) in either case have that effect,
- shall be void. 15
- (3) Subsection (2) shall not apply if—
- (a) the work is no longer published by or with the authority of the copyright owner, and
  - (b) there are reasonable grounds for preventing or restricting the making of accessible copies of the work. 20
- (4) If section 104A or 104B is displaced by a licensing scheme pursuant to subsection (1) and section 173, then sections 152 to 155 shall apply in relation to the scheme as if it were one to which those sections applied pursuant to section 150.

### **Limitations following infringement of copyright** 25

- 104D.** (1) The Minister may, by order, make regulations under this section if it appears to him or her that the making of copies pursuant to—
- (a) section 104A, or
  - (b) a licence granted under a licensing scheme that has been notified under section 104C, 30
- has led to infringement of copyright on a scale which, in the Minister's opinion, would not have occurred if section 104A had not been in force, or the licence had not been granted.
- (2) The regulations may prohibit one or more named designated bodies, or one or more specified categories of designated body, from acting pursuant either to section 104A, or to a licence of a description specified in the regulations. 35
- (3) The regulations may disapply—
- (a) the provisions of section 104A, or
  - (b) the provisions of a licence, or a licensing scheme, of a description 40

specified in the order,

in respect of the making of copies of a description so specified.

- (4) If the Minister proposes to make regulations pursuant to this section, he or she shall, before making them, consult—
- (a) such publishers or copyright owners or bodies representing publishers or other copyright owners as he or she thinks fit; and 5
  - (b) such designated bodies or other bodies representing persons with a disability as he or she thinks fit.
- (5) If the Minister proposes to make regulations pursuant to this section which include a prohibition, then he or she shall, before making it, also consult— 10
- (a) if the proposed regulations are to apply to one or more named designated bodies, that body or those bodies; and
  - (b) if they are to apply to one or more specified categories of designated body, to such bodies representing designated bodies of that category or those categories as he or she thinks fit. 15
- (6) A designated body which is prohibited by regulations made pursuant to this section from acting under a licence may not apply to the Controller under section 154(1) in respect of a refusal or failure by a licensing body to grant such a licence. 20

#### **Publishers' obligations**

- 104E.** (1) For the purposes of enabling accessible copies to be made pursuant to sections 104 and 104A, the publisher of a work shall make or cause to be made at least one specified electronic version of the work.
- (2) For the purposes of this section, the specified electronic version of the work is a version which is in an electronic format which enables, insofar as is practicable, accessible copies of the work to be— 25
- (a) made without undue difficulty,
  - (b) navigated with sufficient ease, and
  - (c) as accessible to the person with a disability as it would be if he or she did not suffer from the disability. 30
- (3) (a) The publisher of any work first published or otherwise made available in the State after the commencement of this section shall, where a demand is made by a designated body, deliver within one month after receipt of that demand a copy of the specified electronic version procured or obtained pursuant to subsection (1), including all relevant associated metadata. 35
- (b) With that specified electronic version, the publisher shall also deliver a copy of any computer program, manual and any other material or information necessary in order to access the specified electronic version. 40

- (c) Except in the case of delivery to a Board or authority referred to in section 198(1) or section 198A(1), the publisher may make the delivery of a specified electronic version pursuant to paragraph (a) subject to the payment of a reasonable charge, provided that such a charge shall not exceed an ordinary commercial price. 5
- (4) For the purposes of subsection (3)—
- (a) a demand may be made by a designated body either in writing pursuant to section 14 or by means of a communication in any appropriate digital or electronic or other similar or related technological form or format, 10
- (b) delivery shall be effected by a publisher—
- (i) by means of an appropriate storage medium delivered to an address named in the demand,
- (ii) in such digital or electronic or other similar or related technological form or format as may be specified in the demand, 15  
or
- (iii) by permitting a designated body, through means (including computer programs, online search, and other automated means) specified in the demand, to harvest, download or otherwise access or acquire the specified electronic version of the work, 20
- and
- (c) it shall be for the designated body in question to specify in the demand which of the three alternative means of discharging the obligation referred to in paragraph (b) shall apply.
- (5) Where a designated body is a Board or authority referred to in section 198 or section 198A, then subsection (3) is without prejudice to the right of such Boards or authorities referred to make a demand pursuant to section 198 or section 198A; and, if such a demand is made, then section 198A(11) shall apply. 25
- (6) A publisher who fails to comply with this section shall be liable at the suit of a designated body to be ordered to comply with this section, either by the delivery of the specified electronic version in question or by the payment to the relevant designated body of an amount which is not more than the cost of making good the failure to comply. 30
- (7) The Minister may, by order, make regulations for the purposes of this section— 35
- (a) prescribing the works to which subsection (1) applies,
- (b) prescribing the circumstances under which an electronic version of a work is in a form or format which fulfills the conditions in subsection (2), 40
- (c) prescribing how a reasonable charge for the purposes of subsection 3(c) may be calculated, and

- (d) fixing the day on which this section shall come into operation.
- (8) If the Minister proposes to make regulations pursuant to this section, he or she shall, before making it, consult as provided in section 104D(4).

**Accessible copies and technological protection measures** 5

- 104F.** (1) Persons with a disability or designated bodies shall not be prevented from undertaking the acts permitted by sections 104 to 104B by virtue of the application of technological protection measures to the work.
- (2) In particular, and without prejudice to section 374, nothing in Part VII shall be construed as operating to prevent any person with a disability or any designated body— 10
    - (a) from undertaking the acts permitted by sections 104 to 104B,
    - (b) from undertaking any act of circumvention required to effect such permitted acts, or
    - (c) from removing rights management information from, or altering rights management information in, works where that is required to effect such permitted acts. 15
  - (3) Where, pursuant to section 104A, a designated body makes or causes to be made an accessible copy of a work to which rights protection measures have been applied, then the designated body shall, insofar as it is reasonably practicable to do so, incorporate or cause to be incorporated the same, or equally effective, measures in the copy, unless the copyright owner agrees otherwise. 20
  - (4) The publisher shall not apply technological protection measures to the specified electronic version of the work made or caused to be made pursuant to section 104E, unless the publisher— 25
    - (a) also delivers an appropriate means of circumvention to the designated body at the same time as and in the same manner as the delivery of the specified electronic version is effected, or
    - (b) has already delivered an appropriate means of circumvention to the designated body. 30

**Persons with a disability: final provisions**

- 104G.** (1) For the purposes of sections 104 to 104G:
- (a) a work or a copy of a work (other than an accessible copy made under section 104A or 104B) is to be taken to be accessible to a person with a disability only if it is as accessible to that person as it would be if he or she did not suffer from a disability; 35
  - (b) ‘accessible copy’, in relation to a work, means a copy which provides for a person with a disability to have appropriate access to the work, having regard to the nature of the work and the problems caused by the disability; 40
  - (c) an accessible copy may include facilities for navigating that copy

but shall not include—

(i) changes that are not necessary to overcome problems caused by disability, or

(ii) changes which infringe the integrity right provided by section 109;

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(d) ‘disability’ means any physical or mental disability, and except where the contrary intention appears or the context otherwise requires includes the meanings ascribed to it in any other Act of the Oireachtas, including section 2 of the Equal Status Act 2000 and section 2 of the Disability Act 2005;

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(e) a ‘designated body’ means—

(i) a heritage institution,

(ii) a body making and supplying works modified in order to meet the special needs of persons with a disability; provided that the body is not established or conducted for profit or controlled by a body established or conducted for profit, or

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(iii) a body designated for the purposes of this section by order of the Minister who shall not designate a body unless he or she is satisfied that the body is not conducted for profit;

and

20

(f) an ‘ordinary commercial price’, in the case of a work which is or was available to persons without a disability, means a price which is similar to or lower than the usual price of the work in the form or format in which it is or was available to persons without a disability.

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(2) The Minister may, by order, make regulations providing for the application of sections 104 to 104G, or any part thereof, to cross-border exchanges of accessible copies.”.

(2) The Principal Act is amended—

(a) in section 2, by deleting the definition of “disability”,

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(b) in section 144, by inserting the following subsection after subsection (4):

“(5) For the purposes of this section, “disability” has the same meaning as in section 48 of the Statute of Limitations, 1957.”,

and

(c) in section 263, by inserting the following subsection after subsection (4):

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“(5) For the purposes of this section, “disability” has the same meaning as in section 48 of the Statute of Limitations, 1957.”.

## Consumer protection

18. Section 2 of the Principal Act is amended by substituting the following subsection for

subsection (10):

- “(10) (a) Where an act which would otherwise infringe any of the rights conferred by this Act is permitted under this Act, any unfair term in a contract which purports to prohibit or restrict that act shall be void. 5
- (b) Whether a term is unfair shall depend on all of the circumstances of the case.
- (c) In particular, where a contract has not been individually negotiated, a term shall be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the party who had not drafted the term in question, taking into account the nature of the work which is the subject-matter of the contract and all circumstances attending the conclusion of the contract and all other terms of the contract or of another contract on which it is dependent. 10 15
- (d) A term shall always be regarded as having not been individually negotiated where—
- (i) it has been drafted in advance by one party and the other party has therefore not been able to influence its substance, particularly in the context of a pre-formulated standard contract, or 20
- (ii) it is a term of a licensing scheme made pursuant to this Act.
- (e) It shall be for any party who claims that a term was individually negotiated to show that it was. 25
- (f) In making an assessment of good faith, particular regard shall be had to—
- (i) the strength of the bargaining positions of the parties,
- (ii) whether the party who had not drafted the term in question had an inducement to agree to it, 30
- (iii) whether the subject-matter of the contract was sold or supplied to the special order of the party who had not drafted the term in question, and
- (iv) the extent to which the party who had drafted the term in question has dealt fairly and equitably with the other party whose legitimate interests he has to take into account.”. 35

### **Public administration**

19. (1) Section 71 of the Principal Act is amended, in subsection (1), by inserting, after “the purposes of” the following “public security, for the purposes of administrative,”.
- (2) Section 237 of the Principal Act is amended by inserting, after “the purposes of” the following “public security, for the purposes of administrative,”. 40

(3) Section 74 of the Principal Act is amended by substituting the following subsection for subsection (2):

“(2) Copyright is not infringed in any material open to public inspection pursuant to a statutory requirement where—

- (a) by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register: 5
  - (i) the material is copied with a view to the doing of any act authorised by this section;
  - (ii) copies of the material are issued to the public; 10
  - (iii) the material (or a copy of it) is made available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them,
- (b) the purpose of the doing of any act mentioned in paragraph (a) is to: 15
  - (i) enable the material to be inspected at a more convenient time or place; or
  - (ii) otherwise facilitate the exercise of any right for the purpose of which the statutory requirement is imposed, 20and
- (c) the material is not commercially available, by or with the authority of the copyright owner, to the public.”.

(4) Section 74 of the Principal Act is amended by substituting the following subsection for subsection (5): 25

“(5) Copyright is not infringed in any material which is on a statutory register or is open to public inspection pursuant to a statutory requirement where:

- (a) the material contains information about matters of general scientific, technical, commercial or economic interest; 30
- (b) by or with the authority of the person required to make the material open to public inspection or, as the case may be, the person maintaining the register:
  - (i) the material is copied with a view to the doing of any act authorised by this section; 35
  - (ii) copies of the material are issued to the public;
  - (iii) the material (or a copy of it) is made available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them; 40

- (c) the acts mentioned in paragraph (b) are done for the purposes of disseminating the information mentioned in paragraph (a); and
- (d) the material is not commercially available, by or with the authority of the copyright owner, to the public.”.

**Innovation**

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20. (1) The Principal Act is amended by inserting the following section after section 106D (inserted by section 16 of this Act):

**“Innovation**

- 106E.** (1) It is not an infringement of the rights conferred by this Part if the owner or lawful user of a work (‘the initial work’) derives from it an innovative work. 10
- (2) An innovative work is an original work which is substantially different from the initial work, or which is a substantial transformation of the initial work.
- (3) The innovative work must not— 15
- (a) conflict with the normal exploitation of the initial work, or
  - (b) unreasonably prejudice the legitimate interests of the owner of the rights in the initial work.
- (4) Unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise— 20
- (a) the innovative work must be accompanied by a sufficient acknowledgement, and
  - (b) within a reasonable time of the date on which the innovative work is first made available to the public in the State, the author of the innovative work must inform the owner of the rights in the initial work about the availability of the innovative work. 25
- (5) Subsection (1) shall not apply if—
- (a) the initial work is an infringing copy, and
  - (b) the person making the innovative work did not have reasonable grounds to believe that the initial work was not an infringing copy. 30
- (6) Subsection (1) shall not apply if, or to the extent that, the owner of the rights in the initial work can establish by clear and convincing evidence that, within a reasonable time after first publication of the work, he or she had embarked upon a process to derive from it a work to which the innovative work is substantially similar or related. 35
- (7) This section shall come into operation on such day as may be fixed by order made by the Minister.”.

- (2) The Principal Act is amended by inserting the following section after section 254C (inserted by section 16 of this Act):

## **“Innovation**

- 254D.** (1) It is not an infringement of the rights conferred by this Part if the owner or lawful user of a recording of a performance (the initial recording) derives from it an innovative work.
- (2) An innovative work is either an original work or a recording of a performance which is substantially different from the initial recording, or which is a substantial transformation of the initial recording. 5
- (3) The innovative work must not—
- (a) conflict with the normal exploitation of the initial recording, or
- (b) unreasonably prejudice the legitimate interests of the owner of the rights in the initial recording. 10
- (4) Unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise—
- (a) the innovative work must be accompanied by a sufficient acknowledgement, and 15
- (b) within a reasonable time of the date on which the innovative work is first made available to the public in the State, the author of the innovative work must inform the owner of the rights in the initial recording about the availability of the innovative work.
- (5) Subsection (1) shall not apply if— 20
- (a) the initial recording is an illicit recording, and
- (b) the person making the innovative work did not have reasonable grounds to believe that the initial work was not an illicit recording.
- (6) Subsection (1) shall not apply if, or to the extent that, the owner of the rights in the initial recording can establish by clear and convincing evidence that, within a reasonable time after first publication of the recording, he or she had embarked upon a process to derive from it a work or recording of a performance to which the innovative work is substantially similar or related. 25
- (7) This section shall come into operation on such day as may be fixed by order made by the Minister.”. 30

## **Heritage**

- 21.** (1) The Principal Act is amended, except where the contrary intention appears or the context otherwise requires—
- (a) by substituting “heritage institutions” for “librarians or archivists”, wherever occurring in the shoulder notes to sections 61-62, 64-67, 70, 229, 231-234, and 236, 35
- (b) by substituting “heritage institution” for—
- (i) “library, archive”,

- (ii) “library or archive”, and
  - (iii) “prescribed library or prescribed archive”,  
wherever occurring,
  - (c) by substituting “heritage institutions” for—
    - (i) “libraries and archives”, and 5
    - (ii) “libraries or archives”,  
wherever occurring,
  - (d) by substituting “A person referred to in section 2(4)” for “The librarian or archivist of a prescribed library or prescribed archive”, wherever occurring,
  - (e) by substituting “a person referred to in section 2(4)” for “a librarian or archivist of a prescribed library or prescribed archive”, wherever occurring, and 10
  - (f) by substituting “person referred to in section 2(4)” for “librarian or archivist”, wherever occurring.
- (2) Section 2 of the Principal Act is amended, by substituting the following subsections for subsections (3) and (4): 15
- “(3) A reference in this Act to a heritage institution shall include references to—
    - (a) prescribed libraries, prescribed archives and prescribed museums,
    - (b) educational establishments,
    - (c) the Boards and authorities referred to in section 198A(1), 20
    - (d) any eligible institutions to which the Heritage Fund Act 2001 applies, and
    - (e) such other institutions as the Minister may from time to time prescribe.
  - (4) A reference in this Act to a heritage institution shall include references 25
    - to a person acting on its behalf; and, in particular, a reference in this Act to a heritage institution shall include references to the person having direction of the institution concerned (whether called the “Director” or by any other name, designation or title), to a person acting under the authority of an educational establishment, to a 30
    - librarian in a prescribed library, to an archivist in a prescribed archive, and to a curator in a prescribed museum.”.
- (3) Section 50 of the Principal Act is amended by substituting the following subsection for subsection (3):
- “(3) The copying by a person, other than a person acting under the 35
    - authority of an educational establishment, researcher or private student, is not fair dealing where—
    - (a) in the case of a heritage institution, a person referred to in section 2(4) does anything which is not permitted under section 63, or

- 5
- (b) in any other case, the person copying knows or has reason to believe that the copying will result in copies of substantially the same material being provided to more than one person at approximately the same time and for substantially the same purpose.”.
- (4) Section 59 of the Principal Act is amended, in subsection (2)—
- (a) by substituting “70” for “67”,
- (b) in paragraph (a) by adding after “makes and supplies” and before “a copy”, the following: “, or causes to be made and supplied,”,
- (c) in paragraph (b) by adding after “makes and supplies” and before “to another”, the following: “, or causes to be made and supplied,”,
- (d) in paragraph (c), by inserting after “makes” and before “a copy” the following: “or causes to be made”,
- (e) in paragraph (d)—
- (i) by inserting after “making or supplying” and before “a copy” the following: “or causing to be made or supplied”, and
- (ii) by substituting “;” for “.”,
- and
- (f) by inserting after paragraph (d) the following paragraph:
- “(e) in the case of section 69—
- (i) what works may be reproduced pursuant to subsection (1)(a)(ii) of that section,
- (ii) what constitutes a digital reproduction for the purposes of subsection (1)(a)(ii) of that section,
- (iii) what constitute archival and preservation purposes for the purposes of subsection 1(c) of that section, and
- (iv) such other conditions, if any, which must be complied with.”.
- (5) (a) Section 61 of the Principal Act is amended, in subsection (1), by adding, after “make and supply” and before “a copy of an article”, the following: “, or cause to be made and supplied,”.
- (b) Section 62 of the Principal Act is amended, in subsection (2), by adding, after “make and supply” and before “a copy of part”, the following: “, or cause to be made and supplied,”.
- (c) Section 64 of the Principal Act is amended, in subsection (1), by adding, after “make and supply” and before “to another”, the following: “, or cause to be made and supplied,”.
- (d) Section 65 of the Principal Act is amended, in subsection (1), by adding, after “make” and before “a copy of a work”, the following: “or cause to be made,”.
- (6) The Principal Act is amended by inserting the following sections after section 68:

**“Format-shifting by heritage institutions**

69. (1) It is not an infringement of the rights conferred by this Part if—
- (a) a heritage institution, being the owner or lawful user of a work—
    - (i) makes or causes to be made a reproduction of that work in a different format, or 5
    - (ii) in particular, makes or causes to be made a digital reproduction of that work,
  - (b) the heritage institution owns or is a lawful user of the medium or device on which the reproduction is reproduced,
  - (c) the reproduction is made for archival or preservation purposes, and 10
  - (d) the reproduction is made for purposes that are neither directly nor indirectly commercial.
- (2) Subsection (1) shall not apply if—
- (a) the work being reproduced is an infringing copy, and
  - (b) the heritage institution making the reproduction or causing it to be made did not have reasonable grounds to believe that the work was not an infringing copy. 15

**Fair dealing by heritage institutions**

- 69A.(1) The communication by a heritage institution to individual members of the public of reproductions of works in the permanent collection of the institution, by dedicated terminals on the premises of the institution, shall constitute ‘fair dealing’ for the purposes of section 50(1). 20
- (2) The brief and limited display of a reproduction of a work—
- (a) for educational purposes either in an educational establishment or other heritage institution or by any person acting under the authority of an educational establishment or other heritage institution, or 25
  - (b) during a public lecture given either in an educational establishment or other heritage institution or by any person acting under the authority of an educational establishment or other heritage institution, 30
- shall constitute ‘fair dealing’ for the purposes of section 50(1); and the communication of such a reproduction, through the internet or otherwise, shall also constitute “fair dealing” for the purposes of section 50(1). 35
- (3) Subsections (1) and (2) shall apply only if the communication or display is—
- (a) undertaken for the sole purpose of education, teaching, research or private study, and
  - (b) accompanied by a sufficient acknowledgement. 40

- (4) Subsection (2) shall apply only if the display is undertaken for purposes that are neither directly nor indirectly commercial.”.
- (7) The Principal Act is amended, in section 70, by substituting “67, 68, 69 or 69A” for “67 or 68”.
- (8) The Principal Act is amended by inserting the following sections after section 235: 5
- “Format-shifting by heritage institutions**
- 235A.** (1) It is not an infringement of the rights conferred by this Part if—
- (a) a heritage institution, being the owner or lawful user of a recording of a performance—
    - (i) makes or causes to be made a reproduction of that recording in a different format, or 10
    - (ii) in particular, makes or causes to be made a digital reproduction of that recording,
  - (b) the heritage institution owns or is a lawful user of the medium or device on which the reproduction is reproduced, 15
  - (c) the reproduction is made for archival or preservation purposes, and
  - (d) the reproduction is made for purposes that are neither directly nor indirectly commercial.
- (2) Subsection (1) shall not apply if—
- (a) the recording being reproduced is an infringement of the rights conferred by this Part, and 20
  - (b) the heritage institution making the reproduction or causing it to be made did not have reasonable grounds to believe that the recording was not such an infringement.
- Fair dealing by heritage institutions** 25
- 235B.** (1) The communication by a heritage institution to individual members of the public of recordings of performances in the permanent collection of the institution, by dedicated terminals on the premises of the institution, shall constitute ‘fair dealing’ for the purposes of section 50(1). 30
- (2) The brief and limited display of a still image or a very short clip from a recording of a performance in the permanent collection of a heritage institution—
- (a) for educational purposes either in an educational establishment or other heritage institution or by any person acting under the authority of an educational establishment or other heritage institution, or 35
  - (b) during a public lecture given either in an educational establishment or other heritage institution or by any person acting under the authority of an educational establishment or other heritage institution 40

shall constitute ‘fair dealing’ for the purposes of section 50(1); and the communication of the display of such an image or clip, through the internet or otherwise, shall also constitute “fair dealing” for the purposes of section 50(1).

(3) Subsections (1) and (2) shall apply only if the communication or display is— 5

(a) undertaken for the sole purpose of education, teaching, research or private study, and

(b) accompanied by a sufficient acknowledgement.

(4) Subsection (2) shall apply only if the display is undertaken for purposes that are neither directly nor indirectly commercial.”. 10

(9) The Principal Act is amended, in section 236, by substituting “234, 235, 235A or 235B” for “234 or 235”.

## Catalogues

22. (1) Section 66 of the Principal Act is amended, in subsection (1)— 15

(a) by inserting, after “complied with, make” and before “a copy of a work”, the following: “or cause to be made”,

(b) in paragraph (d), by deleting, after “archive”, “or”,

(c) in paragraph (e), by substituting “; or” for “;”, and

(d) by inserting the following paragraph after paragraph (e): 20

“(f) for the purposes of publishing such a copy in a catalogue relating to an exhibition,”.

(2) Section 66 of the Principal Act is amended, in subsection (2), by inserting, after “purpose to be achieved” and before “.”, the following: “, provided that any copying is accompanied by a sufficient acknowledgement”. 25

(3) Section 94 of the Principal Act is amended, in subsection (1)—

(a) by inserting, after “the purpose of advertising the” and before “sale of the work”, the following: “public exhibition or”, and

(b) by inserting, after “sale of the work” and before “.”, the following: “but only to the extent necessary to promote the event, and excluding any other commercial use”. 30

(4) Section 233 of the Principal Act is amended—

(a) in subsection (2), by substituting “Subsection (1) ” for “This section”; and

(b) by inserting after subsection (2) the following subsections:

“(3) Where a recording of a performance is in the permanent collection of a heritage institution, that institution may, where the prescribed conditions are complied with, reproduce or cause to be reproduced either a still image or a very short clip from that recording— 35

- (a) for the purposes of compiling or preparing a catalogue; or
- (b) for the purposes of publishing such an image or clip in a catalogue relating to an exhibition,

without infringing any copyright in that recording or performance.

- (4) Subsection (3) shall apply to reproduction conducted for the curatorial purposes specified in subsection (3), and to an extent reasonably justified by the non-commercial purpose to be achieved, provided that any reproduction is accompanied by a sufficient acknowledgement.”. 5

### **Donations**

- 23. The Principal Act is amended by substituting the following section for section 123: 10

#### **“Copyright to pass in transfers**

123. Where, after the commencement of this section, a person is entitled, beneficially or otherwise, to any material thing containing an original fixation of a work, any transfer by that person of that thing shall be construed as including the copyright in the work in so far as the transferor is the owner of the copyright at the time of the transfer, unless— 15

- (a) a contrary intention is patently indicated in a document effecting that transfer,
- (b) a contrary intention otherwise patently appears, or
- (c) the circumstances of the transfer otherwise patently require.”. 20

### **Copyright deposit**

- 24. The Principal Act is amended, in section 198, by substituting the following subsections for subsection (9) to (12):

“(9) A publisher who fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,000 or such greater sum as the Minister may from time to time determine, and in addition the publisher shall be liable to be ordered to comply with this section, either by the delivery of the book in question or by the payment to the relevant Board or authority of an amount which is not more than the cost of making good the failure to comply. 25 30

(10) For the purposes of this section, ‘book’ includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, plans, prints or other engravings belonging thereto. 35

(11) Where a copy of a book requested under subsection (1) is delivered in a form other than an electronic form, the Board or other authorities referred to in subsection (1) may request, in addition to that copy, a 40

copy in an electronic form readable by means of an electronic retrieval system and on such request being made a copy in electronic form shall be delivered by the publisher to the Board or authority concerned.

- (12) Subsection (11) is without prejudice—
- (a) to section 198A(7), or 5
  - (b) to the right of the Board or other authorities referred to in subsection (1) to make a demand pursuant to section 104E; and, if such a demand is made, then section 198A(11) shall apply.
- (13) Before delivery of a copy of a book in electronic form is made pursuant to subsection (11), the Boards or authorities referred to in subsection (1) or subsection (5) may— 10
- (a) require that the copy of the book in electronic form be delivered in a particular format, being one of the formats in which the copy of the book in electronic form is made available, and the publisher shall deliver it in the format required; and 15
  - (b) require the person delivering the copy of the book in electronic form to deliver, with that copy, a copy of any computer program and any information necessary in order to access the copy of the book in electronic form, and a copy of any manual and other material that accompanies the copy of the book in electronic form and is made available to the public, and the publisher shall deliver the items so required. 20
- (14) A publisher shall not apply technological protection measures to any copy of a book in electronic form delivered pursuant to subsection (11) to a Board or authority referred to in subsection (1) or subsection (5), unless the publisher— 25
- (a) also delivers an appropriate means of circumvention to the Board or authority in question at the same time as and in the same manner as the delivery of the digital publication is effected, or
  - (b) has already delivered an appropriate means of circumvention to the Board or authority in question. 30
- (15) Subject to subsection (17), the delivery pursuant to this section of a copy of a book shall not amount to—
- (a) a breach of contract,
  - (b) an infringement of any intellectual property right in relation to the work or any part thereof, or 35
  - (c) an infringement of section 6 or section 36 of the Defamation Act 2009.
- (16) Subject to subsection (17), the doing by a Board or authority referred to in subsection (1) or subsection (5) of an act permitted by this section shall not amount to an infringement of section 6 or section 36 of the Defamation Act 2009. 40

- (17) The Minister may, by order, make regulations to provide for circumstances in which subsections (15) and (16) shall not apply.
- (18) Any demand, notice or receipt made or given by a Board or authority pursuant to this section may be either in writing pursuant to section 14 or in any appropriate digital or electronic or other similar or related technological form or format.” 5

**Digital copyright deposit**

25. (1) The Principal Act is amended by inserting after section 198 the following section:

**“Digital copyright deposit**

- 198A. (1) The Boards and authorities to which this section applies are the Boards and authorities specified in section 198(1) and such other Boards or authorities as the Minister may from time to time determine. 10
- (2) The Boards and authorities to which this section applies are entitled to delivery of a copy of every digital publication made available in the State. 15
- (3) (a) In particular, where a demand referred to in paragraph (b) is made, then the publisher shall, within the deadline referred to in paragraph (c), discharge the obligation referred to in paragraph (d).
- (b) For the purposes of paragraph (a), the relevant demand is either a demand by a Board or authority to which this section applies made to the publisher of any digital publication first made available in the State after the commencement of this section or, in the case of the authority having control of the National Library of Ireland, a demand made to the publisher of any digital publication made available in the State. 20 25
- (c) For the purposes of paragraph (a), the relevant time limit is one month from the date on which the demand is made, or, where the demand was so made before the digital publication was first made available, one month from the date on which the digital publication is first made available. 30
- (d) For the purposes of paragraph (a), the relevant obligation on the publisher is, at his or her own expense, to—
  - (i) deliver to the said Boards and authorities to an address named in the demand the number of storage media, each containing a copy of the digital publication, as specified pursuant to paragraph (f), 35
  - (ii) deliver to the said Boards and authorities in such digital or electronic or other similar or related technological form or format as may be specified in the demand the number of copies of the digital publication specified pursuant to paragraph (f), or 40
  - (iii) effect delivery by permitting the said Boards and authorities, through means (including computer programs, online search,

and other automated means) specified in the demand, to harvest, download or otherwise acquire as many copies of the digital publication as may be specified pursuant to paragraph (f).

- (e) For the purposes of paragraph (d), it shall be for the Board or authority in question to specify in the demand which of the three alternative means of discharging the obligation shall apply. 5
- (f) For the purposes of paragraph (d), the relevant number shall be the number of copies as would be required pursuant to section 198(1) if the digital publication were a book, or such fewer number as may be specified in the demand, or such other number as the Minister may from time to time determine. 10
- (4) Subject to subsection (14), the publisher of any digital publication first made available in the State after the commencement of this section shall, where a demand is made by the authority having control of each of the libraries referred to in section 198(5), within one month after receipt of that demand or, where the demand was so made before the digital publication was made available, within one month after publication, deliver either to an address in Dublin named in the demand or in such digital or electronic or other similar or related technological form or format as may be specified in the demand a copy of that digital publication for, or in accordance with the directions of, that authority. 15 20
- (5) Subject to subsection (11), where substantially the same work is published in a form or format to which both this section and section 198 apply, then— 25
  - (a) delivery of a book pursuant to section 198 (including, where relevant, an additional copy in electronic form requested pursuant to section 198(11)) shall discharge the obligation to deliver a digital publication pursuant to this section,
  - (b) delivery of a digital publication pursuant to this section shall discharge the obligation to deliver a book pursuant to section 198, and 30
  - (c) it shall be for the Board or authority which is entitled to take delivery of the book or digital publication, as the case may be, to decide which form or format of delivery to require and to provide notice thereof to the publisher. 35
- (6) In the case of a digital publication made available in a series of numbers, parts or iterations, the demand referred to in subsection (3) or subsection (4) may include all numbers, parts or iterations of the digital publication which may subsequently be made available. 40
- (7) A copy of a digital publication delivered pursuant to this section—
  - (a) shall be a copy of the whole digital publication, including all relevant associated metadata, and

- (b) in the opinion of the Boards and authorities taking delivery of the digital publication, shall be of a quality suitable for its preservation.
- (8) Before delivery of a digital publication is made pursuant to this section, the Boards or authorities to which this section applies or the authorities referred to in section 198(5) may— 5
- (a) require that a digital publication be delivered in a particular format, being one of the formats in which the digital publication is made available, and the publisher shall deliver it in the format required; and
- (b) require the person delivering the digital publication to deliver, with the copy of the digital publication, a copy of any computer program and any information necessary in order to access the digital publication, and a copy of any manual and other material that accompanies the digital publication and is made available to the public, and the publisher shall deliver the items so required. 10 15
- (9) The publisher shall not apply technological protection measures to any digital publication delivered pursuant to this section to a Board or authority to which this section applies or to an authority which is referred to in section 198(5), unless the publisher—
- (a) also delivers an appropriate means of circumvention to the Board or authority in question at the same time as and in the same manner as the delivery of the digital publication is effected, or 20
- (b) has already delivered an appropriate means of circumvention to the Board or authority in question.
- (10) A publisher who fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,000 or such greater sum as the Minister may from time to time determine, and in addition the publisher shall be liable to be ordered to comply with this section, either by the delivery of the digital publication in question or by the payment to the relevant Board or authority of an amount which is not more than the cost of making good the failure to comply. 25 30
- (11) Subsection (3) is without prejudice to the right of the Boards and authorities to which this section applies to make a demand pursuant to section 104E; and a Board or authority which makes a demand pursuant to section 104E may decide that— 35
- (a) compliance with section 104E is sufficient to comply with any or all of subsection (3), subsection (7) or section 198(11), or
- (b) compliance with any or all of subsection (3), subsection (7) or section 198(11) is sufficient to comply with section 104E; 40
- and where it so decides, it shall notify the publisher accordingly in the demand made under the relevant subsection or subsections.
- (12) Boards and authorities taking delivery of a digital publication pursuant

to this section shall give a receipt for every digital publication so delivered to them.

- (13) Any demand, notice or receipt made or given by a Board or authority pursuant to this section may be either in writing pursuant to section 14 or in any appropriate digital or electronic or other similar or related technological form or format. 5
- (14) Without prejudice to any of the permitted acts specified in subsection (16), the Minister may prescribe conditions under which a Board or authority to which this section applies may, in respect of a digital publication which has been delivered to it pursuant to this section, also do any of the additional acts specified in subsection (17). 10
- (15) If the Minister has made an order pursuant to subsection (14), then without prejudice to any of the permitted acts specified in subsection (16), the Minister may also prescribe conditions under which an authority having control of a library referred to in section 198(5), in respect of a digital publication which has been delivered to it pursuant to this section, also do any of the additional acts specified in subsection (17), provided that the Minister shall not make such regulations unless the Minister is satisfied that— 15
- (a) as regards the additional acts specified in subsection (17), the restriction of those activities pursuant to the laws of the United Kingdom is not substantially less, 20
- (b) as regards the protection of intellectual property rights in the relevant digital publication pursuant to the laws of Ireland, the protection pursuant to the laws of the United Kingdom of corresponding rights is not substantially less, and 25
- (c) as regards the protection from liability pursuant to subsections (21) to (23), the protection pursuant to the laws of the United Kingdom in relation to corresponding liability is not substantially less.
- (16) For the purposes of subsections (14) and (15), the permitted acts are those acts permitted— 30
- (a) in relation to works protected by copyright under Chapter 6 of Part II,
- (b) in relation to performances, by Chapter 4 of Part III,
- (c) in relation to databases, by Chapter 8 of Part V, and 35
- (d) in relation to any act of circumvention under section 374.
- (17) For the purposes of subsections (14) and (15), the additional acts are, in respect of a digital publication, the ability to—
- (a) transfer or lend it to any other person or body,
- (b) provide or withhold access to it to any other person or body, 40
- (c) supply a copy or a part thereof to any other person or body for the

- purposes of education, research or private study, or for other non-commercial purposes,
- (d) in the case of a digital publication comprising or containing a computer program or database, adapt it, or
- (e) dispose of it. 5
- (18) It is not an infringement of the rights conferred by this Act if a Board or authority to which this section applies reproduces any work that is made available in the State through the internet.
- (19) Where any work has been made available in the State through the internet without a restriction as to its access or use, then it is not an infringement of the rights conferred by this Act if a Board or authority to which this section applies reproduces that work and makes it available through the internet without a restriction as to its access or use, whether or not that work continues to be available elsewhere through the internet. 10 15
- (20) For the purposes of this section, a work shall have been made available in the State through the internet where—
- (a) it is made available to the public either from a website with a domain name which relates to the State or to a place within the State, or by similar or related means, or 20
- (b) it is made available to the public either by a person any of whose activities relating to the creation or the publication of the digital publication takes place within the State, or by a person with similar or related connections to the State.
- (21) Subject to subsection (23), the delivery pursuant to this section of a copy of a digital publication shall not amount to— 25
- (a) a breach of contract,
- (b) an infringement of any intellectual property right in relation to the work or any part thereof, or
- (c) an infringement of section 6 or section 36 of the Defamation Act 2009. 30
- (22) Subject to subsection (23), the doing by a Board or authority to which this section applies or by an authority referred to in section 198(5) of an act permitted by this section shall not amount to an infringement of section 6 or section 36 of the Defamation Act 2009. 35
- (23) The Minister may, by order, make regulations to provide for circumstances in which subsections (21) and (22) shall not apply.
- (24) The Minister may make regulations to implement and administer this section; provided that, if the Minister proposes to make regulations pursuant to this section, he or she shall, before making them, consult— 40
- (a) the Boards and authorities to which this section applies,

- (b) the authorities referred to in section 198(5), if their interests would be affected by the proposed regulations, and
  - (c) such publishers or copyright owners or bodies representing publishers or other copyright owners as he or she thinks fit.”.
- (2) The Heritage Fund Act, 2001 is amended, in section 2, by inserting in paragraph (b) of the definition of “heritage object”, after “the Act of 2000),” the following: “any digital publication (within the meaning of section 2 of the Act of 2000 and for the purposes of section 198A of that Act),”.

**Content-mining**

26. (1) The Principal Act is amended by inserting the following section after section 50: 10

**“Content-mining**

50A.(1) For the purposes of section 50, fair dealing for the purposes of education, research or private study shall include an act of content-mining.

(2) For the purposes of this section— 15

(a) ‘content-mining’ means an algorithmic or technological process of analysis of a work or works, for the purposes of seeking to establish new facts, relationships, patterns, trends or anomalies, or for other similar or related purposes, in the work or works so analysed; and 20

(b) ‘an act of content-mining’ includes:

(i) access to, use of, extraction from, or adaptation of a work, in whole or in part, for the purposes of content-mining; and

(ii) the publication of the results of the content-mining.

(3) Subsection (1) applies only where an act of content-mining is undertaken in respect to— 25

(a) a work to which that person undertaking the act of content-mining already has a right to access or use (whether under a licence or otherwise), or

(b) a work which, at the time when the act of content-mining was undertaken, was available through the internet without a restriction as to its access or use, whether or not that work continues to be available through the internet without such a restriction. 30

(4) For the purposes of publication pursuant to subsection 2(b)(ii), the reproduction of extracts from a work which are necessary to explain the results of the content-mining shall constitute inclusion in an incidental manner for the purposes of section 52. 35

(5) For the purposes of section 87, any reproduction of a work that is necessary for the purposes of an act of content-mining shall constitute a reproduction that is— 40

- (a) temporary for the purposes of section 87(1)(a), and
  - (b) either transient or incidental, for the purposes of section 87(1)(b),  
provided that, once the process of content-mining is complete, the reproduction is deleted, erased or otherwise destroyed.
- (6) Without prejudice to section 374, nothing in Part VII shall be construed as operating to prevent any person—
- (a) from undertaking the acts permitted by this section,
  - (b) from undertaking any act of circumvention required to effect such permitted acts, or
  - (c) from removing rights management information from, or altering rights management information in, works where that is required to effect such permitted acts.
- (7) Where a reproduction, which would otherwise be an infringing copy, is made under this section and is not deleted, erased or otherwise destroyed, but instead is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.”.
- (2) The Principal Act is amended by substituting the following section for section 329:
- “Fair dealing: education, research or private study**
- 329.** (1) The database right in a database is not infringed by fair dealing with a substantial part of its contents by a lawful user of the database where that part is extracted for the purposes of education, research or private study.
- (2) For the purposes of this Part, ‘fair dealing’—
- (a) includes the extraction of the contents of a database by a lawful user for a purpose and to an extent which will not unreasonably prejudice the interests of the rightsowner, and
  - (b) includes an act of content-mining.
- (3) For the purposes of this section—
- (a) ‘content-mining’ means an algorithmic or technological process of analysis of a database or databases, for the purposes of seeking to establish new facts, relationships, patterns, trends or anomalies, or for other similar or related purposes, in the data in the database or databases so analysed; and
  - (b) ‘an act of content-mining’ includes:
    - (i) access to, use of, extraction from, or adaptation of a database, in whole or in part, for the purposes of content-mining; and
    - (ii) the publication of the results of the content-mining.
- (4) Subsection (2)(b) applies only where an act of content-mining is

undertaken in respect to—

- (a) a database to which that person undertaking the act of content-mining already has a right to access or use (whether under a licence or otherwise), or
  - (b) a database which, at the time when the act of content-mining was undertaken, was available through the internet without a restriction as to its access or use, whether or not that database continues to be available through the internet without such a restriction. 5
- (5) For the purposes of publication pursuant to subsection 3(b)(ii), the re-utilisation of extracts from a database which are necessary to explain the results of the content-mining shall not constitute an infringement of the database right in the database from which the extracts have been re-utilised. 10
- (6) It is not an infringement of the rights conferred by this Part to make or cause to be made a temporary reproduction of a database, in whole or in part, where that temporary reproduction is incidentally made as an integral and essential part of the process of content-mining; provided that— 15
- (a) the reproduction has no independent economic significance, and has as its sole purpose the enabling of the process of content-mining, and 20
  - (b) once the process of content-mining is complete, the reproduction is deleted, erased or otherwise destroyed.
- (7) Without prejudice to section 374, nothing in Part VII shall be construed as operating to prevent any person— 25
- (a) from undertaking the acts permitted by this section,
  - (b) from undertaking any act of circumvention required to effect such permitted acts, or
  - (c) from removing rights management information from, or altering rights management information in, a database where that is required to effect such permitted acts. 30
- (8) (a) A licensing scheme certified under section 173 may displace any exemption in respect of education provided in subsection 2(b).
- (b) Where a licensing scheme certified under section 173 and applicable to the exemption in respect of education provided in subsection 2(b) is in force, then any such exemption shall not apply if the person making use of the database knew or ought to have been aware of the existence of the licensing scheme. 35
  - (c) If the exemption in respect of education provided in subsection 2(b) is displaced by a licensing scheme pursuant to paragraph (a) and section 173, then sections 349 to 351 shall apply in relation to that part of the scheme which relates to that exemption as if that part of 40

the scheme were a scheme to which those sections applied pursuant to section 348.

- (9) Where a reproduction, which would otherwise be an infringing copy, is made under this section and is not deleted, erased or otherwise destroyed, but instead is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes.” 5

### **Digital research and computer security**

27. The Principal Act is amended by inserting the following section after section 106E (inserted by section 21 of this Act): 10

#### **“Digital research and computer security**

- 106F.** (1) It is not an infringement of the rights conferred by this Act for a person to reproduce a work for the purposes of encryption analysis or research, for the purposes of related analysis or research, or for the purposes of such other similar or related analysis or research as the Minister may by order provide. 15
- (2) Subsection (1) shall apply only if—
- (a) it would not be practical to carry out the analysis or research without making the reproduction, 20
  - (b) the reproduction is made by or on the directions of the owner or lawful user of the work, and
  - (c) the person making the reproduction has informed the owner of the rights in the work, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise. 25
- (3) It is not an infringement of the rights conferred by this Act for a person to reproduce a work for the sole purpose, with the consent of the owner or administrator of a computer, computer system or computer network, of assessing the vulnerability of the computer, system or network or of correcting any security flaws. 30
- (4) Once the process of analysis, research or assessment for which the reproduction was made is complete, then the reproduction shall be deleted, erased or otherwise destroyed.
- (5) Where a reproduction, which would otherwise be an infringing copy, is made under this section and is not deleted, erased or otherwise destroyed, but instead is subsequently sold, rented or lent, or offered or exposed for sale, rental or loan, or otherwise made available to the public, it shall be deemed to be an infringing copy for those purposes and for all subsequent purposes. 35
- (6) Without prejudice to section 374, nothing in Part VII shall be construed as operating to prevent any person— 40

- (a) from undertaking the acts permitted by this section,
- (b) from undertaking any act of circumvention required to effect such permitted acts, or
- (c) from removing rights management information from, or altering rights management information in, a work where that is required to effect such permitted acts.”. 5

**Reasonable dealing**

28. (1) The Principal Act is amended by inserting the following section after section 49:

**“Reasonable dealing**

- 49A.(1) Reasonable dealing with a work is not an infringement of the rights conferred by this Part. 10
- (2) The other acts permitted by this Part shall be regarded as examples of reasonable dealing, and, in any particular case, the court shall not consider whether a dealing constitutes a reasonable dealing without first considering whether that dealing amounts to another act permitted by this Part. 15
- (3) For the purposes of this section, the court shall, in determining whether a dealing with a work in any particular case is a reasonable dealing, take into account such matters as the court considers relevant, including any or some or all of the following: 20
  - (a) the extent to which the dealing in question is analogically similar or related to the other acts permitted by this Part,
  - (b) the purpose and character of the dealing in question, including in particular whether—
    - (i) it is incidental, non-commercial, non-consumptive, personal or transformative in nature, or 25
    - (ii) if the dealing were not a reasonable dealing within the meaning of the section, it would otherwise have constituted a secondary infringement of the rights conferred by this Part,
  - (c) the nature of the work, including in particular whether there is a public benefit or interest in its dissemination through the dealing in question, 30
  - (d) the amount and substantiality of the portion dealt with, quantitatively and qualitatively, in relation to the work as a whole,
  - (e) the impact of the dealing upon the normal commercial exploitation of the work, having regard to matters such as its age, value and potential market, 35
  - (f) the possibility of obtaining the work, or sufficient rights therein, within a reasonable time at an ordinary commercial price, such that the dealing in question is not reasonable in all the circumstances of 40

- the case,
- (g) whether the legitimate interests of the owner of the rights in the work are unreasonably prejudiced by the dealing in question, and
  - (h) whether the dealing in question is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise.
- (4) The fact that a work is unpublished shall not itself bar a finding of reasonable dealing if such a finding would otherwise be made pursuant to this section.
- (5) The Minister may, by order, make regulations for the purposes of this section—
- (a) prescribing what constitutes a reasonable dealing in particular cases, and
  - (b) fixing the day on which this section shall come into operation.”.
- (2) The Principal Act is amended by inserting the following section after section 220:
- “Reasonable dealing**
- 220A.** (1) The reasonable dealing with a recording of a performance is not an infringement of the rights conferred by this Part.
- (2) The other acts permitted by this Part shall be regarded as examples of reasonable dealing, and, in any particular case, the court shall not consider whether a dealing constitutes a reasonable dealing without first considering whether that dealing amounts to another act permitted by this Part.
  - (3) For the purposes of this section, the court shall, in determining whether a dealing with a recording in any particular case is a reasonable dealing, take into account such matters as the court considers relevant, including any or some or all of the following:
    - (a) the extent to which the dealing in question is analogically similar or related to the other acts permitted by this Part;
    - (b) the purpose and character of the dealing in question, including in particular whether—
      - (i) it is incidental, non-commercial, non-consumptive, personal or transformative in nature, or
      - (ii) if the dealing were not a reasonable dealing within the meaning of this section, it would otherwise have constituted a secondary infringement of the rights conferred by this Part;
    - (c) the nature of the recording, including in particular whether there is a public benefit or interest in its dissemination through the dealing in question;
    - (d) the amount and substantiality of the portion dealt with, quantitatively and qualitatively, in relation to the recording as a

- whole;
- (e) the impact of the dealing upon the normal commercial exploitation of the recording, having regard to matters such as its age, value and potential market;
  - (f) the possibility of obtaining the recording, or sufficient rights therein, within a reasonable time at an ordinary commercial price, such that the dealing in question is not reasonable in all the circumstances of the case; 5
  - (g) whether the legitimate interests of the owner of the rights in the recording are unreasonably prejudiced by the dealing in question; and 10
  - (h) whether the dealing in question is accompanied by a sufficient acknowledgement, unless to do so would be unreasonable or inappropriate or impossible for reasons of practicality or otherwise.
- (4) The fact that a recording is unpublished shall not itself bar a finding of reasonable dealing if such a finding would otherwise be made pursuant to this section. 15
  - (5) The Minister may, by order, make regulations for the purposes of this section—
    - (a) prescribing what constitutes a reasonable dealing in particular cases, and 20
    - (b) fixing the day on which this section shall come into operation.”.

**Fair compensation**

- 29. (1) The Principal Act is amended, in Part 2, by substituting the following Chapter for Chapter 17: 25

“CHAPTER 17

*Registration of Copyright Licensing Bodies and Collecting Societies*

**Register of copyright licensing bodies and collecting societies**

- 175.(1) The Controller shall establish and maintain a register of copyright licensing bodies and collecting societies in such form and manner and containing such particulars as the Minister may prescribe to be known as the ‘Register of Copyright Licensing Bodies and Collecting Societies’ and referred to in this Part as the ‘Register’. 30
- (2) The Controller shall keep the Register in such form so that the Register is capable of being used to make a copy of any entry in the Register. 35
- (3) The Register shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance—

- (a) the Register shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and
- (b) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant. 5
- (4) An application for registration or renewal of a registration of a licensing body or collecting society shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance. 10
- (5) The Controller shall register an applicant or renew a registration pursuant to section 178A.
- (6) The information prescribed under 178A(4)(b) and supplied by the applicant for registration shall be placed on the Register, and applicants may apply to the Controller to have such information revised from time to time as circumstances may require. 15
- (7) The information to be prescribed by the Minister under subsection 178A(4)(b) shall include, as appropriate, the following:
  - (a) the name of the applicant; 20
  - (b) the address of the applicant;
  - (c) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;
  - (d) a copy of the memorandum and articles of association, or partnership agreement, as the case may be, of the applicant; 25
  - (e) in the case of a licensing body within the meaning specified in sections 38 or 149—
    - (i) details of the scheme,
    - (ii) details of the scales of charges or proposed charges to be levied by the applicant, 30
    - (iii) the class of rightsowners represented or proposed to be represented by the applicant, and
    - (iv) arrangements for the distribution of charges levied by the applicant;
  - (f) in the case of a licensing body within the meaning specified in section 38, the names of the rightsowner or rightsowners in respect of whom the body concerned claims entitlement to receive payments under that section; and 35
  - (g) in the case of a collecting society within the meaning specified in subsection (9)— 40

- (i) details of the scales of levies or proposed levies to be levied by the applicant;
  - (ii) the classes or names of those who, by assignment, grant of exclusive licence, appointment of it as their agent or designated representative, or otherwise, have authorized it to act on their behalf in relation to the collection and distribution of levies payable pursuant to section 181A; and
  - (iii) arrangements for the distribution of levies paid pursuant to section 181A.
- (8) On the registration or renewal of a registration of a licensing body or collecting society, the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine. 10
- (9) For the purposes of this Chapter, ‘collecting society’ means a society, a company registered under the Companies Act, 2014, or other organisation, which has as one of its main objects the collection and distribution of levies payable pursuant to section 181A for the benefit of those who, by assignment, grant of exclusive licence, appointment of it as their agent or designated representative, or otherwise, have authorised it to act on their behalf in relation to the collection and distribution of such levies. 15  
20
- (10) The Controller may register a body as both a licensing body within the meaning specified in sections 38 or 149 and a collecting society within the meaning specified in subsection (9); and a body so registered shall be liable only once for the payment of any registration fee payable pursuant to subsection (4). 25

**Proof that licensing body or collecting society may act on behalf of specified classes**

- 176.(1) A certificate granted under section 175(8) shall include the particulars specified in subsection (7) of that section. 30
- (2) In the case of a licensing body within the meaning specified in sections 38 or 149, the certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rightsowners for whom it claims representation rights or on behalf of the rightsowners who have assigned rights to it, or exclusively licensed it, as specified in that certificate. 35
- (3) In the case of a collecting society within the meaning specified in section 175(9), the certificate shall be evidence of the right of the collecting society, until the contrary is proved, to act on behalf of those who, by assignment, grant of exclusive licence, appointment of it as their agent or designated representative, or otherwise, have authorized it to act on their behalf in relation to the collection and distribution of levies payable pursuant to section 181A, as specified in that certificate. 40

### **Notification of proposed charges or levies**

- 177.(1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than two months before the proposed charge comes into effect, and the Controller shall consider any such proposed charge pursuant to section 178A. 5
- (2) The registration of a licensing body which fails to comply with subsection (1) is deemed to be cancelled from the date on which the proposed charge comes into effect. 10
- (3) A collecting society registered under this Part which proposes to impose a levy, otherwise than in accordance with the scales of levies included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed levy not less than one month before the proposed levy comes into effect, and the Controller shall consider any such proposed levy pursuant to section 178A. 15
- (4) The registration of a collecting society which fails to comply with subsection (3) is deemed to be cancelled from the date on which the proposed levy comes into effect. 20
- (5) In the case of a body that is registered pursuant to section 175(10) as both a licensing body and a collecting society—
- (a) if the registration of that body as a licensing body is deemed to be cancelled pursuant to subsection (2), then its registration as a collecting society shall be deemed to be cancelled from the same date, and 25
- (b) if the registration of that body as a collecting society is deemed to be cancelled pursuant to subsection (4), then its registration as a licensing body shall be deemed to be cancelled from the same date. 30

### **Validity of certificates of registration**

178. (1) A certificate of registration issued under section 175(8) shall be valid for 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate.
- (2) Subject to section 175(4), a licensing body or collecting society registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months. 35
- (3) An application for renewal of a registration shall be made not less than two months before the expiration of the period of validity of the certificate of registration. 40
- (4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

## Consideration by Controller

- 178A. (1) As soon as practicable after the receipt of a notification of proposed charges or levies pursuant to section 177 or of an application to register an applicant or renew a registration pursuant to section 178, the Controller shall— 5
- (a) inform the Council of that notification or application,
  - (b) publish it in an advertisement in *Iris Oifigiúil* and at least two newspapers circulating in the State, and
  - (c) in the information to the Council pursuant to paragraph (a) and in the advertisements published pursuant to paragraph (b), give notice that, within one month after the said publication, any person may file with the Controller written objections to the proposed charges or levies or application, as the case may be. 10
- (2) The Controller shall—
- (a) send to the licensing body, collecting society, or applicant, as the case may be, a copy of any objections so filed, so as to permit it to reply thereto; 15
  - (b) send to the Council a copy of any objections so filed, so as to permit it to make observations thereon;
  - (c) send to any person who filed an objection a copy of any reply thereto or observations thereon. 20
- (3) Having regard to the terms of a notification or application referred to in subsection (1), to any objections filed pursuant to subsection (1), to any replies or observations filed pursuant to subsection (2), and to any criteria prescribed by the Controller or by the Minister, the Controller shall determine— 25
- (a) scales of charges or levies that are fair and equitable, and
  - (b) arrangements for the distribution of levies by collecting societies that are fair and equitable.
- (4) The Controller shall register an applicant or renew a registration pursuant to section 178 where the Controller is satisfied that— 30
- (a) the applicant complies either with the definition of a licensing body specified in section 38 or 149, or with the definition of a collecting society specified in section 175(9),
  - (b) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration, 35
  - (c) scales of charges or levies are fair and equitable within the meaning of subsection (3), and
  - (d) in the case of a collecting society— 40
    - (i) its arrangements for the distribution of levies are fair and

equitable, and

- (ii) it has furnished to the Controller the statements of account referred to in section 181A(6) and has paid to the Council the sum referred to in section 181A(7) for the calendar year previous to the calendar year in which the application pursuant to section 178 was made. 5
- (5) The Controller shall approve charges or levies proposed pursuant to section 177 where the Controller is satisfied that—
  - (a) the proposed scales of charges or levies are fair and equitable within the meaning of subsection (3), and 10
  - (b) in the case of a collecting society,
    - (i) its arrangements for the distribution of levies are fair and equitable, and
    - (ii) it has paid to the Council the sum referred to in section 181A(7)
      - (a) for the calendar year previous to the calendar year in which the proposal pursuant to section 177 was made. 15

**Refusal of application**

- 179. (1) The Controller may refuse an application for renewal of a registration by a licensing body or collecting society registered under this Part or cancel the registration of a licensing body or collecting society where the licensing body or collecting society no longer fulfils the requirements specified in section 178A(4). 20
- (2) The Controller shall remove a licensing body or collecting society from the Register where its application for renewal of its registration is refused or its registration is cancelled. 25

**Appeals and indemnity**

- 180. (1) For the avoidance of doubt, bodies providing notifications pursuant to section 177, bodies making applications pursuant to section 178, and persons who have filed objections pursuant to 178A, are parties to proceedings before the Controller for the purposes of section 16C(1), and may therefore appeal decisions of the Controller taken pursuant to this Chapter to the Intellectual Property Court of the Circuit Court pursuant to section 16C. 30
- (2) Except as provided in subsection (1), no action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the bona fide exercise of any functions, powers or duties conferred or imposed by or under this Chapter. 35

**Obligation of collecting societies to register (copyright)**

- 181. (1) Any body operating as a licensing body within the meaning specified in sections 38 or 149, and any body operating as a collecting society within the meaning specified in section 175(9), shall be obliged to register in accordance with the provisions of this Chapter, and to 40

remain registered for so long as it continues to operate in this capacity.

- (2) Any body to which the provisions of subsection (1) applies which—
- (a) fails within six months of the commencement of this Chapter to register under the terms of this Chapter,
  - (b) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter, to register under the terms of this Chapter, or
  - (c) continues to operate as such a body having been removed from the Register for any reason,
- shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) shall be liable—
- (a) on summary conviction, to a fine not exceeding €1,500, or to imprisonment for a term not exceeding 12 months, or both, or
  - (b) on conviction on indictment, to a fine not exceeding €100,000, or to imprisonment for a term not exceeding 5 years, or both.

### **Fair compensation**

- 181A.** (1) The holders of rights conferred by this Part are entitled to receive fair compensation from manufacturers and importers of blank recording media to compensate them adequately for harm done to them by the use made of their works pursuant to sections 106B, 106C, and 106D; and such fair compensation shall be paid only by means of levies collected and distributed pursuant to this section by a collecting society holding a certificate granted under section 175(8).
- (2) Every person who, in the course of a business, manufactures a blank recording medium in the State or imports a blank recording medium into the State is liable, subject to subsection (4), to pay a levy to a collecting society on selling those blank recording media in the State.
- (3) The levy payable pursuant to subsection (2) shall be paid according to the scale determined by the Controller pursuant to section 178.
- (4) No levy shall be payable pursuant to subsection (2) where—
- (a) it is a term of the sale of the blank recording medium that the medium is to be exported from the State, and it is exported from State, or
  - (b) the manufacturer or importer of a blank recording medium either sells it to a designated body as defined in section 104G(1)(e) or to a purchaser who is purchasing it in the course of a business.
- (5) Where a designated body or purchaser in the course of a business referred to in subsection (4)(b)—
- (a) purchases a blank recording medium in the State from a person other than the manufacturer or importer, and

- (b) provides the collecting society with proof of that purchase, on or before June 30 in the calendar year following the calendar year in which the purchase was made,
- the collecting society is liable to pay forthwith to the designated body or purchaser in the course of a business, as the case may be, an amount equal to the amount of the levy paid in respect of the blank recording medium purchased. 5
- (6) Where levies have been paid to a collecting society pursuant to subsection (2), the society shall keep statements of account in respect of those levies, and shall furnish those statements in respect of each calendar year to the Controller not later than the last day of February in the subsequent calendar year. 10
- (7) Of the full total of the levies collected by the society in a calendar year, as set out in the accounts kept pursuant to subsection (6), the society shall pay any reimbursements due pursuant to subsection (5), and from the amount remaining, the society shall— 15
- (a) pay 50 per cent of that amount to the Council not later than the last day of February in the subsequent calendar year, and
- (b) disburse the remaining 50 per cent pursuant to the arrangements for the distribution of levies approved by the Controller pursuant to section 178A. 20
- (8) For the purposes of this section, ‘blank recording medium’—
- (a) means a recording medium onto which no recording has ever been fixed, and
- (b) includes a device which incorporates a blank recording medium and which is intended wholly or mainly for the purposes of making of recordings, but 25
- (c) does not include any device where the making of recordings is not its main intended function, whether or not that device incorporates a blank recording medium.”. 30
- (2) The Principal Act is amended, in Part 3, by substituting the following Chapter for Chapter 8:

“CHAPTER 8

*Registration of Licensing Bodies and Collecting Societies in respect of Performers’ Property Rights* 35

**Register of licensing bodies and collecting societies for performers’ property rights**

- 280.** (1) The Controller shall establish and maintain a register of copyright licensing bodies and collecting societies in such form and manner and containing such particulars as the Minister may prescribe to be known as the ‘Register of Licensing Bodies and Collecting Societies for Performers’ Property Rights’ and referred to in this Part as the 40

‘Register’.

- (2) The Controller shall keep the Register in such form so that the Register is capable of being used to make a copy of any entry in the Register.
- (3) The Register shall be kept at such place as may be prescribed by the Minister and, subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance—
  - (a) the Register shall be made available for inspection by a person at such times and in such manner as may be prescribed by the Minister, and
  - (b) where a request is made to the Controller for a certified or uncertified copy of, or extract from, an entry in the Register, the Controller shall issue a copy of the entry or extract to the applicant.
- (4) An application for registration or renewal of a registration of a licensing body or collecting society shall be made to the Controller in such form and manner as may be prescribed by the Minister and shall be subject to the payment of such fee as may be prescribed by the Minister with the consent of the Minister for Finance.
- (5) The Controller shall register an applicant or renew a registration pursuant to section 283A.
- (6) The information prescribed under 283A(4)(b) and supplied by the applicant for registration shall be placed on the Register, and applicants may apply to the Controller to have such information revised from time to time as circumstances may require.
- (7) The information to be prescribed by the Minister under subsection 283A(4)(b) shall include, as appropriate, the following:
  - (a) the name of the applicant;
  - (b) the address of the applicant;
  - (c) the names of the chairperson and other members of the board or officers, or names of partners, as the case may be, of the applicant;
  - (d) a copy of the memorandum and articles of association, or partnership agreement, as the case may be, of the applicant;
  - (e) in the case of a licensing body within the meaning specified in section 265—
    - (i) details of the scheme,
    - (ii) details of the scales of charges or proposed charges to be levied by the applicant,
    - (iii) the class of rightsowners represented or proposed to be represented by the applicant, and
    - (iv) arrangements for the distribution of charges levied by the

applicant;	
(f) in the case of a collecting society within the meaning specified in subsection (9)—	
(i) details of the scales of levies or proposed levies to be levied by the applicant,	5
(ii) the classes or names of those who, by assignment, grant of exclusive licence, appointment of it as their agent or designated representative, or otherwise, have authorized it to act on their behalf in relation to the collection and distribution of levies payable pursuant to section 286A, and	10
(iii) arrangements for the distribution of levies paid pursuant to section 286A.	
(8) On the registration or renewal of a registration of a licensing body or collecting society, the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.	15
(9) For the purposes of this Chapter, ‘collecting society’ means a society, a company registered under the Companies Act 2014, or other organization, which has as one of its main objects the collection and distribution of levies payable pursuant to section 286A for the benefit of those who, by assignment, grant of exclusive licence, appointment of it as their agent or designated representative, or otherwise, have authorized it to act on their behalf in relation to the collection and distribution of such levies.	20
(10) The Controller may register a body as both a licensing body within the meaning specified in section 265 and a collecting society within the meaning specified in subsection (9); and a body so registered shall be liable only once for the payment of any registration fee payable pursuant to subsection (4).	25
<b>Proof that licensing body or collecting society may act on behalf of specified classes</b>	30
<b>281.</b> (1) A certificate granted under section 280(8) shall include the particulars specified in subsection (7) of that section.	
(2) In the case of a licensing body within the meaning specified in section 265, the certificate shall be evidence of the right of the licensing body, until the contrary is proved, to act on behalf of the classes of rightsowners for whom it claims representation rights or on behalf of the rightsowners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.	35
(3) In the case of a collecting society within the meaning specified in section 280(9), the certificate shall be evidence of the right of the collecting society, until the contrary is proved, to act on behalf of those who, by assignment, grant of exclusive licence, appointment of it as their agent or designated representative, or otherwise, have	40

authorized it to act on their behalf in relation to the collection and distribution of levies payable pursuant to section 286A, as specified in that certificate.

**Notification of proposed charges or levies**

- 282.** (1) A licensing body registered under this Part which proposes to impose a charge, otherwise than in accordance with the scales of charges included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed charge not less than two months before the proposed charge comes into effect, and the Controller shall consider any such proposed charge pursuant to section 283A. 5 10
- (2) The registration of a licensing body which fails to comply with subsection (1) is deemed to be cancelled from the date on which the proposed charge comes into effect.
- (3) A collecting society registered under this Part which proposes to impose a levy, otherwise than in accordance with the scales of levies included in an application for registration or for renewal of a registration, shall provide the Controller in writing with details of the proposed levy not less than one month before the proposed levy comes into effect, and the Controller shall consider any such proposed levy pursuant to section 178A. 15 20
- (4) The registration of a collecting society which fails to comply with subsection (3) is deemed to be cancelled from the date on which the proposed levy comes into effect.
- (5) In the case of a body that is registered pursuant to section 280(10) as both a licensing body and a collecting society— 25
- (a) if the registration of that body as a licensing body is deemed to be cancelled pursuant to subsection (2), then its registration as a collecting society shall be deemed to be cancelled from the same date, and 30
- (b) if the registration of that body as a collecting society is deemed to be cancelled pursuant to subsection (4), then its registration as a licensing body shall be deemed to be cancelled from the same date.

**Validity of certificates of registration**

- 283.** (1) A certificate of registration issued under section 280(8) shall be valid for 12 months from the date of registration or such lesser period as may be specified by the Controller in the certificate. 35
- (2) Subject to section 280(4), a licensing body or collecting society registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months. 40
- (3) An application for renewal of a registration shall be made not less than two months before the expiration of the period of validity of the certificate of registration.

- (4) A term of renewal of a registration shall take effect from the expiration of the previous registration.

**Consideration by Controller**

- 283A.** (1) As soon as practicable after the receipt of a notification of proposed charges or levies pursuant to section 282 or of an application to register an applicant or renew a registration pursuant to section 283, the Controller shall— 5
- (a) inform the Council of that notification or application,
  - (b) publish it in an advertisement in *Iris Oifigiúil* and at least two newspapers circulating in the State, and 10
  - (c) in the information to the Council pursuant to paragraph (a) and in the advertisements published pursuant to paragraph (b), give notice that, within one month after the said publication, any person may file with the Controller written objections to the proposed charges or levies or application, as the case may be. 15
- (2) The Controller shall—
- (a) send to the licensing body, collecting society, or applicant, as the case may be, a copy of any objections so filed, so as to permit it to reply thereto,
  - (b) send to the Council a copy of any objections so filed, so as to permit it to make observations thereon, 20
  - (c) send to any person who filed an objection a copy of any reply thereto or observations thereon.
- (3) Having regard to the terms of a notification or application referred to in subsection (1), to any objections filed pursuant to subsection (1), to any replies or observations filed pursuant to subsection (2), and to any criteria prescribed by the Controller or by the Minister, the Controller shall determine— 25
- (a) scales of charges or levies that are fair and equitable, and
  - (b) arrangements for the distribution of levies by collecting societies that are fair and equitable. 30
- (4) The Controller shall register an applicant or renew a registration pursuant to section 283 where the Controller is satisfied that—
- (a) the applicant complies either with the definition of a licensing body specified in section 265, or with the definition of a collecting society specified in section 280(9), 35
  - (b) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration,
  - (c) scales of charges or levies are fair and equitable within the meaning of subsection (3), and 40

- (d) in the case of a collecting society—
  - (i) its arrangements for the distribution of levies are fair and equitable, and
  - (ii) it has furnished to the Controller the statements of account referred to in section 286A(6) and has paid to the Council the sum referred to in section 286A(7) for the calendar year previous to the calendar year in which the application pursuant to section 283 was made. 5
- (5) The Controller shall approve charges or levies proposed pursuant to section 282 where the Controller is satisfied that— 10
  - (a) the proposed scales of charges or levies are fair and equitable within the meaning of subsection (3), and
  - (b) in the case of a collecting society,
    - (i) its arrangements for the distribution of levies are fair and equitable, and 15
    - (ii) it has paid to the Council the sum referred to in section 286A(7)
      - (a) for the calendar year previous to the calendar year in which the proposal pursuant to section 282 was made.

**Refusal of application**

- 284. (1) The Controller may refuse an application for renewal of a registration by a licensing body or collecting society registered under this Part or cancel the registration of a licensing body or collecting society where the licensing body or collecting society no longer fulfils the requirements specified in section 283A(4). 20
- (2) The Controller shall remove a licensing body or collecting society from the Register where its application for renewal of its registration is refused or its registration is cancelled. 25

**Appeals and indemnity**

- 285. (1) For the avoidance of doubt, bodies providing notifications pursuant to section 282, bodies making applications pursuant to section 283, and persons who have filed objections pursuant to 283A, are parties to proceedings before the Controller for the purposes of section 16C(1), and may therefore appeal decisions of the Controller taken pursuant to this Chapter to the Intellectual Property Court of the Circuit Court pursuant to section 16C. 30 35
- (2) Except as provided in subsection (1), no action or other proceedings shall lie or be maintainable against the Controller (except in the case of wilful neglect of duty) in respect of anything done or omitted to be done by him or her in the bona fide exercise of any functions, powers or duties conferred or imposed by or under this Chapter. 40

**Obligation of collecting societies to register (performers' property rights)**

- 286. (1) Any body operating as a licensing body within the meaning specified

in section 265, and any body operating as a collecting society within the meaning specified in section 175(9), shall be obliged to register in accordance with the provisions of this Chapter, and to remain registered for so long as it continues to operate in this capacity.

- (2) Any body to which the provisions of subsection (1) applies which— 5
- (a) fails within six months of the commencement of this Chapter to register under the terms of this Chapter,
  - (b) fails within 2 months of its establishment in the case of a body established after the commencement of this Chapter, to register under the terms of this Chapter, or 10
  - (c) continues to operate as such a body having been removed from the Register for any reason,
- shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) shall be liable—
- (a) on summary conviction, to a fine not exceeding €1,500, or to imprisonment for a term not exceeding 12 months, or both, or 15
  - (b) on conviction on indictment, to a fine not exceeding €100,000, or to imprisonment for a term not exceeding 5 years, or both.

#### **Fair compensation**

- 286A.** (1) The holders of rights conferred by this Part are entitled to receive fair compensation from manufacturers and importers of blank recording media to compensate them adequately for harm done to them by the use made of their works pursuant to sections 245A, 245B, and 245C; and such fair compensation shall be paid only by means of levies collected and distributed pursuant to this section by a collecting society holding a certificate granted under section 280(8). 20 25
- (2) Every person who, in the course of a business, manufactures a blank recording medium in the State or imports a blank recording medium into the State is liable, subject to subsection (4), to pay a levy to a collecting society on selling those blank recording media in the State. 30
- (3) The levy payable pursuant to subsection (2) shall be paid according to the scale determined by the Controller pursuant to section 283.
- (4) No levy shall be payable pursuant to subsection (2) where—
- (a) it is a term of the sale of the blank recording medium that the medium is to be exported from the State, and it is exported from the State, or 35
  - (b) the manufacturer or importer of a blank recording medium either sells it to a designated body as defined in section 104G(1)(e) or to a purchaser who is purchasing it in the course of a business.
- (5) Where a designated body or purchaser in the course of a business referred to in subsection (4)(b)— 40

- (a) purchases a blank recording medium in the State from a person other than the manufacturer or importer, and
  - (b) provides the collecting society with proof of that purchase, on or before June 30 in the calendar year following the calendar year in which the purchase was made, 5
- the collecting society is liable to pay forthwith to the designated body or purchaser in the course of a business, as the case may be, an amount equal to the amount of the levy paid in respect of the blank recording medium purchased.
- (6) Where levies have been paid to a collecting society pursuant to subsection (2), the society shall keep statements of account in respect of those levies, and shall furnish those statements in respect of each calendar year to the Controller not later than the last day of February in the subsequent calendar year. 10
  - (7) Of the full total of the levies collected by the society in a calendar year, as set out in the accounts kept pursuant to subsection (6), the society shall pay any reimbursements due pursuant to subsection (5), and from the amount remaining, the society shall— 15
    - (a) pay 50 per cent of that amount to the Council not later than the last day of February in the subsequent calendar year, and 20
    - (b) disburse the remaining 50 per cent pursuant to the arrangements for the distribution of levies approved by the Controller pursuant to section 283A.
  - (8) For the purposes of this section, ‘blank recording medium’—
    - (a) means a recording medium onto which no recording has ever been fixed, and 25
    - (b) includes a device which incorporates a blank recording medium and which is intended wholly or mainly for the purposes of making of recordings, but
    - (c) does not include any device where the making of recordings is not its main intended function, whether or not that device incorporates a blank recording medium.”. 30

**Review of operation of Act**

- 30. The Principal Act is amended by inserting the following section after section 378 (as inserted by section 3 of this Act): 35

**“Review of Operation of Act.**

- 379. (1) If the Minister has made a recognition order, then the Council shall carry out a review of the operation of this Act not later than 5 years after the making of the recognition order and at least once every 5 years thereafter. 40

- (2) The Council shall submit a report to the Minister of the findings of a

review carried out under subsection (1), and shall publish that report no later than two weeks after it has submitted it to the Minister.

- (3) If the Minister has not made a recognition order, then the Minister shall commence a review of the operation of this Act not later than the first day of January 2019 and at least once every 5 years thereafter. 5
- (4) A review under subsection (3) shall be completed not later than one year after its commencement.”.

**Short title, collective citation and commencement**

- 31. (1) This Act may be cited as the Copyright and Related Rights (Innovation)(Amendment) Act 2015. 10
- (2) This Act and the Copyright and Related Rights Act 2000, as amended, may be cited together as the Copyright and Related Rights Acts 2000 to 2015.
- (3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions. 15

## THE COPYRIGHT COUNCIL OF IRELAND

## FOURTH SCHEDULE

*The Copyright Council of Ireland*

- 5
1. The Copyright Council of Ireland (the Council) shall be a company limited by guarantee.
  2. The principal objects of the Council shall be to—
    - (a) ensure the integrity of copyright whilst protecting freedom of expression and the public interest, 10
    - (b) raise public awareness of the importance of copyright and contribute to public debate about the application and reform of copyright, including by making recommendations to the Minister and to other appropriate bodies in Ireland, the European Union and internationally,
    - (c) foster dialogue and cooperation in the Irish copyright community, 15
    - (d) prepare and publish standards and codes of best practice on copyright issues,
    - (e) undertake research on copyright issues, and in particular on the social and economic impact of copyright,
    - (f) support legal and technical means of protecting copyright, and
    - (g) promote creativity, sharing, open access, and innovation. 20
  3. The Council shall be independent in the performance of its functions.
  4. (1) Any natural or legal person or body, whether incorporated or unincorporated, shall be entitled to be a subscribing member of the Council.
    - (2) The Council shall seek to ensure that the subscribing membership shall be as widely representative as possible of the Irish copyright community as a whole. 25
    - (3) The Council shall publish categories of membership and scales of fees.
  5. (1) The number of directors of the Board of the Council shall be 13, of whom—
    - (a) one shall be a director who represents the interests of those who create works protected by this Act, such as authors and performers;
    - (b) one shall be a director who represents the interests of those who are not authors or performers but who hold rights pursuant to this Act; 30
    - (c) one shall be a director who represents the interests of licensing bodies and collecting societies;
    - (d) one shall be a director who represents the interests of providers of information society services; 35
    - (e) one shall be a director who represents the interests of those, such as consumers, who regularly make lawful use of copyright material;
    - (f) one shall be a director who represents the interests of recently-established

- businesses for which copyright is a significant aspect of their business;
- (g) one shall be a director who represents the interests of libraries or educational establishments;
  - (h) one shall be a director who represents the interests of heritage institutions other than libraries or educational establishments; 5
  - (i) one shall be a director who represents the interests of those who manufacture devices or provide services allowing the use of copyright material; and
  - (j) four shall be directors who represent the general public interest, at least one of whom shall possess appropriate technological expertise.
- (2) The providers of information society services referred to in section 5(1)(d) are “relevant service providers” within the meaning of section 3(1) of the European Communities (Directive 2000/31/EC) Regulations 2003 (S.I. No. 68 of 2003). 10
  - (3) The directors referred to in section 5(1)(j) shall be persons who are of standing in the community, and who are independent of the interests referred to in section 5(1)(a) to (i). 15
  - (4) The directors referred to in section 5 shall be selected for appointment—
    - (a) by a panel of five persons who are, in the opinion of the Minister, independent of the interests referred to in section 5(1)(a) to (i), and
    - (b) in accordance with a selection process that is advertised to members of the public in a manner that the Minister considers to be sufficient. 20
  - (5) The criteria for selecting persons for appointment as directors pursuant to section 5(1) shall be published in such manner as will enable them to be inspected by members of the public.
  - (6) (a) A director shall hold office for a period of 5 years from the date of his or her appointment. 25
    - (b) A director whose term of office expires by the effluxion of time shall be eligible for reappointment as a director, but only once.
  - (7) (a) One of the directors appointed pursuant to paragraph 5(1)(j) shall be nominated by the panel to the Minister for appointment as Chairperson of the Board. 30
    - (b) A Chairperson whose term of office as a director expires by the effluxion of time shall be eligible for reappointment as a director and as the Chairperson, but only once.
  - (8) The Board may from time to time invite a suitable person or persons to attend or be an observer at meetings of the Board for the duration of any calendar year or part thereof. 35
  - (9) Every question at a meeting of the Board shall be determined by consensus, but where in the opinion of the Chairperson or other person presiding consensus is not possible, the question shall be decided by a majority of the votes of members present and voting on the question and, in the case of an equal division of votes, the Chairperson or other person presiding shall have a second or casting vote. 40

6. (1) The Council shall be funded from—
- (a) subscriptions paid by members of the Council, calculated in accordance with such rules as the Council shall make for that purpose, and
  - (b) payments paid pursuant to sections 181A(7)(a) and 286A(7)(a) of the Act.
- (2) The Council may charge fees for its services and for the services of any exchange, service or agency which it may from time to time establish, operate or provide; and, subject to section 11(4)(d), such fees shall be calculated in accordance with such rules as the Council shall make for that purpose. 5
- (3) The Council may accept gifts, donations or funding from any person, but only where— 10
- (a) the donor does not attach to the gift, donation or funding, any conditions incompatible with the objects, functions and independence of the Council,
  - (b) in return for the gift, donation or funding, the Council does not give any undertaking incompatible with its objects, functions and independence, and
  - (c) the making and receipt of any such gifts, donations or funding is published in such manner as will enable this to be known to and commented upon by members of the public. 15
- (4) There may be paid to the Council out of moneys provided by the Oireachtas a grant of such amount as the Minister may determine from time to time.
- (5) There may be paid to the Council pursuant to section 41(1)(g) of the National Lottery Act 2013 a grant of such amount as the Government may determine from time to time. 20
- (6) The Council may accept funding from the European Union, or from any other appropriate European or International agency or body, where the receipt of any such funding is compatible with the objects, functions and independence of the Council. 25
- (7) Any funding, fees, grants, gifts, or donations received by the Council pursuant to this section shall be expended by it for such purposes connected with its objects and functions as in its discretion it thinks fit.
7. The Council may provide a copyright licensing service; and, if it does, 30
- (a) the service shall be called the Irish Digital Copyright Exchange (‘the Exchange’),
  - (b) the Council may, from time to time, advise the Minister in relation to copyright licensing in general and the Exchange in particular, and
  - (c) the Minister may, by order, make regulations in respect of licences and licensing schemes to be granted or operated by the Exchange. 35
8. (1) The Council shall provide an alternative dispute resolution service for copyright disputes, called the Copyright Alternative Dispute Resolution Service (‘the Service’).
- (2) The Service shall be an independent, facilitative, confidential, expeditious and 40

informal service, to assist parties to a copyright dispute to attempt by themselves, on a voluntary basis, to reach a mutually acceptable agreement to resolve their dispute.

- (3) The following principles shall apply to the dispute-resolution process:
- (a) participation in a process to resolve a copyright dispute is voluntary, and any party involved in the process, including the Service, may withdraw from the process at any time and without explanation; 5
  - (b) the Service shall at all times be independent, neutral and impartial;
  - (c) while the process is ongoing, and thereafter unless otherwise agreed by the parties, the parties and the Service shall keep the process confidential; 10
  - (d) the parties and the Service shall seek to complete the process in the shortest time practicable, relative to the nature of the dispute;
  - (e) where all parties agree, a non-party participant, such as a qualified legal practitioner, an expert witness, a potential party or friend of a party or potential party, shall be allowed to participate in the process; 15
  - (f) the Service may, at any stage in the process, make a proposal to the parties to resolve the dispute, but the Service is not empowered to impose such a proposal on the parties;
  - (g) the parties alone shall determine, either at the beginning of the process or when agreement (if any) is reached, the enforceability, or otherwise, of any agreement that arises from the process, and any agreement thereby reached shall be enforceable as a contract at law if it is made in writing and signed by all the parties and by the Service; and 20
  - (h) if the process does not result in an agreement, the Service shall issue a certificate to this effect. 25
- (4) The Council may also provide mediation, conciliation or other dispute resolution services for copyright disputes, such as by telephone, online, or in person.
9. (1) If any party to a dispute resolution agreement or any person claiming through or under him or her commences any proceedings in any court against any other party to the agreement or any person claiming through or under him or her in respect of any matter agreed to be referred, any party to such proceedings may, at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court, if it is satisfied that there is not sufficient reason why the matter should not be referred in accordance with the agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the process, may make an order staying the proceedings. 30 35
- (2) (a) The court shall not make an order staying the proceedings if—
- (i) the parties had already undertaken a process with the Service to seek to resolve their dispute, and 40
  - (ii) that process had not resulted in an agreement resolving the dispute.

- (b) A certificate from the Service that the process had not resulted in an agreement resolving the dispute shall be evidence, unless the contrary is proven, that the process had not so resulted.
10. In this Schedule—
- (a) “copyright dispute” means any civil or commercial dispute arising under this Act that could give rise to civil liability, but does not include any mediation, conciliation or other dispute resolution process which is provided for in accordance with any other Act of the Oireachtas; 5
- (b) “dispute resolution agreement” means an agreement to refer present or future disputes to the Service; 10
- (c) “process” means the process undertaken by the parties to a copyright dispute with the Service to seek to resolve that dispute.
11. (1) The Council may, from time to time, advise the Minister in relation to orphan works, and the Minister may, by order, make regulations accordingly.
- (2) For the purposes of this section, “orphan works” are works— 15
- (a) which are not “relevant works” for the purposes of the Regulations of 2014,
- (b) which are protected by copyright or related rights under this Act, and
- (c) for which, despite a diligent search having been carried out, no rightsowner can be
- (i) identified, or 20
- (ii) located, even if identified.
- (3) The Minister may, by order, make regulations authorising the Council to grant licences to do, or to authorise the doing of, any act in respect of an orphan work that would otherwise be restricted by copyright or a related right under this Act; and this licensing service shall be called the Irish Orphan Works Licensing Agency (“the Agency”). 25
- (4) Regulations made by the Minister pursuant to subsection (3) shall prescribe—
- (a) the kinds of works in respect of which the Agency may grant licences,
- (b) the circumstances in which a rightsowner cannot be identified or located,
- (c) what constitutes a diligent search by an applicant to the Agency for a missing rightsowner, 30
- (d) terms and conditions, including fees, upon which such licences may be granted by the Agency,
- (e) the nature of such licences,
- (f) the amount of the fee paid by the applicant that may be retained by the Agency and the amount that must be passed on by way of fair compensation to a rightsowner who is identified or located after a licence has been granted by the Agency in respect of a work in which the rightsowner is entitled to copyright or a related right under this Act, and 35

- (g) the circumstances in which a rightsowner of rights in an orphan work may put an end to the orphan work status of the work in so far as his or her rights are concerned.
- (5) Notwithstanding anything in subsection (4), the Agency may provide for further terms and conditions, not inconsistent with that subsection, in any licence granted by it. 5
- (6) No licence granted pursuant to this section shall afford exclusive rights over an orphan work to a licensee, and any term of any licence which purports to do so shall be void.
- (7) An act in respect of an orphan work is not an infringement of the rights conferred by this Act if it is undertaken on foot of a licence granted pursuant to this section. 10
- (8) This section is without prejudice to the operation of the Regulations of 2014, and those Regulations shall be without prejudice to the operation of this section.
- (9) For the purposes of this section “the Regulations of 2014” are the European Union (Certain Permitted Uses of Orphan Works) Regulations 2014 (S.I. No. 490 of 2014). 15
- 12. The Council may, from time to time, prepare a single text consolidating the Copyright and Related Rights Acts 2000 to 2015 and related statutes and statutory instruments, and the Attorney General may certify the text as a restatement pursuant to section 2(1) of the Statute Law (Restatement) Act 2002. 20

An Bille Cóipchirt agus Ceart Gaolmhar  
(Nuálaíocht) (Leasú), 2015

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# BILLE

*(mar a tionscnaíodh)*

*dá ngairtear*

Acht do leasú an Achta Cóipchirt agus Ceart  
Gaolmhar, 2000 agus do dhéanamh socrú i  
dtaobh nithe gaolmhara.

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*Na Seanadóirí Sean D. Barrett, Feargal Quinn agus  
David Norris a thug isteach,*

*2 Nollaig, 2015*

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Copyright and Related Rights (Innovation)  
(Amendment) Bill 2015

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# BILL

*(as initiated)*

*entitled*

An Act to amend the Copyright and Related Rights  
Act 2000 and to make provision for related  
matters.

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*Introduced by Senators Sean D. Barrett, Feargal  
Quinn and David Norris*

*2nd December, 2015*

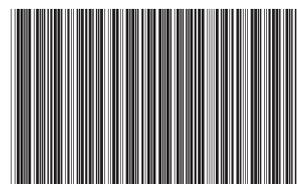
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