



SEANAD ÉIREANN

**AN BILLE UM CHÓIPCHEART AGUS FORÁLACHA EILE DE
CHUID AN DLÍ MAOINE INTLEACTHÚLA, 2018
COPYRIGHT AND OTHER INTELLECTUAL PROPERTY
LAW PROVISIONS BILL 2018**

**LEASUITHE COISTE
COMMITTEE AMENDMENTS**

SEANAD ÉIREANN

AN BILLE UM CHÓIPCHEART AGUS FORÁLACHA EILE DE CHUID AN DLÍ
MAOINE INTLEACHTÚLA, 2018
—AN COISTE

COPYRIGHT AND OTHER INTELLECTUAL PROPERTY LAW PROVISIONS BILL
2018
—COMMITTEE STAGE

*Leasuithe
Amendments*

**Government amendments are denoted by an asterisk*

SECTION 18

1. In page 16, line 18, after “given in” to insert “an educational institution or in”.

*—Senators David Norris, Victor Boyhan, Fintan Warfield, Ivana Bacik, Kevin Humphreys,
Ged Nash, Aodhán Ó Riordáin.*

SECTION 27

2. In page 21, line 41, to delete “any combination thereof.” and substitute the following:

“any combination thereof).

- (4B)(a) 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.
- (b) 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.
- (c) For the purposes of this subsection, a work shall have been made available in the State through the internet where—
 - (i) 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
 - (ii) 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.”.

—Senator Fintan Warfield.

[SECTION 28]

SECTION 28

3. In page 22, to delete lines 12 to 16 and substitute the following:

“(3) Without prejudice to the generality of section 221(1), the brief and limited display of a recording of a performance—

(a) either—

(i) in a prescribed library or prescribed archive or by the librarian or archivist of a prescribed library or prescribed archive, or

(ii) during the course of a public lecture given in an educational institution or in a prescribed library or prescribed archive or given by the librarian or archivist of a prescribed library or prescribed archive,

(b) undertaken for the sole purpose of education, teaching, research or private study where such purpose is neither directly nor indirectly commercial, and

(c) accompanied by a sufficient acknowledgement,

shall constitute fair dealing with the work for the purposes of section 50(1).

(4) It is not an infringement of any moral right conferred by Part IV to do anything which by virtue of this section is not an infringement of the rights conferred by this Part.

(5) In this Part, ‘fair dealing’ includes the making use of a performance or recording which has been lawfully made available to the public for a purpose and to an extent which will not unreasonably prejudice the interests of the rightsowner where such use is accompanied by a sufficient acknowledgement.”.

—*Senators David Norris, Victor Boyhan, Fintan Warfield, Ivana Bacik, Kevin Humphreys, Ged Nash, Aodhán Ó Riordáin.*

4. In page 22, line 12, to delete “means” and substitute “includes”.

—*Senators David Norris, Victor Boyhan, Fintan Warfield, Ivana Bacik, Kevin Humphreys, Ged Nash, Aodhán Ó Riordáin.*

SECTION 37

5. In page 29, between lines 2 and 3, to insert the following:

“Fair dealing

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

(2) Section 329 of the Principal Act is amended, in subsection (2), by substituting “includes” for “means”.

—*Senators David Norris, Victor Boyhan, Fintan Warfield, Ivana Bacik, Kevin Humphreys,*

SECTION 45

6. In page 32, between lines 20 and 21, to insert the following:

“CHAPTER 5

Miscellaneous amendments of Principal Act in relation to user rights

Fair dealing

45. (1) Section 49 of the Principal Act is amended by inserting the following subsection after subsection (1):

“(2) 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.”.

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

- (3) The Principal Act is amended by inserting the following section after section 50:

“Fair dealing - public lectures in educational establishments

50A.(1) Without prejudice to the generality of section 50(1), the brief and limited display of a copy of a work—

- (a) during the course of a public lecture given in an educational establishment,
- (b) undertaken for the sole purpose of education, teaching, research or private study where such purpose is neither directly nor indirectly commercial, and
- (c) accompanied by a sufficient acknowledgement,

shall constitute fair dealing with the work for the purposes of section 50(1).

- (2) It is not an infringement of any moral right conferred by Part IV to do anything which by virtue of this section is not an infringement of the rights conferred by this Part.”.

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

“Fair dealing - format-shifting for private use

106A.(1) Without prejudice to the generality of section 50(1), it shall constitute fair dealing with a work for the purposes of section 50(1) if—

- (a) the owner or lawful user of the 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
 - (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 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.
- (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 all reproductions of that work which he or she has made under that subsection.
- (6) Without prejudice to section 2, for the purposes of subsection (1)(a), 'work'—
- (a) includes a work which has been purchased, obtained by way of a gift, or acquired by means of a download resulting from a purchase or a gift (other than a download of a kind mentioned in paragraph (b)), and
 - (b) does not include a work which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a download enabling no more than temporary access to the work.
- (7) It is not an infringement of any moral right conferred by Chapter 7 of Part II to do anything which by virtue of this section is not an infringement of an infringement of the rights conferred by this Part.

Fair dealing - back-up copies

106B.(1)(a) Without prejudice to the generality of section 50(1), it shall constitute fair dealing with a work for the purposes of section 50(1) if the owner or lawful user of the work makes or causes to be made a reproduction of the 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

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lawful use.

- (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.
 - (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.
 - (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.
 - (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 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.
 - (8) Without prejudice to section 2, for the purposes of subsection (1)(a), 'work'—
 - (a) includes a work which has been purchased, obtained by way of a gift, or acquired by means of a download resulting from a purchase or a gift (other than a download of a kind mentioned in paragraph (b)), and
 - (b) does not include a work which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a download enabling no more than temporary access to the work.
 - (9) It is not an infringement of any moral right conferred by Chapter 7 of Part II to do anything which by virtue of this section is not an infringement of the rights conferred by this Part.”
- (5) Section 220 of the Principal Act is amended—

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- (a) by designating the existing section 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.”.

- (6) The Principal Act is amended by inserting the following section after section 221:

“Fair dealing - public lectures in educational establishments, libraries and archives

221A.(1) Without prejudice to the generality of section 221(1), the brief and limited display of a recording of a performance—

- (a) during the course of a public lecture given in an educational establishment,
- (b) undertaken for the sole purpose of education, teaching, research or private study where such purpose is neither directly nor indirectly commercial, and
- (c) accompanied by a sufficient acknowledgement,

shall constitute fair dealing with the work for the purposes of section 221(1).

- (2) Without prejudice to the generality of section 221(1), the brief and limited display of a recording of a performance—

- (a) either—
 - (i) in a prescribed library or prescribed archive or by the librarian or archivist of a prescribed library or prescribed archive, or
 - (ii) during the course of a public lecture given in a prescribed library or prescribed archive or given by the librarian or archivist of a prescribed library or prescribed archive,
- (b) undertaken for the sole purpose of education, teaching, research or private study where such purpose is neither directly nor indirectly commercial, and
- (c) accompanied by a sufficient acknowledgement,

shall constitute fair dealing with the work for the purposes of section 50(1).

- (3) It is not an infringement of any moral right conferred by Part IV to do anything which by virtue of this section is not an infringement of the rights conferred by this Part.”.

- (7) The Principal Act is amended by inserting the following sections after section 254:

“Fair dealing - format-shifting for private use

254A.(1) Without prejudice to the generality of section 221(1), it shall constitute fair dealing with a recording of a performance for the purposes of section 221(1) if—

- (a) the owner or lawful user of the recording makes or causes to be made a reproduction of that recording 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
- (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
- (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.

(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 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.

(6) Without prejudice to sections 2 and 202, for the purposes of subsection (1)(a), ‘recording of a performance’—

- (a) includes a recording which has been purchased, obtained by way of a gift, or acquired by means of a download resulting from a purchase or a gift (other than a download of a kind mentioned in paragraph (b)), and
- (b) does not include a recording which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a download enabling no more than temporary access to the work.

- (7) It is not an infringement of any moral right conferred by Part IV to do anything which by virtue of this section is not an infringement of the rights conferred by this Part.

Fair dealing - back-up copies

254B.(1)(a) Without prejudice to the generality of sections 221(1) and 242, it shall constitute fair dealing with a recording of a performance for the purposes of section 221(1) if the owner or lawful user of the recording 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.

(b) In particular, it shall constitute fair dealing for the purposes of section 221(1) if the reproduction is made as a back-up copy in case the recording is lost, damaged or otherwise rendered unusable.

(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—

(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.

(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.

(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.

(8) Without prejudice to sections 2 and 202, for the purposes of subsection (1)(a), 'recording of a performance'—

(a) includes a recording which has been purchased, obtained by way of

a gift, or acquired by means of a download resulting from a purchase or a gift (other than a download of a kind mentioned in paragraph (b)), and

(b) does not include a recording which has been borrowed, rented, broadcast or streamed, or a copy which has been obtained by means of a download enabling no more than temporary access to the work.

(9) It is not an infringement of any moral right conferred by Part IV to do anything which by virtue of this section is not an infringement of the rights conferred by this Part.”.

(8) Section 329 of the Principal Act is amended, in subsection (2), by substituting “includes” for “means”.”.

—*Senators David Norris, Victor Boyhan, Fintan Warfield, Ivana Bacik, Kevin Humphreys, Ged Nash, Aodhán Ó Riordáin.*

7. In page 32, between lines 20 and 21, to insert the following:

“Right to fair compensation

45. (1) The Principal Act is amended by inserting the following sections after section 106C (as inserted by section 45#):

“Right to fair compensation

106C.(1) The owners of rights conferred by this Part are entitled to receive fair compensation from manufacturers and importers of blank recording media to compensate the said rightsowners fairly for harm done to them by the use made of their works pursuant to sections 106A and 106B.

(2) The right to fair compensation conferred by this section shall not be waived by the rightsowner, and such a rightsowner shall not assign the right to fair compensation except to a collecting society for the purpose of enabling the collecting society to exercise that right on behalf of the rightsowner.

(3) The right to fair compensation is transmissible by way of testamentary disposition or by operation of law, as personal or moveable property and it may be further transmitted, including by assignment, by any person who legally acquires the right.

(4) Fair compensation under this section shall be paid only by means of levies collected and distributed by a collecting society holding a certificate granted under section 181A(8).

(5) An agreement is void in so far as it purports to—

(a) exclude or restrict the right to fair compensation conferred by this section, or

(b) restrict the powers of the Controller conferred by this Chapter.

- (6) References in this Part to the transfer of the rights conferred by this Part by one person to another include any arrangement having that effect whether made by them directly or through intermediaries.

Levies to fund the right to fair compensation

106D.(1) 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 (3), to pay a levy to a collecting society within the meaning specified in subsection (10) of section 181A on selling those blank recording media in the State.

- (2) The levy payable pursuant to subsection (1) shall be paid according to the scales specified in section 181A(7)(f).

- (3) No levy shall be payable pursuant to subsection (1) 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 sells it either to a designated body as defined in section 104(3) or to a purchaser who is purchasing it in the course of a business.

- (4) Where a designated body or purchaser in the course of a business referred to in subsection (3)(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) Where levies have been paid to a collecting society pursuant to subsection (1), 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.

- (6) 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 (5), the society shall—

- (a) pay any reimbursements due pursuant to subsection (4), and
- (b) pay the fair compensation to the appropriate rightsowners according to the scales specified in section 181A(7)(h).

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- (7) 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
 - (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.”.
- (2) The Principal Act is amended by inserting the following sections after section 254B (as inserted by section 45#):

“Right to fair compensation

254C.(1) The owners of rights conferred by this Part are entitled to receive fair compensation from manufacturers and importers of blank recording media to compensate the said rightsowners fairly for harm done to them by the use made of their works pursuant to sections 254A and 254B.

- (2) The right to fair compensation conferred by this section shall not be waived by the rightsowner, and such a rightsowner shall not assign the right to fair compensation except to a collecting society for the purpose of enabling the collecting society to exercise that right on behalf of the rightsowner.
- (3) The right to fair compensation is transmissible by way of testamentary disposition or by operation of law, as personal or moveable property and it may be further transmitted, including by assignment, by any person who legally acquires the right.
- (4) Fair compensation under this section shall be paid only by means of levies collected and distributed by a collecting society holding a certificate granted under section 286A(8).
- (5) An agreement is void in so far as it purports to—
 - (a) exclude or restrict the right to fair compensation conferred by this section, or
 - (b) restrict the powers of the Controller conferred by this Chapter.
- (6) References in this Part to the transfer of the rights conferred by this Part by one person to another include any arrangement having that effect whether made by them directly or through intermediaries.

Levies to fund the right to fair compensation

254D.(1) 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 (3), to pay a levy to a

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collecting society within the meaning specified in subsection (10) of section 286A on selling those blank recording media in the State.

- (2) The levy payable pursuant to subsection (1) shall be paid according to the scales specified in section 286A(7)(f).
- (3) No levy shall be payable pursuant to subsection (1) 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
 - (b) the manufacturer or importer of a blank recording medium sells it either to a designated body as defined in section 104(3) or to a purchaser who is purchasing it in the course of a business.
- (4) Where a designated body or purchaser in the course of a business referred to in subsection (3)(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) Where levies have been paid to a collecting society pursuant to subsection (1), 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.
- (6) 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 (5), the society shall—
 - (a) pay any reimbursements due pursuant to subsection (4), and
 - (b) pay the fair compensation to the appropriate rightsowners according to the scales specified in section 286A(7)(h).
- (7) 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

- (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.”.”.

—*Senators David Norris, Victor Boyhan, Fintan Warfield, Ivana Bacik, Kevin Humphreys, Ged Nash, Aodhán Ó Riordáin.*

[#This is a reference to the section proposed to be inserted by amendment No. 6.]

- 8. In page 32, between lines 20 and 21, to insert the following:

“Registration of Collecting Societies

- 45. (1) The Principal Act is amended, in Part II, by inserting the following Chapter after Chapter 17:

“CHAPTER 17A

Registration of Copyright Collecting Societies

Register of Copyright Collecting Societies

- 181A.(1) The Controller shall establish and maintain a register of copyright collecting societies in such form and manner and containing such particulars as the Minister may prescribe to be known as the ‘Register of Copyright Collecting Societies’ and referred to in this Part as the ‘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 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)(a) The Controller shall register an applicant or renew a registration where the Controller is satisfied that—

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- (i) the applicant complies with the definition of a collecting society specified in subsection (10), and
 - (ii) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.
- (b) The Controller shall not register an applicant or renew a registration unless the Controller is satisfied that the scales specified in paragraph (h) of subsection (7) are fair.
- (6) The information prescribed under paragraph (a)(ii) of subsection (5) 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 (5) (a)(ii) 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) details of the scheme;
 - (f) details of the scales of levies or proposed levies to be levied by the applicant as fair compensation for the purposes of sections 106C and 106D;
 - (g) the names or classes of rightsowners represented or proposed to be represented by the applicant on whose behalf the applicant collects or proposes to collect fair compensation for the purposes of sections 106C and 106D; and
 - (h) details of the scales of payments or proposed payments to be made by the applicant to those mentioned in paragraph (g).
- (8) On the registration or renewal of a registration of a collecting society, the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.
- (9) The Controller shall make a summary of the Register available online, and that summary shall include the information referred to in paragraphs (a) to (c) of subsection (7).
- (10) In this section, 'collecting society' means a society or other organisation which has as one of its main objects the exercise of the right to collect fair compensation under this section for the purposes of

sections 106C and 106D.

Proof that collecting society may act on behalf of specified classes

181B. A certificate granted under subsection (8) of section 181A shall include the particulars specified in subsection (7) of that section and the certificate shall be evidence of the right of the collecting society, until the contrary is proved, to act on behalf of the classes of rightsowner or rightsowners for whom it claims representation or on behalf of rightsowners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of levies

181C.(1) 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 levy comes into effect.

- (2) The registration of a collecting society which fails to comply with subsection (1) is deemed to be cancelled from the date on which the proposed levy comes into effect.

Validity of certificates of registration

181D.(1) A certificate of registration issued under subsection (8) of section 181A 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 subsection (4) of section 181A, a collecting society registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months.
- (3) An application for renewal of a registration shall be made not less than one month 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.

Refusal of application

181E.(1) The Controller may refuse an application for renewal of a registration by a collecting society registered under this Part or cancel the registration of a collecting society where the body no longer fulfills the requirements specified in subsection (5) of section 181A.

- (2) The Controller shall remove a collecting society from the Register and from the summary of the Register where its application for renewal of its registration is refused or its registration is cancelled.

Indemnity for Controller

181F. 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.

Obligation of copyright collecting societies to register

181G.(1) Any body operating as a collecting society within the meaning specified in subsection (10) of section 181A 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 provision 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 class A fine, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €200,000, or to imprisonment for a term not exceeding 5 years, or both.”.

(2) The Principal Act is amended, in Part III, by inserting the following Chapter after Chapter 8:

“CHAPTER 8A

Registration of Collecting Societies for Performers’ Property Rights

Register of Collecting Societies for Performers’ Property Rights

286A.(1) The Controller shall establish and maintain a register of collecting societies for performers’ property rights in such form and manner and containing such particulars as the Minister may prescribe to be known as the ‘Register of Collecting Societies for Performers’ Property Rights’ and referred to in this Part as the ‘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

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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 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)(a) The Controller shall register an applicant or renew a registration where the Controller is satisfied that—
- (i) the applicant complies with the definition of a collecting society specified in subsection (10), and
 - (ii) the applicant has provided such information and satisfied such conditions as may be prescribed by the Minister for the purposes of registration.
- (b) The Controller shall not register an applicant or renew a registration unless the Controller is satisfied that the scales specified in paragraph (h) of subsection (7) are fair.
- (6) The information prescribed under paragraph (a)(ii) of subsection (5) 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 (5) (a)(ii) 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) details of the scheme;
 - (f) details of the scales of levies or proposed levies to be levied by the applicant as fair compensation for the purposes of sections 254C and 254D;

- (g) the names or classes of rightsowners represented or proposed to be represented by the applicant on whose behalf the applicant collects or proposes to collect fair compensation for the purposes of sections 254C and 254D; and
 - (h) details of the scales of payments or proposed payments to be made by the applicant to those mentioned in paragraph (g).
- (8)(a) On the registration or renewal of a registration of a collecting society, the Controller shall issue to the applicant a certificate of registration in such form as the Controller shall determine.
- (b) The Controller shall not issue a certificate under subsection (1) unless the Controller is satisfied that the scales specified in paragraph (h) of subsection (7) are fair.
- (9) The Controller shall make a summary of the Register available online, and that summary shall include the information referred to in paragraphs (a) to (c) of subsection (7).
- (10) In this section, ‘collecting society’ means a society or other organisation which has as one of its main objects the exercise of the right to collect fair compensation under this section for the purposes of sections 254C and 254D.
- (11)(a) The Controller may register a body as two or more of the following bodies:
- (i) a licensing body within the meaning of section 181;
 - (ii) a collecting society within the meaning specified in subsection (10) of section 181A;
 - (iii) a licensing body within the meaning of section 286; and
 - (iv) a collecting society within the meaning specified in subsection (10) of section 286A.
- (b) A body registered pursuant to subsection (1) shall be liable only once for the payment of any registration fee payable pursuant to subsection (4) of section 175, subsection (4) of section 181A, subsection (4) of section 280 and subsection (4) of section 286A.

Proof that collecting society may act on behalf of specified classes

286B. A certificate granted under subsection (8) of section 286A shall include the particulars specified in subsection (7) of that section and the certificate shall be evidence of the right of the collecting society, until the contrary is proved, to act on behalf of the classes of rightsowner or rightsowners for whom it claims representation or on behalf of rightsowners who have assigned rights to it, or exclusively licensed it, as specified in that certificate.

Notification of levies

- 286C.**(1) 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 levy comes into effect.
- (2) The registration of a collecting society which fails to comply with subsection (1) is deemed to be cancelled from the date on which the proposed levy comes into effect.

Validity of certificates of registration

- 286D.**(1) A certificate of registration issued under subsection (8) of section 286A 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 subsection (4) of section 286A, a collecting society registered under this Part may apply for renewal of its registration for further periods each of which shall not exceed 12 months.
- (3) An application for renewal of a registration shall be made not less than one month 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.

Refusal of application

- 286E.**(1) The Controller may refuse an application for renewal of a registration by a collecting society registered under this Part or cancel the registration of a collecting society where the body no longer fulfils the requirements specified in subsection (5) of section 286A.
- (2) The Controller shall remove a collecting society from the Register and from the summary of the Register where its application for renewal of its registration is refused or its registration is cancelled.

Indemnity for Controller

286F. 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.

Obligation of collecting societies for performers' property rights to register

286G.(1) Any body operating as a collecting society within the meaning specified in subsection (10) of section 286A 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.

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- (2) Any body to which the provision 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 class A fine, or to imprisonment for a term not exceeding 12 months, or both, or
 - (b) on conviction on indictment, to a fine not exceeding €200,000, or to imprisonment for a term not exceeding 5 years, or both.”.
- (3) The Principal Act is amended by inserting the following subsection in section 175:
- “(9) The Controller shall make a summary of the Register available online, and that summary shall include the information referred to in paragraphs (a) to (c) of subsection (7).”.
- (4) The Principal Act is amended by inserting the following subsection in section 280:
- “(8) The Controller shall make a summary of the Register available online, and that summary shall include the information referred to in paragraphs (a) to (c) of subsection (6).”.
- (5) The Principal Act is amended by inserting the following subsection in section 355:
- “(8) The Controller shall make a summary of the Register available online, and that summary shall include the information referred to in paragraphs (a) to (c) of subsection (6).”.
- (6) The Principal Act is amended, in subsection (2) of section 179, in subsection (2) of section 284, and in subsection (2) of section 359, by inserting “and from the summary of the Register” after “the Register”.”.

— *Senators David Norris, Victor Boyhan, Fintan Warfield, Ivana Bacik, Kevin Humphreys, Ged Nash, Aodhán Ó Riordáin.*

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Section opposed.

—*Senator Fintan Warfield.*