

Copyright

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NATIONAL LEGISLATION

AUSTRALIA

Copyright Act 1968

(No. 63 of 1968)

An Act relating to copyright, and for other purposes

(Sections 176 to 249)*

PART VII

The Crown

Crown copyright in original works made under direction of Crown

176. — (1) Where, apart from this section, copyright would not subsist in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the Commonwealth or a State, copyright subsists in the work by virtue of this sub-section.

(2) The Commonwealth or a State is, subject to this Part and to Part X, the owner of the copyright in an original literary, dramatic, musical or artistic work made by, or under the direction or control of, the Commonwealth or the State, as the case may be.

Crown copyright in original works first published in Australia under direction of Crown

177. — Subject to this Part and to Part X, the Commonwealth or a State is the owner of the copyright in an original literary, dramatic, musical or artistic work first published in Australia if first published by, or under the direction or control of, the Commonwealth or the State, as the case may be.

Crown copyright in recordings and films made under direction of Crown

178. — (1) Where, apart from this section, copyright would not subsist in a sound recording or cinematograph film made by, or under the direction or control of, the Commonwealth or a State, copyright subsists in the recording or film by virtue of this sub-section.

(2) The Commonwealth or a State is, subject to this Part and to Part X, the owner of the copyright in a sound recording or cinematograph film made by, or under the direction or control of, the Commonwealth or the State, as the case may be.

Provisions relating to ownership of copyright may be modified by agreement

179. — The last three preceding sections have effect subject to any agreement made by, or on behalf of, the Commonwealth or a State with the author of the work or with the

maker of the sound recording or cinematograph film, as the case may be, by which it is agreed that the copyright in the work, recording or film is to vest in the author or maker, or in another person specified in the agreement.

Duration of Crown copyright in original works

180. — (1) Copyright in a literary, dramatic or musical work of which the Commonwealth or a State is the owner, or would, but for an agreement to which the last preceding section applies, be the owner —

- (a) where the work is unpublished — continues to subsist so long as the work remains unpublished; and
- (b) where the work is published — subsists, or, if copyright in the work subsisted immediately before its first publication, continues to subsist, until the expiration of fifty years after the expiration of the calendar year in which the work was first published.

(2) Subject to the next succeeding sub-section, copyright in an artistic work of which the Commonwealth or a State is the owner, or would, but for an agreement to which the last preceding section applies, be the owner, continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the work was made.

(3) Copyright in an engraving or photograph of which the Commonwealth or a State is the owner, or would, but for an agreement to which the last preceding section applies, be the owner, continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the engraving or photograph is first published.

Duration of Crown copyright in recordings and films

181. — Copyright in a sound recording or cinematograph film of which the Commonwealth or a State is the owner, or would, but for the operation of an agreement to which section 179 of this Act applies, be the owner, subsists until the expiration of fifty years after the expiration of the calendar year in which the recording or film is first published.

Application of Parts III and IV to copyright subsisting by virtue of this Part

182. — (1) Part III (other than the provisions of that Part relating to the subsistence, duration or ownership of copyright) applies in relation to copyright subsisting by virtue of

* See *Copyright*, 1970, pp. 178 *et seq.*, 218 *et seq.*, 247 *et seq.*

this Part in a literary, dramatic, musical or artistic work in like manner as it applies in relation to copyright subsisting in such a work by virtue of that Part.

(2) Part IV (other than the provisions of that Part relating to the subsistence, duration or ownership of copyright) applies in relation to copyright subsisting by virtue of this Part in a sound recording or cinematograph film in like manner as it applies in relation to copyright subsisting in such a recording or film by virtue of that Part.

Use of copyright material for the services of the Crown

183. — (1) The copyright in a literary, dramatic, musical or artistic work or a published edition of such a work, or in a sound recording, cinematograph film, television broadcast or sound broadcast, is not infringed by the Commonwealth or a State, or by a person authorized in writing by the Commonwealth or a State, doing any acts comprised in the copyright if the acts are done for the services of the Commonwealth or State.

(2) Where the Government of the Commonwealth has made an agreement or arrangement with the Government of some other country for the supply to that country of goods required for the defence of that country —

(a) the doing of any act in connection with the supply of those goods in pursuance of the agreement or arrangement; and

(b) the sale to any person of such of those goods as are not required for the purposes of the agreement or arrangement,

shall, for the purposes of the last preceding sub-section, be each deemed to be for the services of the Commonwealth.

(3) Authority may be given under sub-section (1) of this section before or after the acts in respect of which the authority is given have been done, and may be given to a person notwithstanding that he has a licence granted by, or hindering on, the owner of the copyright to do the acts.

(4) Where an act comprised in a copyright has been done under sub-section (1) of this section, the Commonwealth or State shall, as soon as possible, unless it appears to the Commonwealth or State that it would be contrary to the public interest to do so, inform the owner of the copyright, as prescribed, of the doing of the act and shall furnish him with such information as to the doing of the act as he from time to time reasonably requires.

(5) Where an act comprised in a copyright has been done under sub-section (1) of this section, the terms for the doing of the act are such terms as are, whether before or after the act is done, agreed between the Commonwealth or the State and the owner of the copyright or in default of agreement, as are fixed by the High Court.

(6) An agreement or licence (whether made or granted before or after the commencement of this Act) fixing the terms upon which a person other than the Commonwealth or a State may do acts comprised in a copyright is inoperative with respect to the doing of those acts, after the commencement of this Act, under sub-section (1) of this section, unless the agreement or licence has been approved by the Attorney-

General of the Commonwealth or the Attorney-General of the State.

(7) Where an article is sold and the sale is not, by virtue of sub-section (1) of this section, an infringement of a copyright, the purchaser of the article, and a person claiming through him, is entitled to deal with the article as if the Commonwealth or State were the owner of that copyright.

(8) An act done under sub-section (1) of this section does not constitute publication of a work or other subject-matter and shall not be taken into account in the application of any provision of this Act relating to the duration of any copyright.

(9) Where an exclusive licence is in force in relation to any copyright, the preceding sub-sections of this section have effect as if any reference in those sub-sections to the owner of the copyright were a reference to the exclusive licensee.

(10) Jurisdiction is conferred on the High Court to the extent necessary for the purposes of this section.

PART VIII

Extension or Restriction of Operation of Act

Application of Act to countries other than Australia

184. — (1) Subject to this section, the regulations may make provision applying any of the provisions of this Act specified in the regulations, in relation to a country (other than Australia) so specified, in any one or more of the following ways:

(a) so that the provisions apply in relation to literary, dramatic, musical or artistic works or editions first published, or sound recordings or cinematograph films made or first published, in that country in like manner as those provisions apply in relation to literary, dramatic, musical or artistic works or editions first published, or sound recordings or cinematograph films made or first published, in Australia;

(b) so that the provisions apply in relation to artistic works that are buildings situated in that country or are attached to, or form part of, buildings situated in that country in like manner as those provisions apply in relation to artistic works that are buildings situated in Australia or are attached to, or form part of, buildings situated in Australia;

(c) so that the provisions apply in relation to persons who, at a material time, are citizens or nationals of that country in like manner as those provisions apply in relation to persons who, at such a time, are Australian citizens;

(d) so that the provisions apply in relation to persons who, at a material time, are resident in that country in like manner as those provisions apply in relation to persons who, at such a time, are resident in Australia;

(e) so that the provisions apply in relation to bodies incorporated under the law of that country in like manner as those provisions apply in relation to bodies incorporated under a law of the Commonwealth or of a State;

(f) so that the provisions apply in relation to television broadcasts and sound broadcasts made from places in

that country by persons entitled under the law of that country to make such broadcasts in like manner as those provisions apply in relation to television broadcasts and sound broadcasts made from places in Australia by the Australian Broadcasting Commission, by a holder of a licence for a television station, by a holder of a licence for a broadcasting station or by a person prescribed for the purposes of sub-paragraph (iii) of paragraph (a) or sub-paragraph (iii) of paragraph (b) of section 91 of this Act.

(2) Regulations applying a provision of this Act in relation to a country other than Australia in accordance with the last preceding sub-section —

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

(3) Regulations applying any of the provisions of this Act in relation to a country, not being a country that is a party to a Convention relating to copyright to which Australia is also a party, shall not be made unless the Governor-General is satisfied that, in respect of the class of works or other subject-matter to which those provisions relate, provision has been or will be made under the law of that country by virtue of which adequate protection is or will be given to owners of copyright under this Act.

(4) Where —

- (a) the identity of the author of an unpublished work is unknown but there are reasonable grounds for believing that the author of the work was, at the time when, or for a substantial part of the period during which, the work was made, a citizen or national of a country other than Australia;
 - (b) under the law of that country, a person is authorized to represent the author, or to protect and enforce the rights of the author, in relation to that work; and
 - (c) provision is made by the regulations applying any of the provisions of this Act in relation to works made by citizens or nationals of that country,
- that person shall, for the purposes of those provisions as so applying, be treated as if he were the author of the work.

Denial of copyright to citizens of countries not giving adequate protection to Australian works

185. — (1) If it appears to the Governor-General that the law of a country does not give adequate protection to Australian works, or does not give adequate protection in relation to a class or classes of such works (whether the lack of protection relates to the nature of the work or the nationality, citizenship or country of residence of its author, or all of those matters), the regulations may make provision in relation to that country in accordance with the next succeeding sub-section.

(2) Regulations made for the purposes of this section may provide, either generally or in such classes of cases as are

specified in the regulations, that copyright under this Act does not subsist in works first published after a date specified in the regulations (which may be a date before the commencement of the regulations or before the commencement of this Act) if, at the time of the first publication of those works, the authors of the works were or are —

- (a) citizens or nationals of a country specified in the regulations, not being at that time persons resident in Australia; or
- (b) in the case of works being sound recordings or cinematograph films — bodies incorporated under the law of a country specified in the regulations.

(3) In making regulations for the purposes of this section, the Governor-General shall have regard to the nature and extent of the lack of protection for Australian works by reason of which the regulations are made.

(4) In this section —

“Australian work” means a work the author of which was, at the time when the work was made, a qualified person for the purposes of the relevant provision of this Act;

“author”, in relation to a sound recording or a cinematograph film, means the maker of the recording or film;

“the relevant provision of this Act” means —

- (a) in relation to a literary, dramatic, musical or artistic work — section 32 of this Act; and
- (b) in relation to a sound recording or a cinematograph film — Part IV;

“work” means a literary, dramatic, musical or artistic work, a sound recording or a cinematograph film.

Application of Act to international organizations

186. — (1) Where it appears to the Governor-General that it is desirable that this Act should apply in relation to an organization —

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

the regulations may declare that organization to be an international organization to which this Act applies.

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

Original works made or first published by international organizations

187. — (1) Where an original literary, dramatic, musical or artistic work is made by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this sub-section, subsist in the work —

- (a) copyright subsists in the work;
- (b) that copyright subsists so long as the work remains unpublished; and
- (c) the organization is, subject to Part X, the owner of that copyright.

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

- (a) copyright subsists in the work, or, if copyright in the work subsisted immediately before its first publication, continues to subsist in the work;
- (b) that copyright subsists until the expiration of fifty years after the expiration of the calendar year in which the work was first published; and
- (c) the organization is, subject to Part X, the owner of that copyright.

(3) Part III, other than the provisions of that Part relating to the subsistence, duration or ownership of copyright, applies in relation to copyright subsisting by virtue of this section in like manner as it applies in relation to copyright subsisting by virtue of that Part.

Subject-matter, other than original works, made or first published by international organizations

188. — (1) Where a sound recording or a cinematograph film is made by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this sub-section, subsist in the recording or film —

- (a) copyright subsists in the recording or film;
- (b) that copyright subsists so long as the recording or film remains unpublished; and
- (c) the organization is, subject to Part X, the owner of that copyright.

(2) Where a sound recording or a cinematograph film is first published by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this sub-section, subsist in the recording or film immediately after the first publication of the recording or film —

- (a) copyright subsists in the recording or film, or, if copyright in the recording or film subsisted immediately before its first publication, continues to subsist in the recording or film;
- (b) that copyright subsists until the expiration of fifty years after the expiration of the calendar year in which the recording or film was first published; and
- (c) the organization is, subject to Part X, the owner of that copyright.

(3) Where an edition of a literary, dramatic, musical or artistic work or of two or more literary, dramatic, musical or artistic works, other than an edition that reproduces a previous edition of the same work or works, is published by, or

under the direction or control of, an international organization to which this Act applies in such circumstances that copyright would not, apart from this sub-section, subsist in the edition immediately after the first publication of the edition —

- (a) copyright subsists in the edition;
- (b) that copyright subsists until the expiration of twenty-five years after the expiration of the calendar year in which the edition was first published; and
- (c) the organization is, subject to Part X, the owner of that copyright.

(4) Part IV, other than the provisions of that Part relating to the subsistence, duration or ownership of copyright, applies in relation to copyright subsisting by virtue of this section in like manner as it applies in relation to copyright subsisting by virtue of that Part.

PART IX

False Attribution of Authorship

Definition

189. — In this Part, “name” includes initials or a monogram.

Duty not to attribute falsely the authorship of a work

190. — (1) A person (in this sub-section referred to as “the offender”) is, by virtue of this section, under a duty to the author of a work not to —

- (a) insert or affix another person’s name in or on the work, or in or on a reproduction of the work, in such a way as to imply that the other person is the author of the work;
- (b) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, the work with another person’s name so inserted or affixed, if the offender knows that the other person is not the author of the work;
- (c) do any of the acts mentioned in the last preceding paragraph in relation to, or distribute, reproductions of the work, being reproductions in or on which another person’s name has been so inserted or affixed, if the offender knows that the other person is not the author of the work; or
- (d) perform in public or broadcast the work as being a work of which another person is the author, if the offender knows that the other person is not the author of the work.

(2) The last preceding sub-section applies where, contrary to the fact, a work is represented as being an adaptation of the work of another person in like manner as it applies where a work is represented as being the work of another person.

(3) After the death of the author of a work, a person is, by virtue of this section, under a duty to the legal personal representative of the author not to do in relation to, or to a reproduction of, the work or an adaptation of the work any act that, but for the death of the author, the person would, by reason of either of the last two preceding sub-sections, have been under a duty to the author not to do.

(4) In this section, “work” means a work in which copyright subsists.

Duty not to attribute falsely the authorship of altered work

191. — Where a work in which copyright subsists has been altered by a person other than the author of the work, a person is, by virtue of this section, under a duty to the author of the work not to —

- (a) publish, sell or let for hire, or by way of trade offer or expose for sale or hire, the work as so altered, as being the unaltered work of the author; or
- (b) publish, sell or let for hire, or by way of trade offer or expose for sale or hire, a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author,

if, to his knowledge, it is not the unaltered work or a reproduction of the unaltered work, as the case may be, of the author.

Duty not to attribute falsely the authorship of reproduction of artistic work

192. — A person is, by virtue of this section, under a duty to the author of an artistic work in which copyright subsists not to —

- (a) publish, sell or let for hire, by way of trade offer or expose for sale or hire, or by way of trade exhibit in public, a reproduction of the work, as being a reproduction made by the author of the work; or
- (b) distribute reproductions of the work as being reproductions made by the author of the work,

where the reproduction was, or the reproductions were, to his knowledge, not made by the author.

Breach of duty not committed if act done outside Australia or done with permission

193. — The doing of an act by a person is not a breach of a duty owed by that person to another person by virtue of this Part if the act was done outside Australia or was done with the permission, whether express or implied, of that other person.

Action for breach of duty

194. — (1) Where a person commits a breach of a duty owed by him to another person by virtue of this Part, the breach is not an offence against this Part but the other person may bring an action in respect of the breach.

(2) Subject to section 203 of this Act, the relief that a court may grant in an action under the last preceding subsection includes an injunction (subject to such terms, if any, as the court thinks fit) and damages.

(3) Where, in respect of an act done in relation to, or to a reproduction of, a work or an adaptation of a work after the death of the author of the work, damages are recovered under this section by the legal personal representative of the author, those damages devolve as if they formed part of the estate of the author and as if the right of action in respect of the doing of that act had subsisted, and had been vested in the author, immediately before his death.

Saving of other rights and remedies

195. — (1) Subject to this section, this Part does not affect any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than by virtue of this Part.

(2) Any damages recovered in proceedings instituted by virtue of this Part shall be taken into account in assessing damages in proceedings instituted otherwise than by virtue of this Part and arising out of the same operation or transaction.

(3) Any damages recovered in proceedings instituted otherwise than by virtue of this Part shall be taken into account in assessing damages in proceedings instituted by virtue of this Part and arising out of the same operation or transaction.

PART X
Miscellaneous

Assignments and licences in respect of copyright

196. — (1) Copyright is personal property and, subject to this section, is transmissible by assignment, by will and by devolution by operation of law.

(2) An assignment of copyright may be limited in any way, including any one or more of the following ways:

- (a) so as to apply to one or more of the classes of acts that, by virtue of this Act, the owner of the copyright has the exclusive right to do (including a class of acts that is not separately specified in this Act as being comprised in the copyright but falls within a class of acts that is so specified);
- (b) so as to apply to a place in or part of Australia;
- (c) so as to apply to part of the period for which the copyright is to subsist.

(3) An assignment of copyright (whether total or partial) does not have effect unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted in respect of a copyright by the owner of the copyright binds every successor in title to the interest in the copyright of the grantor of the licence to the same extent as the licence was binding on the grantor.

Prospective ownership of copyright

197. — (1) Where, by an agreement made in relation to a future copyright and signed by or on behalf of the person who would, apart from this section, be the owner of the copyright on its coming into existence, that person purports to assign the future copyright (wholly or partially) to another person (in this sub-section referred to as "the assignee"), then if, on the coming into existence of the copyright, the assignee or a person claiming under him would, apart from this sub-section, be entitled as against all other persons to have the copyright vested in him (wholly or partially, as the case may be), the copyright, on its coming into existence, vests in the assignee or his successor in title by force of this sub-section.

(2) Where, at the time when a copyright comes into existence, the person who, if he were then living, would be entitled to the copyright is dead, the copyright devolves as

if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) A licence granted in respect of a future copyright by the prospective owner of the copyright binds every successor in title to the prospective interest in the copyright of the grantor of the licence to the same extent as the licence was binding on the grantor.

Copyright to pass under will with unpublished work

198. — Where under a bequest, whether specific or general, a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless a contrary intention appears in the testator's will, be read as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

Reception of broadcasts

199. — (1) Where the inclusion in a television broadcast or sound broadcast of a reading or recitation of an extract from a published literary or dramatic work, or from an adaptation of such a work, does not constitute an infringement of the copyright in the work, a person who, by the reception of the broadcast, causes the work or adaptation to be performed in public does not, by doing so, infringe the copyright in the work.

(2) A person who, by the reception of a television broadcast or sound broadcast, causes a sound recording to be heard in public does not, by doing so, infringe the copyright, if any, in that recording under Part IV.

(3) A person who, by the reception of an authorized television broadcast, causes a cinematograph film to be seen or heard in public shall be treated, in any proceedings for infringement of the copyright, if any, in the film under Part IV, as if he had been the holder of a licence granted by the owner of that copyright to cause the film to be seen or heard in public by the reception of the broadcast.

(4) A person who, by the reception of an authorized television broadcast or sound broadcast, causes a literary, dramatic or musical work or an adaptation of such a work, an artistic work or a cinematograph film to be transmitted to subscribers to a diffusion service shall be treated, in any proceedings for infringement of the copyright, if any, in the work or film, as if he had been the holder of a licence granted by the owner of that copyright to cause the work, adaptation or film to be transmitted by him to subscribers to that service by the reception of the broadcast.

(5) If, in the circumstances mentioned in either of the last two preceding sub-sections, the person causing the cinematograph film to be seen or heard, or the work, adaptation or cinematograph film to be transmitted, as the case may be, infringed the copyright concerned by reason that the broadcast was not an authorized broadcast, proceedings shall not be brought against that person under this Act in respect of his infringement of that copyright but the infringement shall be

taken into account in assessing damages in any proceedings against the maker of the broadcast in respect of that copyright, in so far as that copyright was infringed by the making of the broadcast.

(6) For the purposes of this section, a broadcast, in relation to a work, an adaptation of a work or a cinematograph film, is an authorized broadcast if, but only if, it is made by, or with the licence of, the owner of the copyright in the work or film.

(7) A reference in this section to a broadcast shall —

- (a) in the case of a television broadcast — be read as a reference to such a broadcast made by the Australian Broadcasting Commission, by the holder of a licence for a television station or by a person prescribed for the purposes of sub-paragraph (iii) of paragraph (a) of section 91 of this Act; and
- (b) in the case of a sound broadcast — be read as a reference to such a broadcast made by the Australian Broadcasting Commission, by the holder of a licence for a broadcasting station or by a person prescribed for the purposes of sub-paragraph (iii) of paragraph (b) of section 91 of this Act.

Use of works and broadcasts for educational purposes

200. — (1) The copyright in a literary, dramatic, musical or artistic work is not infringed by reason only that the work is reproduced or, in the case of a literary, dramatic or musical work, an adaptation of the work is made or reproduced —

- (a) in the course of educational instruction, where the work is reproduced or the adaptation is made or reproduced by a teacher or student otherwise than by the use of an appliance adapted for the production of multiple copies; or
- (b) as part of the questions to be answered in an examination, or in an answer to such a question.

(2) The making of a record of a sound broadcast or of a television broadcast, being a broadcast that was intended to be used for educational purposes, does not constitute an infringement of copyright in a work or sound recording included in the broadcast, or an infringement of copyright in the broadcast, if —

- (a) the record is made by, or on behalf of, the person or authority in charge of a place of education that is not conducted for profit; and
- (b) the record is not used except in the course of instruction at that place.

(3) For the purposes of sections 38 and 103 of this Act, in determining whether the making of an article constituted an infringement of copyright, the last two preceding sub-sections shall be disregarded.

(4) For the purposes of any provision of this Act relating to imported articles, in determining whether the making of an article made outside Australia would, if the article had been made in Australia by the importer of the article, have constituted an infringement of copyright, sub-sections (1) and (2) of this section shall be disregarded.

Delivery of library material to the National Library

201. — (1) The publisher of any library material that is published in Australia and in which copyright subsists under this Act shall, within one month after the publication, cause a copy of the material to be delivered at his own expense to the National Library.

Penalty: One hundred dollars.

(2) The copy of any library material delivered to the National Library in accordance with this section shall be a copy of the whole material (including any illustrations), be finished and coloured, and bound, sewed, stitched or otherwise fastened together, in the same manner as the best copies of that material are published and be on the best paper on which that material is printed.

(3) When any library material is delivered to the National Library in accordance with this section, the National Librarian shall cause a written receipt for the material to be given to the publisher of the material.

(4) This section is not intended to exclude or limit the operation of any law of a State or Territory of the Commonwealth (whether made before or after the commencement of this Act) that makes provision for or in relation to the delivery to a specified public or other library in or of the State or Territory of copies of library material published in the State or Territory.

(5) In this section —
 “illustrations” includes drawings, engravings and photographs;
 “library material” means a book, periodical, newspaper, pamphlet, sheet of letter-press, sheet of music, map, plan, chart or table, being a literary, dramatic, musical or artistic work or an edition of such a work, but does not include a second or later edition of any material unless that edition contains additions or alterations in the letter-press or in the illustrations.

Groundless threats of legal proceedings

202. — (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding in respect of an infringement of copyright, then, whether the person making the threats is or is not the owner of the copyright or an exclusive licensee, a person aggrieved may bring an action against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats, and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the acts in respect of which the action or proceeding was threatened constituted, or, if done, would constitute, an infringement of copyright.

(2) The mere notification of the existence of a copyright does not constitute a threat of an action or proceeding within the meaning of this section.

(3) Nothing in this section renders a barrister or solicitor of the High Court, or of the Supreme Court of a State or Territory of the Commonwealth, liable to an action under

this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) The defendant in an action under this section may apply, by way of counterclaim, for relief to which he would be entitled in a separate action in respect of an infringement by the plaintiff of the copyright to which the threats relate and, in any such case, the provisions of this Act with respect to an action for infringement of a copyright are, *mutatis mutandis*, applicable in relation to the action.

(5) A reference in this section to an action in respect of an infringement of copyright shall be read as including a reference to an action in respect of the conversion or detention of an infringing copy or of a plate used or intended to be used for making infringing copies.

Limitation on power of courts to grant relief in proceedings under this Act

203. — Nothing in this Act authorizes a State court or a court of a Territory to grant relief by way of injunction or account of profits if that court would not, apart from this Act, have power to grant such relief.

PART XI

Transitional

Division 1. — Preliminary

Definitions

204. — (1) In this Part, the expression “photograph” has, in lieu of the meaning given to that expression by section 10 of this Act, the meaning given by the next succeeding subsection.

(2) For the purposes of any provision of this Part that provides that an expression is to have the meaning given to that expression by this section or that refers to an expression as defined by this section —

“collective work” means —

- (a) an encyclopaedia, dictionary, year book or similar work;
- (b) a newspaper, review, magazine or similar periodical; or
- (c) a work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

“deliver”, in relation to a lecture, includes deliver by means of a mechanical instrument;

“dramatic work” includes a piece for recitation, a choreographic work or entertainment in dumb show the scenic arrangement or acting form of which is fixed in writing or otherwise, and a cinematograph production where the arrangement, the acting form or the combination of incidents represented gives the work an original character;

“lecture” includes an address, speech and sermon;

“literary work” includes a map, chart, plan, table and compilation;

“perform”, in relation to a dramatic work as defined by this section or a musical work, means make an acoustic rep-

resentation of the work or a visual representation of a dramatic action in the work, and includes make such a representation by means of a mechanical instrument; “photograph” includes photo-lithograph and a work produced by a process similar to photography.

References to making of works, recordings and films

205. — For the purposes of any reference in this Part to works, sound recordings or cinematograph films made before the commencement of this Act, a work, sound recording or cinematograph film the making of which extended over a period shall be deemed not to have been made before the commencement of this Act unless the making of it was completed before the commencement of this Act.

References in other laws or instruments to copyright

206. — (1) Without prejudice to the operation of the succeeding sections of this Part —

- (a) a reference in any other law of the Commonwealth or in any contract, agreement or other instrument to a provision of the Copyright Act, 1911 shall be read as a reference, or as including a reference, to the corresponding provision of this Act;
- (b) a reference in any other law of the Commonwealth or in any contract, agreement or other instrument to copyright or to works in which copyright subsists shall, if apart from this Act it would be read as a reference to copyright under the Copyright Act, 1911 or to works in which copyright subsisted under that Act, be read as a reference, or as including a reference, to copyright under this Act or to works or any other subject-matter in which copyright subsists under this Act, as the case may be; and
- (c) a reference in any other law of the Commonwealth or in any contract, agreement or other instrument to the grant of an interest in copyright by licence shall be read, in relation to copyright under this Act, as a reference to the grant of a licence in respect of that copyright.

(2) This section has effect unless the contrary intention appears in the other law of the Commonwealth or in the contract, agreement or other instrument, as the case may be.

(3) In this section, “law of the Commonwealth” means —

- (a) an Act;
- (b) an instrument (including regulations or rules) having effect by virtue of an Act;
- (c) an Ordinance of a Territory of the Commonwealth and any other law in force in a Territory of the Commonwealth;
- (d) an instrument (including regulations or rules) having effect by virtue of such an Ordinance or law; and
- (e) an instrument having effect by virtue of any such regulations or rules as are mentioned in paragraph (b) or paragraph (d) of this sub-section.

Application

207. — Except in so far as this Part otherwise expressly provides, this Act applies in relation to things existing at the commencement of this Act in like manner as it applies in

relation to things coming into existence after the commencement of this Act.

Authorship of photographs

208. — A reference in this Act to the author of a photograph shall, in relation to a photograph taken before the commencement of this Act, be read as a reference to the person who, at the time when the photograph was taken, was the owner of the material on which the photograph was taken.

Publication

209. — (1) For the purposes of the application of sub-section (5) of section 29 of this Act in determining whether a publication that took place before the commencement of this Act was the first publication, the reference in that sub-section to a period of not more than thirty days shall be read as a reference to a period of not more than fourteen days.

(2) For the purposes of the application of sub-section (7) of section 29 of this Act in relation to an act done before the commencement of this Act —

- (a) a reference in that sub-section to copyright includes a reference to copyright under the *Copyright Act* 1905 and to copyright under the Copyright Act, 1911; and
- (b) a reference in that sub-section to the licence of the owner of copyright shall —
 - (i) in relation to copyright under the *Copyright Act* 1905 — be read as a reference to the privity of the owner; and
 - (ii) in relation to copyright under the Copyright Act, 1911 — be read as a reference to the consent or acquiescence of the owner.

Division 2. — Original Works

Expired copyright not to revive

210. — (1) Notwithstanding anything in Part III, copyright does not subsist by virtue of that Part in a work first published before the commencement of this Act unless copyright subsisted in the work under the Copyright Act, 1911 immediately before the commencement of this Act.

(2) The last preceding sub-section does not apply in relation to a work to which Division 5 of this Part applies.

Original works in which copyright subsists

211. — (1) Sub-section (1) of section 32 of this Act applies to works made before the commencement of this Act as if each reference in that sub-section to a qualified person included a reference to a British subject and to a person domiciled in any part of the Queen’s dominions to which the Copyright Act, 1911 extended.

(2) Sub-section (2) of section 32 of this Act applies to works first published before the commencement of this Act as if paragraphs (d) and (e) of that sub-section were omitted.

(3) Sub-section (2) of section 32 of this Act applies to works that are first published after the commencement of this Act and the author of which died before the commencement of the *Nationality and Citizenship Act* 1948 as if the

reference in paragraph (e) of that sub-section to a qualified person included a reference to a person who would have been an Australian citizen if that Act had been in force immediately before his death.

(4) Sub-section (3) of section 32 of this Act does not apply to or in relation to a building that was constructed before the commencement of this Act.

(5) This section has effect subject to the last preceding section.

Duration of copyright in photographs

212. — Sub-section (6) of section 33 of this Act does not apply in relation to a photograph taken before the commencement of this Act but, subject to sub-section (2) of section 32 of this Act as affected by the last preceding section, copyright subsisting in such a photograph by virtue of Part III continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the photograph was taken.

Ownership of copyright

213. — (1) Sub-sections (4) and (6) of section 35 of this Act do not apply in relation to works made before the commencement of this Act.

(2) Sub-section (5) of section 35 of this Act does not apply in relation to a work that was or is made in pursuance of an agreement made before the commencement of this Act.

(3) Where a work is excluded from the application of sub-section (4), sub-section (5) or sub-section (6) of section 35 of this Act by reason of either of the last two preceding sub-sections, sub-section (2) of section 35 of this Act has effect in relation to the work subject to the succeeding sub-sections of this section.

(4) The operation of any of the next three succeeding sub-sections in relation to a particular work may be excluded or modified by agreement.

(5) Where, in the case of a work being a photograph, portrait or engraving —

(a) a person made, for valuable consideration, an agreement with another person for the taking of the photograph, the painting or drawing of the portrait or the making of the engraving by the other person; and

(b) the work was made in pursuance of the agreement, the first-mentioned person is the owner of any copyright subsisting in the work by virtue of Part III.

(6) Where the work was made by the author in pursuance of the terms of his employment by another person under a contract of service or apprenticeship, that other person is the owner of any copyright subsisting in the work by virtue of Part III.

(7) Where the work is a literary, dramatic or artistic work that was made by the author in pursuance of the terms of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship and was so made for the purpose of publication in a newspaper, magazine or similar periodical, the author is entitled to restrain the publication of the work otherwise than in a newspaper, magazine or similar periodical.

(8) In the last three preceding sub-sections, expressions that are defined by section 204 of this Act have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

Infringement by importation, sale and other dealings

214. — For the purposes of sections 37 and 38 of this Act, the fact that, to the knowledge of a person, the making of an article constituted, or, in the case of an imported article, would, if the article had been made in Australia by the importer of the article, have constituted, an infringement of copyright under the Copyright Act, 1911 has the like effect as if, to the knowledge of that person, the making of the article had constituted, or would, if the article had been made in Australia by the importer, have constituted, as the case may be, an infringement of copyright under this Act.

Recording of musical works

215. — (1) Where a record of a work has, before the commencement of this Act, been made by, or with the consent or acquiescence of, the owner of the copyright in the work under the Copyright Act, 1911, Division 6 of Part III has the like effect as if the record had been made in Australia for the purpose of retail sale and had been so made by, or with the licence of, the person who is entitled, by virtue of this Act, to authorize the making in Australia of records of the work.

(2) Notwithstanding sub-section (1) of section 5 of this Act, sub-sections (2) to (7), inclusive, of section 19 of the Copyright Act, 1911 as in force immediately before the commencement of this Act continue to apply in relation to records made before the commencement of this Act and, subject to those sub-sections, any regulations made for the purposes of those sub-sections and in force immediately before the commencement of this Act continue to apply in relation to those records.

Publication of artistic works

216. — Section 68 of this Act does not apply in relation to a painting, drawing, engraving, photograph or cinematograph film made before the date of commencement of this Act, but the copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film made before that date if, by virtue of section 65 or section 66 of this Act, the making of the painting, drawing, engraving, photograph or film would not have constituted an infringement of the copyright under this Act if this Act had been in operation at the time when it was made.

Reconstruction of buildings

217. — The reference in sub-section (2) of section 73 of this Act to construction of a building by, or with the licence of, the owner of the copyright in architectural drawings or plans shall be read as including a reference to construction by, or with the licence of, the person who, at the time of the construction, was the owner of the copyright in the drawings or plans under the law relating to copyright that was in force at that time in the State or Territory of the Commonwealth in which the building was constructed.

Industrial designs

218. — (1) Division 8 of Part III does not apply to artistic works made before the commencement of this Act.

(2) Copyright does not subsist by virtue of this Act in an artistic work made before the commencement of this Act which, at the time when the work was made, constituted a design capable of being registered under the *Designs Act* 1906, or under that Act as amended and in force at that time, and was used, or intended to be used, as a model or pattern to be multiplied by any industrial process.

Reproduction of work upon payment of royalties

219. — (1) The copyright in a literary, dramatic, musical or artistic work that has been published before the commencement of this Act is not infringed by the reproduction of the work for sale if —

- (a) the reproduction takes place at a time after the expiration of twenty-five years, or, in the case of a work in which copyright subsisted at the commencement of the Copyright Act, 1911, after the expiration of thirty years, after the date of the death of the author; and
- (b) the person reproducing the work establishes —
 - (i) that, before the commencement of this Act, he gave the notice in writing of his intention to reproduce the work that was prescribed for the purposes of the proviso to section 3 of the Copyright Act, 1911; and
 - (ii) that he has paid, in the manner that was prescribed for the purposes of that proviso, or is prescribed for the purposes of this section, as the case may be, to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per centum of the price at which he published the reproduction.

(2) The regulations may make provision for or in relation to the manner in which, and the times at which, payment of royalties is to be made for the purposes of sub-paragraph (ii) of paragraph (b) of the last preceding sub-section and may include provision requiring payment in advance, or otherwise securing the payment of the royalties.

(3) Regulations 38 to 42, inclusive, of the Copyright Regulations as in force under the *Copyright Act* 1912-1966 immediately before the commencement of this Act continue in force for the purposes of this section as if they had been made under this Act, but may be amended or repealed by regulations made under this Act.

(4) A reference in paragraph (a) of sub-section (1) of this section to a time after the expiration of a specified number of years from the date of the death of the author of a work shall, in the case of a work of joint authorship, be read as a reference to a time after —

- (a) the expiration of the same number of years from the date of the death of the author who died first; or
- (b) the date of the death of the author who died last, whichever is the later.

(5) Where a literary, dramatic or musical work, or an engraving, in which copyright subsisted at the date of the

death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who died last —

- (a) had not been published;
 - (b) in the case of a dramatic or musical work — had not been performed in public; and
 - (c) in the case of a lecture — had not been delivered in public,
- before that date, sub-section (1) of this section applies as if the author had died on the date on which —
- (d) in the case of a literary work (other than a lecture) or an engraving — the work was first published;
 - (e) in the case of a dramatic or musical work — the work was first published or first performed in public, whichever first happened; or
 - (f) in the case of a lecture — the lecture was first published or first delivered in public, whichever first happened.

(6) In this section, expressions that are defined by section 204 of this Act have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

*Division 3. — Subject-Matter other than Works**Sound recordings*

220. — (1) Sub-section (1) of section 89 of this Act applies in relation to sound recordings made before the commencement of this Act as if the reference in that sub-section to a qualified person included a reference to a British subject and to a person domiciled in any part of the Queen's dominions to which the Copyright Act, 1911 extended.

(2) Sub-section (2) of section 89 of this Act does not apply in relation to a sound recording made before the commencement of this Act.

(3) Section 93 of this Act does not apply in relation to a sound recording made before the commencement of this Act but copyright subsisting in such a recording by virtue of sub-section (1) or sub-section (3) of section 89 of this Act continues to subsist until the expiration of fifty years after the expiration of the calendar year in which the recording was made.

Cinematograph films

221. — Copyright does not subsist by virtue of section 90 of this Act in a cinematograph film made before the commencement of this Act.

Application of Act to dramatic works and photographs comprised in cinematograph films

222. — (1) Where a cinematograph film made before the commencement of this Act was an original dramatic work as defined by section 204 of this Act, this Act (other than this sub-section) has effect in relation to the film as if the film had been an original dramatic work as defined by section 10 of this Act and the person who was the author of the work for the purposes of the Copyright Act, 1911 shall be deemed to be the author of the work for the purposes of this Act as having effect by virtue of this sub-section.

(2) This Act has effect in relation to photographs forming part of a cinematograph film made before the commencement of this Act in like manner as it has effect in relation to photographs not forming part of a cinematograph film.

Television broadcasts and sound broadcasts

223. — Copyright does not subsist by virtue of section 91 of this Act in —

- (a) a television broadcast or a sound broadcast made before the commencement of this Act; or
- (b) a television broadcast or a sound broadcast made after the commencement of this Act that is a repetition of a television broadcast or a sound broadcast made before the commencement of this Act.

Published editions of works

224. — Copyright does not subsist by virtue of section 92 of this Act in a published edition of a work or works where the first publication of the edition took place before the commencement of this Act.

Infringement by importation, sale and other dealings

225. — For the purposes of sections 102 and 103 of this Act, the fact that, to the knowledge of a person, the making of an article constituted, or, in the case of an imported article, would, if the article had been made in Australia by the importer of the article, have constituted, an infringement of copyright under the Copyright Act, 1911 has the like effect as if, to the knowledge of that person, the making of the article had constituted, or would, if the article had been made in Australia by the importer, have constituted, as the case may be, an infringement of copyright under this Act.

Division 4. — Miscellaneous

Actions for infringement

226. — Section 115 of this Act does not apply to an infringement of copyright under the Copyright Act, 1911 and does not affect any proceedings under that Act, whether instituted before or after the commencement of this Act.

Infringing copies

227. — Section 116 of this Act does not apply in relation to an article made, or imported into Australia, before the commencement of this Act, but, notwithstanding sub-section (1) of section 5 of this Act, proceedings may, subject to the Copyright Act, 1911, be brought or continued by virtue of section 7 of that Act in relation to such an article and may be so brought or continued although the proceedings relate to the conversion or detention of the article after the commencement of this Act.

Actions where copyright subject to exclusive licence

228. — Division 3 of Part V does not apply in relation to a licence granted before the commencement of this Act and does not affect any proceedings under the Copyright Act, 1911, whether instituted before or after the commencement of this Act.

Offences and summary proceedings

229. — For the purposes of Division 5 of Part V, the definition of "infringing copy" in section 10 of this Act applies as if any reference in that definition to copyright included a reference to copyright under the Copyright Act, 1911.

Limitation of actions

230. — Section 134 of this Act does not apply in relation to an infringement of copyright under the Copyright Act, 1911 or to an article made, or imported into Australia, before the commencement of this Act.

Restriction of importation of printed copies of works

231. — Where —

- (a) before the date of commencement of this Act, a notice had been given in respect of a work under section 10 of the *Copyright Act* 1912 or of that Act as amended; and
- (b) that notice had not been withdrawn, and had not otherwise ceased to have effect, before that date,

the notice has, during the period of six months commencing on that date, such effect (if any) as it would have if it had been duly given in accordance with section 135 of this Act.

References and applications to Tribunal in relation to licence schemes

232. — (1) Part VI applies in relation to licence schemes formulated before the date of commencement of this Act in like manner as it applies in relation to licence schemes formulated on or after that date, but, for the purposes of the application of that Part in relation to licence schemes formulated before that date, any reference in that Part to copyright includes a reference to copyright under the Copyright Act, 1911.

(2) Any reference in section 157 of this Act to a refusal or failure to grant or procure the grant of a licence, or to a proposal that a licence should be granted, does not include a reference to a refusal or failure that occurred, or a proposal that was made, before the commencement of this Act.

Duration of Crown copyright in photographs

233. — Sub-section (2) of section 180 of this Act applies in relation to photographs taken before the commencement of this Act as if sub-section (3) of that section were omitted.

Duration of Crown copyright in recordings

234. — Section 181 of this Act applies in relation to sound recordings made before the commencement of this Act as if the reference in that section to the expiration of the calendar year in which the recording is first published were a reference to the expiration of the calendar year in which the recording was made.

Crown copyright in films

235. — (1) Sections 178 and 181 of this Act do not apply in relation to cinematograph films made before the commencement of this Act.

(2) Where sections 178 and 181 of this Act do not apply in relation to a cinematograph film by reason of the last preceding sub-section —

- (a) if the film was an original dramatic work as defined by section 204 of this Act — sections 176 and 177, and sub-section (1) of section 180, of this Act apply in relation to that work in accordance with sub-section (1) of section 222 of this Act; and
- (b) sections 176 and 177, and sub-section (2) of section 180 of this Act as modified by section 233 of this Act, apply in relation to photographs forming part of the film in like manner as they apply in relation to photographs not forming part of a cinematograph film.

Works made or published by international organizations

236. — (1) Sub-section (1) of section 187 of this Act does not apply in relation to works made before the commencement of this Act.

(2) Sub-section (2) of section 187 of this Act does not apply in relation to works first published before the commencement of this Act.

Subject-matter, other than original works, made or published by international organizations

237. — (1) Sub-section (1) of section 188 of this Act does not apply in relation to sound recordings or cinematograph films made before the commencement of this Act.

(2) Sub-section (2) of section 188 of this Act does not apply in relation to sound recordings or cinematograph films first published before the commencement of this Act.

(3) Sub-section (3) of section 188 of this Act does not apply in relation to an edition published before the commencement of this Act.

False attribution of authorship of work

238. — (1) It is a breach of the duty imposed on a person by section 190 of this Act if the person does, on or after the date of commencement of this Act, any of the acts mentioned in paragraphs (b) and (c) of sub-section (1) of that section notwithstanding that the name concerned was inserted or affixed before that date.

(2) Subject to the last preceding sub-section, Part IX does not apply in relation to acts done before the commencement of this Act.

(3) In this section, "name" includes initials or a monogram.

Assignments and licences

239. — (1) Subject to this section, where copyright subsists in a work by virtue of this Act, any document that was made, or event that occurred, before the commencement of this Act, being a document or event that had any operation affecting the ownership of, or creating, transferring or terminating an interest, right or licence in respect of, copyright in the work under the Copyright Act, 1911 or would have had such an operation if that Act had continued in force, has the like operation in relation to the copyright in the work under this Act.

(2) If the operation of a document to which the last preceding sub-section applies was or would have been limited to a period specified in the document, the document does not have any operation in relation to the copyright under this Act, except in so far as that period extends after the commencement of this Act.

(3) For the purposes of the operation of a document in accordance with this section —

- (a) expressions used in the document have the same respective meanings as they had immediately before the commencement of this Act, whether or not those expressions have different meanings for the purposes of this Act; and
- (b) sub-section (1) of section 197 of this Act does not apply.

(4) Without prejudice to the generality of sub-section (1) of this section, where the author of a work that was made before the commencement of this Act was the first owner of the copyright in the work —

- (a) any assignment of the copyright, or any grant of an interest in the copyright, made by the author (otherwise than by will) after the commencement of the Copyright Act, 1911 and before the commencement of this Act, being an assignment or grant that has effect in relation to copyright in the work under this Act by virtue of sub-section (1) of this section, does not operate to vest in the assignee or grantee any rights with respect to the copyright in the work after the expiration of twenty-five years after the date of the death of the author;
- (b) on the death of the author, the reversionary interest in the copyright expectant on the termination of that period devolves, notwithstanding any agreement to the contrary, on his legal personal representative as part of his estate; and
- (c) any agreement entered into by the author as to the disposition of that reversionary interest is of no force or effect,

but nothing in this sub-section shall be taken to apply to the assignment of the copyright in a collective work or a licence to publish a work or a part of a work as part of a collective work.

(5) In the last preceding sub-section, expressions that are defined by section 204 of this Act have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

(6) The preceding sub-sections of this section apply in relation to copyright under this Act in a sound recording or in a cinematograph film in like manner as they apply in relation to copyright in a work but a reference in those sub-sections to the copyright under the Copyright Act, 1911 shall —

- (a) in the application of those sub-sections in relation to a sound recording — be read as a reference to the copyright under that Act in records embodying the recording; and
- (b) in the application of those sub-sections in relation to a cinematograph film — be read as a reference to any copyright under that Act in the film (in so far as it con-

stituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

Bequests

240. — (1) Section 198 of this Act does not apply in relation to a bequest contained in the will of a testator who died before the commencement of this Act.

(2) Where —

- (a) an author has died before the commencement of this Act;
- (b) a person has acquired, under the will of the author, the ownership of a manuscript of a work by the author; and
- (c) the work —
 - (i) has not been published;
 - (ii) in the case of a dramatic or musical work — has not been performed in public; and
 - (iii) in the case of a lecture — has not been delivered in public,

the ownership by that person of the manuscript is evidence that that person is the owner of the copyright in the work.

(3) In the last preceding sub-section, expressions that are defined by section 204 of this Act have the meanings respectively given to those expressions by that section and do not have the meanings, if any, respectively given to those expressions by Part II.

Delivery of library material to National Library

241. — Section 201 of this Act does not apply in relation to library material published before the commencement of this Act.

Groundless threats of legal proceedings

242. — Section 202 of this Act does not apply in relation to threats made after the commencement of this Act in respect of acts that took place before the commencement of this Act and, notwithstanding section 6 of this Act, section 41A of the *Copyright Act 1912-1966* continues to apply in relation to any such threats in like manner as it continues to apply in relation to threats made before the commencement of this Act.

Division 5. — Works Made before 1 July, 1912

Definition

243. — In this Division, “right conferred by the Copyright Act, 1911”, in relation to a work, means a right that, by virtue of section 24 of the Copyright Act, 1911, was conferred in place of a right that subsisted immediately before the commencement of that Act.

Application

244. — This Division applies to works made before the first day of July, One thousand nine hundred and twelve.

Rights conferred by Copyright Act, 1911

245. — Notwithstanding anything in Division 2 of this Part, section 32 of this Act does not apply to a work to which this Division applies unless a right conferred by the Copyright Act, 1911 subsisted in the work immediately before the commencement of this Act.

Performing rights

246. — (1) Where the right conferred by the Copyright Act, 1911 in relation to a dramatic or musical work to which this Division applies did not include the sole right to perform the work in public, then, copyright, in so far as it subsists in the work by virtue of this Act, does not include the performing rights in relation to the work.

(2) Where the right conferred by the Copyright Act, 1911 in relation to a dramatic or musical work to which this Division applies consisted only of the sole right to perform the work in public, then, copyright, in so far as it subsists in the work by virtue of this Act, consists only of the performing rights in relation to the work.

(3) For the purposes of this section, the performing rights, in relation to a work, are —

- (a) the exclusive right to perform the work, or an adaptation of the work, in public;
- (b) the exclusive right to broadcast the work or an adaptation of the work; and
- (c) the exclusive right to cause the work, or an adaptation of the work, to be transmitted to subscribers to a diffusion service.

Contributions to periodicals

247. — Where —

- (a) a work to which this Division applies (in this section referred to as “the relevant work”) consists of an essay, article or item forming part of, and first published in, a review, magazine or other periodical or work of a like nature; and
- (b) immediately before the commencement of this Act, a right of publishing the relevant work in a separate form subsisted by virtue of the note to the First Schedule to the Copyright Act, 1911,

copyright subsisting in the relevant work by virtue of this Act is subject to that right of publishing the relevant work in a separate form.

Assignments and licences

248. — (1) Without prejudice to the generality of sub-section (1) of section 239 of this Act, where —

- (a) the author of a work to which this Division applies had, before the commencement of the Copyright Act, 1911, made an assignment or grant of a kind referred to in paragraph (a) of the proviso to sub-section (1) of section 24 of that Act (in this section referred to as “the proviso”); and
 - (b) copyright subsists in the work by virtue of this Act,
- the succeeding sub-sections of this section have effect.

(2) If, before the commencement of this Act, an event occurred or a notice was given, being an event or notice that, in accordance with paragraph (a) of the proviso, had any operation affecting the ownership of the right conferred by the Copyright Act, 1911 in relation to the work or creating, transferring or terminating an interest, right or licence in respect of that right, that event or notice has the like operation in relation to the copyright in the work under this Act.

(3) Any right that, at a time after the commencement of this Act, would, by virtue of paragraph (a) of the proviso, have been exercisable in relation to the work or in relation to the right conferred by the Copyright Act, 1911, if this Act had not been enacted, is exercisable in relation to the work or in relation to the copyright subsisting in the work under this Act, as the case may be.

(4) If, in accordance with paragraph (a) of the proviso, the right conferred by the Copyright Act, 1911 would have reverted to the author or his personal representatives on the date referred to in that paragraph, and that date occurs after the commencement of this Act, then on that date —

(a) the copyright in the work under this Act reverts to the author or his personal representatives, as the case may be; and

(b) any interest of any other person in that copyright that subsists on that date by virtue of any document made before commencement of the Copyright Act, 1911 ceases.

PART XII

Regulations

Regulations

249. — The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing penalties not exceeding a fine of One hundred dollars for offences against the regulations.

International Publishers Association (IPA)

(Working Conference, London, September 30 to October 2, 1970)

The International Publishers Association (IPA) held a Working Conference in London from September 30 to October 2, 1970. Member associations from the following 22 countries were represented: Australia, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany (Federal Republic), India, Israel, Italy, Japan, Netherlands, Norway, Republic of Korea, Singapore, Spain, Sweden, Switzerland, United Kingdom, United States of America.

WIPO, invited to attend in an observer capacity, was represented by Mr. Roger Harben, Counsellor, Copyright Division, and Unesco by Mr. Julian Behrstock, Director, Office of Free Flow of Information and International Exchanges.

The plenary sessions of the Conference, which adopted resolutions relating to each agenda item, were presided over by the President of the IPA, Mr. Ernest Lefebvre (Netherlands).

The agenda included an item on International Copyright, concerned with the proposals for the revision of the Berne Convention and the Universal Copyright Convention, for which introductory papers had been prepared by Mr. Ronald Barker, Secretary of the Publishers Association of the United Kingdom. The two resolutions adopted unanimously under this heading are set out below, together with a further resolution concerning photocopying.

At the conclusion of a discussion on "The Free Flow of Raw Materials for Books", introduced by Mr. Dina N. Malhotra of the Federation of Publishers' and Booksellers' Associations of India, a resolution was unanimously adopted in which "the vital importance . . . of encouraging the local publishing and production of books in each member country" was recognized.

The next Congress of the IPA will be held in 1972 in France.

Resolutions

International Copyright

The Working Conference of the International Publishers Association meeting in London on October 2, 1970,

Recalling the Resolution adopted unanimously by the members of IPA at their 18th Congress in Amsterdam on June 15, 1968,

Believing that free negotiation within the framework of international copyright offers the most effective means of ensuring that works required

by developing countries are made available in editions and at prices suited to the circumstances of those countries,

Records its satisfaction with the revision of the Universal Copyright Convention proposed by the Intergovernmental Committee of UCC in Paris in September 1970 and with the revision of the Stockholm Act of the Berne Convention proposed by the Permanent Committee of the Berne Union at its meeting in Geneva in September 1970;

Recognizing that the proposed revisions represent substantial concessions by all the developed and developing countries concerned,

Expresses the hope that these revisions will be given effect at the simultaneous Revision Conferences to be held in Paris from June 21 to July 10, 1971, and that the revised Conventions will so assist the development of developing countries that the two Conventions may in due course be further revised to ensure that further protection of authors' rights which the two Conventions were designed to provide.

* * *

This Working Conference of IPA recommends that the IPA Executive Committee take measures to set up agencies with the help of Unesco's International Copyright Information Centre which will facilitate the flow of rights from the developed to the developing countries, and vice versa, so that there is wider dissemination of culture, and an increase in literacy by the publication of local translations and reprints, through free negotiations.

Photocopying

The Working Conference of the International Publishers Association meeting in London on October 2, 1970,

Recognizing that photocopying provides an invaluable means of access to copyright works, but that uncontrolled copying could so undermine the economics of publishing that new works would be less readily available to those who have need of them, and that, consequently, it is in the interests of authors, publishers and users alike that photocopying should be controlled by copyright proprietors on a basis which compensates the copyright proprietors,

Urges its member associations to seek in their several countries by legislation or other effective means a system of photocopying control which will not impede reasonable photocopying but will so reward copyright proprietors as to ensure a continued supply of new works for the benefit of all users,

And expresses the hope that further consideration will be given by the Permanent Committee of the Berne Union and the Intergovernmental Committee of the Universal Copyright Convention to the possibility of establishing international protection against unauthorized photocopying subject to such exceptions for "fair use" as domestic legislation may permit having regard for the need to protect copyright works effectively in the interest of education and all other users,

And in pursuance of these ends asks the IPA to set up a Committee consisting of representatives of member associations to work out proposals for legislative rules for photocopying.

International Secretariat of Entertainment Trade Unions (ISETU)

(Conference on copyright, residual and performers' rights, Geneva, October 6 and 7, 1970)

The ISETU Conference on copyright, residual and performers' rights met on October 6 and 7, 1970, at Geneva. Representatives of trade unions from eleven countries (Argentina, Australia, Austria, France, Germany (Federal Republic), Mexico, Netherlands, Sweden, Switzerland, United Kingdom, United States of America) were present, as well as an observer from the Writers Guild of Great Britain.

Two intergovernmental organizations, WIPO and ILO, also sent observers. WIPO was represented by Mr. Mihailo Stojanović, Legal Assistant, Copyright Division. ILO was represented by Mr. H. Dunning, Chief, Workers' Relations Branch, and Mr. Edward Thompson, Head, Non-Manual Workers' Section, General Conditions of Work Branch.

The agenda of the Conference included several items dealing with the protection of performers' rights and the safe-

guard of their interests in the light of recent developments, such as: problems raised in connection with audio-visual cassettes and wire television, international protection of satellite signals, progress in achieving performers' rights legislation in different countries, and progress of the Rome Convention. It also included various questions concerning the national and international protection of copyright: copyright in cinematographic and televisual works, both in different countries and in the Stockholm Act of the Berne Convention, and the proposals for revision of the Berne Convention and the Universal Copyright Convention.

The Conference dealt with the different items within an exchange of views on the basis of which the competent bodies of ISETU shall take appropriate action.

- September 27 to October 1, 1971 (Berne) — Joint ad hoc Committee on the International Classification of Patents — Working Group II *
- September 27 to October 2, 1971 (Geneva) — WIPO Coordination Committee, Executive Committees of the Paris and Berne Unions, Assembly and Committee of Directors of the National Property Offices of the Madrid Union, Council of the Lisbon Union
- October 4 to 8, 1971 (Geneva) — Committee of Experts on International Registration of Marks
Object: Preparation of the Revision of the Madrid Agreement or of the Conclusion of a New Treaty — *Invitations:* Member States of the Paris Union and organizations concerned
- October 4 to 9, 1971 (Geneva) — Joint ad hoc Committee on the International Classification of Patents — Working Group V *
- October 11 to 15, 1971 (Geneva) — ICIREPAT — Technical Committee for Computerization
- October 13 to 15, 1971 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems
- October 18 to 22, 1971 (Geneva) — ICIREPAT — Technical Committee for Shared Systems
- October 25 to 29, 1971 (Geneva) — ICIREPAT — Technical Committee for Standardization
- November 9 to 12, 1971 (Geneva) — Joint ad hoc Committee on the International Classification of Patents — Meeting of the Bureau *
- November 15 to 18, 1971 (Geneva) — Joint ad hoc Committee on the International Classification of Patents — Plenary Committee *
- November 18 to 20, 1971 (Geneva) — Intergovernmental Committee Established by the Rome Convention (Neighboring Rights)
Note: Meeting convened jointly with the International Labour Office and Unesco
- November 22 to 27, 1971 (Geneva) — Executive Committee of the Berne Union
- December 6 to 11, 1971 (Geneva) ** — Patent Cooperation Treaty (PCT) — Financing Working Group and Interim Committees
Members: (i) Financing Working Group: Canada, France, Germany (Fed. Rep.), Italy, Japan, Netherlands, Soviet Union, Sweden, Switzerland, United Kingdom, United States of America; (ii) Interim Committees: Signatory States of the PCT
- December 13 to 15, 1971 (Geneva) — ICIREPAT — Technical Coordination Committee

* Meeting convened jointly with the Council of Europe.

** Dates to be confirmed later.

Meetings of Other International Organizations Concerned with Intellectual Property

- February 22 and 23, 1971 (London) — International Confederation of Societies of Authors and Composers — Legal Committee
- April 17 to 24, 1971 (Vienna) — International Chamber of Commerce — Congress
- May 18 to 21, 1971 (Caracas) — Inter-American Association of Industrial Property — 3rd Congress
- May 18 to 22, 1971 (Stockholm) — International Federation of Patent Agents — General Assembly
- June 21 to 28, 1971 (Toronto - Montreal) — International Writers Guild — 3rd Congress
- July 5 to 24, 1971 (Paris) — Unesco — Diplomatic Conference for the Revision of the Universal Copyright Convention
- International Conference for the Setting Up of a European System for the Grant of Patents (Luxembourg):
- January 12 to 15, 1971 — Working Party I
- April 20 to 30, 1971 — Conference

VACANCIES IN WIPO

Applications are invited for the following posts:

Competition No. 135

Technical Counsellor
(Industrial Property Division)

Category and grade: P. 4/P. 5, according to qualifications and experience of the incumbent.

Principal duties:

The incumbent will — subject to general directives and by delegation of authority from the Head of the Industrial Property Division — be responsible to the latter for the coordination and implementation of the program of WIPO in the field of documentation, classification and information retrieval with respect to patent documents.

His particular duties will include:

- (a) coordination of, and participation in, the work of WIPO in the field of:
 - (i) documentation, in particular as regards the implementation of the relevant provisions of the Patent Cooperation Treaty (PCT);
 - (ii) patent classification, in particular as regards the work with respect to the International Patent Classification (IPC);
 - (iii) information retrieval, in particular as regards the work of the "Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices" (ICIREPAT);
- (b) assistance in preparation of the program of WIPO in the above-mentioned fields;
- (c) preparation of, and secretarial assistance to, meetings convened by WIPO in execution of its program in the above-mentioned fields, in particular preparation of documents for, and reports of, such meetings;
- (d) preparation of reports on the work performed and planned in the above-mentioned fields;
- (e) assistance in coordinating the work of the Patent Offices and interested governmental organizations participating in the program of WIPO in the above-mentioned fields;
- (f) contacts with industry and private organizations to ensure harmonization of efforts in the above-mentioned fields;
- (g) participation in meetings of other international organizations dealing with documentation, classification and information retrieval with respect to patent documents.

Qualifications:

- (a) University degree in a relevant field of science or technology or qualifications equivalent to such degree.
- (b) Wide knowledge and experience in the fields of documentation, classification and information retrieval.
- (c) Excellent knowledge of English and at least a good knowledge of French.

Practical experience in dealing with documentation, classification and information retrieval problems in the patent field and in the processing of patent applications, for instance as a patent examiner, would be an advantage.

Competition No. 136

Deputy Head, External and Public Relations Division

Category and grade: P. 4/P. 5, according to qualifications and experience of the incumbent.

Principal duties:

The incumbent will assist the Head of the Division in directing the said Division and in the accomplishment of the following tasks:

- (a) such relations with Member States as fall within the competence of the Division, including those connected with the functions of WIPO as depository of conventions and treaties;
- (b) relations with the United Nations, its bodies and Specialized Agencies, as well as with other intergovernmental organizations;
- (c) representation of WIPO at meetings sponsored by the organizations and bodies mentioned under item (b);
- (d) preparation of working documents for, and reports on, the said meetings.

The Deputy Head will directly supervise the work of the officers of the Division acting in the external relations field.

Qualifications:

- (a) University degree in law or equivalent legal qualifications.
- (b) Familiarity with the activities and procedures of the United Nations, its organs and its Specialized Agencies.
- (c) Experience in the field of intellectual property, especially in its international aspects.
- (d) Proven ability for representing the Organization at international meetings.
- (e) Excellent knowledge of one of the following working languages: English or French; and at least a good knowledge of the other.

Competition No. 137

Head of Copyright Division

Category and grade: P. 5

Principal duties:

The incumbent will direct the Copyright Division of the International Bureau. In this capacity his duties will include:

- (a) formulation of proposals for the preparation and implementation of the WIPO's Copyright and Neighboring Rights program;
- (b) writing of legal studies;
- (c) acting as editor of *Copyright* and *Le Droit d'Auteur*;
- (d) representing WIPO at meetings concerning Copyright and Neighboring Rights and preparation of working papers for and reports on such meetings;
- (e) directing the work of maintaining up to date a collection of Copyright and Neighboring Rights legislation.

Qualifications:

- (a) University degree in law or equivalent legal qualifications.
- (b) Wide experience in the field of Copyright and Neighboring Rights, including its international aspects.
- (c) Excellent knowledge of one of the following working languages: English or French; and at least a good knowledge of the other. Additional languages would be an advantage.

*Competition No. 138**Counsellor*

(Director General's Office)

Category and grade: P. 4/P. 5, according to qualifications and experience of the incumbent.

Principal duties:

The incumbent will, under the general supervision of the First Deputy Director General, assist the Director General and the Deputy Directors General by performing in particular the following tasks:

- (a) participation in the general planning of WIPO activities;
- (b) contacts with the various services of WIPO, particularly as regards the control of progress on various assignments and liaison among such services on questions requiring coordinated activity;
- (c) carrying out special studies in the intellectual property and international relations fields;
- (d) collaboration in the preparation of WIPO meetings on administrative and legal matters;
- (e) representing WIPO in international meetings; contacts with representatives of Member States and other visitors.

Qualifications:

- (a) University degree in law or equivalent legal qualifications.
- (b) Experience in the field of Intellectual Property (including its international aspects).
- (c) Proven ability in implementing professional contacts at an international level.
- (d) Excellent knowledge of one of the following working languages: English or French; and at least a good knowledge of the other.

With regard to the above-mentioned posts:

Nationality:

Candidates must be nationals of one of the Member States of WIPO or of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of WIPO.

Age limit:

At the P. 5 level: less than 55 years of age at date of appointment.

At the P. 4 level: less than 50 years of age at date of appointment.

Date of entry on duty:

As mutually agreed.

Applications:

Application forms and full information regarding the *conditions of employment* may be obtained from the Head of the Administrative Division, WIPO, 32, chemin des Colombettes, 1211 Geneva, Switzerland. Please refer to the number of the competition.

Closing date: February 28, 1971.
