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AN ACT to Amend the Copyright Act.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Copyright (Amendment) Act, 2015, and shall be read and construed as one with the Copyright Act (hereinafter referred to as the "principal Act") and all amendments thereto.

Short title and construction.

2. Section 2 of the principal Act is amended in subsection (1)—
(a) by inserting immediately before the definition of "adaptation" the following definition—

Amendment of section 2 of principal Act.

““accessible format”, in relation to a protected work means a version of the work in Braille, large-

print, electronic format or otherwise modified to provide a person with a disability with improved access to the work;”;

- (b) by inserting next after the definition of “author,” the following definition—

““authorized body” means—

- (a) the Jamaica Council for Persons with Disabilities;
 - (b) the National Library of Jamaica;
 - (c) any other body that is so named by the Minister on the recommendation of the Jamaica Intellectual Property Office;”;
- (c) by inserting next after the definition of “cable programme service” the following definitions—

““carrier” means a person who is granted a carrier licence pursuant to section 13 of the *Telecommunications Act*;

“circumvention” in relation to a technological protection measure means—

- (a) the descrambling of a scrambled work;
- (b) the decryption of an encrypted work, or other action to avoid, bypass, remove, deactivate, or impair a technological protection measure without the authority of the copyright owner;

“circumvention device” means a device that—

- (a) is designed or produced for the purpose of the circumvention of a technological protection measure that effectively controls access to a protected work in respect of which rights are conferred under Part IX; or

- (b) has only a limited commercially significant purpose or use, other than the circumvention of a technological protection measure that effectively controls access to a protected work;”;
- (d) by inserting next after the definition of “country” the following definition—
 - “ “Crown copyright” means copyright owned by the Crown;”;
- (e) by inserting next after the definition of “exclusive recording contract” the following definition—
 - “ “Executive Director” means the Executive Director of the Jamaica Intellectual Property Office;”;
- (f) by inserting next after the definition of “film” the following definition—
 - “ “fixation” means the embodiment of sounds or images or the representations thereof, from which sounds or images or representations can be perceived, reproduced or communicated through a device and “fix” shall be construed accordingly;”;
- (g) by inserting next after the definition of “musical work” the following definitions—
 - “ “Office” means the Jamaica Intellectual Property Office established under the *Jamaica Intellectual Property Office Act*;
 - “orphan work” means a protected work in relation to which the author or copyright owner has not been identified or located after reasonable efforts to identify or locate the author or copyright owner;”;
- (h) in the definition of “performer”, by deleting the words “plays in or otherwise performs, a literary, dramatic, musical, or artistic work” and substituting therefor the words “plays in,

interprets, or otherwise performs, a literary, dramatic, musical or artistic work or an expression of folklore, as the case may be”;

- (i) in the definition of “record”, by inserting immediately after the words “or other device” the words “any electronic or other intangible fixation,”;
- (j) by inserting next after the definition of “recording” the following definition—
 - “ “Register” means the Register of Copyright and Related Rights kept pursuant to section 9A;”;
- (k) by inserting next after the definition of “reprographic process” the following definition—
 - “ “rights management information” means any information attached to or embodied in a copy of a work or other subject matter, which identifies—
 - (a) the work;
 - (b) the author of the work;
 - (c) the owner of any right in the work;
 - (d) the performer of a performance embedded in the work;
 - (e) the terms or conditions of the use of the work; or
 - (f) any numbers or codes that represent any of the information set out in paragraph (a), (b), (c), (d) or (e);”;
- (l) by inserting next after the definition of “sculpture” the following definition—
 - “ “service provider” means a person who is the holder of a service provider licence issued under section 13 of the Telecommunications Act;”;

- (m) in paragraphs (a) and (b) of the definition of “sound recording”, by inserting immediately after the words “which sounds” wherever they appear the words “or representation of the sounds” in each case;
- (n) by inserting next after the definition of “specified country” the following definitions—

“ “specified service” means a telecommunication service or such other service as may be prescribed under the Telecommunications Act;

“technological protection measure” means a device or component or feature incorporated into a process that is designed in the ordinary course of its operation, to prevent or inhibit the infringement of rights in a protected work by—

- (a) ensuring that access to the work is available solely by use of an access code or process, including decryption, descrambling or other transformation of the work, with the authority of the owner or exclusive licensee of the copyright;
- (b) a copy control mechanism, which limits the number of permissible copies that may be made of the protected work;”.

3. Section 9 of the principal Act is amended—

- (a) in subsection (1), by—
 - (i) deleting from paragraph (d), the word “or”;
 - (ii) deleting the full stop at the end of paragraph (e) and substituting therefor the word “; or”; and

Amendment
of section 9
of principal
Act.

(iii) inserting next after paragraph (e) as amended, the following as paragraph (f)—

“(f) to authorize any communication to the public of the work by wire or wireless means, including making the work available for access by any member of the public from a place and time determined by the member of the public.”; and

(b) by renumbering subsections (2) and (3) as subsections (3) and (4) respectively and inserting next after subsection (1), the following as subsection (2)—

“(2) Subject to subsection (1) (e), adaptations of a work shall be protected as original works, without prejudice to the copyright in the original work.”.

Insertion of new sections 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H and 9I in principal Act.

4. The principal Act is amended by inserting next after section 9, the following as sections 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H and 9I—

“Register of Copyright and Related Rights.

9A.—(1) There shall be kept by the Jamaica Intellectual Property Office, (whether electronically or otherwise) a Register to be called the Register of Copyright and Related Rights, in which shall be entered the following information submitted pursuant to an application under section 9B—

- (a) the names or titles of works in which copyright is presumed to subsist;
- (b) the names and addresses of authors, publishers and owners of copyright and related rights, assignees of copyright and persons to whom an interest in copyright has been granted by licence; and
- (c) such other particulars as may be prescribed.

(2) Documents purporting to be copies of or extracts from any entry in the Register, if certified by Executive Director or other authorized officer under the seal of the Office, shall in the absence of evidence to the contrary, be presumed to be authentic for all purposes and shall be admissible as evidence of the contents thereof in any legal proceedings.

Application
to enter
particulars in
Register.

9B.—(1) Any person referred to in subsection (2)(c), or his agent, who intends to name particulars of a work entered in the Register, shall make an application to the Executive Director, in the form prescribed as Form A in the First Schedule, accompanied by the fees prescribed in relation thereto in the Third Schedule.

Form A.
First
Schedule.
Third
Schedule.

(2) An application made under subsection (1) shall contain—

- (a) the name and address of the author, and if the author is dead, the date of the author's death, if known;
- (b) the name and address of the owner of the copyright in the work;
- (c) a declaration in the form prescribed as Form B in the First Schedule that the applicant is—
 - (i) the author of the work;
 - (ii) the owner of the copyright in the work;
 - (iii) a person to whom a partial assignment as described under section 23(2) has been made;
 or

Form B.
First
Schedule.

- (iv) a person to whom an interest in the copyright has been granted by licence;
- (d) the nature of the work;
- (e) the title of the work;
- (f) in the case of a published work, the date and place of first publication; and
- (g) any additional information as may be prescribed.

(3) Where the Executive Director receives an application under this section, the Executive Director may conduct such inquiry as the Executive Director deems fit before entering the particulars of the work in the Register.

(4) Where the Executive Director enters a work in the Register, the Executive Director shall issue to the applicant under this section a certificate of registration in the form set out as Form C in the First Schedule.

Form C.
First
Schedule.

Copyright
author, owner
or assignee,
etc., not
deprived of
rights where
copyright not
registered.

9C.—(1) The non-registration in the Register, of a work in accordance with section 9A, shall not deprive a person referred to in section 9B (2)(c) (i), (ii), (iii) or (iv) of his rights under this Act in relation to the work.

(2) For the avoidance of doubt and without limiting the generality of subsection (1), the registration of a work in the Register is not a condition precedent to instituting legal action for the infringement of copyright or any related rights in the work.

Executive
Director may
amend or
alter the
Register.

9D. The Executive Director may, as advised by the applicant for registration of a work, or on the Executive Director's own motion, and shall if so directed by a court of competent jurisdiction, amend

or alter the Register, in relation to any work registered therein, to—

- (a) correct any error in any name, address or particulars, or other error appearing in the Register in relation to the work;
- (b) record—
 - (i) any transfers in ownership or other dealing in the work; or
 - (ii) the date of death of the author;
- (c) update any name, address or other particulars; and
- (d) remove the entry in relation to the work where—
 - (i) the Executive Director is satisfied that the entry has been obtained by fraud or other malfeasance; or
 - (ii) if the applicant so requests.

Author or owner of copyright may request to change registration details. Form D. First Schedule.

9E.—(1) Subject to subsection (2), an author or owner of copyright and related rights, in relation to work registered in the Register, may make a request to change the details of such registration in the form set out as Form D in the First Schedule.

(2) The Executive Director may refuse to make the change requested under subsection (1) if the Executive Director is satisfied that—

- (a) the interest of any other person is likely to be adversely affected and no satisfactory evidence of consent has been provided to the Executive Director of that person to the change; or

- (b) it would be improper to make the change in the absence of—
 - (i) a court order; or
 - (ii) the carrying out of any action appearing to the Executive Director to be prudent in the circumstances.

Register open for public inspection.

9F. The Office shall make the Register available for public inspection whether by electronic or other access thereto.

Publication of corrections to the Register.

9G. The title or names of works, names and addresses of authors and other prescribed particulars of authors and works in every entry made in the Register, and any corrections made thereto may be published by the Executive Director from time to time.

Damages caused by fraud, etc. recoverable in Court.

9H. Where a person applies for the registration of copyright on behalf of another person, and as a result of a fraudulent or an erroneous assumption of such authority, damages results to the copyright owner or owner of related rights, such damages shall be recoverable in court.

Immunity of Office in relation to Register.

9I. The Office shall not be liable in respect of any action done or omission made in good faith, in relation to any of its functions exercised under sections 9A, 9B, 9C, 9D, 9E, 9F , 9G , 9H or 9I.”.

Amendment of section 10 of principal Act.

5. Section 10 of the principal Act is amended by deleting the words “fifty years” wherever they appear and substituting therefor in each case the words “ninety-five years”.

Amendment of section 11 of principal Act.

6. Section 11 of the principal Act is amended in subsection (1) by deleting the words “fifty years” wherever they appear and substituting therefor in each case the words “ninety-five years”.

7. Section 12 of the principal Act is amended in subsection (1) by deleting the words “fifty years” and substituting therefor the words “ninety-five years”.

Amendment of section 12 of principal Act.

8. Section 13 of the principal Act is amended by deleting the words “twenty-five years” and substituting therefor the words “fifty years”.

Amendment of section 13 of principal Act.

9. The principal Act is amended by inserting next after section 13, the following as sections 13A, 13B and 13C—

Insertion of new sections 13A, 13B and 13C in principal Act.

“Duration of copyright of where copyright vests in employer. 13A. Where, pursuant to an agreement between employer and employee, the copyright in a work created by the employee has vested in the employer, the copyright expires at the end of the period of ninety-five years from the date of the death of the employee.

Crown copyright and duration. 13B.—(1) Where a work is made by a person employed or engaged by the Crown under a contract of service, a contract of apprenticeship or a contract for services, the Crown is the first owner of any copyright in the work, subject to any agreement to the contrary.

(2) Notwithstanding subsection (1), Crown copyright shall subsist in a literary work consisting of any of the following works—

- (a) a Bill introduced into either of the Houses of Parliament or any report of a committee of Parliament;
- (b) an Act of Jamaica or any subsidiary legislation; or
- (c) the Hansard Reports of Parliamentary Debates.

(3) Crown copyright shall not be deemed to be infringed by non commercial use of work, if such use is not misleading, mischievous or otherwise derogatory.

(4) Nothing in subsection (2) shall affect copyright in any work that is incorporated by reference in a work referred to in subsection (2).

(5) Crown copyright shall expire—

- (a) in the case of a typographical arrangement of a published edition, at the end of the period of fifty years from the end of the calendar year in which the work is made; and
- (b) in the case of any other work, at the end of the period of ninety-five years from the end of the calendar year in which the work is made.

(6) This section applies only—

- (a) in relation to authors employed by the Crown and the copyright existing by virtue of their contribution to the work;
- (b) in the case of a work of joint authorship (other than where paragraph (a) would apply) where one or more, but not all, of the authors are persons employed or engaged by the Crown under—
 - (i) a contract of service;
 - (ii) a contract of apprenticeship; or
 - (iii) a contract for services.

(7) Without limiting the effect of section 150, the Minister may make regulations in relation to Crown copyright, including any dealings therein or any exceptions to infringements thereof.

Application
to Crown
copyright.

13C. Subject to the provisions of this Act, this Act applies in relation to Crown copyright as to other copyright.”

10. Section 33 of the principal Act is amended in subsection (1) by—

Amendment
of section 33
of principal
Act.

- (a) deleting the word “or” at the end of paragraph (a);
- (b) deleting the comma at end of paragraph (b) and substituting therefor the word “; or”;
- (c) inserting next after paragraph (b) as amended, the following as paragraph (c)—

“(c) has in his possession, custody or control, a circumvention device, knowing or having reason to believe that the circumvention device has been or is being used to—

- (i) circumvent a technological protection measure;
 - (ii) give unauthorized access to a protected work; or
 - (iii) make infringing copies of a protected work.”; and
- (d) deleting the words “copy or article” and substituting therefor the words “copy, article or circumvention device”.

11. Section 36 of the principal Act is amended in—

Amendment
of section 36
of principal
Act.

- (a) subsection (1), by deleting the word “concluded” and substituting therefor the word “conferred”;
- (b) subsection (2)(g), by inserting immediately after—
 - (i) the word “pseudonymous” the words “or orphan”; and
 - (ii) the words “is dead” the words “or that the copyright owner cannot be identified or located after reasonable inquiry”.

Amendment
of section 46
of principal
Act.

12. Section 46 of the principal Act is amended by inserting next after subsection (3), the following as subsections (3A) and (3B)—

- “ (3A) A person who causes—
- (a) the manufacture of a circumvention device;
 - (b) the importation into Jamaica, of a circumvention device for sale or rental;
 - (c) the distribution of a circumvention device; or
 - (d) the unauthorized broadcast of a circumvented work, commits an offence, if the person ought reasonably to have known that the circumvention device is likely to be used to circumvent or facilitate the circumvention of a technological protection measure that will prejudicially affect an owner of copyright.
- (3B) A person commits an offence if the person causes—
- (a) the removal or alteration of rights management information attached to a copy of a protected work, without the permission of the owner or exclusive licensee of the copyright; or
 - (b) the importation for distribution, the distribution or broadcast to the public of a protected work, if the person knows that the rights management information attached to the protected work has been removed or altered without the permission of the owner or exclusive licensee of the copyright.”.

Amendment
of section 48
of principal
Act.

13. Section 48 of the principal Act is amended in subsection (1) by—

- (a) deleting the word “or” appearing at the end of paragraph (a);
- (b) deleting the comma at the end of paragraph (b) and substituting therefor the word “; or”;

- (c) inserting next after paragraph (b), as amended, the following as paragraph (c)—

“(c) he had in his possession, custody or control a circumvention device, knowing or having reason to believe that it has been or is being used to—

- (i) circumvent a technological protection measure; or
- (ii) give unauthorized access to, or make infringing copies of, a protected work;”;

- (d) deleting the words “copy or article” and substituting therefor the words “copy, article or circumvention device”.

14. Section 55 of the principal Act is amended by—

Amendment
of section 55
of principal
Act.

- (a) deleting the word “or” appearing at the end of paragraph (a);
- (b) deleting the comma appearing at the end of paragraph (b) and substituting therefor a semicolon; and
- (c) inserting next after paragraph (b) as amended, the following as paragraphs (c), (d) and (e)—

“(c) by the making of copies for the purpose of restoring or preserving the work;”;

- (d) by the making of copies which are transient, temporary or incidental to the authorized publication of the work; or
- (e) by the incidental storage and copying of the work which occurs pursuant to authorized transmission of the work.”.

15. The principal Act is amended by inserting next after section 65, the following heading and sections as sections 65A and 65B—

Insertion of
new heading
and sections
65A and 65B
in Principal
Act.

“ *Exceptions for Persons Who are Disabled*

Copyright of
works by
persons with
a print
disability.

65A.—(1) An authorized body may, if the conditions in subsection (2) are complied with, make or supply copies or adaptations of published literary or

dramatic works for the purpose of providing persons who have a print disability, with copies that are in an accessible format, without infringing any copyright in those literary or dramatic works.

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

- (a) the authorized body has made reasonable efforts to obtain a copy of the complete work, in an accessible format at a reasonable commercial price, but has been unable to do so;
- (b) the copies are provided only to persons having a print disability;
- (c) where any person acting on behalf of the authorized body makes a copy or adaptation of a published literary or dramatic work under this section, the authorized body shall, as soon as is reasonably practicable, take all reasonable steps to notify the owner of the copyright in the work of the making of a copy or adaptation; and
- (d) if any person with a print disability to whom a copy is provided is required to pay for the copy, the payment required is no higher than a sum consisting of the cost of the production of the copy and a reasonable contribution to the general expenses of the authorized body, with no element of profit.

(3) An authorized body may copy a work contained in an electronic medium for the purposes of converting the work to an accessible format.

(4) Circumvention of a technological protection measure for the purposes referred to in subsection (1), shall not be treated as a commission of an offence or infringement of any copyright in the work.

(5) In this section, a person has a print disability if that person—

- (a) is blind;
- (b) suffers from severe impairment of his sight;
- (c) is unable to hold or manipulate printed material;
- (d) is unable to focus or move his eyes; or
- (e) suffers any other disability with respect to visual perception.

Hearing disabled.

65B.—(1) A person with a hearing disability, an authorized body or an organization acting on that person's behalf and approved for that purpose by an authorized body, may, without infringing any copyright in the work—

- (a) translate, adapt or reproduce in sign language a literary or dramatic work, other than a cinematographic work, in a format specially designed for persons with a hearing disability; or
- (b) perform in public a literary or dramatic work, other than a cinematographic work, in sign language, either live or in a format specially designed for persons with a hearing disability.

(2) In this section a person has a hearing disability if that person—

- (a) suffers from severe or profound deafness; or
- (b) is not able to discriminate speech in a meaningful way, from other sounds.”

Amendment
of section 71
of principal
Act.

16. Section 71 of the principal Act is amended by renumbering subsections (2) and (3) as subsections (5) and (6) respectively, and inserting next after subsection (1), the following as subsections (2), (3) and (4)—

“ (2) For the purposes of this section—

- (a) efforts undertaken to ascertain the identity or locate an author, referred to in subsection (1), shall be documented; and
- (b) without prejudice to the adequacy of any other form of effort to ascertain the identity of the author, reasonable inquiry shall be deemed to have been made, where a notice seeking to ascertain the location or identity of the author has been published electronically or otherwise in a newspaper in island-wide circulation in Jamaica or other publicly available medium.

(3) Where an act referred to in subsection (1) is done for profit, or is not governed by the other provisions of this Part, and the author is located or identified no later than six years after the end of the calendar year in which the act takes place, the copyright owner shall be entitled to receive equitable remuneration for the use made of the work.

(4) Where there is no agreement as to equitable remuneration payable pursuant to subsection (3), an application for a determination of the equitable remuneration payable, may be made to the Copyright Tribunal or to a court of competent jurisdiction.”.

Amendment
of section 77
of principal
Act.

17. Section 77 of the principal Act is amended by deleting all the words preceding paragraph (a) and substituting therefor the following—

“ 77. Where sound recordings have, with the licence or consent of the owner of the copyright in the work been previously made in, imported into or distributed in Jamaica for the purposes of retail sale, then any person may after the expiry of the period of four months immediately following upon the date of the first

authorized distribution in Jamaica of such recordings for retail sale, and without first obtaining the licence or consent of the owner of the copyright in the work, make or authorize the making of sound recordings of it if such person—”.

18. The principal Act is amended by inserting next after section 82, the following as section 82A—

Insertion of section 82A in principal Act.

“ Authorized body may copy a work in electronic form.

82A.—(1) An authorized body may copy a work contained in electronic form for archival and preservation purposes.

(2) Circumvention of a technological protection measure for the purposes referred to in subsection (1), shall not be an offence or an infringement of any copyright in the work.”.

19. The principal Act is amended by inserting next after section 83, the following as section 83A—

Insertion of section 83A in principal Act.

“ Carrier and Internet service providers note deemed to infringe copyright work, etc.

83A.—(1) A carrier or Internet service provider shall not be deemed to have infringed the copyright in any work by making a copy thereof which is incidental to the data transmission functions of the carrier or provider.

(2) A carrier or Internet service provider shall not be deemed to have authorized, permitted or facilitated an infringement of copyright solely because another person uses a facility operated by the carrier, or specified services provided by the Internet service provider, to infringe copyright.”.

20. Section 87 of the principal Act is amended in subsection (1) in the definition of “licensing body” by inserting immediately after the word “author” the words “, and that has obtained a certificate of registration in accordance with section 87A”.

Amendment of section 87 of principal Act.

insertion of
new sections
87A and 87B
in principal
Act.

21. The principal Act is amended by inserting next after section 87, the following as sections 87A and 87B—

“Registration
of licensing
bodies.

87A.—(1) No person shall carry on the activity of negotiating or granting of licences on behalf of owners of copyright unless that person is a licensing body, holding a certificate of registration.

(2) Subsection (1) shall not apply where any activity therein referred to is carried on by a person acting as an authorized agent for one author and for no other.

(3) A society or other organization that intends to carry on operations as a licensing body, shall apply to the Executive Director in the form and manner prescribed, for a certificate of registration, and submit the prescribed fee.

(4) The Executive Director shall not register more than one licensing body at the same time to carry on operations in respect of the same class of rights, unless that Executive Director is satisfied that the registration of more than one such body is justified by market conditions and is in the public interest.

(5) For greater certainty and in furtherance of the functions conferred by the *Jamaica Intellectual Property Office Act*, the Executive Director shall have the functions in relation to the grant, refusal, suspension or revocation of a certificate issued under this Part.

(6) Any person who contravenes subsection (1) commits an offence and shall be liable on summary conviction before a Resident Magistrate—

- (a) in the case of an individual, to a fine not exceeding one million dollars or in default

of payment thereof to imprisonment for a term not exceeding six months; or

- (b) in the case of a body corporate, to a fine not exceeding one million dollars.

Owner of a copyright in a work shall continue to have the right to grant a licence.

87B. For greater certainty and in furtherance of the functions conferred by the *Jamaica Intellectual Property Office Act*, nothing in section 87A shall restrict the right of the owner of the copyright in a work or of related rights in respect of a work, to grant a licence in respect of the work in a manner that is not inconsistent with any of the contractual arrangements, if any, that the owner may have with a licensing body.”.

22. In the marginal note of Section 103 of the principal Act is amended—

Amendment of section 103 of principal Act.

- (a) by deleting the word “Schedule” and substituting therefor the words “Second Schedule”; and
- (b) in subsection (2), by inserting immediately after the words “provisions of the” the word “Second”.

23. The principal Act is amended by inserting next after section 106, the following heading and section 106A—

Insertion of new heading and section 106A in principal Act.

“ *Recognition of Rights*

Recognition of moral rights of performers. 106A.—(1) A performer shall have the right with respect to live aural performances or performances fixed in phonograms—

- (a) to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; or
- (b) to object to any distortion, mutilation or other modification of his performances that is prejudicial to his reputation.

(2) The rights conferred under this section shall exist independently of the rights conferred under section 108.”

Repeal and replacement of section 108 of principal Act.

24. The principal Act is amended by deleting section 108, and substituting therefor the following—

“ Consent required for recording or live transmission of performance.

108.—(1) A performer’s rights are infringed by a person who, without the performer’s consent —

- (a) fixes in a recording, otherwise than for his private and domestic use, the whole or any substantial part of a qualifying performance;
- (b) copies a recording, otherwise than for his private and domestic use, of the whole or any substantial part of a qualifying performance;
- (c) sells, rents or distributes to the public, or otherwise transfers ownership of any such recording or copies thereof, that is not already subject to a sale, rental distribution or other transfer authorized by the performer; or
- (d) broadcasts live, or includes live in a cable programme service or otherwise communicates to the public, the whole or any substantial part of a qualifying performance.

(2) A performer’s rights are not infringed by—

- (a) the making of copies of a recording of a qualifying performance for the purpose of archiving, restoring or preserving the work;

- (b) the making of copies which are transient, temporary or incidental to the authorized performance of the work; or
- (c) the incidental storage and copying of a recording of the performance in the process of an authorized transmission, thereof.

(3) In any action for infringement of a performer's rights under subsection (1), damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given."

25. Section 114 of the principal Act is amended in subsection (1) by—

Amendment
of section
114 of
principal
Act.

- (a) deleting the word "or" appearing at the end of paragraph (a);
- (b) deleting the comma at the end of paragraph (b) and substituting therefor a semicolon; and
- (c) inserting next after paragraph (b) as amended, the following as paragraphs (c), (d) and (e)—

“(c) rents or distributes an unauthorized recording of the whole or a substantial part of the performance;”;

- (d) makes the whole or a substantial part of the performance available to the public by means of a recording made accessible, or communicated to the public by means of any form of technology that allows a member of the public to access the performance from a place and at a time chosen by the member of the public; or
- (e) copies a recording of the whole or a substantial part of the performance stored by means of any electronic retrieval system, on electronic devices or utilizing any other storage medium or device.”.

Amendment
of section
129 of
principal
Act.

26. Section 129 of the principal Act is amended by deleting all the words appearing after the words “period of” and substituting therefor the words “ninety-five years from the end of the calendar year in which the performance was fixed or, in the absence of such performance being fixed, from the end of the calendar year in which the performance takes place.”.

Amendment
of section
134 of
principal
Act.

27. Section 134 of the principal Act is amended by deleting from—

- (a) subsection (3), the words “subsections (1) and (2)” and substituting therefor the words “this section”; and
- (b) subsections (5) and (6), the words “subsection (1) or (2)” and substituting therefor the words “this section”.

Insertion of
new section
134A in
principal
Act.

28. The principal Act is amended by inserting next after section 134, the following as section 134A—

“Offence for
carrier or
Internet
service
provider to
facilitate
copyright
infringement,
etc.”

134A.—(1) A carrier or an Internet service provider who knowingly—

- (a) operates a facility or otherwise permits or facilitates the use of a facility by another person to infringe copyright; or
- (b) provides specified services or permits or facilitates the use of specified services to another person in order to infringe copyright,

commits an offence.

(2) In an action for infringement, where a person uses a facility operated by or specified services provided by a carrier or an Internet service provider to infringe copyright, the Court may, if it thinks fit, grant an injunction against the carrier or the Internet service provider prohibiting the conduct referred to in subsection (1).

(3) A person who commits an offence under subsection (1), shall be liable—

(a) on summary conviction before a Resident Magistrate—

(i) in the case of an individual, to a fine not exceeding one million dollars and in default of payment thereof to imprisonment for a term not exceeding one year; or

(ii) in the case of a body corporate, to a fine not exceeding one million dollars; or

(b) on conviction in a Circuit Court—

(i) in the case of an individual, to a fine and in default of payment thereof to imprisonment for a term not exceeding five years; or

(ii) in the case of a body corporate, to a fine.”.

29. The principal Act is amended by inserting next after section 137, the following as section 137A—

“Retrospective application.

137A.—(1) Subject to the provisions of this section, the amendments under sections 10, 11, 12, 13 and 129 made by and the provisions of sections 13A and 13B incorporated under the Copyright (Amendment) Act, 2015, that extend the date for the expiration of copyright or other rights shall, notwithstanding anything to the contrary in this Act or any other law, be deemed to have come into operation on the 6th day of August, 2012.

Insertion of new section 137A in principal Act.

(2) Any person who during the relevant period has done any act in relation to a work or performance that had entered into the public domain prior to the doing of that act, and which would, by virtue of the application of subsection (1), otherwise be an infringement of copyright or other rights under this Act, shall not be subject to any civil or criminal liability in connection with—

- (a) that act; or
- (b) the performance of any legal obligations, whether during or after the relevant period, which arise out of any contractual arrangement entered into by the person during the relevant period in connection with that work or performance.

(3) In this section “relevant period” means the period commencing on August 6, 2012 and ending on the date of the coming into operation of the Copyright (Amendment) Act, 2015.”.

Insertion of
new section
148A in
principal
Act.

30. The principal Act is amended by inserting next after section 148, the following as section 148A—

“Fees.
Third
Schedule.

148A.—(1) The fees specified in the Third Schedule shall be payable to the Office in respect of the matters therein prescribed.

(2) The Minister may by order amend the Third Schedule.”.

Amendment
of section
150 of
principal
Act.

31. Section 150 of the principal Act is amended by inserting immediately after the words “to this Act” the words “and, notwithstanding the generality of the foregoing, the Minister may also prescribe fees in relation to any matter under this Act”.

32. The principal Act is amended by inserting next after section 153, the following as section 154—

Insertion
new section
154 in
principal
Act.

Further
transitional
provisions.

154. Notwithstanding section 87A, a licensing body operating before the date of coming into operation of the Copyright (Amendment) Act, 2015, shall be required to satisfy the requirements for registration under section 87A and any regulations in relation thereto, within six months from that date or such longer period as the Minister, after consultation with the Executive Director, may by order prescribe.

33. The Schedule to the principal Act is amended by—

Insertion of
new First and
Third
Schedules in
principal
Act.

(a) renumbering the Schedule as the Second Schedule; and

(b) inserting the following as the First and Third Schedules, respectively—

“ FIRST SCHEDULE (Sections 9B and 9E)

FORM A

The Copyright Act

Voluntary Copyright Registration Service

Registration Number: _____



Application for Registration to Enter Particulars in Register (Pursuant to section 9B)

- 1. Title of Work(s): _____
2. Description of Work: _____
Artistic (includes layout for websites)/Literary/Musical/Dramatic (dance, mimes)/Film/Computer software/Sound Recording/Typographical Arrangement of Published Editions
3. Also registered at JIPO as:
Trade Mark [] Patent [] Industrial Design [] Geographical [] Indication
4. Date and Country where work was made: _____
5. If published, country and date of first publication: _____
6. Single Author: [] Joint Authors: [] Number of joint Authors: _____
7. Name of Author: _____
Mailing Address: _____
Telephone Numbers: (home) _____ (office) _____
(mobile) _____
Email: _____
Country of Citizenship or Habitual Residence: (please state) _____
Date of Birth: _____
Date of Death: _____
Name of Author: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence: (please state) _____

Date of Birth: _____

Date of Death: _____

For _____

additional authors, please continue on additional blank paper

8. Pseudonym/Alias: _____

9. Is Author the Copyright Owner?: Yes (proceed to 14)

No (proceed to 10)

10. Name of Copyright Owner: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence: (please state) _____

Name of Copyright Owner: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence: (please state) _____

11. Relationship to Author(s):

Publisher Record Producer Manager Employer

Assignee Beneficiary Other (please specify) _____

12. Nature of Rights Owned:

All rights: Reproduction (text/image)
 Reproduction(music/lyrics)
 Synchronisation Other Reproduction (please specify) _____
 Distribution Public Performance Adaptation
 Broadcast/inclusion in cable programme
 Other (please specify) _____

13. Duration of Rights: From: _____ To: _____

14. Form Deposited by:

Name of Agent: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

15. Declaration by Author/Copyright Owner:

I/We _____ hereby declare that I/we am/are the
 (please select as appropriate)

true author(s) and /or owner of the work above described and have deposited an electronic copy of the work with the Jamaica Intellectual Property Office of my own free will and volition.

I/We fully understand that depositing a copy of this work with Jamaica Intellectual Property Office does not grant copyright, nor prevent potential acts of infringement but only provides, *prima facie* evidence of my claim of authorship/ownership in the deposited work. I/We grant Jamaica Intellectual Property Office permission to reproduce and store in electronic format, a copy of my work for the purposes of this copyright registration service only.

It has been explained to me/us and I/we fully understand that copyright arises automatically once a work qualifies under Part II of the Copyright Act of Jamaica, 1993 and, that the Jamaica Intellectual Property Office shall only indicate under which category of work it may be classified.

I/We hereby also declare that the information contained herein is true to the best of my/our knowledge and belief. I/We will indemnify and hold the Jamaica Intellectual Property Office harmless against any and all third party claims in respect of its dealings with the work deposited.

Signed:

(Author/Copyright Owner)

Date

Witness

Date

Signed:

(Author/Copyright Owner)

Date

Witness

Date

If Author is under 18, Declaration and Signature of Parent/Guardian Required

I hereby declare that I am the parent/guardian of the abovenamed author/copyright owner of the above-described work deposited with the Jamaica Intellectual Property Office. I have read and fully understand the above terms and conditions of depositing this work with the Jamaica Intellectual Property Office and have also explained the terms and conditions to my child/ward.

Signed:

Name of Parent/Guardian

Date

Witness

Date

FOR JIPO USE ONLY			
Registration fee paid?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amount paid: _____
Declaration of copyright submitted:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Electronic file deposited:	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Proof of authorization to deposit from (if by agent):	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Date of Registration:	_____		
COMPLETED BY:	_____	_____	_____
(JIPO Officer)	Name	Signature	Date

Note:

This Form shall be completed by the Author/Copyright Owner and submitted to the Jamaica Intellectual Property Office by the Author/Copyright Owner or the Agent of the Author/Copyright Owner.

FORM B

The Copyright Act

Voluntary Copyright Registration Service

Registration Number: ____/____/____



*Declaration of Copyright Ownership and/or Authorship
(Pursuant to section 9B)*

I/We _____ is the author/owner of the copyright
(the applicant)

- a person to whom a partial assignment is made pursuant to section 23(2)
- a licence granted.

DO SOLEMNLY AND SINCERELY DECLARE as follows:

1. That I/we am/are the author /person to whom a partial assignment or licence is made copyright owner(s) of a _____ work entitled _____.
2. Described nature of the work _____.
3. The work was made on _____ at _____.
4. That copies of the said work were first issued to the public on _____ at _____.
5. _____ is/am/are the author(s) of the work and which is original to me/use/him/them and not copied from another work.
6. The electronic version of the work submitted to the Jamaica Intellectual Property Office is a true representation of the work described herein, in respect of which I/we claim authorship/copyright ownership.

AND I/WE MAKE THIS SOLEMN DECLARATION conscientiously believing the same to be true and by virtue of the provisions of the Voluntary Declarations Act.

TAKEN AND ACKNOWLEDGE }

This day of , 20 ,
in the Parish of

Justice of the Peace

Author/Copyright Owner

TAKEN AND ACKNOWLEDGE }

This day of , 20 ,
in the Parish of

Justice of the Peace

Author/Copyright Owner

FORM C

The Copyright Act

Voluntary Copyright Registration Service

Registration Number: _____
 _____/_____/_____



Certificate of Registration
(Pursuant to section 9B)

I hereby declare that on the _____ day of _____, 20____, a claim of authorship and or ownership of copyright by _____ was entered into the Register of Voluntary Copyright Registration Service at the Jamaica Intellectual Property Office in respect of the following work(s):

Name: _____

Type: _____

Author: _____

Date of creation: _____

Country of creation/publication: _____

Registration number: _____

Executive Director (JIPO SEAL)

Date: _____

Notes:

1. The Jamaica Intellectual Property Office assumes no responsibility as to the truth and facts asserted by the claimant and has conducted no independent examination regarding the qualification of the work for copyright protection.
2. Copyright protection arises automatically once the requirements under the Copyright Act of Jamaica are satisfied.
3. This Certificate merely attests that a claim of authorship copyright ownership was deposited with the Jamaica Intellectual Property Office on the date so indicated.

FORM D

The Copyright Act

Voluntary Copyright Registration Service

Registration Number:

____/____/____



*Request to Change Registration Details
(Pursuant to section 9E)*

1. Name of Applicant: _____

2. Relationship to Registered Work:

Author only Copyright Owner only

Author and Copyright Owner

3. Record a change of:

(a) mailing address of author: go to 4 and complete that section

(b) mailing address of next of kin: go to 5 and complete that section

(c) death of author: go to 6 and complete that section

(d) publication of work: go to 7 and complete that section

(e) name of copyright owner: go to 8 and complete that section

(f) mailing address of copyright owner: go to 8 and complete that section

(g) rights owned by copyright owner: go to 10 and complete that section

4. New mailing address: Author _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

5. New mailing address: Next of kin _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

6. Date of death of author(s): _____

7. Country and date of first publication: _____

8. Name of New Copyright Owner: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence (please state): _____

Contact/Agent: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Name of New Copyright Owner: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

Country of Citizenship or Habitual Residence (please state): _____

Contact/Agent: _____

Mailing Address: _____

Telephone Numbers: (home) _____ (office) _____

(mobile) _____

Email: _____

9. Nature of Transfer—

(a) testamentary disposition

(b) assignment/licence

(c) other (please specify) _____

10. Nature of rights owned:

All rights: Reproduction (text/image) Reproduction(music/lyrics)

Synchronisation Other Reproduction (please specify) _____

Distribution Public Performance Adaptation

Broadcast/inclusion in cable programme

Other (please specify) _____

11. Duration of rights: From: _____ to: _____

12. Declaration by Author/Copyright Owner:

I/We _____ hereby declare that the information
(please select as appropriate)

contained herein is true to the best of my/our knowledge and belief.

I/We will indemnify and hold the Jamaica Intellectual Property Office harmless
against any and all third party claims in respect of its dealings with the work
deposited.

Signed:

(Author/Copyright Owner)

Date

Witness

Date

Signed:

(Author/Copyright Owner)

Date

Witness

Date

If Author is under 18, Declaration and Signature of Parent/Guardian Required

I hereby declare that I am the parent/guardian of the abovenamed author/ copyright owner of the above-described work deposited with the Jamaica Intellectual Property Office. I have read and fully understand the above terms and conditions of depositing this work with the Jamaica Intellectual Property Office and have also explained the terms and conditions to my child/ward.

Signed:

Name of Parent/Guardian

Date

Witness

Date

FOR JIPO USE ONLY

COMPLETED BY: _____
(JIPO Officer) Name

Signature

Date

THIRD SCHEDULE

(Sections 9B)

*Registration and Certification Fees**Library Works—**Poems/lyrics/short stories:*

1–10 works	\$ 500.00
11–50 works	\$1,000.00
51–100 works	\$2,000.00
Each succeeding 10 works	\$ 10.00

Book/script/ magazine/catalogue/newsletter/minutes of meetings

Under 100 pages	\$1,000.00
100-250 pages	\$2,000.00
Each succeeding 50 pages	\$ 500.00

Press release/flyers/circulars etc. \$ 250.00*Audio-Visual/Dramatic Works*

Film: 15minutes or less	\$3,000.00 each
Documentaries	\$4,000.00
Feature film /plays	\$7,000.00
Other (e.g. lectures, weddings) under 3 hours	\$2,500.00
Each succeeding 50 pages	\$ 500.00

Artistic Works/Typographical Arrangements

Photo/painting/graphic image/dress pattern: (black/white)	\$ 200.00 each
(colour)	\$ 250.00 each
Technical drawing/map/website or book layout	\$1,500.00

Musical Works/Sound Recordings

1-15 compositions/pieces	\$1,000.00
20-40 compositions	\$2,500.00
Each additional 10 compositions	\$ 500.00

Computer Software \$1,000.00*Certified copies of registration certificate* \$ 200.00 per pageApplication for Registration to enter particulars
in the Register \$1,000.00

MEMORANDUM OF OBJECTS AND REASONS

The World Intellectual Property Organization (WIPO) Copyright Treaty of 1996 (WCT) and the Performances and Phonograms Treaty (WPPT) of 1996 (together commonly known as "the Internet Treaties"), provide the most comprehensive protection to copyright owners, namely, authors, publishers, producers and performers in the digital and electronic environment of the Internet.

Currently, the Copyright Act does not explicitly protect intellectual property rights over digital networks. Therefore, without clear protection in the digital environment, e-commerce activities in Jamaica by musicians, performers, publishers and authors would be at risk, and the right holders would not be able to derive the potential revenue from this stream of commerce provided by the Internet.

This Bill, therefore, seeks to amend the Copyright Act to implement the provisions of the Internet Treaties and to provide protection for right holders. In particular for copyright owners of work of corporate bodies and the Crown for—

- (a) establishing exemptions for access to copyright works by the print and hearing disabled;
- (b) establishing a voluntary deposit system for copyright works to be hosted by the Jamaica Intellectual Property Office;
- (c) establishing the duration of copyright for works created by the Crown and corporate bodies;
- (d) making provision for access to 'orphan works';
- (e) clarifying rights in adapted works;
- (f) extending the rights of Libraries and Archivists to archive material that was in digital format; and
- (g) protecting first importers of sound recordings in Jamaica by ensuring them the first right of distribution of same.

G. ANTHONY HYLTON
Minister of Industry, Investment and Commerce.

A BILL

ENTITLED

**AN ACT to Amend the Copyright (Amendment)
Act.**

As introduced by the Honourable Minister of Industry,
Investment and Commerce

PRINTED BY JAMAICA PRINTING SERVICES (1992) LTD., (GOVERN-
MENT PRINTERS), DUKE STREET, KINGSTON, JAMAICA.

SECTION 2 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

“adaptation” means—

- (a) in relation to a literary or dramatic work—
 - (i) a translation of the work which, as respects a computer program, includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code, otherwise than incidentally in the course of running the program;
 - (ii) a version of a dramatic work in which it is converted into a non-dramatic work or, as the case may be, of a non-dramatic work in which it is converted into a dramatic work;
 - (iii) a version of a work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;
- (b) in relation to a musical work, an arrangement or transcription of the work;

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

- (a) a literary or dramatic work, the author of the work;
- (b) a musical work, the composer;
- (c) an artistic work (other than a photograph) the artist;
- (d) a photograph, the person taking the photograph;
- (e) a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
- (f) the typographical arrangement of a published edition, the publisher;
- (g) a broadcast, the person making the broadcast as described in section 4(2) or, in the case of a broadcast

which relays another broadcast by reception and immediate retransmission, the person making that other broadcast;

... ..
SECTION 2 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

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

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

... ..
“country” includes any territory;

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

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

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

... ..

SECTION 2 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

“performance” in relation to—

- (a) the rights conferred under Part IX, means—
 - (i) a dramatic performance which includes dance and mime;
 - (ii) a musical performance; or
 - (iii) a reading or recitation of a literary work;
 - (iv) a performance of a variety act or any similar presentation,

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

- (b) copyright in a literary, dramatic or musical work includes—
 - (i) delivery in the case of lectures, addresses, speeches and sermons;
 - (ii) any mode of visual acoustic presentation, including presentation by means of a sound recording, film, broadcast or cable programme of the work;

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

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

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

SECTION 2 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

“reprographic process” means a process—

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

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

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

“sound recording” means—

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

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

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

SECTION 9 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

9.—(1) By virtue of and subject to the provisions of this Act, the owner of the copyright in a work shall have the exclusive right to do or to authorize other persons to do any of the following acts in Jamaica—

- (a) to copy the work;
- (b) to issue copies of the work to the public;
- (c) to perform the work in public or, in the case of a sound recording, film, broadcast or cable programme, to play or show the work in public;
- (d) to broadcast the work or include it in a cable programme service; or
- (e) to make an adaptation of the work and, in relation to such adaptation, to do any or all of the foregoing acts.

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

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

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

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

- (a) the author of a literary, dramatic, musical or artistic work that is a protected work; or
- (b) the director of a film that is a protected work,

shall have in respect of such work, whether or not he is the owner of the copyright in the work, the moral rights specified in Part III.

SECTION 10 OF THE COPYRIGHT ACT WHICH IT IS PROPOSED TO AMEND

10.—(1) Subject to the provisions of this section, copyright in any literary, dramatic, musical or artistic work expires at the end of the period of fifty years from the end of the calendar year in which the author dies.

(2) Where the authorship of a work referred to in subsection (1) is unknown, copyright in that work expires at the end of the period of fifty years from the end of the calendar year in which it was first made available to the public; and subsection (1) shall not apply if the identity of the author becomes known after the end of that period.

(3) For the purpose of subsection (2), acts which constitute the making available of a work to the public include—

- (a) in relation to a literary, dramatic or musical work, the performance of the work in public or its broadcast or inclusion in a cable programme service;
- (b) in relation to an artistic work, the exhibition of the work in public or its inclusion in a film shown to the public or in a broadcast or cable programme service,

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

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

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

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

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

SECTIONS 11, 12 AND 13 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

11.—(1) Copyright in a sound recording or film expires at the end of the period of fifty years from the end of the calender year in which it was made or, where it is made available to the public before the end of that period, fifty years from the end of the calender year in which it is so made available.

(2) For the purposes of subsection (1) a sound recording or film is made available to the public when—

- (a) it is first published, broadcast or included in a cable programme service;
- (b) in the case of a film or film sound-track, the film is first shown in public,

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

12.—(1) Copyright in a broadcast or cable programme expires at the end of the period of fifty years from the end of the calender year in which the broadcast was made or the programme included in a cable programme service.

(2) Copyright in a repeat broadcast or a repeat cable programme expires at the same time as copyright in the original broadcast or cable programme; and accordingly; no copyright arises in respect of a repeat broadcast or a repeat cable programme which is broadcast or, as the case may be, included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(3) Reference in subsection (2) to a repeat broadcast or a repeat cable programme means one which is a repeat of a broadcast previously made or, as the case may be, of a cable programme previously included in a cable programme service.

13. Copyright in the typographical arrangement of a published edition expires at the end of the period of twenty-five years from the end of the calendar year in which the edition was first published.

SECTION 33(1) OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

33.—(1) Subject to the provisions of this section and section 35(6), where a person—

- (a) in the course of his business has an infringing copy of a work in his possession, custody or control; or
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies,

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

... ..

SECTION 36 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

36.—(1) Subject to subsection (2), the right conferred by section 14 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 14 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

- (a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme;
- (b) the incidental inclusion of the work in an artistic work, sound recording, film, broadcast or cable programme;
- (c) the use of the work for examination purposes;

- (d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;
- (e) the use of design documents and models;
- (f) the use of a design derived from artistic work;
- (g) acts permitted in relation to anonymous or pseudonymous works on the assumption that copyright in the work has expired or that the author is dead.

SECTION 46 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

46.—(1) Any person who at a time when copyright in a work subsists by virtue of this Act—

...

...

..

(3) Any person who causes—

- (a) a literary, dramatic or musical work done to be performed in public; or
- (b) a sound recording or film to be played, or as the case may be, shown in public,

(otherwise than by reception of a broadcast or cable programme) knowing or having reason to believe that copyright subsists in the work and that the performance, playing or showing, as the case may be, constitutes an infringement of the copyright, commits an offence.

SECTION 48 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

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

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

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

...

...

...

**SECTION 55 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND**

55. Copyright in a work is not infringed—

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

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

**SECTION 65 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND**

65.—(1) Subject to subsection (2), the librarian of a prescribed library or archive may, if the prescribed conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or in any illustrations accompanying it.

(2) Subsection (1) shall not apply where—

- (a) the work had been published before the document was deposited in the library or archive; or
- (b) the copyright owner has prohibited copying of the work,

and at the time of the making of the copy the librarian ought to have been aware of that fact.

(3) The prescribed conditions shall include the following—

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study and will not use them for any other purpose;
- (b) that no person is furnished with any more than one copy of the same material; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library or archive) attributable to their production.

SECTION 71 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

71.—(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by an act done at a time when, or in pursuance of an arrangement made at a time when—

- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
- (b) it is reasonable to assume—
 - (i) that the copyright has expired; or
 - (ii) that the author died fifty years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to work in which copyright originally vested in an international organization by virtue of section 146 and in respect of which an order under that section specifies a copyright period longer than fifty years.

(3) In relation to work of joint authorship—

- (a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and
- (b) the reference in subsection (1)(b)(ii) to the author having died shall be construed as a reference to all the authors having died.

SECTION 77 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

77. Where sound recordings of a musical work (and accompanying words, if any) have, with the licence or consent of the owner of the copyright in the work, been previously made in or imported into Jamaica for the purposes of retail sale, then, any person may, after the expiry of the period of four months immediately following upon the date of the first authorized manufacture in, or importation into, Jamaica of such recordings, and without first obtaining the consent or licence of the owner of the copyright in the work, make or authorize the making of sound recordings of it if such person—

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

SECTIONS 82 AND 83 OF THE COPYRIGHT ACT
WHICH IT IS PROPOSED TO AMEND

82.—(1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.

(2) In subsection (1) “designated” means designated by the Minister, who shall not designate a body unless he is satisfied that it is not established or conducted for profit.

83. Where a literary, dramatic or musical work or film is broadcast with the licence of the copyright owner from a place in Jamaica or a specified country, any person may, without obtaining the licence of the copyright owner, incorporate the work (by means of the reception of the broadcast) in a cable programme service:

Provided that—

- (a) the transmission by the cable programme service takes place simultaneously with the reception of the broadcast; and
- (b) the programme in which the literary, dramatic or musical work or film is incorporated is transmitted without alteration of any kind; and
- (c) the copyright owner shall be entitled to receive from the person providing the cable programme service, equitable remuneration in respect of the transmission, to be fixed in default of agreement by the Tribunal,

and for the purposes of this subsection, an alteration to a programme includes the addition thereto of new material not contained in the programme as broadcast, or the omission from the transmission of any material contained in the programme as broadcast; and the term “material” includes a commercial advertisement.

SECTION 87 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

87.—(1) In this Part—

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

“licensing body” means a society or other organization which has as its main object or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for

him, of licences, and whose objects include the granting of licences covering works of more than one author;

“licensing scheme” means a scheme setting out—

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

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

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

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

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

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

SECTION 103 OF THE COPYRIGHT ACT WHICH IT IS PROPOSED TO AMEND

103.—(1) There is hereby established for the purposes of this Act a tribunal to be called the Copyright Tribunal.

(2) The provisions of the Schedule shall have effect as to the constitution of the Tribunal and otherwise in relation thereto.

SECTION 106 OF THE COPYRIGHT ACT

106.—(1) An appeal lies on any point of law arising from a decision of the Copyright Tribunal to the Supreme Court.

(2) Regulations made under section 105 may limit the time within which an appeal may be brought.

SECTION 108 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO REPEAL AND REPLACE

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

- (a) makes, otherwise than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance; or
- (b) broadcasts live, or includes live in a cable programme service, the whole or any substantial part of a qualifying performance.

(2) In an action for infringement of a performer's rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

SECTIONS 114 AND 129 OF THE PRINCIPAL ACT WHICH IT IS PROPOSED TO AMEND

114.—(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent—

- (a) imports into Jamaica otherwise than for his private and domestic use; or
- (b) in the course of a business, possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,

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

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

129. The rights conferred by this Part continue to subsist in relation to a performance until the end of the period of fifty years from the end of the calendar year in which the performance takes place.

SECTION 134 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

134.—(1)

(3) In subsections (1) and (2) “sufficient consent” means—

- (a) in the case of a qualifying performance that is not subject to an exclusive recording contract, the consent of the performer; and
- (b) in the case of a performance that is subject to an exclusive recording contract, the consent of the person having recording rights.

(4) References in this section to the person having recording rights are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

(5) No offence is committed under subsection (1) or (2) by the doing of an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.

(6) A person guilty of an offence under subsection (1) or (2) shall be liable—

- (a) on summary conviction before a Resident Magistrate to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years;
- (b) on conviction before a Circuit Court to a fine or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

SECTION 137 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

137.—(1) An application may be made to the court for—

- (a) an order that an infringing copy or article delivered up in pursuance of an order under sections 33 and 48 shall be—
 - (i) forfeited to the copyright owner; or
 - (ii) destroyed or otherwise dealt with as the court may direct;

- (b) an order that an illicit recording of a performance delivered up in pursuance of an order under section 133 or 135 shall be—
 - (i) forfeited to such person having performers' rights or recording right in relation to the performance as the court may direct; or
 - (ii) destroyed or otherwise dealt with as the court thinks fit; or
- (c) a decision that no order under paragraph (a) or (b) should be made.

(2) In considering what order (if any) should be made, the court shall have regard to all the circumstances of the case and, in particular—

- (a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interest;
- (b) where the infringement relates to rights conferred under Part IX, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provision shall be made by regulations as to the service of notice on persons having an interest in the infringing copy or other articles or the illicit recording, as the case may be, and any such person is entitled—

- (a) to appear in proceedings for an order under this section, whether or not he was served with notice; and
- (b) to appeal against any order made, whether or not he appeared, and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in an infringing copy or other article, or as the case may be, an illicit recording, the court shall make such order as it thinks just and may, in particular, direct that such copy, article or recording be sold, or otherwise dealt with, and the proceeds divided.

(5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the copy or article or, as the case may be, the recording was before being delivered up or seized is entitled to its return.

(6) References in this section to a person having an interest in a copy or other article or a recording include any person in whose favour an order could be made in respect of the copy, article or, as the case may be, recording under this section.

SECTION 148 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

148.—(1) This Act applies to things done on a Jamaican ship or Jamaican aircraft as it applies to things done in Jamaica.

(2) In this section “Jamaican ship” and “Jamaican aircraft” mean, respectively, a ship or aircraft registered in Jamaica.

SECTION 150 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

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

SECTION 153 OF THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

153.—(1) Where immediately prior to the appointed day copyright subsists in Jamaica in any literary, dramatic, musical or artistic work by virtue of the Copyright Act, 1911 of the United Kingdom, such copyright shall continue to subsist and the person entitled thereto by virtue of that Act

... ..
conferred by this Act if that Act would not, but for the passing of this Act, have constituted an infringement.

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

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

SCHEDULE TO THE COPYRIGHT ACT WHICH
IT IS PROPOSED TO AMEND

SCHEDULE

(Section 103 (2))

1.—(1) The Tribunal shall consist of a chairman and two deputy chairmen and not less than two nor more than eight other members.

(2) A person eligible for appointment as chairman or a deputy chairman if he is an attorney-at-law of not less than five years' standing or a person who has held judicial office.

2. The members of the Tribunal shall be appointed by the Minister by instrument in writing, and, subject to, the provisions of this Schedule, shall hold office for such period, not exceeding three years, as may be specified in the instrument, but shall be eligible for reappointment.

3. A member of the Tribunal may at any time resign his office by instrument in writing and such resignation shall take effect as from the date of the receipt by the Minister of such instrument.

4. The Minister may by instrument in writing at any time revoke the appointment of any member of the Tribunal if—

- (a) he has become bankrupt; or
- (b) he is incapacitated by physical or mental illness,

or if he is, in the opinion of the Minister, otherwise unfit to perform his duties as member.

5.—(1) The Copyright Tribunal shall sit in such number of divisions as may from time to time be necessary.

(2) A division of the Tribunal shall consist of—

- (a) a chairman, who shall be either the chairman or a deputy chairman of the Tribunal; and
- (b) two or more ordinary members.

(3) Where in any proceedings the members are not unanimous, the decision of the Tribunal shall be by a majority of the votes of the members, and in the event of an equality of votes, the chairman shall be entitled to a second or casting vote.

(4) Where part of any proceedings before the Tribunal has been heard and one or more members of the Tribunal are unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as the number of members is not reduced to less than three.

(5) If the chairman of a division of the Tribunal is unable to continue he shall—

- (a) appoint one of the remaining members to act as chairman; and
- (b) appoint a suitably qualified person to attend the proceedings and advise the members of any question of law arising.

(6) For the purposes of paragraph (4)(b), a person is suitably qualified if he is or is eligible for appointment as a deputy chairman of the Tribunal.

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

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

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

6. The Tribunal may order that the costs or expenses of any proceedings before it incurred by any party shall be paid by any other party, and may tax or settle the amount of any costs or expenses to be paid under any such order or direct in what manner they are to be taxed.

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

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

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

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

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

12. A member of the Tribunal who is interested directly or indirectly in any matter before the Tribunal—

- (a) shall disclose the nature of his interest at any meeting of the Tribunal dealing with the matter; and

(b) shall not take part in any deliberation or decision of the Tribunal with respect to that matter.

13. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Tribunal in respect of any act done *bona fide* in the execution or intended execution of the Tribunal's functions under this Act.

14. The office of chairman or member of the Tribunal shall not be a public office for the purposes of Chapter V of the Constitution of Jamaica.
