

CHAPTER 415

COPYRIGHT ACT

To make new provision in respect of copyright and neighbouring rights and certain “sui generis” intellectual property rights in substitution of the provisions of the Copyright Act, Cap. 196.

14th August, 2000;
1st January, 2001

ACT XIII of 2000, as amended by Acts VI of 2001 and IX of 2003.

1. The short title of this Act is the Copyright Act. Short title.

PART I

DEFINITIONS

2. In this Act, unless the context otherwise requires - Interpretation.
Amended by:
IX. 2003.92.
“European Union” means the European Union referred to in the Treaty;

“artistic work” shall include, irrespective of artistic quality, any of the following, or works similar thereto:

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (b) maps, plans, diagrams and three-dimensional works relative to geography, science or topography, but excluding semiconductor product topographies;
- (c) works of sculpture;
- (d) photographs not comprised in an audiovisual work;
- (e) works of architecture in the form of buildings or models; and
- (f) works of artistic craftsmanship, including pictorial woven tissues and articles of applied handicraft and industrial art;

“audiovisual work” means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;

“author” means the natural person or group of natural persons who created the work eligible for copyright but in the case of an audiovisual work it includes the principal director but excludes the producer of the first fixation of the audiovisual work;

“Board” means the Copyright Board established under article 45;

“body of persons” means any company or association of persons whether corporate or unincorporated, whether vested with legal personality or not, and includes any other body however called having legal personality;

“broadcasting” means the transmission by wireless means for the

public reception of sounds or of images and sounds or of the representations thereof, including transmission by satellite. Broadcast does not include a rebroadcast;

“broadcasting authority” means the Broadcasting Authority established by article 118 of the Constitution;

“broadcasting organization” means any broadcaster whether licensed under the Broadcasting Act or under any other law, and includes a broadcasting contractor operating in Malta;

“cable retransmission” means the simultaneous, unaltered and unabridged retransmission by a cable or any other material carrier for reception by the public of an initial transmission by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public, from within Malta or from a State in which the exclusive right to authorize cable retransmission of works eligible for copyright or neighbouring rights is protected under an international agreement to which Malta is also a party;

“collecting society” means any organization which manages or administers copyright or neighbouring rights as its sole purpose or as one of its main purposes as regulated by the provisions of this Act;

“collective work” means a work which has been created by two or more physical persons at the initiative and under the direction of a physical person or legal entity with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing physical persons will not be indicated in the work;

“commercial exploitation” in relation to semiconductor product topographies means the sale, rental, leasing or any other method of commercial distribution, or an offer for these purposes:

Provided that where exploitation takes place under conditions of confidentiality to the extent that no further distribution to third parties occurs there shall not be deemed to have been “commercial exploitation”;

“communication to the public” means the transmission of a work by wire or wireless means and for the purpose of article 7 includes the making available to the public of the work in such a way that members of the public may access the work from a place and at a time individually chosen by them:

The mere provision of physical facilities for enabling or making of a communication does not in itself amount to an act of communication to the public;

“communication to the public by satellite” means the act of introducing, under the control and responsibility of a broadcasting organization, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth and the State where such an act takes place shall be deemed to be the place of origin of that act of communication to the public by satellite;

Provided that if the programme-carrying signals are encrypted, then there is communication to the public by satellite if the means for decrypting the broadcast are provided to the public by the broadcasting organisation or with its consent:

Provided further that if the act of communication to the public by satellite takes place in a State other than Malta or other than a State in which the exclusive right to authorize or prevent the satellite broadcasting of a work eligible for copyright or neighbouring rights is protected under an international agreement to which Malta is also a party, if the programme-carrying signals are transmitted to the satellite from an uplink station situated in Malta, that act of communication to the public by satellite shall be deemed to have occurred in Malta so that the rights provided for by this Act shall be exercisable against the person operating the uplink station, or else in the absence of an uplink station in Malta, if a broadcasting organisation established in Malta has commissioned the act of communication to the public by satellite, that act shall be deemed to have occurred in Malta and the rights provided for by this Act shall be exercisable against that broadcasting organisation;

“computer program” includes computer programs whatever may be the mode or form of their expression including those which are incorporated in hardware, interfaces which provide for the physical interconnection and interaction or the interoperability between elements of software and hardware and preparatory design material leading to the development of a computer program:

Provided that the nature of the preparatory design material is such that a computer program can result therefrom at a later stage;

“copy” means a reproduction in written or graphic form including digital reproduction, in the form of a recording or audiovisual work, or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

“copyright” means copyright under this Act;

“database” means a collection of independent works, data or other materials arranged in a systematic or methodical way and individually accessible by electronic or other means without it being necessary for these materials to have been physically stored in an organized manner but does not extend to computer programs used in the making or operation of a database accessible by electronic means comprised within the term “computer program”;

“distribution” means the making available to the public by sale or other transfer of ownership;

“fixation” means the embodiment of sounds, images, or both, or digital representations thereof, in any material form, from which they can be perceived, reproduced or communicated through a device;

“lawful” means done in compliance with provisions of this Act, and “lawfully” shall be construed accordingly;

“lending” means making available for use, for a limited period of

time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public:

Provided that even when lending by such an establishment gives rise to payment of an amount, as long as this amount does not go beyond what is necessary to cover the operational costs of the establishment, there is no direct or indirect economic or commercial advantage within the meaning of this Act;

“licence” means a lawfully granted licence permitting the doing of an act controlled by copyright or neighbouring rights;

“literary work” shall include, irrespective of literary quality, any of the following, or works similar thereto:

- (a) novels, stories and poetical works;
- (b) plays, stage directions, choreographic works or entertainment in dumb show, film scenarios and broadcasting script;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopaedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons;
- (g) computer programs,

but save as provided in article 12 of the Statute Law Revision Act, 1980, does not include any written law, law report or judicial decisions;

“Malta” shall have the same meaning as assigned to it by article 124 of the Constitution of Malta;

“Member State” means a state which is a member of the European Union;

“Minister” means the Minister responsible for the protection of copyright and neighbouring rights and includes to the extent of the authority given, any person authorised by the Minister in that behalf for any purpose of this Act other than for the purpose of article 59;

“musical work” means any musical work, irrespective of musical quality, and includes works composed for musical accompaniment;

“owner of copyright” means the author who is first owner, an assignee or an exclusive licensee, as the case may be, of a copyright and in the case of a collective work, the first owner of copyright shall be the natural or legal person under whose initiative and direction the work has been created;

“perceptual disability” means a disability that prevents or inhibits a person from reading or hearing a literary, musical, dramatic or artistic work in its original format, and includes such a disability resulting from:

- (a) severe or total impairment of sight or hearing or the inability to focus or move one’s eyes;

- (b) the inability to hold or manipulate a book; or
- (c) an impairment relating to comprehension.

“performance” means the direct rendition of the work to a public which takes place under such circumstances that the works performed can be perceived by the public without any intermediate communication;

“performers” includes singers, musicians, actors or other artists who sing, deliver, declaim, play in, act in or otherwise perform literary, musical and artistic works or expressions of folklore and includes also singers, musicians, actors or other artists who sing, play in or perform in variety, circus and folklore shows or exhibitions;

“person” includes a body of persons;

“prescribed” means prescribed by regulations made under article 59;

“rebroadcast” means simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization not under its control, whether situated in Malta or abroad, and “rebroadcasting” shall be construed accordingly;

Provided that “later rebroadcast” shall mean only any such subsequent broadcast and “later rebroadcasting” shall be construed accordingly;

“rental” means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage;

“reproduction” means the making of one or more copies in any material form of a literary, musical or artistic work, audiovisual work or sound recording and includes storing such work in any medium by electronic means;

“rights-management information” means any information provided by rightholders which identifies the work or other subject-matter referred to in this Act, the author or any other rightholder, or information about the terms and conditions of use of the work or other subject-matter, and any numbers or codes that represent such information;

“satellite” means any satellite operating on frequency bands which, under international telecommunications law are reserved for the broadcast of signals for reception by the public or which are reserved for closed, point-to-point communication. In the latter case, however, the circumstances in which individual reception of the signals takes place must be comparable to those which apply in the first case;

“semiconductor product” means the final or an intermediate form of any product consisting of a body of material which includes a layer of semiconducting material, having one or more layers composed of conducting, insulating or semiconducting material, the layers being arranged in accordance with a predetermined three-dimensional pattern and intended to perform, exclusively or together with other functions, an electronic function;

“semiconductor product topography” means a series of related images, however fixed or encoded, representing the three dimensional pattern of the layers of which a semiconductor product is composed and in which series, each image has the pattern or part of the pattern of a surface of the semiconductor product at any stage of its manufacture;

“sound recording” means the fixation of a sequence of sounds or of a digital representation of sounds capable of being perceived aurally and of being reproduced, but does not include a soundtrack associated with an audiovisual work;

“technological measures” means any technology, device or component that, in the normal course of its operation, is designed to prevent or restrict acts, in respect of works or other subject-matter, which are not authorised by the rightholder of any copyright or neighbouring right or the *sui generis* rights as provided for by this Act. Technological measures shall be deemed “effective” where the use of a protected work or other subject-matter is controlled by the rightholders through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter or a copy control mechanism, which achieves the protection objective;

Cap. 460.

“the Treaty” has the same meaning assigned to it by the European Union Act;

“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

(2) For the purposes of this Act the following provisions shall apply with respect to publication:

- (a) a work shall be deemed to have been published if copies thereof have been made available in a reasonable quantity for sale, rental, lending or in any other manner sufficient to render the work accessible to the public;
- (b) where in the first instance a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;
- (c) a publication in any country shall be treated as being a first publication notwithstanding that there has been an earlier first publication elsewhere, if the two publications took place within a period of not more than thirty days.

PART II

COPYRIGHT

Works eligible for copyright.

3. (1) Subject to the provisions of this article the following works shall be eligible for copyright:

- (a) artistic works;

- (b) audiovisual works;
- (c) databases;
- (d) literary works;
- (e) musical works.

(2) A literary, musical, or artistic work shall not be eligible for copyright unless the work has an original character and it has been written down, recorded, fixed or otherwise reduced to material form.

(3) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

(4) A database shall not be eligible for copyright unless by reason of the selection or arrangement of its contents, it constitutes the author's intellectual creation. Moreover the copyright conferred to a database shall not extend to its contents and shall be without prejudice to any rights subsisting in such contents themselves.

4. (1) Copyright shall be conferred by this article on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the joint authors, is, at the time when the work is made:

Qualification for copyright protection by virtue of authors.

- (a) an individual who is a citizen of, or is domiciled or permanently resident in Malta or in a State in which copyright is protected under an international agreement to which Malta is also a party;
- (b) a body of persons or a commercial partnership constituted, established, registered and vested with legal personality under the laws of Malta or of a State in which copyright is protected under an international agreement to which Malta is also a party.

(2) The terms of copyright protection conferred by this article shall be calculated according to the following table:

TABLE

Type of Work	Date of Expiration of Copyright
(i) Literary, musical or artistic works and database	Seventy years after the end of the year in which the author dies, irrespective of the date when the work is lawfully made available to the public.
(ii) Audiovisual works	Seventy years after the end of the year in which the last of the following person dies: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the audiovisual work.

(3) In the case of an anonymous or pseudonymous literary, musical or artistic work, or in the case of a collective work, the

copyright in the work subsists until the end of the expiration of 70 years from the end of the year in which it was lawfully made available to the public or after the end of the year in which the work was made if it has not been made available to the public:

Provided that when the pseudonym adopted by the author leaves no doubt as to his identity or in the event of the identity of the author becoming known during the period referred to in the preceding paragraph of this sub-article or where in the case of collective works by a body of persons the natural persons who have created the work are individually identifiable in the versions of the work made available to the public the terms of copyright protection shall be calculated in accordance with the provision of paragraph (i) of the last preceding sub-article.

(4) In the case of joint authorship reference in the preceding article to the death of the author shall be deemed to refer to the joint author who dies last, whether or not he is a qualified person in terms of article 4(1).

(5) In the case of a person who for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work the copyright protection of which has expired, he shall benefit from a protection equivalent to the economic rights covered by copyright but limitedly for a period of twenty-five years from the time when the work was first lawfully published or lawfully communicated to the public.

(6) Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.

Qualification for copyright protection by reference to country where work is made or published.

5. (1) Copyright shall be conferred by this article on every work which is eligible for copyright and which is made or first published in Malta or in a State in which such works are protected under an international agreement to which Malta is also a party and which has not been the subject of copyright conferred by article 4.

(2) Copyright conferred on a work by this article shall have the same duration as is provided for in article 4 in relation to the same type of work.

Copyright works of Government and international bodies.

6. (1) Copyright shall be conferred by this article on every work which is eligible for copyright and which is made by or under the direction or control of the Government of Malta and also such governments of other States, international bodies or other inter-governmental organisations as may be prescribed by the Minister responsible for the Industrial Property Office.

(2) Copyright conferred by this article on databases or on a literary, musical or artistic work shall subsist until the end of the expiration of seventy years from the end of the year in which it was first published.

(3) Copyright conferred by this article on an audiovisual work shall have the same duration as is provided for by article 4 in relation to the same type of work.

(4) Article 4(5) shall apply in like manner to works eligible for copyright to which this article applies which, having been unpublished, are lawfully published or lawfully communicated to the public for the first time after copyright protection has expired.

(5) Articles 4 and 5 shall not be deemed to confer copyright on works to which this article applies.

7. (1) Copyright in an audiovisual work, a database, a literary, musical or artistic work shall be the exclusive right to authorise or prohibit the doing in Malta in respect of the protected material in its totality or substantial part thereof, either in its original form or in any form recognisably derived from the original of any of the following:

Nature of copyright in an audiovisual work, database, literary, musical and artistic work.
Substituted by: IX. 2003.93.

- (a) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part;
- (b) the rental and lending;
- (c) the distribution;
- (d) the translation in other languages including different computer languages;
- (e) the adaptation, the arrangement and any other alteration and the reproduction, distribution, communication, display or performance to the public of the results thereof;
- (f) the broadcasting or rebroadcasting or the communication to the public or cable retransmission;
- (g) display or performance to the public:

Provided that the right to authorise or prohibit the cable retransmission of a television broadcast shall be exercisable only through a collecting society.

(2) The right to authorise or prohibit cable retransmission shall not apply when the transmission is made in Malta:

- (a) if the retransmission is in pursuance of a “must carry” requirement as per article 40 of the Broadcasting Act; and
- (b) if and to the extent that the transmission is made for reception in the area in which the cable retransmission may be received.

Cap. 350.

(3) The right to authorise or prohibit the cable retransmission of a television broadcast shall be exercisable only through a collecting society.

(4) In the case provided for in subarticle (2) where a rightholder has not transferred the management of his rights to a collecting society, the collecting society which manages rights of the same category shall be deemed to be mandated to manage his rights. Such rightholder shall have the same rights and obligations resulting from the agreement between the cable operator and the collecting society which is so deemed to be mandated to manage his rights as the rightholders who have mandated that collecting

society and he may claim such rights within a period of three years from the date of the cable retransmission which includes his work or other protected subject-matter.

(5) Where no agreement is concluded regarding authorization of the cable retransmission of a broadcast, either party may call upon the assistance of one or more mediators appointed by the chairman of the Malta Arbitration Centre, unless otherwise agreed to by all the parties. The tasks of the mediators shall be to provide assistance with negotiation. They may also submit proposals to the parties. It shall be assumed that all the parties accept a proposal as referred to in this subarticle if none of them expresses its opposition within a period of three months. Notice of the proposal and of any opposition thereto shall be served on the parties concerned by judicial act, unless otherwise agreed to by the parties. The mediators shall be so selected that their independence and impartiality are beyond reasonable doubt.

Exhaustion of the distribution rights.
Substituted by:
IX. 2003.94.

8. (1) The first sale or other transfer of ownership in the market of the original work enjoying copyright or copies thereof, when such sale is effected by or with the consent of the copyright owner himself, shall exhaust the exclusive distribution right in respect of that work or its copy.

(2) For the purposes of this article “market” means the market in Malta and as from the 1st May 2004 the European Union.

Restriction with regard to certain works.
Substituted by:
IX. 2003.95.

9. (1) Copyright in an audiovisual work, a database, a literary work other than in the case of a computer programme, a musical or artistic work shall not include the right to authorise or prohibit -

- (a) temporary acts of reproduction, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable:
 - (i) a transmission in a network between third parties by an intermediary, or
 - (ii) another lawful use of a work or other subject-matter to be made, and which have no independent economic significance;
- (b) reproductions on paper or any similar medium, effected by the use of any kind of photographic technique or by some other process having similar effects, with the exception of sheet music, provided that the rightholders received fair compensation;
- (c) reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders receive fair compensation which takes account of the application or non-application of technological measures referred to in article 42(3) and (4) to the work or subject-matter concerned;
- (d) specific acts of reproduction made by publicly accessible libraries, educational establishments or

museums, or by archives, which are not for direct or indirect economic or commercial advantage;

- (e) ephemeral recordings or works made by broadcasting organisations by means of their own facilities and for their own broadcasts:

Provided that any reproduction of a work made under this paragraph may, if it is of exceptional documentary character be preserved in official archives;

- (f) reproduction of broadcasts made by social institutions pursuing non-commercial purposes, such as hospitals or prisons, on condition that the rightholders receive fair compensation;
- (g) the performing, playing or showing of a work in a place where no admission fee is charged in respect of such an act by any club whose aim is not profit-making;
- (h) the reproduction, translation, distribution or communication to the public of a work for the sole purpose of illustration for teaching or scientific research only to the extent justified by the non-commercial purpose to be achieved, and as long as the source, including the author's name, is, unless this is impossible, indicated;
- (i) the reproduction, translation, distribution or communication to the public of a work for the benefit of people with a disability, which are directly related to the disability and on a non-commercial nature, to the extent required by the specific disability;
- (j) the reproduction by the press, translation, distribution or communication to the public of published articles on current economic, political or religious topics or of broadcast works or other subject-matter of the same character, in cases where such use is not expressly reserved, and as long as the source, including the author's name, is indicated, or use of works or other subject-matter in connection with the reporting of current events, to the extent justified by the informative purpose and as long as the source, including the author's name, is, unless this is impossible, indicated;
- (k) the reproduction, translation, distribution or communication to the public of quotations for purposes such as criticism or review, provided that they relate to a work or other subject-matter which has already been lawfully made available to the public, as long as, unless this is impossible, the source, including the author's name, is indicated, and that their use is in accordance with fair practice, and to the extent required by the specific purposes;
- (l) the reproduction, translation, distribution or

- communication to the public of a work for the purposes of public security or to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings;
- (*m*) the reproduction, translation, distribution or communication to the public of political speeches as well as extracts of public lectures or similar works or subject-matter to the extent justified by informatory purposes and provided that the source, including the author's name, is, except where this is impossible, indicated;
 - (*n*) the reproduction, translation, distribution or communication to the public of a work for use during religious celebrations or official celebrations organized by a public authority;
 - (*o*) the reading or recitation in public by a person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement;
 - (*p*) the inclusion in a communication to the public, the making of a graphic representation and the making of a photograph or film, of a work of architecture or sculpture or similar works made to be located permanently in public places;
 - (*q*) the incidental inclusion of a work or other subject matter in other material;
 - (*r*) the reproduction, distribution or communication to the public of a work for the purpose of advertising the public exhibition or sale of artistic works, to the extent necessary to promote the event, excluding any other commercial use;
 - (*s*) the reproduction or communication to the public of a work by way of caricature, pastiche or parody;
 - (*t*) the reproduction, translation, distribution or communication to the public of a work in connection with the demonstration or repair of equipment;
 - (*u*) the reproduction, distribution or communication to the public of an artistic work in the form of a building or a drawing or plan of a building for the purposes of reconstructing the building;
 - (*v*) the communication to the public, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of establishments referred to in paragraph (*d*) of works and other subject-matter, not subject to purchase or licensing terms, which are contained in their collections;
 - (*w*) in the case of a database, the performance of those acts which are normally necessary in order that the licensed user obtains access to the contents of the database and normal use thereof, in respect of the whole or part of

the database which the user is licensed to use; and any contractual provisions running counter to what is prescribed in this paragraph shall be null and void.

(2) Copyright in a computer programme shall not include the right to authorize or prohibit:

- (a) the observation, the study or testing of the functioning of the program by the licensed user in order to determine the ideas and principles which underlie any element of the program if this is done whilst performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do;
- (b) the reproduction by the licensed user of the code and translation of its form where this is indispensable to obtain the information necessary to achieve the interoperability of an independently created computer program with other programs, provided that these acts are confined to the parts of the original program which are necessary to achieve interoperability and the information necessary to achieve interoperability has not previously been readily available to the licensed user:

Provided that any information obtained from the reproduction of the code and the translation of the form of a computer program made under this paragraph shall not:

- (i) be used for purposes other than to achieve the interoperability of the independently created computer program;
 - (ii) be given to other persons, except when necessary for the interoperability of the independently created computer program;
 - (iii) be used for the development, production or marketing of a computer program substantially similar in its expression to the original program or for any other act which infringes copyright;
- (c) the making of a copy or a back-up copy, the translation, adaptation, arrangement and any other alteration of a computer program and the reproduction of the results thereof, in so far as this is necessary for the licensed user to make proper use of the program in accordance with its intended purpose, including the correction of errors; and the right of the licensed user to make a back-up copy of a computer program may not be restricted or excluded by contract in so far as it is necessary for the use of that computer program.

(3) The exceptions and limitations provided for in this article shall only be applied in such particular cases which do not conflict with a normal exploitation of the work or other subject-matter and do not unreasonably prejudice the legitimate interests of the rightholder.

Copyright in a work of architecture.

10. Copyright in a work of architecture shall also include the exclusive right to authorize or prevent the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original:

Provided that the copyright in any such work shall not include the right to authorise or prevent the reconstruction, in the same style as the original, of a building to which that copyright relates or the right to authorize or prevent the rental or lending of buildings or works of applied art.

First ownership of copyright.

11. (1) Copyright conferred by articles 4, 5 and 6 shall vest initially in the author or in the joint authors:

Provided that in the case of computer programs and databases where a work is made in the course of the author's employment, in the execution of his duties or following the instructions given by his employer, the economic rights conferred by copyright shall be deemed to be transferred to the author's employer, subject to any agreement between the parties excluding or limiting such transfer. In respect of other works eligible for copyright, in such circumstances, subject to any agreement to the contrary between the parties, the copyright shall always vest in the author or joint authors.

(2) Subject to the provision of the last preceding sub-article-

- (a) the name on a work purporting to be the name of its author shall be considered as such, unless the contrary is proved;
- (b) in the case of an anonymous or pseudonymous work, the publisher whose name is indicated in the work as such shall be deemed to be, unless the contrary is proved, the legal representative of the anonymous or pseudonymous author and shall be entitled to exercise and protect the rights belonging to the author under this Act.

PART III

MORAL RIGHTS OF AUTHORS

Author's right to prohibit the mutilation, modification, distortion or subjecting to derogatory treatment of any work.

12. (1) It shall not be lawful for any person, including the assignee of the copyright or a licensee thereunder, without the author's consent, to mutilate, modify, distort or subject to any other derogatory action any work during its term of copyright in a way prejudicial to the honour or reputation of the author.

(2) The author of a work eligible for copyright shall, until the expiry of copyright, in addition to copyright conferred in relation to that work, and also in those cases where copyright shall have been transmitted by assignment or by testamentary disposition enjoy the moral right -

- (a) to claim authorship of his work, in particular, the right that his name as far as practicable, be indicated in a prominent way on the copies, and in connection with

any public use of that work; or

- (b) that his name be not indicated on the copies, and in connection with any public use, of his work, or that his pseudonym be so indicated:

Provided that during the lifetime of the author of a work it shall not be lawful to transmit any of the aforesaid moral rights.

(3) On the death of the author -

- (a) the right passes to such person as he may by testamentary disposition specifically direct, provided that on this person's death the right passes to his successor;
- (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes;
- (c) if or to the extent the right does not pass under paragraph (a) or paragraph (b) it would be exercisable by the owners of the copyright.

PART IV

NEIGHBOURING RIGHTS

13. Performers shall have the exclusive right to authorise or prohibit the doing in Malta any of the following acts:

Nature of performer's rights.

- (a) the fixation of their performances;
- (b) the direct or indirect, temporary or permanent reproduction by any means and in any form, in whole or in part of a fixation of their performances;
- (c) the rental and lending of their fixed performances;
- (d) the distribution of the original performances fixed in phonograms and of copies thereof;
- (e) the making available to the public of the fixation of their performances, by wire or wireless means, in such a way that members of the public may access them from a place and a time individually chosen by them;
- (f) the broadcasting and the communication to the public of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

14. The rights conferred by this article shall have the duration of fifty years from the end of the year in which the fixation of the performance was first lawfully published or first lawfully communicated to the public, whichever is the earlier or in the absence of such publication or communication to the public from the end of the year in which it was first performed.

Term of protection for performers' rights.

15. Producers of sound recordings shall, in respect of their sound recordings, and producers of the first fixations of audiovisual works, in respect of the original and copies of their audiovisual works, have the exclusive right to authorize or prohibit:

Nature of producer's rights.

- (a) the direct or indirect, temporary or permanent reproduction by any means or form in whole or in part;
- (b) the rental and lending;
- (c) the distribution;
- (d) the making available to the public by wire or wireless means in such a way that members of the public may access them from a place and a time individually chosen by them.

Term of protection for producers' rights.

16. The rights conferred by this article on sound recordings and audiovisual works shall have the duration of fifty years from the end of the year in which the sound recording or the first fixation of the audiovisual work was first lawfully published or lawfully communicated to the public, whichever is the earlier or in the absence of such publication or communication to the public from the end of the year in which the first fixation was made.

Nature of broadcasters' rights.

17. (1) Broadcasting organisations shall have the exclusive right to authorize or prohibit the doing in Malta of any of the following acts:

- (a) the fixation of their broadcasts or initial cable transmissions;
- (b) the direct or indirect, temporary or permanent reproduction by any means or form in whole or in part of fixations of their broadcast or initial cable transmissions as set out in paragraph (a) above;
- (c) the distribution of fixation of their broadcasts or initial cable transmissions as set out in paragraph (a) above;
- (d) the rebroadcasting of their broadcasts as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee;
- (e) the making available to the public, of fixations of their broadcast or initial cable transmissions as set out in (a) above, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

(2) A broadcasting organisation shall not have the right provided in sub-article (1)(a) above when it merely retransmits by cable the broadcasts of broadcasting organisations.

Term of protection of broadcasters' rights.

18. The rights conferred by this article on broadcasts shall have the duration of fifty years from the end of the year in which the broadcast was first transmitted whether by wire or over the air, be it by cable or satellite.

Remuneration for performers and producers of sound recordings.

19. Where a sound recording published for commercial purposes or a reproduction of such sound recording is used directly or indirectly for broadcasting by wireless means or for any communication to the public a single equitable remuneration shall be paid by the user to the performers and to the producers of the sound recording concerned to be shared equally between them. Such payment shall be made to a collecting society representing

both performers and producers of sound recordings or, in the absence of such a collecting society, to the producer of sound recordings who shall be obliged to distribute half of the remuneration to the performers.

20. (1) The distribution right in respect of fixations of performances, sound recordings, original and copies of audiovisual works and fixations of broadcasts conferred by the preceding articles of this Act on performers, producers of sound recordings, producers of the first fixations of audiovisual works and broadcasting organisations respectively, shall be exhausted by the first sale or transfer of ownership in the market of the originals or copies of such works in regard to that particular original or copy, when such sale is effected by the neighbouring right owner or with his consent.

Exhaustion of distribution rights.
Substituted by:
IX. 2003.96.

(2) For the purposes of this article, “market” means the market in Malta and as from the 1st May 2004 the market in any other Member State.

21. The provisions of article 9 shall apply *mutatis mutandis* to the neighbouring rights conferred by this Act in like manner as they apply to copyright in a literary, musical or artistic or audiovisual work, or database.

Exceptions to neighbouring rights.
Substituted by:
IX. 2003.97.

22. Neighbouring rights conferred by this Part shall apply only in respect of works -

Qualification for neighbouring rights protection.

- (a) of which the performer, the producer or broadcaster is -
 - (i) an individual who is a citizen of, or is domiciled or permanently resident in Malta or in a State in which such works are protected by neighbouring rights under an international agreement to which Malta is also a party;
 - (ii) a body of persons or a commercial partnership constituted, established, registered and vested with legal personality under the laws of Malta or of a State in which such works are protected by neighbouring rights under an international agreement to which Malta is also a party;

or

- (b) which are made, first published, broadcast or communicated to the public in Malta or in a State in which such works are protected by neighbouring rights under an international agreement to which Malta is also a party;

or

- (c) which are made by or under the direction or control of the Government of Malta and also such governments of other States, international bodies or other inter-governmental organisations as may be prescribed.

MORAL RIGHTS OF PERFORMERS

Performer's rights to be identified and to prohibit the distortion, mutilation and modification of performances.

23. (1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall until the expiry of the economic rights, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performances, and to prohibit any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation:

Provided that during the lifetime of the performer it shall not be lawful to transmit any of the aforementioned moral rights.

(2) On the death of the performer -

- (a) the right passes to such person as he may by testamentary disposition specifically direct, provided that on this person's death the right passes to his successor;
- (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes.

PART VI

TRANSFER OF COPYRIGHT AND NEIGHBOURING RIGHTS

Assignment and licences.

24. (1) Subject to the provisions of this article, copyright and neighbouring rights shall be transmissible by assignment, operation of law or by testamentary disposition as movable property.

(2) An assignment or testamentary disposition of copyright or neighbouring rights may be limited so as to apply to some only of the acts which the owner of the copyright or neighbouring rights has the exclusive right to authorize or prevent, or to a part only of the period of the copyright or neighbouring right, or to a specified country or other geographical area.

(3) When an author in relation to the original or copy of his work or a performer in relation to the fixation of his performance assigns his exclusive right to authorize or prevent the rental thereof to the producer of the sound recording or the producer of the audiovisual work containing the author's work or the performer's fixed performance, that author or performer shall retain the right to obtain individually or through a collecting society an equitable remuneration for the rental of the said sound recording or original or copy of the said audiovisual work from the producer concerned and such right may not be waived. In the absence of agreement on the remuneration payable under this sub-article, the amount of such remuneration shall be determined by the Board.

(4) Subject to the provisions of article 52 no assignment of copyright or neighbouring rights and no licence to do an act the doing of which is controlled by copyright or by neighbouring rights shall have effect unless it is effected by an agreement in writing between the parties:

Provided that when a contract is concluded between a performer and a producer of audiovisual works concerning the production of an audiovisual work the performer shall be deemed to have assigned to the producer his exclusive rights on the fixation of his performance, unless agreed otherwise, subject only to the right, which may not be waived, of the performer to an equitable remuneration payable on the conclusion of the contract by the producer to the performer or should he so desire to a collecting society representing him, which remuneration shall, in the absence of agreement between the parties, be determined by the Board.

Provided further that, when a contract is concluded between the author of an audiovisual work or the authors of the underlying works used as the basis for the audiovisual work and the producer of the audiovisual work concerning the production of that audiovisual work such authors shall be deemed to have assigned to the producer their exclusive rights on their copyright works, unless agreed otherwise, subject only to the right, which may not be waived, of the authors to an equitable remuneration payable on the conclusion of the contract by the producer to the author individually or should the author so desire, to a collecting society representing him, which remuneration shall, in the absence of agreement between the parties, be determined by the Board.

(5) An assignment or licence of copyright granted by a joint author or an assignment or licence of a neighbouring right granted by a joint rightholder shall have effect as if granted by the other joint authors or joint rightholders respectively:

Provided that, where any other joint author in the case of copyright or joint rightholder in the case of neighbouring rights is not satisfied with the terms on which such assignment or licence has been granted, he may, within three months from the day on which the said terms have been communicated in writing to him, apply to the Board for the determination by it of such terms as the Board may consider fair and reasonable.

(6) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work or an existing work in which copyright or a neighbouring right does not yet subsist, and the prospective copyright or prospective neighbouring right in any such work shall be transmissible as movable property:

Provided that in the case of copyright such assignment or licence shall not be deemed to include a copyright which in terms of article 11(1) vests in the author's employers, unless the parties expressly include it.

(7) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, unless the testator has provided otherwise, be deemed to include any copyright or neighbouring right or prospective copyright or prospective neighbouring right in the work which is vested in the deceased.

PART VII

SUI GENERIS RIGHT IN RESPECT OF DATABASES

Nature of *sui generis* right in respect of databases.

25. Notwithstanding the provisions of article 7, the maker of a database who can show that there has been qualitatively or quantitatively a substantial investment in either the obtaining, verification or presentation of the contents of the database shall have, irrespective of the eligibility of that database or its contents for protection by copyright or by other rights, the right to authorise or prohibit acts of extraction or re-utilization of its contents, in whole or in substantial part, evaluated qualitatively or quantitatively.

Exceptions to the *sui generis* right in respect of databases.

26. (1) The maker of a database which is made available to the public in whatever manner may not prevent a licensed user of the database from extracting or re-utilizing insubstantial parts of its contents, evaluated qualitatively or quantitatively, for any purpose whatsoever, as long as the licensed user does not perform acts which conflict with the normal exploitation of the database or unreasonably prejudice the legitimate interests of the maker of the database or in any way cause prejudice to the holder of a copyright or neighbouring right in respect of the works or subject matter contained in the database and any contractual provisions running counter to this proviso shall be null and void:

Provided that the repeated and systematic extraction or re-utilization of insubstantial parts of the contents of the database implying acts which conflict with a normal exploitation of that database or which unreasonably prejudice the legitimate interests of the maker of the database shall not be permitted.

(2) Notwithstanding article 25, a licensed user may, without the authorization of the maker of a database made available to the public in whatever manner, extract or re-utilize a substantial part of its contents for the following purposes:

- (a) extraction for private use in the case of a non-electronic database;
- (b) extraction for the purposes of illustration for teaching or for scientific research to the extent justified by the non-commercial purpose to be achieved provided the source is indicated;
- (c) extraction or re-utilization for the purposes of public security or an administrative or judicial procedure.

Term of protection of *sui generis* right in respect of databases.

27. The right provided for in article 25 shall expire fifteen years from the first of January of the year following the date of completion of the making of the database, or if made available to the public in whatever manner before expiry of the said period, such a right shall expire fifteen years from the first of January of the year following the date when the database was first made available to the public:

Provided that any substantial change, evaluated qualitatively or quantitatively, to the contents of a database, including any substantial change resulting from the accumulation of successive additions, deletions or alterations, which would result in the database being considered to be a substantial new investment, evaluated qualitatively or quantitatively, shall give rise to the creation of a new database, which shall be entitled from that

moment to its own term of protection of fifteen years.

28. Such a right which may be assigned or granted under contractual licence subject to the provisions of article 24 shall be without prejudice to rights existing in respect of the contents of the database. Assignment and licences.

29. The right conferred by this article shall only apply to a database - Qualification for protection *sui generis* right in respect of databases.

- (a) whose maker or rightholder is at the time when the database is made -
 - (i) an individual who is a citizen of, or is domiciled or permanently resident in Malta or in a State in which such a *sui generis* right in respect of databases is protected under an international agreement to which Malta is also a party;
 - (ii) a body of persons or a commercial partnership constituted, established, registered and vested with legal personality under the laws of Malta or of a State in which such a *sui generis* right in respect of databases is protected under an international agreement to which Malta is also a party;

or

- (b) which is made or first made available to the public in Malta or in a State in which such a *sui generis* right in respect of databases is protected under an international agreement to which Malta is also a party;

or

- (c) which is made by or under the direction or control of the Government of Malta and also such governments of other States, international bodies or other inter-governmental organisations as may be prescribed.

30. (1) For the purposes of this Part “extraction” means the permanent or temporary transfer of all or a substantial part of the contents of a database to another medium by any means or in any form while “re-utilization” means any form of making available to the public all or a substantial part of the contents of a database by the distribution of copies, by renting, by on-line or other forms of transmission: Definition of extraction and re-utilization.

(2) Provided that public lending shall not be deemed to be an act of extraction or re-utilization.

31. The first sale in Malta of a copy of a database by the rightholder or with his consent shall exhaust the right to control the resale of that copy. Exhaustion of resale right.

PART VIII

SUI GENERIS RIGHT IN RESPECT OF SEMICONDUCTOR PRODUCT TOPOGRAPHIES

Nature of *sui generis* right in respect of semiconductor topographies.

32. Creators of semiconductor product topographies and their successors in title shall have the exclusive right to authorize or prevent in Malta the reproduction of the topography and the commercial exploitation or the importation for the purpose of commercial exploitation of the topography or of a semiconductor product manufactured by using the topography.

Exceptions to the topography right.

33. The right conferred by article 32 shall not prevent:

- (a) reproduction of a topography privately for non-commercial aims;
- (b) reproduction for the purpose of analyzing, evaluating or teaching the concepts, processes, systems or techniques bodied in the topography or the topography itself;
- (c) any act in relation to a topography meeting the requirements of article 35 and created on the basis of an analysis and evaluation of another topography carried out in conformity with the preceding paragraph (b).

Exhaustion of topography right.

34. When the topography or the semiconductor product has been put on the market in Malta by the rightholder or with his consent the exclusive right to authorize or prevent the commercial exploitation or the importation of that topography or of that semiconductor product shall be exhausted.

Application of topography right only in respect of creator's own intellectual effort.

35. The right conferred by article 32 shall apply only in respect of semiconductor product topographies which are the result of the creator's own intellectual effort and are not commonplace in the semiconductor industry but shall not extend to any concept, process, system, technique or encoded information embodied in the topography:

Provided that where the semiconductor product topography consists of elements that are commonplace in the semiconductor industry, it shall be protected only to the extent that the combination of such elements, taken as a whole, fulfils the above-mentioned conditions.

Qualification for protection of topography right.

36. The right conferred by article 32 shall apply in favour of a creator or his successor in title who is an individual who is a citizen of, or is domiciled or permanently resident in Malta or in a State in which such a *sui generis* right as is conferred by article 32 on semiconductor product topographies is protected under an international agreement to which Malta is also a party.

Topographies created in course of employment.

37. Where a topography is created in the course of the creator's employment, in the execution of his duties or following the instructions given by his employer the exclusive right conferred by article 32 shall be deemed to be transferred to the creator's employer or his successor in title, subject to any agreement between the parties excluding or limiting such transfer:

Provided that the creator's employer or his successor in title must also satisfy the criteria of article 36 or be a body of persons or a commercial partnership constituted, established, registered and vested with legal personality under the laws of Malta

or of a State in which such a *sui generis* right as is conferred by article 32 on semiconductor product topographies is protected under an international agreement to which Malta is also a party.

38. Where no right to protection as conferred by article 32 exists in favour of a creator or his employer in accordance with articles 36 and 37, the right shall apply in favour of the person or his successor in title, who, satisfying either of the conditions mentioned in the proviso to article 37, first commercially exploits, in Malta or in a State in which such a *sui generis* right as is conferred by article 32 on semiconductor product topographies is protected under an international agreement to which Malta is also a party, a topography which has not yet been exploited commercially anywhere in the world and has been exclusively authorized to exploit commercially the topography throughout such territory by the person entitled to dispose of it.

Where no right to protection exists.

39. The right conferred by article 32 may be assigned or granted under contractual licence subject to the provisions of article 24.

Assignment and licences.

40. The right conferred by article 32 shall subsist for ten years from the end of the year in which the semiconductor product topography was first commercially exploited anywhere in the world or for fifteen years from the first fixation or encoding of the semiconductor product topography if it has not been commercially exploited:

Term of protection for topography right.

Provided that in the case where the term of protection commences from the date of first commercial exploitation in the world rather than from the first fixation or encoding of the topography, the legal remedies provided for by article 43(1) shall also be available in favour of a rightholder who can prove to the satisfaction of the Court that the defendant fraudulently reproduced or commercially exploited or imported for that purpose a semiconductor product topography even though such acts occurred prior to the commencement of the term of protection and the coming into existence of the right conferred by article 32.

41. Notwithstanding article 32 and the provisions of article 42, a person or his successor in title who acquires a semiconductor product shall not be prevented from commercially exploiting that product if at the time of acquisition he was not aware and could not reasonably be expected to be aware that a *sui generis* right as is conferred by article 32 subsisted in that work:

Right of remuneration.

Provided that, at the suit of the rightholder or his successors in title, the Civil Court, First Hall, shall order that person to pay adequate compensation to the plaintiff in respect of the acts committed by him after he became aware or had reasonable grounds to believe that the semiconductor product is protected by such a *sui generis* right.

PART IX

INFRINGEMENT

Infringing acts.
Substituted by:
IX. 2003.98.

42. (1) Copyright, neighbouring rights and *sui generis* rights are infringed by:

- (a) any person who does or causes another person to do, without a licence from the owner or holder thereof, an act the doing of which is controlled by copyright, neighbouring rights or *sui generis* rights;
- (b) any person who, without the licence of the copyright owner or right holder, imports into Malta otherwise than for private and domestic use, or distributes therein by way of trade, hire or otherwise, or by way of trade exhibits in public or is in possession or manufactures in the course of business or offers or exposes for sale or hire an article in respect of which copyright, neighbouring rights or *sui generis* rights are infringed under the preceding paragraph;
- (c) any person who, without the licence of the copyright owner or rightholder does anything which circumvents any effective technological measures, which the person concerned carries out in the knowledge, or with reasonable grounds to know, that he or she is pursuing that objective;
- (d) any person who, without the licence of the copyright owner or rightholder manufactures, imports, distributes, sells, rents, advertises for sale or rental, or possesses for commercial purposes, devices, products or components which:
 - (i) are for the purpose of circumvention of, or
 - (ii) have only a limited commercially significant purpose or use other than to circumvent, or
 - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of, any effective technological measures;
- (e) any person who, without the licence of the copyright owner or rightholder provides, promotes, advertises or markets a service which serves for the purpose of circumvention of any effective technological measures;
- (f) any person who, without the licence of the copyright owner or right holder, knowingly performs any of the following acts:
 - (i) the removal or alteration of any electronic rights-management information;
 - (ii) the distribution, importation for distribution, broadcasting, communication or making available to the public of works or other subject-matter protected under this Act from which

electronic rights-management information has been removed or altered without authority,

if such person knows, or has reasonable grounds to know, that by so doing he is inducing, enabling, facilitating or concealing an infringement of any copyright or any neighbouring right, or of the *sui generis* rights as provided by this Act:

Provided that any of these items of electronic rights-management information:

- (i) is associated with a copy of a copyright work under the terms of this Act, or
- (ii) appears in connection with the communication to the public of a copyright work under the terms of this Act, or
- (iii) is covered by a *sui generis* right under the terms of this Act.

- (2) (a) Notwithstanding the provisions of subarticle (1)(c), (d) and (e), where the application of any effective technological measure to a copyright work prevents any beneficiary of an exception provided for in article 9(1)(b), (c), (d), (e), (f), (i), (l) or (h) from benefiting from that exception, the rightholder shall make available to the beneficiary the means of benefiting from that exception, to the extent necessary to benefit from that exception or limitation:

Provided that the beneficiary shall have legal access to the protected work or subject-matter concerned:

Provided further that there is no voluntary measure taken by the rightholder or exclusive licensee or agreement between the rightholder and the other party concerned, the purpose of which is to enable the beneficiary (or persons of a class to which the beneficiary belongs) to benefit from the exceptions specified in the above paragraph.

- (b) The provisions of subarticle (2)(a) do not apply to copyright works made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

43. (1) Where any person infringes the copyright, neighbouring rights or *sui generis* rights in respect of a work, he shall be liable, at the suit of the copyright owner or right holder to be condemned by the Civil Court, First Hall to the payment of damages or to the payment of a fine to be determined in accordance with a scale of fines to be prescribed by the Minister, as the said Court, having regard to the circumstances of the case, may deem proper and to the restitution of all the profit derived from the infringement of the copyright, neighbouring rights or *sui generis* rights:

Liability for infringement of copyright, neighbouring rights and *sui generis* rights.

Provided that where the defendant proves to the satisfaction of the Court that at the time of the infringement he was not aware and could not reasonably be expected to be aware that copyright, neighbouring rights or *sui generis* rights subsisted in the work to which the action relates, the Court shall not condemn him to the restitution of the profit.

(2) The Civil Court, First Hall may in an action for infringement of copyright, neighbouring rights or *sui generis* rights having regard to all the circumstances and in particular to the flagrancy of the infringement and any benefit accruing to the defendant by reason of the infringement, award such additional damage as the justice of the case may require.

(3) The Court may, moreover, in a suit instituted under this article, on the application of the plaintiff, order that all the infringing articles still in possession of the defendant be delivered to the plaintiff.

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

- (a) after the construction of the building has been begun, so as to prevent it from being completed; or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

Liability for infringement of moral rights.

44. (1) Saving the provisions of the last preceding article, any person who contravenes the provision of article 12(1), shall be liable at the suit of the author or his heirs to be condemned by the Civil Court, First Hall, to the payment of a fine, and for damages to be determined in accordance with a scale of fines to be prescribed by the Minister.

(2) In any proceedings under the last preceding sub-article the Court shall order the destruction of all the infringing articles still in possession of the defendant where it is satisfied that the prejudice caused to the author is so serious as to justify such measure.

(3) The provision of the last preceding sub-article shall not apply where the infringing article is a building.

(4) Any person who contravenes the provisions of article 12(1) and (2) and article 23(1) shall be liable at the suit of the author or the physical person to whom, or the legal entity to which, the right to exercise the aforesaid moral rights has been transmitted under the proviso to article 11(2), to be condemned by the Civil Court, First Hall to the payment of a fine, and for damages to be determined in accordance with a scale of fines to be prescribed by the Minister.

PART X

THE COPYRIGHT BOARD

Appointment of the Board.

45. (1) The Minister shall by notice in the Gazette appoint a Copyright Board, consisting of a chairman and two other members

for the purpose of performing the functions assigned to such Board by the provisions of this Act.

(2) The Chairman of the said Board shall be a retired Judge or a retired Magistrate or a person who has practised as an advocate in Malta for a period of, or periods amounting in the aggregate to, not less than seven years.

(3) The Minister shall also appoint two other persons to act as members of the Board, one to replace the chairman and the other to replace any of the other two members, whenever the chairman or any of the other members, as the case may be, is, for any reason, unable to carry out his functions.

(4) Every member of the Board shall hold office during the Minister's pleasure and the Minister may, without assigning any reason, revoke the appointment of any member and appoint a new member whenever he deems it to be necessary.

(5) The members of the Board, with the exception of the Chairman if he is a Magistrate, shall, before entering upon their office, take before the Attorney General the oath to examine and decide any matter referred to them with equity and impartiality.

46. The Chairman or any other member of the Board may abstain or may be challenged by any of the contending parties for any of the causes mentioned in article 734 of the Code of Organization and Civil Procedure. Any question regarding any cause of abstention or challenge and any question which is a question of law alone shall be decided by the Chairman of the Board.

Absention and challenge.

Cap.12.

47. The Board shall have the power to summon any person to give evidence or to produce books or other documents before it, and the Chairman of the Board shall have, in regard to the summoning and examining of witnesses before the Board, the same powers as are by the Code of Organization and Civil Procedure conferred on the Civil Court, First Hall.

Power to summon.

Cap. 12.

48. (1) Proceedings of the Board shall be held in public and the Board's decision shall be notified to the parties by registered post to their respective business or private addresses and, unless the contrary is proved, such decision shall be deemed to have been served on the party concerned not later than the third day succeeding the day when it was posted to such party.

Proceedings.

(2) The Minister may make regulations governing proceedings before the Board and, without prejudice to the generality of the foregoing, may make regulations -

- (a) prescribing the manner in which any matter may be referred to the Board;
- (b) prescribing the procedure to be adopted by the Board in dealing with any matter referred to it under this Act and the records to be kept by the Board;
- (c) prescribing the manner in which the Board shall be convened and the place where the Board shall hold its sittings;

- (d) prescribing a scale of fines, costs and fees; and
- (e) generally for the better carrying out of the functions assigned to the Board by this Act.
- Right of appeal.
*Amended by:
VI. 2001.34.*
- Cap. 12.
- Costs and fees.
- Unreasonable refusal or unreasonable terms in respect of cable retransmission or rebroadcasting.
- 49.** (1) There shall lie a right of appeal from all decisions of the Board.
- (2) Any appeal shall be brought before the Court of Appeal composed in the manner provided in article 41(6) of the Code of Organization and Civil Procedure by application within fifteen days of service of the Board's decision.
- (3) The Minister responsible for justice may make rules governing appeals to the Court of Appeal under this Act, and prescribing a scale of costs and fees in relation to such appeals.
- 50.** Costs and fees in respect of proceedings before the Board and before the Court of Appeal shall be borne by the parties in such manner as the said Board or Court, as the case may be, shall decide.
- 51.** (1) In any case where it appears to the Board that a collecting society or an owner of copyright or neighbouring right -
- (a) is unreasonably refusing to grant a licence in respect of cable retransmission or rebroadcasting, or
- (b) is imposing unreasonable terms or conditions for the granting of such licence,
- the Board may direct that, as respects the doing of any act relating to a work with which the collecting society or the owner, as the case may be, is concerned, a licence shall be deemed to have been granted by the collecting society or by the owner at the time the act is done, provided the appropriate fees fixed by such Board are paid or tendered before the expiration of such period or periods as the Board may determine.
- (2) The Minister may by regulations order that the provisions of this article shall not remain in force as from the date mentioned in such order.

PART XI

COLLECTIVE ADMINISTRATION OF RIGHTS

- Authorisation of collecting societies.
- Establishment and incorporation of collecting societies.
- Tasks of collecting societies.
- Methods of operation of collecting societies.
- 52.** Authors and other owners of copyright and of neighbouring rights may authorize a collecting society to administer their economic rights.
- 53.** *Repealed by Act IX. 2003.99.*
- 54.** *Repealed by Act IX. 2003.99.*
- 55.** *Repealed by Act IX. 2003.99.*

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| 56. Repealed by Act IX. 2003.99. | Obligations of users of works towards collecting societies. |
| 57. Repealed by Act IX. 2003.99. | Supervision of collecting societies. |
| 58. Repealed by Act IX. 2003.99. | Dissolution of collecting societies. |

PART XII

REGULATIONS

59. The Minister may make regulations for the better implementation of the provisions of this Act and, without prejudice to the generality of the foregoing, may by such regulations:
- (a) prescribe any matter that may be prescribed under this Act;
- (b) introduce changes to extend the protection granted by this Act to any other form of intellectual property not otherwise protected by this Act as may be provided by any international instrument that is binding in Malta;
- (c) change and revive the terms of the duration of protection as may be provided in any international instrument that is binding in Malta;
- (d) alter the rights and limitations thereof as may be provided in any international instrument that is binding in Malta;
- (e) prescribe the functions of the Copyright Board;
- (f) provide for matters relating to collecting societies, in particular their establishment, tasks, manner of operation, setting and approval of fees and their supervision.

Power to make regulations.
Substituted by:
IX. 2003.100.

PART XIII

TRANSITORY PROVISIONS

60. (1) This Act shall apply:
- (a) in relation to works made after the coming into force of this Act; and
- (b) saving the provisions of sub-article (2), to works made before the coming into force of this Act where the term of protection has not, upon the coming into force of this Act, expired under the Copyright Act repealed by this Act.
- (2) (a) The rights of performers in respect of a fixation of their performance on a phonogram to prevent the fixation of their unfixed performance which took place prior to the commencement of this Act and the reproduction of such fixation when undertaken without their authorisation and the rights of performers to

Application to works.

prevent the broadcasting by wireless means and the communication to the public of their live performance when undertaken without their authorisation shall be protected under this Act until the end of a period of fifty years computed from the end of the calendar year in which the performance took place. Provided that these rights are exercised through a collecting society.

- (b) The right of producers of sound recordings made prior to the commencement of this Act to authorize or prohibit the rental of the said sound recordings shall be protected under this Act for a term of fifty years computed from the end of the calendar year in which the sound recording was made. Provided that these rights are exercised through a collecting society.
- (c) The right of the holder of copyright in respect of a literary work consisting of a computer programme to authorise or prohibit the rental of the said programme shall be protected until the end of a period of fifty years computed from the end of the calendar year in which the author of the said computer programme dies.

(3) No action may be taken under this Act in respect of an action which took place prior to the commencement of this Act in respect of rights recognised by this Act but which were not recognised by the Copyright Act repealed by this Act.