

**Copyright (New Technologies)
Amendment Bill**

(Formerly Copyright (New Technologies and
Performers' Rights) Amendment Bill)

Government Bill

As reported from the committee of the whole
House

Copyright (New Technologies)
Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

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Hon Judith Tizard

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Copyright (New Technologies) Amendment Act **2006**.

2 Commencement

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(1) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

(1) **Section 18(2)** comes into force on the day after the date on which this Act receives the Royal assent.

(1A) The rest of this Act comes into force on a date to be appointed by the Governor-General by Order in Council.

10

(2) One or more Orders in Council may be made appointing different dates for the commencement of different provisions.

2A Principal Act amended

This Act amends the Copyright Act 1994.

**Part 1
Amendments to Parts 1 to 5 of Copyright
Act 1994**

5

3 Interpretation

(1) Section 2(1) is amended by repealing the definition of **broad-
cast**.

(2) Section 2(1) is amended by inserting the following definitions
in their appropriate alphabetical order:

10

“**CMI or copyright management information** has the mean-
ing given to it in **section 226F**

“**communicate** means to transmit or make available by
means of a communication technology, including by means of
a telecommunications system or electronic retrieval system,
and **communication** has a corresponding meaning

15

“**communication work** means a ~~transmission, or the mak-
ing available by a communication technology,~~ transmission of
sounds, visual images, or other information, or a combination
of any of those, for reception by members of the public, and
includes a broadcast or a cable programme

20

“**educational resource supplier** means any person—

“(a) whose principal function is the copying of communica-
tion works and the supply of the copies it makes to edu-
cational establishments for educational purposes; and

25

“(b) who does not conduct its business for profit; and

“(c) who has been approved by the Minister of Education
as an educational resource supplier for the purpose of
this Act by a notice published in the *Gazette* and whose
approval has not been revoked

30

“**Internet service provider** means a person who does either
or both of the following things:

“(a) offers the transmission, routing, or providing of con-
nections for digital online communications, between or
among points specified by a user, of material of the
user’s choosing:

35

- “(b) hosts material on websites or other electronic retrieval systems that can be accessed by a user
 “TPM or **technological protection measure** has the meaning given to it in **section 226**
 “TPM **work** has the meaning given to it in **section 226** 5
 “TPM **circumvention device** has the meaning given to it in **section 226.**”
- (3) Section 2(1) is amended by repealing paragraphs (a) and (b) of the definition of **copying** and substituting the following paragraph: 10
 “(a) means, in relation to any description of work, reproducing, recording, or storing the work in any material form (including any digital format), in any medium and by any means; and”.
- (4) Section 2(1) is amended by repealing paragraph (d) of the definition of **copying** and substituting the following paragraph: 15
 “(d) includes, in relation to a film or communication work, the making of a photograph of the whole or any substantial part of any image forming part of the film or communication work—”. 20
- (5) Section 2(1) is amended by repealing paragraphs (c) to (e) of the definition of **material time** and substituting the following paragraphs:
 “(c) in relation to a communication work, means when the work is made or received in New Zealand; and 25
 “(d) in relation to a typographical arrangement of a published edition, means when the edition is first published”.
- (6) Section 2(1) is amended by omitting “broadcast, or cable programme” from paragraph (b) of the definition of **performance** 30 and substituting “or communication work”.
- 4 New section 3 substituted**
 Section 3 is repealed and the following section substituted:

- “3 Associated definitions for purposes of communicating works**
Associated definitions for communication works
- “(1) References in this Act to a person ~~communicating a work~~ or making a communication work are— 5
- “(a) to the person transmitting the communication work or making it available by means of a communication technology, if that person has responsibility to any extent for its contents; and
- “(b) any person who provides the contents of the work and 10
who makes with the person communicating the work the arrangements necessary for its communication.
- “(2) For the purposes of this Act, in the case of communicating a work by satellite transmission,—
- “(a) the place from which the work is communicated is the 15
place from which the signals carrying the work are transmitted to the satellite: and
- “(b) the person communicating the work is the person who transmits those signals to the satellite.”
- 5 Section 4 repealed** 20
Section 4 is repealed.
- 6 Meaning of author**
Section 5(2) is amended by repealing paragraphs (c) to (e) and substituting the following paragraphs:
- “(c) in the case of a communication work, the person who 25
makes the communication work:
- “(d) in the case of a typographical arrangement of a published edition, the publisher.”
- 7 Meaning of work of joint authorship**
Section 6 is amended by repealing subsection (2) and substituting the following subsection: 30
- “(2) A communication work must be treated as a work of joint authorship in any case where more than 1 person is to be taken as making the communication work.”

8 Meaning of publication

- (1) Section 10(4)(a)(ii) is amended by omitting “the broadcasting of the work or its inclusion in a cable programme service” and substituting “the communication of the work to the public”.
- (2) Section 10(4)(b)(iii) is amended by omitting “the broadcasting of the work or its inclusion in a cable programme service” and substituting “the communication of the work to the public”. 5
- (3) Section 10(4)(d) is amended by repealing subparagraph (ii) and substituting the following paragraph:
 “(ii) the communication of the work to the public.” 10

9 Meaning of infringing copy

Section 12(5) is amended by repealing paragraph (a) and substituting the following paragraph:

- “(a) section 85(4) (which relates to incidental recording for the purposes of a communication work):” 15

10 Copyright in original works

- (1) Section 14 is amended by repealing subsection (1) and substituting the following subsection:
 “(1) Copyright is a property right that exists, in accordance with this Act, in original works of the following descriptions: 20
 “(a) literary, dramatic, musical, or artistic works:
 “(b) sound recordings:
 “(c) films:
 “(d) communication works:
 “(e) typographical arrangements of published editions.” 25
- (2) Section 14 is amended by repealing subsection (3).

11 Acts restricted by copyright

Section 16(1) is amended by repealing paragraph (f) and substituting the following paragraph:

- “(f) to communicate the work to the public:” 30

12 New section 20 substituted

Section 20 is repealed and the following section substituted:

“20 Qualification by reference to origin of communication work

A communication work qualifies for copyright if it is made from—

- “(a) a place in New Zealand; or 5
- “(b) a place in a prescribed foreign country.”

13 Duration of copyright in literary, dramatic, musical, or artistic works

Section 22 is amended by repealing subsection (4) and substituting the following subsection: 10

“(4) For the purposes of subsection (3), the circumstances in which a work may be made available to the public include,—

- “(a) in the case of a literary, dramatic, or musical work,—
 - “(i) performance in public:
 - “(ii) communication to the public: 15
- “(b) in the case of an artistic work,—
 - “(i) exhibition in public:
 - “(ii) the playing or showing in public of a film that includes the work:
 - “(iii) communication to the public.” 20

14 Duration of copyright in sound recordings and films

Section 23 is amended by repealing subsection (2) and substituting the following subsection:

“(2) For the purposes of subsection (1), a sound recording or film is made available to the public when— 25

- “(a) the work is first—
 - “(i) published; or
 - “(ii) communicated to the public; or
- “(b) in the case of a film or film sound track,—
 - “(i) the work is first shown in public; or 30
 - “(ii) the work is first played in public.”

15 New section 24 substituted

Section 24 is repealed and the following section substituted:

- “24 Duration of copyright in communication works**
- “(1) Copyright in a communication work expires at the end of the period of 50 years from the end of the calendar year in which the communication work is first communicated to the public.
- “(2) Copyright in a repeated communication work expires at the same time as copyright in the initial communication work expires. 5
- “(3) There is no copyright in a repeated communication work that is communicated to the public after copyright in the initial communication work has expired.” 10
- 16 Infringement by performance or playing or showing in public**
Section 32(2) is amended by omitting “broadcast, or cable programme” and substituting “or communication work”.
- 17 New section 33 substituted** 15
Section 33 is repealed and the following section substituted:
- “33 Infringement by communicating to public**
Communicating a work to the public is a restricted act in relation to every description of copyright work.”
- 18 Infringement by importation** 20
- (1) Section 35(1)(c) is amended by omitting “or” and substituting “and”.
- (2) Section 35(5) is amended by omitting “this Act” and substituting “the Copyright (Parallel Importation of Films and Onus of Proof) Amendment Act 2003”. 25
- (2) Section 35 is amended by repealing subsections (3) to (5) and substituting the following subsections:
- “(3) A person also infringes copyright in a film to which subsection (6) applies if that person—
- “(a) imports a copy of the film into New Zealand within 9 months of first being made available to the public; and 30
- “(b) knows or has reason to believe that the film is imported into New Zealand within 9 months of first being made available to the public; and
- “(c) is not the licensee of the copyright in New Zealand; and 35

- “(d) imports the film into New Zealand other than for that person’s private and domestic use.
- “(4) For the purposes of **subsection (3)**, a film is first made available to the public (as set out in section 23(2)) by any authorised act whether in New Zealand or elsewhere. 5
- “(5) **Subsections (3) and (4)** are repealed on 31 October 2013.”
- 19 Providing means for making infringing copies**
Section 37 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) Copyright in a work is infringed by a person who, other than under a copyright licence, communicates a work to 1 or more persons, knowing or having reason to believe that infringing copies will be made by means of the reception of the communication in New Zealand or elsewhere.” 10
- 20 New section 41 substituted** 15
Section 41 is repealed and the following section substituted:
- “41 Incidental copying of copyright work**
- “(1) Copyright in a work is not infringed by—
- “(a) the incidental copying of the work in an artistic work, a sound recording, a film, or a communication work; or 20
 - “(b) the issue to the public of copies of an artistic work, the playing of a sound recording, the showing of a film, or the communication of a work to the public, in which a copyright work has been incidentally copied; or
 - “(c) the issue to the public of copies of a sound recording, film, or communication work to which **paragraph (a)** or **paragraph (b)** applies. 25
- “(2) For the purposes of **subsection (1)**, a musical work, words spoken or sung with music, or so much of a sound recording or communication work as includes a musical work or those words, must not be regarded as incidentally copied in another work if the musical work or the words, sound recording, or communication work is deliberately copied.” 30

- 21 Criticism, review, and news reporting**
Section 42 is amended by repealing subsection (2) and substituting the following subsection:
“(2) Fair dealing with a work for the purpose of reporting current events by means of a sound recording, film, or communication work does not infringe copyright in the work.” 5
- 22 Research or private study**
Section 43 is amended by repealing subsection (4) and substituting the following subsection:
“(4) This section does not authorise the making of more than 1 copy of the same work, or the same part of a work, on any 1 occasion, but in this subsection **copy** does not include a non-infringing transient reproduction to which **section 43A** applies.” 10
- 23 New section 43A inserted** 15
The following section is inserted after section 43:
“**43A Transient reproduction of work**
A reproduction of a work does not infringe copyright in the work if the reproduction—
“(a) is transient or incidental; and 20
“(b) is an integral and essential part of a technological process for—
“(i) making or receiving a communication that does not infringe copyright; or
“(ii) enabling the lawful use of, or lawful dealing in, 25
the work; and
“(c) has no independent economic significance.”
- 24 Copying for educational purposes of literary, dramatic, musical, or artistic works or typographical arrangements**
Section 44 is amended by inserting the following subsection after subsection (4): 30
“(4A) A copy of a work made in accordance with subsections (3) and (4) may be communicated to a person who is a student or other person who is to receive, is receiving, or has received, a lesson that relates to the work.” 35

25 New section 44A inserted

The following section is inserted after section 44:

“44A Storing copies for educational purposes

- “(1) An educational establishment does not infringe copyright in a work that is made available on a website or other electronic retrieval system by storing a copy of the page or pages in which the work appears if—
- “(a) the material is stored for an educational purpose; and
 - “(b) the material—
 - “(i) is displayed under a separate frame or identifier; and
 - “(ii) identifies the author (if known) and source of the work; and
 - “(iii) states the name of the educational establishment and the date on which the work was stored; and
 - “(c) the material is restricted to use by authenticated users.
- “ (2) **Subsection (1)** does not apply, and the educational establishment does infringe copyright in the work, if the educational establishment knowingly fails to delete the stored material within a reasonable time after the material becomes no longer relevant to the course of instruction for which it was stored.
- “ (3) In **subsection (1)**, **authenticated user** means a person who—
- “(a) is a participant in the course of instruction for which the material is stored; and
 - “(b) can access the stored material only through a verification process that verifies that he or she is entitled to access the stored material.”

26 Copying for educational purposes of films and sound recordings

Section 45 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) Copyright in any work that is a film, sound recording, or communication work, or any work included in a film, sound recording, or communication work, is not infringed by the copying of that work in the circumstances set out in subsection (2).”

27 Performing, playing, or showing work in course of activities of educational establishment

Section 47 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) The playing or showing, for the purposes of instruction, of a sound recording, film, or communication work to the audience described in subsection (1) at an educational establishment is not a playing or showing of the work in public for the purposes of section 32(2).”

28 New section 48 substituted

Section 48 is repealed and the following section substituted:

“48 Educational establishment may copy and communicate communication work

- “(1) A copy of a communication work may be made or communicated by or on behalf of an educational establishment; and subsequently communicated within that educational establishment; without infringing copyright in the communication work or in any work included in it, if the copy is made or communicated for the establishment’s educational purposes:
- “(2) However, **subsection (4)** does not apply to—
- “(a) the copying of a communication work if or to the extent that—
- “(i) licences authorising the copying of the communication work by or on behalf of educational establishments are available under a licensing scheme; and
- “(ii) the establishment knew that fact; or
- “(b) the communication of a copy of a communication work if or to the extent that—
- “(i) licences authorising the communication of the copy by or on behalf of educational establishments are available under a licensing scheme; and
- “(ii) the establishment knew that fact.

“48 Copying and communication of communication work for educational purposes

“(1) This section applies when a copy of a communication work is—

“(a) made or communicated by or on behalf of an educational establishment; or 5

“(b) made and supplied by an educational resource supplier to an educational establishment.

“(2) In any case to which **subsection (1)(a) applies, the making or communication of a copy of the communication work by or on behalf of an educational establishment, and the subsequent communication of the copy within the educational establishment, does not infringe copyright in the communication work or in any work included in it if the copy is made or communicated for the educational establishment’s educational purposes.** 10 15

“(3) In any case to which **subsection (1)(b) applies, the making and supply of a copy of the communication work by an educational resource supplier does not infringe copyright in the communication work or in any work included in it if the copy is made and supplied for the educational purposes of the educational establishment to which it is supplied.** 20

“(4) However, the exclusions from infringement of copyright in **subsections (2) and (3) do not apply to—**

“(a) the copying of a communication work if or to the extent that— 25

“(i) licences authorising the copying of the communication work by or on behalf of educational establishments or by educational resource suppliers are available under a licensing scheme; and 30

“(ii) the educational establishment or the educational resource supplier, as the case may be, knew that fact; or

“(b) the communication of a communication work if or to the extent that— 35

“(i) licences authorising the communication of the copy by or on behalf of educational establishments are available under a licensing scheme; and

- “(ii) the educational establishment knew that fact; or
“(c) the supply of a communication work by an educational resource supplier if or to the extent that—
“(i) licences authorising the supply of the communication work are available under a licensing scheme; and 5
“(ii) the educational resource supplier knew that fact.”

29 Interpretation

Section 50(1) and (2) are amended by omitting “sections 51 to 56 of this Act” and substituting in each case “sections 51 to **56C**”.

30 Copying by librarians of parts of published works

Section 51 is amended by adding the following subsection:

- “(5) In this section, **copy** includes a digital copy, but in that case **section 56B** applies as well.” 15

31 Copying by librarians of articles in periodicals

Section 52 is amended by adding the following subsection:

- “(4) In this section, **copy** includes a digital copy, but in that case **section 56B** applies as well.”

32 Copying by librarians for users of other libraries 20

Section 53 is amended by adding the following subsection:

- “(5) In this section, **copy** includes a digital copy, but in that case **section 56C** applies as well.”

33 Copying by librarians for collections of other libraries

Section 54 is amended by adding the following subsection: 25

- “(5) In this section, **copy** includes a digital copy, but in that case **section 56C** applies as well.”

34 Copying by librarians or archivists to replace copies of works

- (1) Section 55(1) is amended by inserting “(other than a digital copy)” after “copy” in the first place where it appears. 30
(2) Section 55 is amended by adding the following subsections:

- “(3) The librarian of a prescribed library or the archivist of an archive may make a digital copy of any item (the **original item**) in the collection of the library or archive without infringing copyright in any work included in the item if—
- “(a) the original item is at risk of loss, damage, or destruction; and
 - “(b) the digital copy replaces the original item; and
 - “(c) the original item is not accessible by members of the public after replacement by the digital copy except for purposes of research the nature of which requires or may benefit from access to the original item; and
 - “(d) it is not reasonably practicable to purchase a copy of the original item.
- “(4) The librarian of a prescribed library or the archivist of an archive may make a digital copy of any item (the **original item**) in the collection of the library or archive without infringing copyright in any work included in the item if—
- “(a) the digital copy is used to replace an item in the collection of another prescribed library or archive that has been lost, damaged, or destroyed; and
 - “(b) it is not reasonably practicable to purchase a copy of the original item.”

35 Copying by librarians or archivists of certain unpublished works

Section 56 is amended by adding the following subsection: 25

- “(6) In this section, **copy** includes a digital copy, but in that case **section 56B** applies as well.”

36 New sections 56A to 56C inserted

The following sections are inserted after section 56:

“56A Library or archive may communicate digital copy to authenticated users 30

- “(1) The librarian of a prescribed library or the archivist of an archive does not infringe copyright in a work by communicating a digital copy of the work to an authenticated user if the following conditions are met: 35
- “(a) the librarian or archivist has obtained the digital copy lawfully; and

- “(b) the librarian or archivist ensures that each user is informed in writing about the limits of copying and communication allowed by this Act, including that a digital copy of a work may only be copied or communicated by the user in accordance with the provisions of this Act; and 5
- “(c) the digital copy is communicated to the user in a form that cannot be altered or modified; and
- “(d) the number of users who access the digital copy at any one time is not more than the aggregate number of digital copies of the work that— 10
- “(i) the library or the archive has purchased; or
- “(ii) for which it is licensed.
- “(2) In **subsection (1), authenticated user** means a person who— 15
- “(a) has a legitimate right to use the services of the library or archive; and
- “(b) can access the digital copy only through a verification process that verifies that the person is entitled to access the digital copy. 20
- “**56B Additional conditions for supply of copy of work in digital format by librarian or archivist under section 51, 52, or 56**
A copy of a work to which section 51, 52, or 56 applies must not be supplied in a digital format, by the librarian of a prescribed library or the archivist of an archive, to a person (A) 25 unless the following conditions are also complied with:
- “(d) the librarian or archivist must give A, when the copy is supplied, a written notice that sets out the terms of use of the copy; and
- “(e) the librarian or archivist must, as soon as is reasonably practicable, destroy any additional copy made in the process of making the copy that is supplied to A. 30
- “**56C Additional condition for making digital copies under section 53 or 54**
A copy of a work to which section 53 or 54 applies must not be supplied in a digital format to a library unless the librarian supplying the digital copy destroys, as soon as is reasonably 35

practicable, any additional copy made in the process of making the copy that is supplied.”

38 Copying by Parliamentary Library for members of Parliament

Section 58(2) is amended by omitting “broadcast or cable programme” in each place where it appears and substituting in each case “communication work”. 5

39 Use of recording of spoken words in certain cases

(1) Section 68(1)(b) is amended by omitting “broadcasting or including in a cable programme service” and substituting “communicating to the public”. 10

(2) Section 68(2)(a) is amended by omitting “broadcast or cable programme” and substituting “communication work”.

40 Provision of Braille copies of literary or dramatic works

Section 69(1) is amended by inserting “or communicate” after “make”. 15

41 Public reading or recitation

Section 70 is amended by repealing subsection (2) and substituting the following subsection:

“(2) Copyright in a work is not infringed by the making of a sound recording, or the communication to the public, of a reading or recitation that under subsection (1) is not treated as a performance in public, if the recording or communication work consists mainly of material in relation to which it is not necessary to rely on that subsection.” 20 25

42 Representation of certain artistic works on public display

(1) Section 73(2) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) communicating to the public a visual image of the work.” 30

(2) Section 73 is amended by repealing subsection (3) and substituting the following subsection:

“(3) Copyright is not infringed by the issue to the public of copies, or the communication to the public, of anything the making of which was, under this section, not an infringement of copyright.”

43 New sections 80A to 80C inserted 5

The following sections are inserted after section 80:

“80A Decompilation of computer program

“(1) The lawful user of a copy of a computer program expressed in a low level language does not infringe copyright in the program by decompiling it, if the conditions in **subsection (2)** 10 are met.

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

“(a) decompilation is necessary to obtain information necessary for the objective of creating an independent program that can be operated with the program decompiled 15 or with another program; and

“(b) the information obtained from the decompilation is not used for any purpose other than the objective referred to in **paragraph (a)**.

“(3) In particular, the conditions in **subsection (2)** are not met if— 20

“(a) the information necessary to create the independent program is readily available to the lawful user without decompiling the computer program; or

“(b) the lawful user does not confine decompilation of the computer program strictly to the steps that are necessary 25 to create an independent program; or

“(c) the lawful user gives the information obtained from decompiling the computer program to any person when it is not necessary for creating an independent program to do so; or 30

“(d) the lawful user uses the information obtained from decompiling the computer program to create a program that is substantially similar in its expression to the program that has been decompiled; or

“(e) the lawful user uses the information obtained from decompiling the computer program to do any act that is 35 restricted by copyright.

“(4) In this section, **decompile** means—

- “(a) to convert a computer program expressed in a low level language into a version expressed in a higher level language; or
- “(b) to copy the program as a necessary incident of converting it into that version.

5

“80B Copying or adapting computer program if necessary for lawful use

“(1) The lawful user of a computer program (A) does not infringe copyright in it by copying or adapting it, if—

“(a) copying or adapting it is necessary for A’s lawful use of the program (for example, to correct an error in the program); and

“(b) a properly functioning and error-free copy of the program is not available to A within a reasonable time at an ordinary commercial price.

10

15

“(2) This section does not apply to copying or adapting that is permitted under **section 80A or section 80BA.**

“80BA Observing, studying, or testing of computer program

The lawful user of a computer program (A) does not infringe copyright in it by observing, studying, or testing the functioning of the program in order to determine the ideas and principles that underlie any element of the program if A does so while performing the acts of loading, displaying, running, transmitting, or storing the program that A is entitled to do.

20

“80C Certain contractual terms relating to use of computer programs have no effect

25

A term or condition in an agreement for the use of a computer program has no effect in so far as it prohibits or restricts any activity undertaken in accordance with **section 80A(2) or 80B(1).**”

30

44 New section 81A inserted

The following section is inserted after section 81:

“81A Copying sound recording for personal use

“(1) Copyright in a sound recording and in a literary or musical work contained in it is not infringed by copying the sound recording, if the following conditions are met:

“(aa) the sound recording is not a communication work or part of a communication work; and 5

“(a) the copy is made from a sound recording that is not an infringing copy; and

“(b) the sound recording is not borrowed or hired; and

“(c) the copy is made by the owner of the sound recording; and 10

“(d) that owner acquired the sound recording legitimately; and

“(e) the copy is used only for that owner’s personal use or the personal use of a member of the household in which the owner lives or both; and 15

“(f) no more than 1 copy is made for each device for playing sound recordings that is owned by the owner of the sound recording; and

“(g) the owner of the sound recording retains the ownership of both the sound recording and of any copy that is made under this section. 20

“(2) For the avoidance of doubt, **subsection (1)** does not apply if the owner of the sound recording is bound by a contract that specifies the circumstances in which the sound recording may be copied.” 25

45 New heading and new sections 82 to 84 substituted

Sections 82 to 84, and the heading immediately above section 82 are repealed and the following heading and sections substituted: 30

“Communication works

“82 Recording for purposes of maintaining standards in programmes

The author of a communication work does not infringe copyright in it, or in any work included in it, by recording it, if the recording is made and used solely for the purpose of checking on the maintenance of standards in communication works made by the author. 35

“83 Recording for purposes of complaining

- “(1) A person (A) does not infringe copyright in a communication work, or in any work included in it, by recording it or communicating it or both to a complaint authority, if the recording or the communication or both are done solely for the purpose of complaining to a complaint authority. 5
- “(2) However, **subsection (1)** does not apply, and A does infringe copyright in the communication work recorded and in any work included in the recording, if A retains the recording for any longer than is reasonably necessary to prepare and despatch the complaint. 10
- “(3) If a person infringes copyright under **subsection (2)**, the recording is treated as an infringing copy.
- “(4) In this section and in **section 84**, **complaint authority** means any person or body that is responsible for dealing with complaints about the content of communication works, including the content of advertisements in communication works. 15

“84 Recording for purposes of time shifting

- “(1) A person (A) does not infringe copyright in a programme included in a communication work, or in any work included in it, by recording it, if—
- “(a) A makes the recording solely for A’s personal use or the personal use of a member of the household in which A lives or both; and
 - “(b) A makes the recording solely for the purpose of viewing or listening to the recording at a more convenient time; and 25
 - “(c) the recording is not made from an on-demand service; and
 - “(d) A has lawful access to the communication work at the time of making the recording. 30
- “(2) However, **subsection (1)** does not apply, and A does infringe copyright in the communication work recorded and in any work included in the communication work, if—
- “(a) A retains the recording for any longer than is reasonably necessary for viewing or listening to the recording at a more convenient time; or 35

- “(b) in the event that the person who views or listens to the recording wishes to make a complaint to a complaint authority, A retains the recording for any longer than is reasonably necessary to prepare and despatch the complaint. 5
- “(3) If a person infringes copyright under **subsection (2)**, the recording is treated as an infringing copy.”

Example

A records a movie to be screened on television because she will be at work when it screens. She watches the movie on the weekend and then later tapes over it. Provided the conditions in s 84(1) are met, the copy that A makes is not an infringing copy. 10

B copies music from a streamed Internet audio service and keeps the copy as part of B’s music collection, in order to listen to it multiple times on demand. Copies made for the home library or collection in this way are infringing copies. 15

46 Incidental recording for purposes of broadcast or cable programme

- (1) The heading to section 85 is amended by omitting “**broadcast or cable programme**” and substituting “**communication**”. 20
- (2) Section 85 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies where, under an assignment or a licence, a person is authorised to communicate the following works to the public: 25
- “(a) a literary, dramatic, or musical work, or an adaptation of that work; or
- “(b) an artistic work; or
- “(c) a sound recording or film.”
- (3) Section 85(2) is amended by omitting “broadcast or cable programme” and substituting “communication work”. 30
- (4) Section 85(3)(b) is amended by omitting “broadcasting the work or, as the case may be, including the work in a cable programme” and substituting “communicating the work to the public”. 35

- 47 Section 86 repealed**
Section 86 is repealed.
- 48 New sections 87 to 87B substituted**
Section 87 is repealed and the following sections substituted:
- “87 Free public playing or showing of communication work** 5
- “(1) The free public playing or showing of a communication work (other than a communication work to which **section 87A** applies or a communication work for which a subscription fee must be paid in order to receive it) does not infringe any copyright in— 10
- “(a) the communication work; or
- “(b) any sound recording or film included in the communication work.
- “(2) For the purposes of this section, the public playing or showing of a communication work is not free if— 15
- “(a) the audience has paid for admission to—
- “(i) the place where the communication work is shown or played (which in this section is called the **venue**); or
- “(ii) any place of which the venue is a part; or 20
- “(b) goods or services are supplied at the venue or a place of which it forms part at prices that—
- “(i) are substantially attributable to the facilities afforded for hearing or seeing the communication work; or 25
- “(ii) exceed those usually charged there and that are partly attributable to those facilities; or
- “(c) the venue is a hotel, motel, camping ground, or any other place that admits persons for a fee for purposes of temporary accommodation, and the audience is made up of persons residing at that hotel, motel, camping ground, or other place. 30
- “(3) For the purposes of **subsection (2)(a)**, the following persons must not be treated as having paid for admission to the venue:
- “(a) a person admitted as a resident or an inmate of a place (other than a hotel, motel, camping ground, or any other place to which **subsection (2)(c)** applies): 35

- “(b) a person admitted as a member of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing communication works is only incidental to the main purposes of the club or society. 5
- “**87A Free public playing or showing of communication work that is simultaneous with reception**
- “(1) This section applies to the playing or showing of a communication work that—
- “(a) is made for reception in the area in which it is played or shown; and 10
- “(b) is not a communication work for which a subscription fee must be paid in order to receive it; and
- “(c) is shown or played simultaneously upon reception of the communication work. 15
- “(2) The free public playing or showing of a communication work to which this section applies does not infringe any copyright in—
- “(a) the communication work; or
- “(b) any sound recording or film that is played or shown in public by reception of the communication work. 20
- “(3) For the purposes of this section, the public playing or showing of a communication work is not free if—
- “(a) the audience has paid for admission to the place where the communication work is shown or played (which in this section is called the **venue**), including any place of which the venue is a part; or 25
- “(b) goods or services are supplied at the venue or a place of which it forms part at prices that—
- “(i) are substantially attributable to the facilities afforded for hearing or seeing the communication work; or 30
- “(ii) exceed those usually charged there and that are partly attributable to those facilities.
- “(4) For the purposes of **subsection (3)(a)**, the following persons must not be treated as having paid for admission to the venue: 35
- “(a) a person admitted as a resident or an inmate of a place (including a person residing in a hotel, motel, camping

- ground, or any other place that admits persons for a fee for the purpose of temporary accommodation):
- “(b) a person admitted as a member of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing communication works is only incidental to the main purposes of the club or society. 5
- “**87B Assessment of damages for infringement of copyright in sound recording or film** 10
Where the making of a communication work is an infringement of copyright, the fact that the work was heard or seen in public by the reception of the communication work must be taken into account in assessing the damages for the infringement.”
- 49 Reception and retransmission of broadcast in cable programme service** 15
Section 88 is amended by adding the following subsection:
“(4) For the purposes of this section only,—
“(a) sections 3 and 4 of this Act before repeal by the Copyright (New Technologies) Amendment Act **2006** continue to apply as if they had not been repealed and as if references in those provisions to ‘this Act’ were references to this section; and 20
“(b) the definition of broadcast in section 2(1) of this Act before repeal by the Copyright (New Technologies) Amendment Act **2006** continues to apply as if that definition had not been repealed.” 25
- 50 New section 89 substituted**
Section 89 is repealed and the following section substituted:
“**89 Provision of subtitled copies of communication work** 30
“(1) A body prescribed by regulation made under this Act may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally disabled in any other way, with copies that are subtitled or otherwise modified for their special needs, make copies of a communication work and issue copies 35
to the public, without infringing any copyright in the commu-

nication work or in any work included in the communication work.

“(2) A body must not be prescribed for the purposes of **subsection (1)** if it is established or conducted for profit.”

51 Recording for archival purposes 5

Section 90 is amended by repealing subsection (1) and substituting the following subsection:

“(1) A person (A) does not infringe copyright in a communication work, or in any work included in it, by recording it or making a copy of a recording of it, if— 10

“(a) the communication work is in a class of communication work prescribed by regulations made under this Act; and

“(b) A makes the recording or the copy for the purpose of placing it in an archive maintained by a body prescribed by regulations made under this Act.” 15

52 Recording by media monitors

(1) Section 91 is amended by repealing subsection (1) and substituting the following subsections:

“(1) This section applies to a recording, or a transcript of a recording, of a communication work that consists wholly or substantially of news or reports or discussions of current events. 20

“(1A) The person who makes the recording or transcript does not infringe copyright in the communication work, or in any work included in the communication work, if the conditions in **subsection (2)** are complied with.” 25

(2) Section 91(2) is amended by omitting “subsection (1)” and substituting “subsection (1A)”.

(3) Section 91(4) is amended by omitting “broadcasts or cable programmes” and substituting “the communication work”. 30

53 New heading and new sections 92A to 92C inserted

The following heading and sections are inserted after section 92:

“Internet service provider liability

“92A Internet service provider must have policy for terminating accounts of repeat infringers

“(1) An Internet service provider must adopt and reasonably implement a policy that provides for termination, in appropriate circumstances, of the account with that Internet service provider of a repeat infringer. 5

“(2) In **subsection (1)**, **repeat infringer** means a person who repeatedly infringes the copyright in a work by using 1 or more of the Internet services of the Internet service provider to do a restricted act without the consent of the copyright owner. 10

“92B Internet service provider liability if user infringes copyright

“(1) This section applies if a person (A) infringes the copyright in a work by using 1 or more of the Internet services of an Internet service provider to do a restricted act without the consent of the copyright owner. 15

“(2) Merely because A uses the Internet services of the Internet service provider in infringing the copyright, the Internet service provider, without more,— 20

“(a) does not infringe the copyright in the work:

“(b) must not be taken to have authorised A’s infringement of copyright in the work:

“(c) subject to **subsection (3)**, must not be subject to any civil remedy or criminal sanction. 25

“(3) However, nothing in this section limits the right of the copyright owner to injunctive relief in relation to A’s infringement or any infringement by the Internet service provider.

“(4) In **subsections (1) and (2)**, **Internet services** means the services referred to in the definition of Internet service provider in section 2(1). 30

“92C Internet service provider liability for storing infringing material

“(1) This section applies if—

“(a) an Internet service provider stores material provided by a user of the service; and 35

- “(b) the material infringes copyright in a work (other than as a result of any modification by the Internet service provider).
- “(2) The Internet service provider does not infringe copyright in the work by storing the material unless— 5
- “(a) ~~the Internet service provider knows that the material infringes copyright in the work; or~~
- “(ba) ~~the Internet service provider—~~
- “(i) ~~has received a notice of infringement that complies with **section 92GA**; and~~ 10
- “(ii) ~~does not, as soon as possible after becoming aware (whether as a result of receiving the notice or otherwise) of facts or circumstances that make it apparent that the material is likely to infringe copyright in the work; delete the material or prevent access to it; or~~ 15
- “(a) the Internet service provider—
- “(i) knows or has reason to believe that the material infringes copyright in the work; and
- “(ii) does not, as soon as possible after becoming aware of the infringing material, delete the material or prevent access to it; or 20
- “(b) the user of the service who provided the material is acting on behalf of, or at the direction of, the Internet service provider. 25
- “(2A) A court, in determining whether, for the purposes of **subsection (2)**, an Internet service provider knows or has reason to believe that material infringes copyright in a work, must take account of all relevant matters, including whether the Internet service provider has received a notice of infringement in relation to the infringement. 30
- “(3) An Internet service provider who deletes a user’s material or prevents access to it because the Internet service provider knows or has reason to believe that it infringes copyright in a work must, as soon as possible, give notice to the user that the material has been deleted or access to it prevented. 35
- “(4) Nothing in this section limits the right of the copyright owner to injunctive relief in relation to a user’s infringement or any infringement by the Internet service provider.

“92CA Notice of infringement

A notice referred to in **section 92G(2)(ba)(i)** must be—

- “(a) properly completed; and
- “(b) in the prescribed form; and
- “(c) signed by the copyright owner or the copyright owner’s
duly authorised agent. 5

“92CA Requirements for notice of infringement

A notice referred to in **section 92C(2A)** must—

- “(a) contain the information prescribed by regulations made
under this Act; and 10
- “(b) be signed by the copyright owner or the copyright
owner’s duly authorised agent.

“92CB Offences in relation to notice of infringement

“(1) A person (**A**) commits an offence if—

- “(a) A signs, or authorises another person to sign, a notice
referred to in **section 92G(2)(ba)(i)**; and 15
- “(b) the notice is false or misleading in a material particular;
and
- “(c) A knows that the notice is false or misleading in a ma-
terial particular or is reckless as to whether it is or not. 20

“(2) A person (**B**) commits an offence if—

- “(a) B has signed, or has authorised another person to sign,
a notice referred to in **section 92G(2)(ba)(i)**; and
- “(b) the notice is false or misleading in a material particular;
and 25
- “(c) after the notice is signed, B either knows that the notice
is false or misleading in a material particular or is reck-
less as to whether it is or not; and
- “(d) does not take all reasonable steps to withdraw the no-
tice. 30

“(3) A person who commits an offence under this section is liable
on summary conviction,—

- “(a) in the case of an individual, to a fine not exceeding
\$50,000; and
- “(b) in the case of a body corporate, to a fine not exceeding 35
\$100,000.

~~“(4) For the avoidance of doubt, if an individual acting on behalf of a body corporate commits an offence under this section, the body corporate also commits the offence.~~

“92D Internet service provider does not infringe copyright by caching infringing material 5

“(1) An Internet service provider does not infringe copyright in a work by caching material if the Internet service provider—

- “(a) does not modify the material; and
- “(b) complies with any conditions imposed by the copyright owner of the material for access to that material; and 10
- “(c) does not interfere with the lawful use of technology to obtain data on the use of the material; and
- “(d) updates the material in accordance with reasonable industry practice.

“(2) However, an Internet service provider does infringe copyright 15 in a work by caching material if the Internet service provider does not delete the material or prevent access to it by users as soon as possible after the Internet service provider became aware that—

- “(a) the material has been deleted from its original source; 20
or
- “(b) access to the material at its original source has been prevented; or
- “(c) a court has ordered that the material be deleted from its original source or that access to the material at its 25
original source be prevented.

“(3) Nothing in this section limits the right of the copyright owner to injunctive relief in relation to a user’s infringement or any infringement by the Internet service provider.

“(4) In this section,— 30

“**cache** means the storage of material by an Internet service provider that is—

- “(a) controlled through an automated process; and
- “(b) temporary; and
- “(c) for the sole purpose of enabling the Internet service 35
provider to transmit the material more efficiently to other users of the service on their request

“**original source** means the source from which the Internet service provider copied the material that is cached.”

54 Subsequent dealings with copies made under this Part

Section 93 is amended by repealing subsection (2) and substituting the following subsection: 5

“(2) The provisions referred to in subsection (1) are as follows:

“(a) **section 43A** (which relates to transient reproduction of work):

“(b) section 44 (which relates to copying for educational purposes of literary, dramatic, musical, or artistic works or typographical arrangements): 10

“(c) **section 44A** (which relates to storing for educational purposes):

“(d) section 45 (which relates to copying for educational purposes of films and sound recordings): 15

“(e) **section 48** (which relates to recording by educational establishments of communication works):

“(f) section 49 (which relates to things done for the purposes of an examination):

“(g) section 51 (which relates to copying by librarians of parts of published works): 20

“(h) section 52 (which relates to copying by librarians of articles in periodicals):

“(i) section 53 (which relates to copying by librarians for users of other libraries): 25

“(j) section 55 (which relates to copying by librarians or archivists to replace copies of works):

“(k) section 56 (which relates to copying by librarians or archivists of certain unpublished works):

“(l) **sections 56A to 56C** (which relate to access to and copying of works in digital format): 30

“(m) section 58 (which relates to copying by the Parliamentary Library for members of Parliament):

“(n) section 69 (which relates to the provision of Braille copies of literary or dramatic works): 35

“(o) **section 80A** (which relates to the decompilation of computer programs):

- “(p) **section 80B** (which relates to copying or adapting computer programs if necessary for lawful use):
- “(q) **section 81A** (which relates to copying sound recordings for private and domestic use):
- “(r) section 83 (which relates to recording for the purposes of complaining): 5
- “(s) **section 84** (which relates to recording for the purposes of time shifting):
- “(t) section 90 (which relates to recording for archival purposes): 10
- “(u) **section 92B** (which relates to Internet service provider liability for storing infringing material):
- “(v) **section 92C** (which relates to Internet service provider liability for caching infringing material).”
- 55 Right to be identified as author or director** 15
- (1) Section 94(2)(a) is amended by omitting “broadcast, or included in a cable programme” and substituting “or communicated to the public”.
- (2) Section 94(6)(b) is amended by omitting “broadcast or included in a cable programme” and substituting “communicated to the public”. 20
- (3) Section 94(8) is amended by repealing paragraph (a) and substituting the following paragraph:
- “(a) the film is shown in public or communicated to the public; or”. 25
- 56 Content of right to be identified**
- Section 95(1)(c) is amended by omitting “broadcast, cable programme” and substituting “communication work”.
- 57 Exceptions to right to be identified**
- (1) Section 97 is amended by repealing subsection (3) and substituting the following subsection: 30
- “(3) The right is not infringed by an act that, under any of the following provisions of this Act, would not infringe copyright in the work:
- “(a) section 41 (which relates to incidental copying of a work): 35

- “(b) section 42 (which relates to criticism, review, and news reporting):
- “(c) **section 43A** (which relates to transient reproduction of work):
- “(d) section 49 (which relates to things done for the purposes of an examination): 5
- “(e) section 59 (which relates to parliamentary and judicial proceedings):
- “(f) section 60 (which relates to Royal commissions and statutory inquiries): 10
- “(g) section 67 (which relates to acts permitted on assumptions as to expiry of copyright or death of author in relation to anonymous or pseudonymous works):
- “(h) **section 81A** (which relates to copying sound recordings for private and domestic use).” 15
- (2) Section 97(8) is amended by repealing paragraph (b) and substituting the following paragraph:
- “(b) a part of a film, if that part—
- “(i) appears incidentally in another film, or is included in a communication work; and 20
- “(ii) is not a substantial part of the film.”
- 58 Content of right to object to derogatory treatment**
- (1) Section 99(1)(a) is amended by omitting “broadcasts, or includes in a cable programme” and substituting “or communicates to the public”. 25
- (2) Section 99(2)(a) is amended by omitting “broadcasts or includes in a cable programme” and substituting “communicates to the public”.
- (3) Section 99(4) is amended by repealing paragraph (a) and substituting the following paragraph: 30
- “(a) shows in public, or communicates to the public, a derogatory treatment of the film; or”.
- (4) Section 99(4)(c) is amended by repealing subparagraph (i) and substituting the following subparagraph: 35
- “(i) plays in public or communicates to the public; or”.

59 Exceptions to right to object to derogatory treatment of films

- (1) Section 101(3) is amended by repealing paragraphs (a) and (b) and substituting the following paragraph:

“(a) in relation to the communication of a film,— 5
 “(i) complying with a duty imposed under section 4 of the Broadcasting Act 1989; or
 “(ii) maintaining standards that are consistent with the observance of good taste and decency and the maintenance of law and order; or 10
 “(iii) avoiding the commission of an offence; or
 “(iv) complying with a duty imposed by or under any enactment—”.

- (2) Section 101 is amended by repealing subsection (6) and substituting the following subsection: 15

“(6) The right is not infringed, in relation to the communication of a film to the public, if the person (A) communicating the film—

“(a) makes a deletion or any deletions from the film that is or are reasonably required to enable A to— 20
 “(i) follow guidelines as to the programmes that may be shown in particular time periods; or
 “(ii) fit the film into the time scheduled to show it; or
 “(b) communicates the film in separate parts because of its length; or
 “(c) uses a clip of a film in an advertisement for the showing of the film.” 25

60 False attribution of identity of author or director

Section 102 is amended by repealing subsection (4) and substituting the following subsection:

“(4) A person (A) infringes a right under subsection (2) if— 30

“(a) A performs a literary, dramatic, or musical work in public, or shows a film to the public, or communicates the work or film to the public; and
 “(b) the work or film is accompanied by a false attribution; and 35
 “(c) A knows or has reason to believe that the attribution is false.”

- 61 False representation as to literary, dramatic, or musical work**
Section 103 is amended by repealing subsection (4) and substituting the following subsection:
“(4) A person (A) infringes the right conferred by subsection (2) if A performs in public, or communicates to the public, a literary, dramatic, or musical work, accompanied by a false representation, and A knows or has reason to believe that the representation is false.” 5
- 62 Right to privacy of certain photographs and films** 10
(1) Section 105(1) is amended by repealing paragraph (c) and substituting the following paragraph:
“(c) not to have the work communicated to the public.”
(2) Section 105(3)(a) is amended by omitting “broadcast or cable programme”, and substituting “or communication work”. 15
- 63 New sections 112 to 112B substituted**
The principal Act is amended by repealing section 112 and substituting the following sections:
“**112 Warranty implied in certain licences**
“(1) This section applies to a licence that has been granted for— 20
“(a) the performance or communication to the public of a copyright work that is a literary, dramatic, or musical work or a sound recording or film; or
“(b) the inclusion of a copyright work that is an artistic work in a performance or a communication work. 25
“(2) A warranty is implied in the licence that the person by whom or on whose behalf the licence is granted is—
“(a) the owner of the copyright in the work, sound recording, or film that is the subject of the licence; or
“(b) authorised to grant the licence by the copyright owner. 30
- “**112A Damages for falsely claiming copyright ownership or licence**
“(1) This section applies if—
“(a) a person (A) falsely claims to be, or to have been granted a licence by or on behalf of, the owner of the copyright 35

- in a literary, dramatic, musical, or an artistic work or a sound recording or film; and
- “(b) A has threatened or commenced proceedings for preventing, or claiming damages in respect of, a performance or communication to the public of the work, sound recording, or film (which in this section is called the **event**); and 5
- “(c) as a result of the threat or commencement of proceedings, the event has not taken place.
- “(2) A court may award damages to compensate any of the following persons for any loss sustained because the event did not take place: 10
- “(a) in the case of a threat of proceedings, the person to whom A made the threat:
- “(b) in the case of the commencement of proceedings, a defendant: 15
- “(c) any other person interested in the event.
- “**112B Provisions of sections 112 and 112A to have effect no matter what licence says**
- The provisions of **sections 112 and 112A** have effect no matter what any licence may say, and extend to all licences whether granted before or after the commencement of this Act.” 20

Part 2 Amendments to Parts 6 to 11 of Copyright Act 1994 25

- 64 Presumptions relevant to computer programs, sound recordings, and films**
- (1) Section 128(5) is amended by omitting “public, broadcast, or included in a cable programme” and substituting “public or communicated to the public”. 30
- (2) Section 128(6) is amended by omitting “public, broadcast, or included in a cable programme” in each place where it appears and substituting in each case “public or communicated to the public”. 35

- 64A Unjustified proceedings**
Section 130(1) is amended by inserting “or a contravention of **section 226A**” after “copyright”.
- 65 Criminal liability for making or dealing with infringing objects** 5
Section 131(4) is amended by omitting “broadcast or cable programme” and substituting “communication work”.
- 66 Works of more than one author**
Section 147 is amended by repealing subsection (2) and substituting the following subsection: 10
“(2) In subsection (1), **group of companies** means a holding company and its subsidiaries as defined in sections 5 and 6 of the Companies Act 1993.”
- 67 Licensing schemes to which sections 149 to 155 apply**
(1) Section 148(a) is amended by repealing subparagraph (iv) and substituting the following subparagraph: 15
“(iv) relate to licences for copying the work or performing, showing, or playing the work in public or communicating the work to the public:”.
- (2) Section 148(b) is amended by omitting “broadcasts, or cable programmes” and substituting “communication works”. 20
- (3) Section 148(d) is amended by repealing subparagraphs (iii) and (iv) and substituting the following subparagraph: 25
“(iii) recording in the circumstances set out in sections 48(1) and 91(2);—”.
- 68 Licences to which sections 157 to 160 apply**
(1) Section 156(a) is amended by repealing subparagraph (iii) and substituting the following subparagraph: 30
“(iii) authorise the copying of the work or the performance, showing, or playing of the work in public or the communication of the work to the public:”.
- (2) Section 156(b) is amended by omitting “broadcast, or cable programme” and substituting “communication work”.

- 69 New section 163 substituted**
The principal Act is amended by repealing section 163 and substituting the following section:
- “163 Licences for educational establishments in respect of works included in communication works 5**
- “(1) This section applies to references or applications made under this Part in relation to licences for—
- “(a) the recording, for educational purposes, by or on behalf of educational establishments, of communication works that include copyright works; or 10
- “(b) making copies of those recordings for educational purposes.
- “(2) When this section applies, the Tribunal must, in considering what charges (if any) should be paid for a licence, have regard to the extent to which the owners of the copyright in the works included in the communication work have already received, or are entitled to receive, payment in respect of their inclusion.” 15
- 70 Licences to reflect conditions imposed by promoters of events**
- (1) Section 164(1) is amended by omitting “broadcast, or cable programme” and substituting “or communication work”. 20
- (2) Section 164(2)(b) is amended by omitting “broadcast, or cable programme” and substituting “or communication work”.
- 71 Licences to reflect payments in respect of underlying rights 25**
- Section 165(2) is amended by—
- (a) omitting “broadcasts, or cable programmes” and substituting “or communication works”; and
- (b) omitting “broadcast, or cable programme” and substituting “or communication work”. 30
- 72 Licences in respect of works included in retransmissions**
Section 166 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) This section applies to applications under this Part in relation to licences to include literary, dramatic, musical, or artistic 35

works or sound recordings or films in a communication work when one communication work (in this section referred to as the **first transmission**) is, by reception and immediate retransmission, to be further communicated to the public (in this section referred to as the **further transmission**).”

5

73 Determination of equitable remuneration

Section 168(1)(e) is amended by omitting “broadcast or cable programme” and substituting “communication work”.

74 Interpretation

- (1) Paragraph (d) of the definition of **commercial exploitation** in section 169 is repealed and the following paragraph substituted:

“(d) communicating recordings or copies of recordings to the public”.

- (2) Paragraph (b) of the definition of **recording** in section 169 is amended by omitting “broadcast of, or a cable programme that includes,” and substituting “communication work that includes”.

75 Application

Section 170(4)(a) is amended by omitting “broadcast or cable programme” and substituting “communication work”.

76 Consent required for recording or live transmission of performance

Section 171(1) is amended by repealing paragraph (b) and substituting the following paragraph:

“(b) communicates live to the public the whole or any substantial part of a performance.”

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77 New section 172 substituted

Section 172 is repealed and the following section substituted:

“172 Infringement by use of recording made without performer’s consent

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A person (A) infringes a performer’s rights if—

- “(a) without the performer’s consent and by means of a recording, A shows in public, plays in public, or communicates to the public the whole or a substantial part of a performance; and
- “(b) the recording was made without the performer’s consent; and 5
- “(c) A knows or has reason to believe that the recording was made without the performer’s consent.”

78 Incidental inclusion of performance or recording

Section 175 is amended by repealing subsection (1) and substituting the following subsection: 10

- “(1) The rights conferred by this Part are not infringed by—
- “(a) the incidental inclusion of a performance or recording in a sound recording, film, or communication work; or
- “(b) the playing of a sound recording, the showing of a film, or the making of a communication work, where the performance or sound recording has been incidentally included in that sound recording, film, or communication work; or 15
- “(c) the issue to the public of copies of a sound recording, film, or communication work in which a performance or recording has been incidentally included.” 20

79 New section 175A inserted

The following section is inserted after section 175:

- “**175A Transient reproduction of recording of performance** 25
- A reproduction of a recording of a performance of a work does not infringe the rights conferred by this Part in the recording if the reproduction—
- “(a) is transient or incidental; and
- “(b) is a necessary part of a technological process for the viewing of, or listening to, the recording by a member of the public to whom the recording is lawfully made available; and 30
- “(c) has no independent economic significance.”

- 80 Playing or showing sound recording, film, broadcast, or cable programme at educational establishment**
- (1) The heading to section 178 is amended by omitting “**broadcast, or cable programme**” and substituting “**or communication work**”. 5
- (2) Section 178(1) is amended by omitting “broadcast, or cable programme” and substituting “or communication work”.
- 81 Recording of broadcasts and cable programmes by educational establishment**
- (1) The heading to section 179 is amended by omitting “**broadcasts and cable programmes**” and substituting “**communication works**”. 10
- (2) Section 179 is amended by omitting “broadcast or cable programme” and substituting “communication work”.
- 82 Use of recordings of spoken works in certain cases** 15
- (1) Section 184 is amended by repealing subsection (1) and substituting the following subsection:
- “(1) It is not an infringement of the rights conferred by this Part to use a recording of a reading or recitation of a literary work (or to copy the recording and use the copy) if— 20
- “(a) it was made for the purpose of—
- “(i) reporting current events; or
- “(ii) communicating all or part of the reading or recitation to the public; and
- “(b) the conditions in subsection (2) are complied with.” 25
- (2) Section 184(2)(a) is amended by omitting “broadcast or cable programme” and substituting “communication work”.
- 83 New section 187 substituted**
- Section 187 is repealed and the following section substituted:
- “**187 Incidental recording for purposes of communication work** 30
- “(1) A person who proposes to communicate a recording of a performance to the public in circumstances not infringing rights under this Part does not require consent for the purposes of this Part to the making of the further recording if the conditions in **subsection (2)** are complied with. 35

- “(2) The conditions referred to in **subsection (1)** are that the further recording—
- “(a) must only be used for communicating it to the public in circumstances not infringing rights under this Part; and
 - “(b) must be destroyed within 6 months after first being communicated to the public, unless the Minister has authorised the preservation of the recording in the records of a government department or in the national archives because of its documentary character or exceptional importance. 5 10
- “(3) A recording made in accordance with this section is treated as an illicit recording—
- “(a) for the purposes of any use in breach of the condition in **subsection (2)(a)**; and
 - “(b) for all purposes after either of the conditions in **subsection (2)** is broken.” 15

84 New sections 188 to 188B substituted

Section 188 is repealed and the following sections substituted:

“188 Free public playing or showing of communication work

- “(1) The free public playing or showing of a communication work (other than a communication work to which **section 188A** applies or a communication work for which a subscription fee must be paid in order to receive it) does not infringe a right under this Part in relation to a performance or recording included in— 20 25
- “(a) the communication work; or
 - “(b) any sound recording or film that is played or shown in public by reception of the communication work.
- “(2) For the purposes of this section, the public playing or showing of a communication work is not free if— 30
- “(a) the audience has paid for admission to—
 - “(i) the place where the communication work is shown or played (which in this section is called the **venue**); or
 - “(ii) any place of which the venue is a part; or 35
 - “(b) goods or services are supplied at the venue or a place of which it forms part at prices that—

- “(i) are substantially attributable to the facilities afforded for hearing or seeing the communication work; or
- “(ii) exceed those usually charged there and that are partly attributable to those facilities; or 5
- “(c) the venue is a hotel, motel, camping ground, or any other place that admits persons for a fee for the purposes of temporary accommodation, and the audience is made up of persons residing at that hotel, motel, camping ground, or other place. 10
- “(3) For the purposes of **subsection (2)(a)**, the following persons must not be treated as having paid for admission to the venue:
- “(a) a person admitted as a resident or an inmate of a place (other than a hotel, motel, camping ground, or any other place to which **subsection (2)(c)** applies): 15
- “(b) a person admitted as a member of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing communication works is only incidental to the main purposes of the club or society. 20
- “188A Free public playing or showing of communication work that is simultaneous with reception**
- “(1) This section applies to the playing or showing of a communication work that—
- “(a) is made for reception in the area in which it is played or shown; and 25
- “(b) is not a communication work for which a subscription fee must be paid in order to receive it; and
- “(c) is played or shown simultaneously upon reception of the communication work. 30
- “(2) The free public playing or showing of a communication work to which this section applies does not infringe a right under this Part in relation to a performance or recording included in—
- “(a) the communication work; or
- “(b) any sound recording or film that is played or shown in public by reception of the communication work. 35
- “(3) For the purposes of this section, the public playing or showing of a communication work is not free if—

- “(a) the audience has paid for admission to the place where the communication work is played or shown (which in this section is called the **venue**), including any place of which the venue is a part; or
- “(b) goods or services are supplied at the venue or a place of which it forms part at prices that—
- “(i) are substantially attributable to the facilities afforded for hearing or seeing the communication work; or
- “(ii) exceed those usually charged there and that are partly attributable to those facilities.
- “(4) For the purposes of **subsection (3)(a)**, the following persons must not be treated as having paid for admission to the venue:
- “(a) a person admitted as a resident or an inmate of a place (including a person residing in a hotel, motel, camping ground, or any other place that admits persons for a fee) for the purpose of temporary accommodation:
- “(b) a person admitted as a member of a club or society where the payment is only for membership of the club or society and the provision of facilities for hearing or seeing communication works is only incidental to the main purposes of the club or society.
- “**188B Assessment of damages for infringement of rights under this Part in relation to performance or recording**
- Where the making of a communication work is an infringement of rights under this Part in relation to a performance or recording, the fact that the work was heard or seen in public by the reception of the communication work must be taken into account in assessing the damages for the infringement.”
- 85 Section 189 repealed**
Section 189 is repealed.
- 86 New section 190 substituted**
Section 190 is repealed and the following section substituted:
- “**190 Provision of subtitled copies of communication work**
- “(1) A prescribed body that makes a recording of a communication work for the purpose of providing people who are deaf

or hard of hearing or physically or mentally disabled in any other way with copies that are subtitled or otherwise modified for their special needs, does not infringe any right under this Part in relation to a performance or recording included in that communication work. 5

“(2) A body must not be prescribed for the purposes of **subsection (1)** if it is established or conducted for profit.”

87 New section 191 substituted

Section 191 is repealed and the following section substituted:

“**191 Recording of communication work for archival purposes** 10

“(1) Any person (A) who records, or makes a copy of a recording of, a communication work does not infringe any right under this Part in relation to a performance or recording included in the communication work if—

“(a) the communication work falls within a prescribed class; 15
and

“(b) A makes the recording or the copy for the purpose of it being placed in an archive maintained by a prescribed body.

“(2) A body must not be prescribed for the purposes of **subsection (1)** if it is established or conducted for profit.” 20

88 Criminal liability for making, dealing with, using, or copying illicit recordings

Section 198(2) is amended by repealing paragraph (b) and substituting the following paragraph: 25

“(b) communicated to the public.”

89 New heading and new sections 226 to 226J substituted

Section 226 and the heading immediately above section 226 are repealed and the following heading and sections substituted: 30

“Technological protection measures

“**226 Definitions of TPM terms**

In **sections 226A to 226E**, unless the context otherwise requires,—

“TPM or technological protection measure—

“(a) means any process, treatment, mechanism, device, or system that in the normal course of its operation prevents or inhibits the infringement of copyright in a TPM work; but

5

“(b) for the avoidance of doubt, does not include a process, treatment, mechanism, device, or system to the extent that, in the normal course of operation, it only controls any access to a work for non-infringing purposes (for example, it does not include a process, treatment, mechanism, device, or system to the extent that it controls geographic market segmentation by preventing the playback in New Zealand of a non-infringing copy of a work)

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“TPM circumvention device means a device or means that—

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“(a) is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of a technological protection measure; and

“(b) has ~~no~~ only limited commercially significant application except for its use in circumventing a technological protection measure

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“TPM work means a copyright work that is protected by a technological protection measure.

“226A Prohibited conduct in relation to technological protection measure

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“(1) A person (A) must not make, import, sell, distribute, let for hire, offer or expose for sale or hire, or advertise for sale or hire, a TPM circumvention device that applies to a technological protection measure if A knows or has reason to believe that it will, or is likely to, be used to infringe copyright in a TPM work.

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“(2) A person (A) must not provide a service to another person (B) if—

“(a) A intends the service to enable or assist B to circumvent a technological protection measure; and

35

“(b) A knows or has reason to believe that the service will, or is likely to, be used to infringe copyright in a TPM work.

“(3) A person (A) must not publish information enabling or assisting another person to circumvent a technological protection measure if A intends that the information will be used to infringe copyright in a TPM work.

“**226B Rights of issuer of TPM work** 5

“(1) This section applies if a TPM work is issued to the public by, or under licence from, the copyright owner.

“(2) The issuer of the TPM work has the same rights against a person who contravenes **section 226A** as a copyright owner has in respect of an infringement of copyright. 10

“(3) The issuer of the TPM work has the same rights under section 122 (order for delivery up in civil proceedings) or 132 (order for delivery up in criminal proceedings) in relation to a TPM circumvention device as a copyright owner has in relation to an infringing copy. 15

“(4) Sections 126 to 129 (which relate to certain presumptions) apply in relation to proceedings under this section.

“(5) Section 134 (order as to disposal of infringing copy or other object) applies, with all necessary modifications, in relation to the disposal of anything that is delivered up under **subsection (3)**. 20

“**226C Offence of contravening section 226A**

“(1) A person (A) commits an offence who, in the course of business, makes, imports, sells, distributes, lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, a TPM circumvention device that applies to a technological protection measure if A knows that it will, or is likely to, be used to infringe copyright in a TPM work. 25

“(1A) A person (A) commits an offence who, in the course of business, provides a service to another person (B) if— 30

“(a) A intends the service to enable or assist B to circumvent a technological protection measure; and

“(b) A knows that the service will, or is likely to, be used to infringe copyright in a TPM work.

“(1B) A person (A) commits an offence who, in the course of business, publishes information enabling or assisting another per- 35

son to circumvent a technological protection measure if A intends that the information will be used to infringe copyright in a TPM work.

“(2) A person who commits an offence under this section is liable on conviction on indictment to a fine not exceeding \$150,000 or a term of imprisonment not exceeding 5 years or both. 5

“**226D When rights of issuer of TPM work do not apply**

“(2) ~~The rights that the issuer of a TPM work has under **section 226B** do not prevent or restrict the making, importation, sale, or letting for hire of a TPM circumvention device to enable a qualified person to—~~ 10

~~“(a) exercise a permitted act under Part 3; or~~

~~“(d) undertake encryption research.~~

“(2) The rights that the issuer of a TPM work has under **section 226B** do not prevent or restrict the exercise of a permitted act. 15

“(2A) The rights that the issuer of a TPM work has under **section 226B** do not prevent or restrict the making, importation, sale, or letting for hire of a TPM circumvention device to enable—

“(a) a qualified person to exercise a permitted act under Part 3 using a TPM circumvention device on behalf of the user of a TPM work; or 20

“(b) a person referred to in **section 226E(3)** to undertake encryption research.

“(3) In this section and in **section 226E**, **qualified person** means— 25

“(a) the librarian of a prescribed library; or

“(b) the archivist of an archive; or

“(c) an educational establishment; or

“(d) any other person specified by the Governor-General by Order in Council on the recommendation of the Minister. 30

“(4) A qualified person must not be supplied with a TPM circumvention device on behalf of a user unless the qualified person has first made a declaration to the supplier in the prescribed form. 35

“(5) In this section,—

“**archive** has the same meaning as in section 50(1)

- “**archivist** includes a person acting on behalf of the archivist
- “**encryption technology** means the scrambling and descrambling of information using mathematical formulae or algorithms
- “**librarian** includes a person acting on behalf of the librarian 5
- “**prescribed library** has the same meaning as in section 50(1).
- “(6) In this section and in **section 226E**, **encryption research** means identifying and analysing flaws and vulnerabilities of encryption technology.
- “**226E User’s options if prevented from exercising permitted act by TPM** 10
- “(1) Nothing in this Act prevents any person from using a TPM circumvention device to exercise a permitted act under Part 3 or to ~~undertake encryption research~~.
- “(2) The user of a TPM work who wishes to exercise a permitted act under Part 3 but cannot practically do so because of a TPM may do either or both of the following: 15
- “(a) apply to the copyright owner or the exclusive licensee for assistance enabling the user to exercise the permitted act: 20
- “(b) engage a qualified person (*see* **section 226D(3)**) to exercise the permitted act on the user’s behalf using a TPM circumvention device, but only if the copyright owner or the exclusive licensee has refused the user’s request for assistance or has failed to respond to it within a reasonable time. 25
- “(3) ~~For the purposes of this section, a person (A) undertakes encryption research if A~~ Nothing in this Act prevents any person from using a TPM circumvention device to undertake encryption research if that person — 30
- “(a) is either—
- “(i) engaged in a course of study at an educational establishment in the field of encryption technology; or
- “(ii) employed, trained, or experienced in the field of encryption technology; and 35
- “(b) has either—

- “(i) obtained permission from the copyright owner or exclusive licensee of the copyright to the use of a TPM circumvention device for the purpose of the research; or
- “(ii) has taken, or will take, all reasonable steps to obtain that permission. 5
- “(4) A qualified person who exercises a permitted act on behalf of the user of a TPM work must not charge the user more than a sum consisting of the total of the cost of the provision of the service and a reasonable contribution to the qualified person’s general expenses. 10

“Copyright management information

“226F Meaning of copyright management information

In **sections 226G, 226H, and 226J CMI or copyright management information** means information attached to, or embodied in, a copy of a work that— 15

- “(a) identifies the work, and its author or copyright owner; or
- “(b) identifies or indicates some or all of the terms and conditions for using the work, or indicates that the use of the work is subject to terms and conditions. 20

“226G Interference with CMI prohibited

- “(1) A person (A) must not remove or modify any copyright management information attached to, or embodied in, a copy of a work. 25
- “(2) However, **subsection (1)** does not apply if—
- “(a) A has the authority of the copyright owner or the exclusive licensee to remove or modify the copyright management information; or
- “(b) A does not know, and has no reason to believe, that the removal or modification will induce, enable, facilitate, or conceal an infringement of the copyright in the work. 30

“226H Commercial dealing in work subject to CMI interference

- “(1) A person (A) must not, in the course of business, make, import, sell, let for hire, offer or expose for sale or hire, or advertise 35

for sale or hire, a copy of a work if any copyright management information attached to, or embodied in, the copy has been removed or modified without the authority of the copyright owner or the exclusive licensee.

- “(2) However, **subsection (1)** does not apply if— 5
- “(a) A has the authority of the copyright owner or the exclusive licensee to remove or modify the copyright management information; or
- “(b) A does not know, and has no reason to believe, that the removal or modification will induce, enable, facilitate, 10
or conceal an infringement of the copyright in the work; or
- “(c) A does not know, and has no reason to believe, that any copyright management information attached to, or embodied in, the copy has been removed or modified without the authority of the copyright owner or the exclusive licensee. 15

“**226I Contravention of section 226G or 226H**

A copyright owner or licensee of a work has the same rights in relation to a contravention of **section 226G or 226H** as 20
a copyright owner has in respect of an infringement of copyright.

“**226J Offence of dealing in work subject to CMI interference**

- “(1) A person (A) who contravenes **section 226H** commits an offence if— 25
- “(a) A knows that the copyright management information has been removed or modified without the authority of the copyright owner or exclusive licensee; and
- “(b) A knows that dealing in the work will induce, enable, facilitate, or conceal an infringement of the copyright in 30
the work.
- “(2) A person who commits an offence under **subsection (1)** is liable on conviction on indictment to a fine not exceeding \$150,000 or a term of imprisonment not exceeding 5 years or both.” 35

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- 90 Offence of fraudulently receiving programmes**
Section 227(1) is amended by omitting “broadcasting service or cable programme service” and substituting “communication work”.
- 91 Rights and remedies in respect of apparatus, etc, for unauthorised reception of transmissions** 5
Section 228(1)(b) is amended by omitting “broadcasting service or cable programme service” and substituting “communication work”.
- 92 Supplementary provisions as to fraudulent reception** 10
(1) Section 229(2) is amended by omitting “broadcasting services or cable programme services” and substituting “communication works”.
(2) Section 229(3) is amended by omitting “broadcasting service or cable programme service” and substituting “communication work”. 15
- 93 Application to Convention countries**
Section 230(1) is amended by repealing paragraph (d) and substituting the following paragraph:
“(d) apply in relation to communication works communicated from any Convention country as they apply in relation to communication works communicated from New Zealand,—” 20
- 94 Application of Act (other than Part 9) to other entities** 25
Section 232(2) is amended by repealing paragraph (d) and substituting the following paragraph:
“(d) it applies to communication works communicated from any Convention country as it applies to communication works communicated from New Zealand.”
- 95 Regulations** 30
(1) Section 234(e) is amended by omitting “broadcasts or cable programmes” and substituting “communication works”.

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- (2) Section 234 is amended by inserting the following paragraph after paragraph (e):
“(ea) prescribing the form of a notice of infringement for the purposes of **section 92C(2)(ba)(i)**.”

Legislative history

4 December 2006	Introduction (Bill 102–1)
12 December 2006	First reading and referral to Commerce Committee
27 July 2007	Reported from Commerce Committee (Bill 102–2)
19 March 2008	Second reading
1 April 2008	Committee of the whole House (Bill 102–3)

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