

## SHORT TITLE.

1. This Act may be cited as The Copyright Act, 1921.

## INTERPRETATION.

2. In this Act, unless the context otherwise requires,

(a) “architectural work of art” means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

(b) “artistic work” includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

(c) “book” shall include every volume, part or division of a volume, pamphlet, sheet of letter-press, sheet of music, map, chart, or plan separately published;

(d) “cinematograph” includes any work produced by any process” analogous to cinematography;

(e) “collective work” means,-

(i) an encyclopedia, dictionary, year book, or similar work;

(ii) a newspaper, review, magazine, or similar periodical; and,

(iii) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

(f) “delivery,” in relation to a lecture, includes delivery by means of any mechanical instrument;

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

(h) “engravings” include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs;

(i) “His Majesty's Dominions” includes any territories under His Majesty's protection to which an order in Council made under the provisions of section twenty-eight of the Copyright Act, 1911, passed by the Parliament of the United Kingdom relates;

(j) “infringing,” when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made, or imported in contravention of the provisions of this Act;

(k) For the purposes of this Act, “a work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

(l) “lecture” includes address, speech, and sermon;

(m) “legal representatives” includes heirs, executors, administrators and assigns or other legal representatives ;

(n) “literary work” includes maps, charts, plans, tables, and compilations;

(o) “Minister” means the Minister of the Crown named by the Governor in Council to administer this Act;

(p) “musical work” means any combination of melody and harmony, or either of them, printed, reduced to writing, or otherwise graphically produced or reproduced.

(q) “performance” means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

(r) “photograph” includes photo-lithograph and any work produced by any process analogous to photography;

(s) “plate” includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used Or intended to be used for printing or reproducing copies of any work, and any matrix or other appliance by which records, perforated rolls, or other contrivances for the acoustic representation of the work, are or are intended to be made;

(t) “work of sculpture “ includes casts and models.

## COPYRIGHT.

3. (1) For the purposes of this Act, “copyright” means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished, to publish the work or any substantial part thereof; and shall include the sole right,

(a) to produce, reproduce, perform or publish any translation of the work;

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;

(d) in the case of a literary, dramatic, or musical work. to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered; and to authorize any such acts as aforesaid.

(2) For the purposes of this Act, "publication," in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work, the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purpose of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such works.

(3) For the purposes of this Act (other than those relating to infringement of copyright) a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public without the consent or acquiescence of the author, his executors, administrators or assigns.

(4) For the purposes of this Act, a work shall be deemed to be first published within His Majesty's Dominions or within a foreign country to which this Act extends, notwithstanding that it has been published simultaneously in some other place; and a work shall be deemed to be published simultaneously in two places, if the time between the publication in one such place and the other place does not exceed fourteen days or such longer period as may for the time being be fixed by order in council.

(5) Where, in the case of an unpublished work, the making of the work is extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with if the author was, during any substantial part of that period a British subject, or a subject or citizen of a foreign country to which this Act extends, or a resident within His Majesty's Dominions.

(6) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident within His Majesty's Dominions if he is domiciled within His Majesty's Dominions.

#### WORKS IN WHICH COPYRIGHT MAY SUBSIST.

4. (1) Subject to the provisions of this Act, copyright shall subsist in Canada for the term hereinafter mentioned, in every original literary, dramatic, musical and artistic work, if the author was at the date of the making of the work a British subject, a citizen or subject of a foreign country which has adhered to the Convention and the Additional Protocol thereto set out in the Second Schedule to this Act, or resident within His Majesty's Dominions; and if, in the case of a published work, the work was first published within His Majesty's Dominions or in such foreign country; but in no other works, except as far as the protection conferred by this Act is extended as hereinafter provided to foreign countries to which this Act does not extend.

(2) If the Minister certifies by notice, published in the Canada Gazette, that any country which has not adhered to the Convention and the Additional Protocol thereto, set out in the Second Schedule to this Act, grants or has undertaken to grant, either by treaty, convention, agreement or law, to citizens of Canada the benefit of copyright on substantially the same basis as to its own citizens or copyright

protection substantially equal to that conferred by this Act, such country shall, for the purpose of the rights conferred by this Act, be treated as if it were a country to which this Act extends; and it shall be lawful for the Minister to give such a certificate as aforesaid, notwithstanding that the remedies for enforcing the rights, or the restrictions on the importation of copies of works, under the law of such country, differ from those in this Act.

(3) Copyright shall subsist for the term hereinafter mentioned in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical, literary or dramatic works.

#### TERM OF COPYRIGHT.

5. The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death.

Provided that any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright, royalties in respect of all copies of the work sold by him, calculated at the rate of ten per cent on the price at which he publishes the work; and, for the purposes of this proviso, the Governor in Council may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if he thinks fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

6. In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licenses a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.

7. The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the photograph so derived, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within His Majesty's Dominions, if it has established a place of business therein.

8. The term for which copyright shall subsist in records, perforated rolls and other contrivances by means of which sounds may be mechanically reproduced shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was

the owner of such original plate at the time when such plate was made shall be deemed to be the author of such contrivance, and where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within His Majesty's Dominions if it has established a place of business therein.

9. In the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to section five of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

10. Without prejudice to any rights or privileges of the Crown, where any work has, whether before or after the commencement of this Act, been prepared or published by or under the direction or control of His Majesty or any government department, the copyright in the work shall, subject to any agreement with the author, belong to His Majesty, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

#### OWNERSHIP OF COPYRIGHT.

11. (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:

Provided that-

(a) where, in the case of an engraving, photograph; or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and,

(b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright; but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

(2) .The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to territorial limitations, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by license, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorized agent.

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) alter the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void; but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a license to publish a work or part of a work as part of a collective work..

(3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee, as respects the rights so assigned, and the assignor, as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly. .

#### COMPULSORY LICENSES.

12. If, at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public, a complaint is made to the Governor in Council that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a license to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the Governor in Council may think fit.

#### LICENSES.

13. (1) Any person may apply to the Minister for a license to print and publish in Canada any book wherein copyright subsists, if at any time after publication and within the duration of the copyright the owner of the copyright fails:

(a) to print the said book or cause the same to be printed in Canada;

(b) to supply by means of copies so printed the reasonable demands of the Canadian market for such book.

(2) Such application may be in such form as may be prescribed by the regulations and shall state the proposed retail price of the edition of such book proposed to be printed.

(3) Every applicant for a license under this section shall with his application deposit with the Minister an amount not less than ten per cent of the retail selling price of one thousand copies of such book and not less than one hundred dollars and such amount shall, if such application is unsuccessful, be returned to such applicant less such deductions for fees as may be authorized by the regulations.

(4) Notice of such application shall forthwith be communicated by the Minister to the owner of the

copyright in such manner as may be prescribed by the regulations.

(5) If the owner of the copyright shall not within a delay to be fixed by the regulations after communication of such notice give an undertaking, with such security as may be prescribed by the regulations, to procure within two months after the date of such communication the printing in Canada of an edition of not less than one thousand copies of such book, the Minister in his discretion may grant to the applicant a license to print and publish such book upon terms to be determined by the Minister after hearing the parties or affording them such opportunity to be heard as may be fixed by the regulations.

(6) Where two or more persons have applied for a license under this section, the Minister shall award the license to the applicant proposing the terms, in the opinion of the Minister, most advantageous to the author, and if there are two proposing terms equally advantageous to the author, to the applicant whose application was first received.

(7) Such license when issued shall entitle the licensee to the sole right to print and publish such book in Canada during such term, not exceeding five years or for such edition or editions as may be fixed by the license.

(8) Such licensee shall pay a royalty on the retail selling price of every copy of such book printed under such license, at a rate to be determined by the Minister.

(9) The acceptance of a license for a book shall imply an undertaking by the licensee,

(a) to print and publish in Canada an edition of the book of not less than one thousand copies, at the price specified in the license, and within two months from the issue of the license; and

(b) to print the same from the last authorized edition of the book in such manner as may be prescribed by the Minister, in full, without abbreviation or alteration of the letterpress, and, without varying, adding to, or diminishing the main design of such of the prints, engravings, maps, charts, musical compositions, or photographs contained in the book as the licensee reproduces.

(10) Every book published under a license under this section shall have printed or otherwise impressed upon it the words "Printed under Canadian license" and the calendar year of such license and the retail selling price of such book.

(11) If the Minister on complaint is satisfied that the licensee does not print and keep on sale in Canada a number of copies of the book sufficient to supply the reasonable demands, he shall, after giving the licensee an opportunity of being heard to show cause against the cancellation, cancel the license.

(12) If a book for which a license has been issued is suppressed by the owner of the copyright, the licensee shall not print the book or any further copies thereof, but may sell any copies already printed, and may complete and sell any copies in process of being printed under his license, but the owner of the copyright shall be entitled to buy all such copies at the cost of printing them.

(13) Nothing in this section shall authorize the granting without the consent of the author, of a license

to publish a second or succeeding edition of any work whereof such author has published one or more editions in Canada.

#### SERIAL LICENSE.

14. (1) If the publication of a book is lawfully begun as a serial elsewhere than in His Majesty's Dominions or a foreign country to which subsection one of section four of this Act applies, and the owner of the copyright has refused to grant a license to any person in Canada, being a publisher of a periodical, to publish such book in serial form, a license may in the discretion of the Minister be granted to any person in Canada, being the publisher of a periodical, to publish such book once in serial form in the said periodical, provided that a license shall not be granted to more than one such publisher in the same city, town or place.

(2) Such license may be issued by the Minister on application by the publisher in such form as may be prescribed by the regulations.

(3) The term "serial" under this section shall mean and refer to any book which is first published in separate articles or as a tale or short story complete in one issue in a newspaper or periodical.

(4) The term "owner of a copyright" under this section may mean the owner of the right to publish in serial form as distinct and separate from other rights of publication.

(5) The application for a license under this section may be in the form of a draft contract between the licensee and the owner of the copyright.

(6) Such license may be upon the terms proposed in such draft contract, or upon terms prescribed by the regulations; provided that before such terms are settled the owner of the copyright shall be entitled to being fully heard in support of any contentions or representations he may deem it in his interests to make.

(7) The applicant for a license under this section shall with his application deposit such amount of money as may be required by the regulations, and such money shall on the issue of the license be paid forthwith to the owner of the copyright.

(8) Nothing in this Act shall prohibit the importation and circulation of newspapers, magazines and periodicals which together with foreign original matter contain serials licensed to be printed and published in Canada.

15. (1) Every license issued under sections twelve, thirteen or fourteen shall be deemed to constitute a contract, on the terms embodied in such license or in this Act, between the owner of the copyright and the licensee, and the licensee shall be entitled to the like remedies as in the case of a contract, the licensee shall have the same power and right to take any action or any legal proceedings to prevent or restrain any infringement of copyright which affects the rights of such licensee or to recover compensation or damages for any such infringement that the owner of the copyright would have for an infringement of his copyright.

(2) The owner of the copyright shall, in addition to any other remedy in respect to such license as a contract, be entitled, in case of default by the licensee in observing the terms of such license, on petition to the Exchequer Court of Canada, to have such license cancelled.

(3) Particulars of such cancellation may be entered on the Register of Copyrights.

(4) All moneys paid or payable by a licensee or applicant for a license under sections twelve, thirteen or fourteen shall be paid to the Minister.

(5) All moneys deposited by a successful applicant for a license and all moneys due from time to time by way of royalty or otherwise from licensees shall likewise be paid to the Minister and by him paid out to the persons entitled thereto.

(6) The Minister may by regulations require every copy of a book upon which the royalty has been duly paid to be suitably stamped or marked.

#### INFRINGEMENT OF COPYRIGHT.

16. (1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright:

Provided that the following acts shall not constitute an infringement of copyright:

(i) Any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary;

(ii) Where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work;

(iii) The making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture: or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art;

(iv) The publication in a collection, mainly composed of non-copyright matter, bona fide intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists: Provided that not more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged;

(v) The publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building

is being used for public worship, in a position near the lecturer; but nothing in this paragraph shall affect the provisions in paragraph (i) as to newspaper summaries;

(vi) The reading or recitation in public by one person of any reasonable extract from any published work.

(2) Copyright in a work shall also be deemed to be infringed by any person who,-

(a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or,

(b) distributes either for the purposes of trade, or to such an extent as to affect prejudicially the owner of the copyright; or,

(c) by way of trade exhibits in public; or,

(d) imports for sale or hire into Canada any work which to his knowledge infringes copyright or would infringe copyright if it had been made within Canada.

(3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

17. Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

18. (1) It shall not be deemed to be an infringement of copyright in any musical, literary or dramatic work for any person to make within Canada records, perforated rolls, or other contrivances, by means of which sounds may be reproduced and by means of which the work may be mechanically performed, if such person proves,-

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and,

(b) that he has given the prescribed notice of his intention to make the contrivances, and that there has been paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, as hereinafter mentioned:

Provided that,-

(i) nothing in this provision shall authorize any alterations in, or omissions from, the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and,

(ii) for the purposes of this provision, a musical, literary or dramatic work shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced; and,

(iii) the making of the necessary manuscript arrangement and instrumentations of the copyrighted work, for the sole purpose of the adaptation of the work to the contrivances in question, shall not be deemed an infringement of copyright.

(2) The royalty as aforesaid shall be two cents for each playing surface of each such record and two cents for each such perforated roll or other contrivance.

(3) If any such contrivance is made reproducing on the same playing surface two or more different works in which copyright subsists, and the owners of the copyright therein are different persons, the sums payable by way of royalties under this section shall be apportioned amongst the several owners of the copyright equally.

(4) When any such contrivances by means of which a literary, dramatic or musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed enquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such enquiries within the prescribed time.

(5) For the purposes of this section, the Governor in Re Council may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties; and any such regulations may, if the Governor in Council thinks fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.

(6) In the case of musical, literary or dramatic works Pro published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions:

(a) The conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copy right in the work, and the restrictions as to alterations in or omissions from the work, shall not apply;

(b) No royalties shall be payable in respect of contrivances lawfully made and sold by the manufacturer before the commencement of this Act;

(c) Notwithstanding any assignment made before the passing of this Act of the copyright in a literary or dramatic or musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed, shall belong to the author or his legal representatives and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his legal representatives.

(7) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced .has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the

like term as this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived.

Provided that,—

(i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and,

(ii) nothing in this provision shall be construed as conferring copyright in any such contrivance the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first mentioned contrivance.

#### CIVIL REMEDIES.

219. (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of injunction, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.

(2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the Court.

(3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is at issue, then,—

(a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;

(b) if no name is so printed or indicated, or the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

20. All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

21. Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement if the defendant proves that at the date of the infringement he was not aware, and had no reasonable

ground for suspecting that copyright subsisted in the work: Provided that if at the date of the infringement the copyright in the work was duly registered under this Act, the defendant shall be deemed to have had reasonable ground for suspecting that copyright subsisted in the work.

22. (1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction in respect of the construction of such building or structure or to order its demolition.

(2) Such of the other provisions of this Act as provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or as impose summary penalties, shall not apply in any case to which this section applies.

23. An action in respect of infringement of copyright shall not be commenced after the expiration of three years next after the infringement.

#### SUMMARY REMEDIES.

24. (1) If any person knowingly,—

(a) makes for sale or hire any infringing copy of a work in which copyright subsists; or,

(b) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or,

(c) distributes infringing copies of any such work either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright; or,

(d) by way of trade exhibits in public any infringing copy

of any such work; or,

(e) imports for sale or hire into Canada any infringing copy of any such work;

he shall be guilty of an offence under this Act and be liable on summary conviction to a fine not exceeding ten dollars for every copy dealt with in contravention of this section, but not exceeding two hundred dollars in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(2) If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence under this Act, and be liable on summary conviction to a fine not exceeding two hundred dollars, or in the case of a second or subsequent offence, either to such fine or to imprisonment with or without hard labour for a term not exceeding two months.

(3) The court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

26. (1) Any person who, without the written consent of the owner of the copyright or of his legal representative, knowingly performs or causes to be performed in public and

for private profit the whole or any part, constituting an infringement, of any dramatic or operatic work or musical composition in which copyright subsists in Canada, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding two hundred and fifty dollars, or, in the case of a second or subsequent offence, either to such fine or to imprisonment for a term not exceeding two months, or to both.

(2) Any person who makes or causes to be made any change in or suppression of the title, or the name of the author, of any dramatic or operatic work or musical composition in which copyright subsists in Canada, or who makes or causes to be made any change in such work or composition itself without the written consent of the author or of his legal representative, in order that the same may be performed in whole or in part in public for private profit, shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding five hundred dollars, or in the case of a second or subsequent offence, either to such fine or to imprisonment for a term not exceeding four months, or to both.

#### IMPORTATION OF COPIES.

26. Copies made out of Canada of any work in which copyright subsists which if made in Canada would infringe copyright and as to which the owner of the copyright gives notice in writing to the Department of Customs that he is desirous that such copies should not be so imported into Canada, shall not be so imported, and shall be deemed to be included in Schedule C to The Customs Tariff, 1907, and that Schedule shall apply accordingly.

27. (1) Where the owner of the copyright has by license or otherwise granted the right to reproduce any book in Canada, or where a license to reproduce such book has been granted under sections twelve or thirteen, it shall not be lawful except as provided in subsection three to import into Canada copies of such book, and such copies shall be deemed to be included in Schedule C to The Customs Tariff, 1907, and that Schedule shall apply accordingly.

(2) Except as provided in subsection three, it shall be unlawful to import into Canada copies of any book in which copyright subsists until fourteen days after publication thereof and during such period or any extension thereof such copies shall be deemed to be included in Schedule C to The Customs Tariff, 1907, and that Schedule shall apply accordingly.

Provided that if within the said period of fourteen days an application for a license has been made in accordance with the provisions of section thirteen, the Minister may in his discretion extend the said

period and the prohibition against importation shall be continued accordingly. The Minister shall forthwith notify the Department of Customs of such extension.

(3) Notwithstanding anything in this Act it shall be lawful for any person:

(a) To import for his own use not more than two copies of any work published in any country adhering to the Convention;

(b) To import for use by any Department of His Majesty's Government for the Dominion or any of the provinces of Canada, copies of any work, where-ever published;

(c) At any time before a work is printed or made in Canada to import any copies required for the use of any public library or institution of learning;

(d) To import any book lawfully printed in the United Kingdom or in a foreign country which has adhered to the Convention and the Additional Protocol thereto set out in the second Schedule to this Act, and published for circulation among, and sale to the public within either; provided that any officer of the Customs, may in his discretion, require any person seeking to import any work under this section to produce satisfactory evidence of the facts necessary to establish his right so to import.

#### ADMINISTRATION.

28. The Copyright Office, established under the Copyright Act and amendments thereto, shall continue and shall be attached to the Patent Office, and any officers appointed under the said Act shall continue as if established or appointed under this Act.

29. The Commissioner of Patents may do any act or thing, whether judicial or ministerial, which the Minister is authorized or empowered to do by any provision of this Act, and in the absence or inability to act of the Commissioner of Patents the Registrar of Copyrights may exercise such powers and do any such act or thing.

30. There shall be a Registrar of Copyrights.

31. The Commissioner of Patents or the Registrar of Copyrights shall sign all entries made in the Registers and shall sign all certificates and certified copies under the seal of the Copyright Office.

32. The Registrar of Copyrights shall perform such other duties in connection with the administration of this Act as may be assigned to him by the Commissioner of Patents.

33. There shall be a seal of the Copyright Office and impressions thereof shall be judicially noticed.

34. The Commissioner of Patents shall, subject to the Minister, oversee and direct the officers, clerks and employees of the Copyright Office, and have general control of the business thereof, and shall perform such other duties as are assigned to him by the Governor in Council.

36. (1) Every register of copyrights under this Act shall be prima facie evidence of the particulars

entered therein and documents purporting to be copies of any entries therein or extracts therefrom, certified by the Commissioner of Patents or the Registrar of Copyrights and sealed with the seal of the Copyright Office, shall be admissible in evidence in all courts without further proof or production of the originals.

(2) A certificate of registration of copyright in a work shall be prima facie evidence that copyright subsists in the work and that the person registered is the owner of such copyright.

## REGISTRATION.

36. (1) The Minister shall cause to be kept at the Copyright Office, books to be called the Registers of Copyrights, in which may be entered the names or titles of works and the names and addresses of authors, and such other particulars as may be prescribed..

(2) The author or publisher of, or the owner of, or other person interested in the copyright in any work may cause the particulars respecting the work to be entered in the register.

(3) In the case of an encyclopedia, newspaper, review, magazine or other periodical work, or work published in a series of books or parts, it shall not be necessary to make a separate entry for each number or part, but a single entry for the whole work shall suffice.

(4) There shall also be kept at the Copyright Office such indexes of the registers established under this section as may be prescribed.

(5) The register and indexes established under this section shall be in the prescribed form, and shall at all reasonable times be open to inspection, and any person shall be entitled to take copies of or make extracts from any such register.

(6) Any registration made under the Copyright Act shall have the same force and effect as if made under this Act.

(7) Any work in which copyright, operative in Canada, subsisted immediately before the commencement of this Act, shall be registerable under this Act.

37. (1) The application for the registration of a copyright may be made in the name of the author or of his legal representatives, by any person purporting to be the agent of such author or legal representatives.

(2) Any damage caused by a fraudulent or an erroneous assumption of such authority shall be recoverable in any court of competent jurisdiction.

38. Application for registration of a copyright shall be made in accordance with the prescribed form, and shall be deposited at the Copyright Office together with the prescribed fee.

39. (1) Any grant of an interest in a copyright, either by assignment or license, may be registered, if made in duplicate, upon production of both duplicates to the Copyright Office and payment of the

prescribed fee. One duplicate shall be retained at the Copyright Office and the other shall be returned to the person depositing it, with a certificate of registration..

(2) Any grant of an interest in a copyright, either by assignment or license, shall be adjudged void against any subsequent assignee or licensee for valuable consideration without actual notice, unless such assignment or license is registered in the manner directed by this Act before the registering of the instrument under which a subsequent assignee or licensee claims, and no grantee shall maintain any action under this Act, unless his and each such prior grant has been registered.

FEES.

40. (1) The following fees shall be paid to the Minister in advance before an application for any of the following purposes is received, that is to say:

Registering a copyright. \$ 2 00

Registering an assignment of copyright, in respect of each copyright assigned, including certificate of registration 1 00

Certificate of registration of copyright 1 00

Certified copies of documents or extracts:

For every folio of one hundred words 0 10

(2) The said fees shall be in full of all services by the Minister or any person employed by him.

(3) All fees received under this Act shall be paid over to the Minister of Finance, and shall form part of the Consolidated Revenue Fund of Canada.

(4) No person shall be exempt from the payment of any fee or charge payable in respect of any services performed under this Act for such person.

(5) Such further or other fees as may be necessary for the purposes of this Act may be established and imposed by order in council.

41. (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as specified in the first column of the First Schedule to this Act, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of that Schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made, and the work had been one entitled to copyright thereunder.

Provided that,

(a) if the author of any work in which any such right as

is specified in the first column of the First Schedule to this Act subsist at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired, the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either,

(i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration or,

(ii) without any such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment.

The notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the Canada Gazette.

(b) where any person has, before the commencement of this Act, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interests arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.

(2) For the purposes of this section, the expression “author” includes the legal representatives of a deceased author.

(3) Subject to the provisions of subsections six and seven of section eighteen of this Act, copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

#### CLERICAL ERRORS NOT TO INVALIDATE.

42. Clerical errors which occur in the framing or copying of an instrument drawn by any officer or employee in or of the Department shall not be construed as invalidating such instrument, but when discovered they may be corrected under the authority of the Minister.

## RULES AND REGULATIONS.

43. The Governor in Council may make such rules: and regulations, and prescribe such forms as appear to him necessary and expedient for the purposes of this Act.

44. No person shall be entitled to copyright or any similar right in any literary, dramatic, musical or artistic work otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

45. (1) The Governor in Council may make orders for altering, revoking, or varying any order in Council made under this Act, but any order made under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the order comes into operation, and shall provide for the protection of such rights and interests.

(2) Every order in Council made under this Act shall be published in the Canada Gazette, and shall be laid before Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

46. (1) This Act shall not apply to designs capable of being registered under the Trade Mark and Design Act, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.

(2) General rules under section thirty-nine of the Trade Mark and Design Act, may be made for determining the conditions under which a design shall be deemed to be used for such purposes as aforesaid.

## REPEAL.

47. All the enactments relating to copyright passed by the Parliament of the United Kingdom are, so far as they are operative in Canada, hereby repealed. Provided that this repeal shall not prejudicially affect any legal rights existing at the time of the repeal.

48. The Copyright Act, chapter seventy of the Revised Statutes of Canada, 1906, and chapter seventeen of the statutes of 1908, are hereby repealed.

## CONVENTION OF BERNE.

49. The Governor in Council may take such action as may be necessary to secure the adherence of Canada to the revised Convention of Berne, signed the thirteenth day of November, 1908, and the Additional Protocol thereto signed at Berne the twentieth day of March, 1914, set out in the Second Schedule to this Act.

## COMMENCEMENT.

50. This Act shall come into force on a day to be fixed by proclamation of the Governor in Council.