

STATES OF JERSEY



DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (APPLICATION, TRANSITIONAL PROVISIONS AND SAVINGS) (JERSEY) REGULATIONS 201-

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by the Minister for Economic Development**

STATES GREFFE



Jersey

DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (APPLICATION, TRANSITIONAL PROVISIONS AND SAVINGS) (JERSEY) REGULATIONS 201-

REPORT

Introduction

The Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (IPURL) completely updates the copyright framework in the Island. It also introduces protection for other unregistered intellectual property rights. In addition, the Law was drafted to be fully compliant with major international conventions and treaties to which many countries in the world belong. IPURL was approved unanimously by the States Assembly on 1st December 2010 and received Royal Assent on 16th November 2011.

The Report accompanying IPURL explained how the new Law will provide the commercial foundation stone for many parts of the creative industries and underpin the diversification of the Island's economy in the area of e-commerce. The earlier Report included figures showing the impressive contribution of the UK's creative industries to the economy and the above average rates of growth. The creative industries include music, publishing, broadcasting, software, computer games and film. The artistic originals these sectors create are disseminated by an ever-increasing number of new business models relying on digital technology and the Internet. A report published in the UK in June 2012 aimed at improving the measurement of UK investment in artistic originals suggests that UK investment in copyright was £5.1 billion in 2009, that is £3.2 billion higher than existing official data (see the press release published by the UK Intellectual Property Office (IPO) on 8th June 2012).

Current copyright law in Jersey is provided by extension of the UK Copyright Act 1911 to the Island. The fundamental principles in the 1911 Act are still present in IPURL. This includes the provision of exclusive rights that allow those who create and invest in creativity to obtain a return on often significant investment when material protected by copyright is exploited by being copied, published and so on. This also includes limited exceptions to rights that permit certain uses of protected material without permission from the copyright owner. The 1911 Act was clearly not, though, drafted with a view to covering the many different ways of copying, transmitting and using content that are commonplace today. A copyright work may now only exist as a digital file made available on the Internet. IPURL therefore updates and amends

exclusive rights for copyright owners, and exceptions to rights for users to provide a balanced, modern copyright framework.

The majority of the Draft Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Jersey) Regulations 201- (the draft Regulations) makes provision for the transition from the 1911 Act to IPURL, in particular regarding which Law applies to things that already exist at commencement of IPURL and how it applies. The draft Regulations are to come into force on the same day that IPURL comes into force. The extension of the 1911 Act to the Island will cease on the day that IPURL comes into force as a result of an Order in Council already made in the UK (see the Copyright (Repeal of the Copyright Act 1911) (Jersey) Order 2012 – UK S.I. 2012 No. 1753).

The provision in IPURL about a number of rights related to copyright is also important to the creative industries. These related rights are recognised by many other countries, but they do not currently exist at all in Jersey. Some of these related rights, such as rights for performers in recordings (films and sound recordings) of their performances are required if Jersey wishes to have a Law that complies with the major international conventions and treaties in the copyright and related rights area. The draft Regulations also make provision about whether or not, and if so, how these new rights related to copyright are to apply to things already in existence, and performances that have already taken place, at commencement.

The draft Regulations are therefore being presented to the States Assembly for approval in order to permit Jersey to make the transition from a very outdated copyright law to a modern, but balanced, legal framework that fairly protects creative content. The 1911 Act was revoked and replaced in the UK in 1956. Current copyright law in the UK is provided by Part 1 of the Copyright, Designs and Patents Act 1988 as amended, including amendments to make provision about rights in an age when the internet is so relevant to how material protected by copyright and related rights is made available to the public. IPURL copies all the important provisions in the 1988 Act as amended that underpin the functioning of the digital economy in the UK, and, moreover, permits amendments to be made by Regulations for a number of reasons so that it will be easier to keep the law in Jersey up-to-date in the future.

The framework of rights, and exceptions to rights, in IPURL will underpin Jersey's position as an attractive place to do business in the area of e-commerce in particular. It will ensure that Jersey provides unregistered intellectual property rights comparable to those available in other territories at the forefront of the knowledge economy. The draft Regulations should ensure a smooth transition to this new regime for copyright and related rights.

International conventions for unregistered intellectual property rights

Copyright and other unregistered intellectual property rights come into being automatically when the material that can be protected is created and any relevant qualification provisions, such as a requirement for the author to be a national of, or first publication to have been in, a convention country, are met. International conventions and treaties set out some of the key principles for most of these unregistered rights, including to require a contracting party to give rights automatically to relevant material having its origin in all other contracting parties. Membership of an international convention therefore ensures automatic rights, that is without registration or any other formality, for the material covered by that convention in all countries that belong to the convention.

The main international convention in the area of copyright is the Berne Convention for the Protection of Literary and Artistic Works and there are currently 165 contracting parties to this Convention. Much material having its origin in Jersey will already be protected in much of the rest of the world as a result of UK membership of the Berne Convention and qualification for protection arising due to the author being a British citizen or the work being first published in the UK. There may, though, be some gaps in protection, particularly for a copyright work created by a body incorporated in Jersey. A law compliant with the Berne and other international conventions and treaties as explained in the report on IPURL will therefore permit Jersey to seek membership of those conventions and treaties and so address such gaps in protection. Jersey can, though, only belong to the conventions and treaties by an extension of the UK's membership, and so this was requested shortly after IPURL was adopted by the States Assembly in December 2010. If the draft Regulations are approved by the States Assembly, and IPURL then comes into force, extension of the UK's membership of the main international treaties and conventions in the area of unregistered intellectual property rights will be pursued vigorously with the UK. The Regulations have, where necessary, and as explained further below, been drafted so as to be convention compliant.

Both IPURL and the draft Regulations are also believed to be compliant with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is included in the Agreement establishing the World Trade Organisation (WTO). TRIPS compliance is essential if Jersey wishes to join the WTO. TRIPS does, though, require provision on registered intellectual property rights, as well as the unregistered rights in IPURL. There is already provision in Jersey for registered intellectual property rights in the area of trade marks, patents and registered designs, but these laws are not in all respects compliant with TRIPS. Amendments to these laws to make them TRIPS compliant (and compliant with the Paris Convention for the protection of industrial property, the main international convention for registered intellectual property rights) are currently being drafted, and the Economic Development Department intends to have a draft Law with these amendments ready to lodge for approval by the States Assembly next year. It will in addition be necessary to make new provision about plant variety rights for TRIPS compliance, another type of intellectual property right that is usually a registered right. The Economic Development Department is also working on what will be needed on this to comply with TRIPS. But IPURL and the draft Regulations are concerned solely with unregistered intellectual property rights, which, as explained above, are automatic rights applying to the relevant material without the need for registration or any other formality.

Relationship with UK law

As indicated above, current copyright law in Jersey is provided by an extension to the Island of the UK Copyright Act 1911, and this extension will be repealed the day that IPURL and the draft Regulations come into force. Although the 1911 Act has been revoked and replaced in the UK for some considerable time, those changes to UK law have included transitional provisions preserving the extension of the 1911 Act to Jersey, and the subordinate legislation that has previously been made in the UK under the 1911 Act. Jersey has not, therefore, for a long time had the same copyright law as the UK. Continued reliance in Jersey on a Law drafted in 1911 means there is significant doubt about the interpretation of the Law in the modern world. Although case law in Jersey might develop the apparent boundaries of the 1911 Act to accommodate more recent types of copyright works and activities on the Internet to

some extent, the new provision in IPURL will provide a much more transparent legal framework.

IPURL is very similar to the markedly more up-to-date provision in UK copyright law provided by Part 1 of the Copyright, Designs and Patents Act 1988 as amended and other provision in UK law on unregistered intellectual property rights. (The 1988 Act is not the main UK law on patents and registered designs, but it was used as a legislative vehicle to make some amendments to these areas of law. Amendments to those registered intellectual property rights are not relevant to the provision in IPURL, which is about unregistered intellectual property rights only.) Also, as indicated above, it will in due course be possible to amend IPURL in a number of ways by Regulations, including to match changes to copyright law that are currently being discussed in the UK as a result of the recommendations made in the Hargreaves Review of Intellectual Property and Growth.

The UK has made the transition from the 1911 Act to the 1988 Act as amended in two major revisions of the Law in 1956 and 1988, and a large number of more minor revisions, some of which, such as the changes made in 2003 to update rights for a world with the Internet, were significant revisions. On each occasion, the UK has made appropriate transitional provisions and savings and these have all been considered very carefully in drawing up the provision in the draft Regulations. Most parts of the draft Regulations do, therefore, have counterparts in UK law, but much of the provision has needed to be modified to a greater or lesser extent compared to UK law so as to make sense for the transition that is taking place in Jersey from the 1911 Act to a Law very similar to the 1988 Act as amended in one stage rather than a large number of stages.

So long as the 1911 Act remains in force in Jersey, those who create copyright works in the Island are able to rely on a transitional provision in paragraph 36(4) of Schedule 1 of the UK 1988 Act that gives full copyright protection in the UK for all works having their origin in the Island. The draft Regulations clearly cannot deal with the transition in the UK from an extension of the 1911 Act to Jersey to an independent copyright law as in Part 1 of IPURL. However, the UK has recognised that it is appropriate to provide continuity of copyright protection in the UK for works having their origin in the Island by maintaining full copyright protection in the UK for all such works when the 1911 Act extension is revoked. This will be delivered by the provisions of another Order in Council already made in the UK, the Copyright and Performances (Application to Other Countries) (Amendment) Order 2012 (UK S.I. 2012 No. 1754), which comes into force the day that IPURL comes into force.

Copyright protection in Jersey under the 1911 Act for works having their origin in the UK is also preserved by paragraph 36(4) of Schedule 1 of the 1988 Act. When extension of the 1911 Act to the Island has been revoked, provisions in the draft Regulations will continue copyright protection in Jersey for existing works having their origin in the UK. The provision in the Intellectual Property (Unregistered Rights) (Works of Foreign Provenance) (Jersey) Order 201-, to be made under IPURL and explained further below, will ensure that works created after commencement and having their origin in the UK will also have full copyright protection in Jersey under IPURL.

Summary of provision in the draft Regulations

Transitional provisions as in the draft Regulations will be particularly important to make it clear how IPURL applies to existing material and its effect on what people have already agreed to do or are planning to do under the existing Law. For copyright, transitional provisions are essential because there is already a Law in Jersey, the UK 1911 Act, which in a number of respects is different from the provision in IPURL. For other provision in IPURL there is, though, still a need to make some provision as there is already material in existence which could in the future attract rights and/or things that people have started and may still be doing in the future with such material when such rights have come into existence.

The approach taken on some significant provisions in the draft Regulations that will determine how, when IPURL comes into force, it will apply to things already in existence, or performances that have already taken place, is generally as follows:

- Copyright will only apply to existing works of a type that can currently attract copyright.
- There will be no revival of copyright for existing works which had copyright in the past but which has expired before commencement of IPURL.
- Database right and performers' rights can apply to existing material, but there will be no unregistered design right for existing designs.
- No terms of protection for existing works can be longer than terms under IPURL, but existing works in copyright at commencement will benefit from any extended terms.
- Existing law continues to apply to anything done as a result of agreements reached or arrangements made under the existing law before commencement of IPURL.
- Continuation of activity that would have been permitted by the new exceptions to rights will be treated as though those exceptions had always been in place.
- States Assembly and States will be licensed to use existing works where States Assembly and States copyright would have applied if created after commencement of IPURL, but States Assembly or States is not the copyright owner of, and has no right to exploit, those works.
- Authors' moral rights will apply to existing works if the author has not died, but performers' moral rights will not apply to past performances.
- IPURL will in some cases be modified in how it applies to existing material of foreign provenance in the same way as for new material of foreign provenance.

Part 2 of the draft Regulations, which amounts to more than half of the Regulations, makes provision about copyright. As already indicated, this is where there is the greatest need to understand how and when the 1911 Act might still apply after commencement of IPURL, and how and when the new copyright law in Part 1 of IPURL will apply to things that already exist. A number of the Regulations are highly complex, and some of the Regulations may in practice have little effect because they even continue the effect of some transitional provisions in the 1911 Act when that replaced earlier law relating to copyright. But, given that copyright may continue to subsist for 50 or more years after the death of the author, it is important to ensure that the transitional provisions do provide answers to relevant issues even for very old

existing material. Parts 3 to 8 of the draft Regulations make transitional provisions for the introduction of the new unregistered intellectual property rights in IPURL and related matters. These rights do not currently apply to anything in the Island, but in some cases, with appropriate safeguards, the new rights do need to apply to existing material in order to comply with international conventions and treaties. Each Part of the draft Regulations is explained in more detail below.

Part 1

Regulation 1, the single Regulation in this Part provides some interpretation and definitions for terms used in the Regulations. Any references to “commencement” are to the day that IPURL comes into force.

Part 2

Regulations 2 to 54 all make provision about copyright. The *additional interpretation* in *Regulation 2* defines an existing copyright work as one that has copyright under the 1911 Act, including as a result of any Orders in Council made under the 1911 Act. Those Orders in Council mean that many works having their origin in other countries already have copyright protection in Jersey. (An Order being made under Article 399 of IPURL will continue this application of Jersey copyright law to works from other countries, including as required by the international treaties and conventions Jersey wishes to join as explained below.) *Regulation 2* also defines the concept of an “existing work” as one made before commencement because some of the Regulations make provision about how IPURL applies to existing works even if they do not already have copyright in Jersey under the 1911 Act.

Subsistence of rights as set out in *Regulation 5* is a key provision. This Regulation defines when copyright under IPURL can apply to an existing work. Except in the cases identified in paragraph (2) of this Regulation, copyright can only apply where the existing work is an existing copyright work. Although there are a number of differences in how the type of work that can attract copyright under the 1911 Act and IPURL are defined, in practice there will be very little difference in what type of thing has copyright under the 1911 Act and can have copyright under IPURL. For example, *Regulation 10* prevents there being any copyright in an existing film as such under IPURL for an existing work that is a film, but does permit there to be copyright in an existing film as a dramatic work and/or a collection of photographs as is the case under the 1911 Act so that existing films do have copyright protection. Paragraph (2) of *Regulation 5* does additionally permit an existing work that is not an existing copyright work to have copyright under IPURL when provision is made in an Order under Article 399 to apply copyright to works having their origin in other countries.

Paragraph (3) of *Regulation 5* does not, though, permit copyright to be revived for any work that had copyright under the 1911 Act and where copyright has already expired. Article 18(2) of the Berne Convention rules out revival of copyright as the default position. A contrary position was taken in the EU in 1996 when terms of protection were harmonised with some terms in the UK for example being extended, and in some cases copyright being revived. But Jersey is copying the harmonised terms in EU law at a different time and from a different base compared to the UK. It would in these circumstances be very difficult indeed to deliver exactly the same duration of protection for very old works in Jersey and the UK even with provision on revival of copyright. Moreover, Jersey is not obliged to copy EU law. Copying the position taken in the Berne Convention and not reviving any copyright is thought to be less likely to cause problems than vice versa.

Regulation 19 provides for the *duration of copyright* for any existing works that do attract copyright under IPURL to be as in IPURL, but not longer than in IPURL. For some works still in copyright, this will mean a period of copyright extended by up to 20 years compared to the 1911 Act. For some very old unpublished works, this will mean a shorter term of protection than under the 1911 Act. *Regulations 20 to 23* then provide reciprocity of term provisions for foreign existing works that attract copyright under IPURL, which may mean a shorter term than that provided in IPURL. This type of provision is the same as applies in the UK and other member States of the EU, but, in line with the requirements of EU law which Jersey has chosen to copy, there is no shortening of term for works from EEA States. *Regulation 20(1)* ensures that this exception from any shortening of term also applies to existing works from Guernsey and the Isle of Man that can attract copyright under IPURL. This provision is being made on the understanding that provision has been or will be made in those Islands in the same way for works having their origin in Jersey.

Regulation 26 ensures that in general whether anything done before commencement is an *infringement of copyright* is determined by the provisions in the 1911 Act with IPURL only applying to things that are done after commencement. *Regulation 44* then ensures that the 1911 Act and IPURL civil remedies apply as appropriate for dealing with any infringement of copyright. *Regulation 45* makes similar provision about copyright offences, which are provided in both the 1911 Act and IPURL where there is wilful infringement of copyright on a commercial scale, but there are some differences in the detail of the provision. The offences in IPURL only apply to acts done after commencement with the offences as in the 1911 Act applying to acts done before commencement.

The draft Regulations ensure that things done after commencement as a result of an agreement made, or arrangements made to exploit an existing work, before commencement are also judged against the provisions in the 1911 Act rather than IPURL. An existing work that has copyright under IPURL after commencement will, though, have copyright as defined in IPURL except where the draft Regulations provide otherwise. In this respect, *Regulation 28* varies the rights that might apply to an existing foreign sound recording, and so what amounts to an infringement of copyright. This varies depending on which international convention or treaty a country belongs to, as these vary regarding what rights must be delivered. Only sound recordings from countries which belong to the Rome Convention (and, for example, all EU member States belong to this convention), or from Guernsey or the Isle of Man, get all the rights as in IPURL. The treatment indicated for Guernsey and the Isle of Man is on the understanding that those Islands do, or will, treat sound recordings from Jersey in the same way. *Regulation 46* varies the copyright offences which can apply to existing foreign sound recordings depending on convention membership in a similar way.

The draft Regulations also make provision about *exceptions to copyright*, which affect what might be an infringement of rights. The provision on exceptions to copyright, limited activities which can be undertaken without infringing copyright, is considerably expanded in IPURL compared to the 1911 Act. For example, under IPURL librarians and archivists are indemnified against copyright infringement where they copy extracts from copyright works on behalf of other people in certain circumstances. *Regulation 29(3)* extends this benefit of indemnification to some copying that a librarian or archivist might have done before commencement. The draft Regulations also help others who have done something, or started doing something, that would be legal under an exception to copyright if done after commencement.

Regulation 29(2) ensures that copies made illegally before commencement, which would be legal to make after commencement, are not treated as infringing copies under IPURL. *Regulation 30* generally ensures that any activity started before commencement, which would be legal under any exception to copyright in IPURL, is to be treated as though the exceptions had always been in place.

Moral rights for authors of copyright works are provided for the first time in IPURL. These are essentially the right to be identified as the author of a work and the right to object to derogatory treatment of a work that damages the author's reputation. The Berne Convention requires that moral rights apply to existing works that have copyright under IPURL where the author has not died before commencement. This is therefore delivered by *Regulation 34*, but there are some variations to this general rule, such as where the author assigned or licensed copyright to someone else before commencement.

Dealings in and licensing of copyright works are addressed in the draft Regulations as much activity will have started before commencement and continue afterwards. For example, *Regulation 36* ensures that in general documents made or events occurring before commencement which affect the ownership of copyright in an existing work, or an interest, right or licence in such a work, have a corresponding effect in relation to copyright under IPURL. *Regulation 42* ensures that existing licences and agreements relating to a copyright work which were to last for the whole period of copyright under the 1911 Act continue to have effect during any period of extended copyright under IPURL, which might arise as a result of the rule in *Regulation 19* on duration of copyright. Copyright licensing by a collecting society is dealt with in *Regulation 47* so that the new provisions in IPURL permitting independent adjudication on the terms and conditions of such licensing can apply appropriately to existing licensing schemes and existing licences.

A final important area covered by Part 2 of the draft Regulations relates to *States Assembly* and *States copyright*. These are two new types of copyright in IPURL similar to provision in UK law about Parliamentary and Crown copyright. They apply respectively to works created under the direction or control of the States Assembly, or made in the course of his or her duties for the States by a Minister, States' employee and so on. Much of the existing material which would have attracted States Assembly or States copyright had it been created in the future is already likely to have copyright owned by the States due to the rules on first ownership of copyright by an employer for works created during the course of employment in the 1911 Act. *Regulation 48* does, however, provide that, not only will there generally be States Assembly copyright in an existing work where this would have been the case if the work had been created after commencement, but also, even where the States Assembly is not currently the owner of copyright, the States Assembly will still be able to use such an existing work. In most cases this is because any existing right to exploit the work is preserved after commencement, but also, should this not be the case, the work is to be treated as licensed to the States Assembly with the copyright owner entitled to claim a royalty. Under the 1911 Act, the States Assembly would only be able to use a copyright work where it is not the copyright owner and does not have a right to exploit it if it is able to agree a licence with the copyright owner. *Regulation 49* makes similar provision about States copyright. *Crown copyright* can exist in works under the 1911 Act and *Regulation 50* provides that Crown copyright under IPURL will only apply to an existing work that already has copyright owned by the Crown.

Part 3

Regulations 55 to 60 in this Part of the draft Regulations make provision about the new right in databases provided in Part 2 of IPURL. Database right as in Part 2 copies UK and EU law on protection for databases created as a result of substantial investment in obtaining, verifying or presenting their contents. There are no convention obligations regarding database right, but the provision has been made in IPURL to support Jersey's pursuit of recognition of rights in databases having their origin in Jersey throughout the EU. *Regulation 56* on subsistence of database right therefore provides that this new right can subsist in an existing database as this is the approach taken in EU law. In practice, existing databases will often already have copyright under the 1911 Act so back-dating the right causes very few problems. *Regulation 59* does, in any case, ensure that things done after commencement as a result of an existing agreement, or arrangements made before commencement to exploit an existing database, do not infringe database right. *Regulation 60* makes similar provision about States, States Assembly and Crown database right by reference to that made in Part 2 of the draft Regulations for these special types of copyright.

Part 4

Regulation 61, the only Regulation in this Part, ensures that the new provision in Part 4 of IPURL that permits action to be taken against those who deal in devices that circumvent technology to protect copyright works, or who remove electronic rights management information, does not apply to anything done before commencement.

Part 5

Regulation 62, the only Regulation in this Part, ensures that the new provision in Part 5 of IPURL that permits action to be taken against those who deal in unauthorised decoders, which give access to conditional access transmissions such as satellite television, does not apply to anything done before commencement.

Part 6

Regulations 63 to 71 make transitional provisions about rights for performers in film or sound recordings of their performances, rights that are provided in Part 6 of IPURL. These rights are new in Jersey, but must be applied to recordings of past performances in order to comply with international treaties and conventions. *Regulation 64* therefore applies performers' rights to performances taking place before commencement, but this is subject to various modifications in other Regulations in this Part. The film and sound recordings of past performances are in any case likely to be existing works in which copyright already exists and so already subject to restrictions on how they can be used without the permission of the right owners. (In countries which already have performers' rights, it is very common for performers to agree an assignment of their rights to the producer who owns the copyright in the recording of the performance so that all the rights are owned by one person.) The modifications to subsistence of performers' rights in performances that have already taken place nevertheless protect the interests of those who have done things at a time when there were no rights. For example, according to paragraph (3) of *Regulation 64*, performers' moral rights do not apply to a performance taking place before commencement. This is consistent with how the UK made provision when introducing these moral rights in 2006. *Regulation 65* ensures that things done after commencement as a result of an existing agreement, or arrangements made before commencement to exploit a performance that took place before commencement, do not infringe performers' rights. According to

Regulation 67, recordings of performances made before commencement cannot be illicit recordings. According to *Regulation 71*, the offences in Part 6 of IPURL only apply to things done following commencement.

Part 7

Regulations 72 to 75 make transitional provisions about Part 7 of IPURL, which delivers a new right, unregistered design right, for original 3D designs. It is a right to prevent copying and so very similar to copyright, and, indeed some things that may in the future be protected by design right may currently be protected by copyright under the 1911 Act. The UK introduced design right in 1988 as a right of much shorter duration than copyright to, in particular, apply to functional items like car exhausts, which may have otherwise attracted copyright as 3D copies of 2D drawings. The provision in IPURL essentially copies the provision in UK law. Design right can also apply to aesthetically pleasing designs, but they may sometimes continue to have copyright protection too, and such existing designs would generally also have been capable of protection by a registered design right where people felt intellectual property rights were important. There are no convention obligations in the area of unregistered design right which require protection for existing designs. *Regulation 73* therefore does not back-date design right to apply to existing things. It provides that design right cannot subsist in a design recorded in a design document before commencement, or an article made to the design before commencement. Other provisions in the draft Regulations also ensure that this new right does not impact unfairly on people who may have agreed or arranged to do things, or done things, before commencement.

Part 8

Regulation 76, the only Regulation in this Part, ensures that the new provision in Schedule 1 of IPURL does not affect the liability of a service provider for anything done before commencement. Schedule 1 sets out the liability of Internet service providers for copyright infringement by others, where it is taking place in their services, and the services providers' obligations to in some situations take action to deal with that infringement.

Part 9

Regulation 77, the only Regulation in this Part, ensures that the Regulations come into force on the same day as IPURL.

IPURL Appointed Day Act and Orders to be made under IPURL

If approved by the States Assembly, these draft Regulations come into force on the day IPURL comes into force. The Draft Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (Appointed Day) Act 201- (P.111/2012) makes provision for IPURL to come into force. Four Orders are to be made under IPURL to come into force on the same day as IPURL. These Orders will only be made by the Minister when the IPURL Appointed Day Act has been adopted by the States. The content of these Orders has, though, been made available in the Annex to this Report, and the following is a brief explanation of what each Order will deliver.

1. Intellectual Property (Unregistered Rights) (Works of Foreign Provenance) (Jersey) Order 201-

There is copyright under the Copyright Act 1911 as it extends to Jersey for works from many other countries. This is generally due to the Orders in Council that have been made under section 29 of the 1911 Act. Article 399 of IPURL permits similar provision to be made by Order for copyright and all the other unregistered intellectual property rights in IPURL. The international conventions and treaties making provision about unregistered intellectual property rights generally require members to protect material having its origin in all other member countries. Each convention or treaty is relevant to only some types of material that can be protected by the rights in IPURL though, and the detail of the rights that must be provided can also vary. The conventions and treaties that Jersey has indicated an interest in joining are:

- the International Convention for the Protection of Literary and Artistic Works (the Berne Convention);
- the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the Rome Convention);
- the WIPO Copyright Treaty (the WCT);
- the WIPO Performances and Phonograms Treaty (the WPPT).

Jersey has already requested that the UK extend its membership of the Berne Convention to Jersey as soon as possible and will be pursuing this, and membership of the other conventions and treaties indicated above, vigorously as soon as IPURL is in force. Jersey also does not currently belong to the World Trade Organisation, but membership would require it to comply with the copyright and related rights' provisions in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The provisions in IPURL are believed to be compatible with all the above conventions and treaties, including TRIPS, other than the requirement to protect material having its origin in other convention countries. An Order made under Article 399 can, though, anticipate membership of all of these conventions and treaties. It is unlikely that the UK would agree to an extension of conventions to Jersey without this evidence of convention compliance in this Order.

This Order therefore ensures that material having its origin in Jersey's closest trading partners, i.e. in the EEA, is protected by rights under IPURL as favourably as material having its origin in Jersey. The Order also anticipates membership of the main international conventions and treaties indicated above by providing the relevant rights in IPURL to member countries, but also, where consistent with convention and treaty provision, limiting rights, including the possible duration of rights in the same way as has been done in UK and EU law regarding term of protection. Finally, as a result of discussions with Guernsey and the Isle of Man, the Order ensures that material having its origin in those Islands will have full rights under IPURL in the areas of copyright, database right, performers' rights and design right on the understanding that this has been, or will be, reciprocated in those Islands for material having its origin in Jersey. (Note that provision in Regulations 20 to 23, 28 and 46 of the draft Regulations as indicated above makes provision as in the Order that might limit rights in existing works of foreign provenance. The provision in the draft Regulations will apply to existing works that have copyright from commencement as a result of other provision

in the Regulations, or which have copyright from commencement or later as a result of provision in the Order.)

2. *Intellectual Property (Unregistered Rights) (Miscellaneous Provisions) (Jersey) Order 201-*

IPURL permits the Minister to prescribe a number of matters in order to supplement the provision that is made in this new Law. This Order and the other Orders in the Annex to this Report, which the Minister intends to make so that they can come into force at the same time as IPURL, do not make provision in all cases where it would be possible to do so. It has been decided that it is not necessary to do so at this point in time. One or more additional Orders can be made in due course if that should be desirable in respect of any cases where there is no provision in the current Orders and the Minister is permitted to prescribe something.

This Order about miscellaneous provisions does not amend the provision in IPURL. (There are a number of provisions in IPURL which do permit the new Law to be changed by Regulations in some situations, but no such Regulations are planned to coincide with commencement of IPURL, other than the draft Regulations making transitional provisions as explained in this Report.) The provisions in this Order merely supplement IPURL, for example by providing additional interpretation for terms used in the new Law, which bodies can benefit from certain parts of the new Law and the procedure to be followed for doing certain things under the new Law. Although it is hoped that the provision in the Order is appropriate, it can, moreover, be modified in due course should that be desirable.

In particular, this Order:

- defines “educational establishment” so that an establishment providing a course of higher, vocational or continuing education in Jersey and peripatetic teachers, as well as schools which are covered by the provision in IPURL, can benefit from certain educational exceptions to rights;
- prescribes which libraries and archives come within the scope of some other exceptions to rights, and elaborates on certain procedures which must be followed under these exceptions;
- defines the meaning of making an article by an industrial process, which is relevant to a limitation on copyright in designs protected by copyright;
- prescribes which bodies may record broadcasts for archival purposes without infringing rights; and
- specifies the form of the notice of seizure which must be left when infringing goods or illicit recordings being sold at street markets are seized by right-holders.

3. *Intellectual Property (Unregistered Rights) (Fees) (Jersey) Order 201-*

The licensing authority is established by IPURL as a body able to adjudicate on certain matters to do with licensing of rights, in particular the terms and conditions of licensing offered by collecting societies. Collecting societies usually represent a large number of right owners and offer blanket licences covering the rights of those right owners for particular uses of certain types of protected material. The adjudication would determine what terms and conditions are reasonable in the circumstances. It would generally take place when a body representing a large number of users of the protected material refers a case to the licensing authority. Part 8 of IPURL makes

provision about the licensing authority and permits fees to be paid to the States to be prescribed for applications and references to the licensing authority.

This Order sets a fee of £200 for such applications and references. This is most unlikely to be enough to cover the costs of determining a case, but on the basis of experience elsewhere it is extremely unlikely that there will be a case. The licensing authority deals with the same sort of disputes as the Copyright Tribunals in the UK and the Isle of Man. There have been no decisions by the Isle of Man Tribunal since it was established in the early 1990s. Even in the UK where the Copyright Tribunal was established in 1989 (and replaced an earlier tribunal with more limited jurisdiction), there are a number of years where there have been no decisions and in other years no more than 2 or 3 decisions at most. Unless or until an Order is made setting up a specific body or appointing a particular person to be the licensing authority, IPURL provides that the Minister is the licensing authority.

It is important to not set a fee that would completely deter a person from taking a case to the licensing authority, as that would undermine the effect the possibility of such a referral has on those negotiating licensing to behave reasonably. A fee of £200 therefore seems to strike the right balance between deterring frivolous cases, but not making the licensing authority inaccessible for a genuine case. The fee can, of course, always be adjusted in the light of experience. In the meantime, the Economic Development Department already has funds which should be sufficient to cover the costs of determining 2 or more cases should that be necessary. Moreover, IPURL provides that a case can always be passed to the Royal Court to be determined should that seem a more suitable and cost-effective way of resolving a case. This might be appropriate for a complex case. The Court can set fees under the Stamp Duties and Fees (Jersey) Law 1998.

The Order also sets a fee for a person issuing a notice of complaint under Article 243(2) of IPURL to the Minister that their enjoyment of an exception to rights is prevented by the use of technological protection measures with copyright and other protected material. The fee varies depending on whether or not the complainant is a representative body of a class of persons. The equivalent provision in the UK has operated since 2003 with no fee charged. It is believed that there have been very few complaints and none have been found to be valid, so again there may well be no cases to deal with in Jersey. The Economic Development Department also has funds which should be sufficient to cover the costs of dealing with a notice of complaint should that be necessary.

4. Intellectual Property (Unregistered Rights) (Proceedings Before Licensing Authority) (Jersey) Order 201-

As indicated above for the Intellectual Property (Unregistered Rights) (Fees) (Jersey) Order 201-, it is actually very unlikely that the licensing authority will have to decide a case. Should there be a case, however, and should the Minister decide not to simply refer the case to the Court, he may find it helpful to appoint an adviser to assist him on various matters that might need to be decided. This Order therefore provides for the appointment of advisers to assist the licensing authority, but none will be appointed unless or until there is a case where this would be appropriate. The costs of any adviser would then be paid out of the funds that the Economic Development Department already has, as indicated above, to cover the costs of determining a case should that be necessary.

Consultation on the draft Regulations

A targeted stakeholder consultation was held from May to July 2012 on an earlier draft of the Regulations making transitional provisions and savings, and drafts of the first 2 of the Orders indicated above to be made under IPURL to coincide with its commencement. There have in addition been discussions with Guernsey and the Isle of Man about whether or not and, if so, how Jersey should make provision to protect material from those Islands in Jersey under IPURL, and how those Islands do, or intend to, protect material having its origin in Jersey. Drafts of the various pieces of subordinate legislation have also been shown to, and parts discussed with, the UK Intellectual Property Office.

Only a very few comments were received from stakeholders. As a result of these, the main change to the draft Regulations has been to make additional provision about licensing schemes that currently operate in Jersey in areas which, when IPURL is in force, will need to be notified under Article 180 in order to have effect in replacing enjoyment of certain exceptions to rights. For example, Article 58 of IPURL permits educational establishments to record and copy broadcasts for educational purposes without infringing copyright, but only if and to the extent there is no notified licensing scheme covering the use. At the moment, this activity probably requires a licence but there is no notification requirement in the 1911 Act. *Regulation 47* therefore now provides that any licensing already operating does not need to be notified for up to year, or until new licences are offered, existing licences are modified or the licensing scheme is modified if any of these happen earlier. The main reason for notification is to ensure that those who need to take out a licence are aware that licences are available and what their terms and conditions are. Varying the need for immediate notification of existing licensing schemes as now set out in Regulation 47 does not, therefore, undermine the purpose of notification, but removes an immediate burden from those operating existing licensing schemes.

A further change has been made to the Regulations in the light of the report on the proposed subordinate legislation written for the Economic Affairs Scrutiny Panel. That report queries the compatibility of compulsory licences with relevant international standards. In general, such licences are not permitted by international treaties and conventions about copyright, although there is some latitude in how treaty compliant provision is applied to existing works. The earlier draft of Regulation 43 provided for compulsory licences that may have been granted in relation to an existing copyright work in compliance with an order made under section 4 of the 1911 Act to continue for the full term of copyright and any period of extended copyright. It has been decided that the provision would be more consistent with the spirit of international treaties and conventions by providing for termination of any such licences after a transitional period. Regulation 43 therefore now provides that any compulsory licences that may have been granted will last no longer than a year at most from commencement. It is believed that there are no such licences in existence in any case, but the provision in Regulation 43 deals with the issue to provide certainty about the ending of the provision in the 1911 Act.

A final amendment has been made to Regulation 30. The policy decision to not apply design right to existing designs (as delivered by Part 7 of the Regulations), and the decision about how to apply the new provisions on exceptions to copyright where there are existing works and where activity has started before commencement, had inadvertently significantly reduced the scope of copyright protection that might exist under the 1911 Act for some existing designs. Paragraphs (3) and (4) of Regulation 30 therefore now ensure that some existing designs are not subject to the copyright

exception in Article 79 of IPURL for a transitional period. Article 79 will in general permit people to make and sell articles to a design recorded in a design document or model without infringing copyright in that document or model. New designs may, of course, have design right after commencement that would still prevent this, but the term of protection for design right is much shorter than copyright. Article 79 does not, moreover, permit anything where the design is for an artistic work or a typeface and so this exception to copyright is particularly relevant to designs for functional articles. It would not, therefore, be appropriate for Article 79 to be disapplied from all existing designs, as that could mean that unrestricted copyright could continue to apply to some existing designs for a very long time where they would only get a short period of protection under design right if created after commencement. New paragraphs (3) and (4) of Regulation 30 therefore ensure that for existing designs, Article 79 will not apply for a period of 10 years only from when the design was recorded. New paragraph (5) then ensures that, even though Article 79 will not apply for this transitional period, this does not affect any rule of law that might prevent or restrict the enforcement of copyright in relation to a design. Enforcement of copyright might, for example, be restricted where it would otherwise prevent repair of something that a person has bought.

The Intellectual Property (Unregistered Rights) (Miscellaneous Provisions) (Jersey) Order 201- has been amended since the consultation to ensure that the library operated by Jersey Archive can clearly benefit from the provisions in IPURL that apply to prescribed libraries. There was a query about peripatetic teachers working in more than one school and how they benefit from the provisions in IPURL applying to “educational establishments”, but they are covered by the fact that the schools they work in are covered. The Intellectual Property (Unregistered Rights) (Works of Foreign Provenance) (Jersey) Order 201- has been amended since the consultation to deliver the agreed protection for material having its origin in Guernsey and the Isle of Man as explained above.

The current draft Regulations (and the Orders) are therefore believed to provide appropriate and balanced provision on the issues that have been explored with stakeholders.

Financial and manpower implications

There are not expected to be any financial or manpower implications arising from the adoption of the draft Regulations by the States. When IPURL comes into force, there could be an increase in enquiries about copyright and how this affects particular interests. This is likely, however, to be increased awareness about copyright because of the publicity that the debate on the Regulations in the States Assembly will give to copyright, rather than just enquires about IPURL, the Regulations and Orders. As has already been explained, the main right, copyright, already exists in Jersey and the main principles in the old and new Laws are not really changing. It is currently expected that the costs and required manpower for dealing with such enquiries will be met from existing resources.

There are a number of situations in which the Minister could be involved in resolving issues referred to him, particularly in his capacity as the licensing authority. This can include cases referred to the licensing authority in relation to existing licensing schemes and licensing as permitted by Regulation 47 of the draft Regulations. It is anticipated that in practice, applications and references to the licensing authority will though, happen infrequently, or not at all. The comparison with the position in the UK and the Isle of Man supports this as a reasonable position to take. Since the equivalent

provision to that in IPURL was enacted many years ago in the UK and the Isle of Man, there have been few or no cases respectively that have needed to be resolved. This is explained further in the section of the Report above about the Intellectual Property (Unregistered Rights) (Fees) (Jersey) Order 201-. Should there be any financial costs and required manpower, however, it is expected that this can also be met from existing resources. Should it become appropriate or necessary to appoint another person or establish a body as the licensing authority, the draft Law enables any costs of doing so to be met, if appropriate, by charges paid by those referring cases to the authority for adjudication. The current Order setting out the fees could then, if appropriate, be revoked and replaced by a new Order prescribing different, higher fees.

ANNEX TO REPORT

The text of the following Orders to be made under IPURL and to come into force to coincide with commencement is included in this Annex:

1. Intellectual Property (Unregistered Rights) (Works of Foreign Provenance) (Jersey) Order 201-
2. Intellectual Property (Unregistered Rights) (Miscellaneous Provisions) (Jersey) Order 201-
3. Intellectual Property (Unregistered Rights) (Fees) (Jersey) Order 201-
4. Intellectual Property (Unregistered Rights) (Proceedings Before Licensing Authority) (Jersey) Order 201-



INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (WORKS OF FOREIGN PROVENANCE) (JERSEY) ORDER 201-

Explanatory Note

This Order –

- (a) extends the application of the rights conferred by the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (the “Law”) to certain works of foreign provenance; and
- (b) modifies the Law in its application to certain copyright works and protected performances of foreign provenance.

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THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of
Articles 399 and 400 of the Intellectual Property (Unregistered Rights) (Jersey)
Law 2011, orders as follows –

1 Interpretation

(1) In this Order, except where the context otherwise requires –

“Berne Convention” means the International Convention for the
Protection of Literary and Artistic Works, signed at Berne on 9th
September 1886;

“Berne Convention country” means a country which is a party to any Act
of the Berne Convention;

“commencement” means the day the Law comes into force;

“Law” means the Intellectual Property (Unregistered Rights) (Jersey)
Law 2011;

“Part 1 of the Law” includes any provision of Part 8 or 9 of the Law, to
the extent that it has effect in relation to and for the purposes of Part 1 of
the Law;

“Part 6 of the Law” includes any provision of Part 8 or 9 of the Law, to
the extent that it has effect in relation to and for the purposes of Part 6 of
the Law;

“Rome Convention” means the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted in Rome on 26th October 1961;

“Rome Convention country” means a country that is a party to the Rome Convention;

“WIPO” means the World Intellectual Property Organisation;

“WIPO Copyright Treaty” means the WIPO Copyright Treaty done at Geneva, 2nd to 20th December 1996;

“WIPO copyright country” means a country that is a party to the WIPO Copyright Treaty;

“WPPT” means the WIPO Performances and Phonograms Treaty adopted at Geneva on 20th December 1996;

“WPPT country” means a country that is a party to the WPPT;

“WTO country” means a country that is a member of the World Trade Organization;

“World Trade Organization” means the organization established by the Agreement Establishing the World Trade Organization done at Marrakesh on 15th April 1994 and which includes, as Annex 1C to that Agreement, the Agreement on Trade-Related Aspects of Intellectual Property Rights.

- (2) A reference in this Order to a country being a party to any convention or treaty or a member of an organisation includes a reference to a country to which the convention, treaty or membership extends.

2 Application

- (1) If, following commencement, a country becomes an EEA State, the provisions of this Order relating to EEA States have effect in relation to the country, as an EEA State, from the day that it becomes an EEA State.
- (2) If, following commencement, a country becomes a Berne Convention country, the provisions of this Order relating to Berne Convention countries have effect in relation to the country, as a Berne Convention country, from the day that it becomes a Berne Convention country.
- (3) Paragraph (2) applies, with the necessary modifications, to a country that, following commencement, becomes a Rome Convention country, a WIPO copyright country, a WPPT country or a WTO country as it applies to a country that, following commencement, becomes a Berne Convention country.

3 Copyright – qualifying persons

- (1) The following persons are prescribed for the purposes of Article 21(2)(d) of the Law in its application to all works described in Article 13(1) of the Law –

- (a) individuals who are nationals of, or domiciled or resident in, an EEA State, Guernsey or the Isle of Man; and
 - (b) bodies incorporated under the law of an EEA State, Guernsey or the Isle of Man.
- (2) The following persons are prescribed for the purposes of Article 21(2)(d) of the Law in its application to literary, dramatic, artistic and musical works, films and the typographical arrangement of published editions –
- (a) individuals who are nationals of, or domiciled or resident in –
 - (i) a Berne Convention country,
 - (ii) a WIPO copyright country, or
 - (iii) a WTO country; and
 - (b) bodies incorporated under the law of –
 - (i) a Berne Convention country,
 - (ii) a WIPO copyright country, or
 - (iii) a WTO country.
- (3) The following persons are prescribed for the purposes of Article 21(2)(d) of the Law in its application to sound recordings –
- (a) individuals who are nationals of, or domiciled or resident in –
 - (i) a WTO country,
 - (ii) a WPPT country, or
 - (iii) a Rome Convention country; and
 - (b) bodies incorporated under the law of –
 - (i) a WTO country,
 - (ii) a WPPT country, or
 - (iii) a Rome Convention country.
- (4) The following persons are prescribed for the purposes of Article 21(2)(d) of the Law in its application to wireless broadcasts –
- (a) individuals who are nationals of, or domiciled or resident in –
 - (i) a WTO country, or
 - (ii) a Rome Convention country; and
 - (b) bodies incorporated under the law of –
 - (i) a WTO country, or
 - (ii) a Rome Convention country.

4 Copyright – qualifying countries

- (1) EEA States, Guernsey and the Isle of Man are prescribed for the purposes of Article 22(2)(b) of the Law in its application to all works described in Article 13(1) of the Law.
- (2) The following countries are prescribed for the purposes of Article 22(2)(b) of the Law in its application to literary, dramatic, artistic and musical works, films and the typographical arrangement of published editions –

- (a) Berne Convention countries;
 - (b) WIPO copyright countries; and
 - (c) WTO countries.
- (3) The following countries are prescribed for the purposes of Article 22(2)(b) of the Law in its application to sound recordings –
- (a) WTO countries;
 - (b) WPPT countries; and
 - (c) Rome Convention countries.
- (4) The following countries are prescribed for the purposes of Article 22(2)(b) of the Law in its application to wireless broadcasts –
- (a) WTO countries; and
 - (b) Rome Convention countries.

5 Restrictions on qualification for copyright under Article 3 or 4

- (1) A wireless broadcast made from a country other than an EEA State, Guernsey or the Isle of Man shall not qualify for copyright protection by virtue Article 3 or 4 if the wireless broadcast is made before the date the country becomes a WTO country or Rome Convention country.
- (2) A repeat broadcast shall not qualify for copyright protection by virtue of Article 3 or 4 if the repeat broadcast is broadcast more than 50 years after the end of the calendar year in which the original broadcast was made.

6 Database right – qualifying countries and persons

- (1) EEA States, Guernsey and the Isle of Man are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 198(2) of the Law.
- (2) Individuals who are nationals of an EEA State are prescribed for the purposes of sub-paragraph (e) of the definition “qualifying person” in Article 198(2) of the Law.

7 Publication right – qualifying countries and persons

- (1) EEA States are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 218(1) of the Law.
- (2) The following persons are prescribed for the purposes of sub-paragraph (c) of the definition “qualifying person” in Article 218(1) of the Law –
 - (a) individuals who are nationals of an EEA State; and
 - (b) bodies incorporated under the law of an EEA State.

8 Fraudulent reception of transmissions – qualifying countries

EEA States are prescribed for the purposes of Article 249(1)(b) of the Law.

9 Performers' protection – qualifying individuals

Individuals who are nationals of, or domiciled or resident in, one of the following countries are prescribed for the purposes of sub-paragraph (c) of the definition “qualifying individual” in Article 254(1) of the Law –

- (a) EEA States;
- (b) Guernsey;
- (c) the Isle of Man;
- (d) WTO countries;
- (e) WPPT countries; and
- (f) Rome Convention countries.

10 Performers' protection – qualifying countries

The following countries are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 254(1) of the Law –

- (a) EEA States;
- (b) Guernsey;
- (c) the Isle of Man;
- (d) WTO countries;
- (e) WPPT countries; and
- (f) Rome Convention countries.

11 Design right – qualifying countries and individuals

- (1) EEA States, Guernsey and the Isle of Man are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 341(1) of the Law.
- (2) WTO countries are prescribed for the purposes of sub-paragraph (b) of the definition “qualifying country” in Article 341(1) of the Law in its application in relation only to designs that are semiconductor topographies.
- (3) Individuals who are nationals of, or domiciled or resident in an EEA State, Guernsey or the Isle of Man are prescribed for the purposes of sub-paragraph (c) of the definition “qualifying individual” in Article 341(1) of the Law.
- (4) Individuals who are nationals of, or domiciled or resident in, a WTO country are prescribed for the purposes of sub-paragraph (c) of the definition “qualifying individual” in Article 341(1) of the Law in its application in relation only to designs that are semiconductor topographies.

12 Part 1 of the Law modified in its application to certain copyright works of foreign provenance

- (1) Schedule 1 has effect to modify Part 1 of the Law in its application to certain copyright works of foreign provenance that are made following commencement.
- (2) For the purposes of the reference in this Article to works made following commencement, a work of which the making extended over a period shall be taken to have been made when its making was completed.

13 Part 6 of the Law modified in its application to certain qualifying performances of foreign provenance

Schedule 2 has effect to modify Part 6 of the Law in its application to certain qualifying performances of foreign provenance, whether taking place before or following commencement.

14 Saving

- (1) This Article applies where a person –
 - (a) began, in good faith, to do an act or made, in good faith, effective and serious preparations to do an act, in connection with a work, database, performance or design; and
 - (b) incurred any expenditure or liability in connection with the act, at a time when the act neither infringed nor was restricted by copyright or by any other right conferred by the Law in the work, database, performance or design.
- (2) If, by virtue of this Order, another person (the “rights owner”) acquires copyright or any other right conferred by the Law in the work, database, performance or design, a person who has acted as described in paragraph (1) has the right –
 - (a) to continue to so act; or
 - (b) to so act,notwithstanding that the act infringes or is restricted by the right so acquired in the work, database, performance or design.
- (3) However, paragraph (2) shall cease to apply if the rights owner (or his or her exclusive licensee) pays reasonable compensation to the person.
- (4) If the rights owner (or licensee) offers to pay compensation to the person, but the rights owner (or licensee) and the person cannot agree on what compensation is reasonable, either of them may refer the matter to arbitration.

15 Citation and commencement

This Order may be cited as the Intellectual Property (Unregistered Rights) (Works of Foreign Provenance) (Jersey) Order 201- and shall come into force on the same day as the Law.

SCHEDULE 1

(Article 12(1))

**MODIFICATION OF PART 1 OF THE LAW – COPYRIGHT WORKS OF
FOREIGN PROVENANCE**

1 Application and interpretation of Schedule 1

- (1) This Schedule applies to works made following commencement.
- (2) In this Schedule –
 - (a) a reference to an EEA State shall be construed as if Jersey, Guernsey and the Isle of Man were also EEA States;
 - (b) a reference to a national of an EEA State includes a reference to a body incorporated under the law of an EEA State;
 - (c) a reference to a national of a country includes a reference to a body incorporated under the law of the country.

2 Duration of copyright in literary, dramatic, musical and artistic works

- (1) Notwithstanding Part 1 of the Law, where the country of origin of a literary, dramatic, musical or artistic work is not an EEA State and the author of the work is not a national of an EEA State, the duration of copyright in the work shall be whichever is the lesser of –
 - (a) the term to which the work is entitled in the country of origin; and
 - (b) the term determined in accordance with Part 1 of the Law.
- (2) If the work is of joint authorship, the reference in sub-paragraph (1) to the author not being a national of an EEA State shall be construed as a reference to none of the authors being such a person.

3 Duration of copyright in sound recordings

- Notwithstanding Part 1 of the Law, where the author of a sound recording is not a national of an EEA State, the duration of copyright in the sound recording shall be whichever is the lesser of –
- (a) the term to which the sound recording is entitled in the country of which the author is a national; and
 - (b) the term determined in accordance with Part 1 of the Law.

4 Further modifications of Part 1 of Law – sound recordings

- (1) This paragraph applies to a work that qualifies for copyright protection only by virtue of either or both of –
 - (a) the author being a person prescribed in Article 3; and
 - (a) the country of first publication (if any) being a country prescribed in Article 4.

- (2) The provisions of the Law specified in sub-paragraph (3) shall not apply in the work's case if –
 - (a) the author is not a national of, or domiciled or resident in, Guernsey, the Isle of Man, a WPPT country or a Rome Convention country; and
 - (b) the country of first publication (if any) is not Guernsey, the Isle of Man, a WPPT country or a Rome Convention country.
- (3) The provisions are –
 - (a) Article 34;
 - (b) Article 35;
 - (c) Article 41; and
 - (d) Article 139(3) and (4).
- (4) The provisions of the Law specified in sub-paragraph (6) shall not apply in the work's case if –
 - (a) the author is not a national of, or domiciled or resident in, Guernsey, the Isle of Man or a Rome Convention country;
 - (b) the country of first publication (if any) is not Guernsey, the Isle of Man or a Rome Convention country; and
 - (c) the work satisfies either or both of the conditions in sub-paragraph (5).
- (5) The conditions are that –
 - (a) the author of the work is a national of, or domiciled or resident in, a WPPT country; or
 - (b) the country of first publication (if any) of the work is a WPPT country.
- (6) The provisions are –
 - (a) Article 34;
 - (b) Article 35, to the extent that it would otherwise apply to a broadcast of a sound recording;
 - (c) Article 41;
 - (d) Article 139(3), to the extent that it would otherwise apply to a broadcast of a sound recording; and
 - (e) Article 139(4).

5 Duration of copyright in films

- (1) Notwithstanding Part 1 of the Law, where the country of origin of a film is not an EEA State and the author of the film is not a national of an EEA State, the duration of copyright is whichever is the lesser of –
 - (a) the term to which the work is entitled in the country of origin; and
 - (b) the term determined in accordance with Part 1 of the Law.
- (2) In relation to a film of which there are joint authors, the reference in sub-paragraph (1) to the author not being a national of an EEA State shall be construed as a reference to none of the authors being such a person.

6 Duration of copyright in broadcasts

- (1) Subject to sub-paragraph (2), copyright in a broadcast that is a repeat of a broadcast originally made before the day on which the repeat broadcast qualified for copyright by virtue of Article 3(1) or (4) or 4(1) or (4) shall expire at the end of the period of 50 years from the end of the calendar year in which the original broadcast was made.
- (2) Notwithstanding Part 1 of the Law, where the author of a broadcast is not a national of an EEA State, the duration of copyright in the broadcast shall be whichever is the lesser of –
 - (a) the term to which the work is entitled in the country of which the author is a national; and
 - (b) the term determined in accordance with Part 1 of the Law.

7 Further modifications of Part 1 of Law – wireless broadcasts

- (1) This paragraph applies to a wireless broadcast if –
 - (a) the broadcast qualifies for copyright protection only by virtue of either or both of –
 - (i) the author being a person prescribed in Article 3, and
 - (ii) the broadcast being made from a place in a country that is prescribed in Article 4;
 - (b) the author is not a national of, or domiciled or resident in Guernsey, the Isle of Man or a Rome Convention country; and
 - (c) the broadcast is not made from a place in Guernsey, the Isle of Man or a Rome Convention country.
- (2) Articles 34 and 41 of the Law shall only apply in the broadcast's case to the extent that they relate to showing a television wireless broadcast in public.
- (3) Articles 35 and 139(3) of the Law shall only apply in the broadcast's case to the extent that they relate to a wireless broadcast by wireless telegraphy.

8 Determination of country of origin for the purposes of paragraphs 2 and 5

- (1) For the purposes of paragraphs 2 and 5, the country of origin of a work shall be determined in accordance with this paragraph.
- (2) If the work is first published in an EEA State, and is not simultaneously published elsewhere, the country of origin is an EEA State.
- (3) If the work is first published simultaneously in 2 or more countries, one or more of which is an EEA State, the country of origin is an EEA State.
- (4) Sub-paragraphs (5) to (7) apply to a work to which neither sub-paragraph (2) or (3) applies.
- (5) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.

- (6) If the work is first published simultaneously in 2 or more countries, only one of which is a Berne Convention country, the country of origin is that country.
- (7) If the work is first published simultaneously in 2 or more countries of which 2 or more are Berne Convention countries, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.
- (8) If the work is unpublished or is a published work to which none of subparagraphs (2) to (7) apply, the country of origin is –
 - (a) if the work is a film and the maker of the film has his or her headquarters in, or is domiciled or resident in an EEA State or Berne Convention country – that State or country;
 - (b) if the work is a work of architecture constructed in an EEA State or Berne Convention country – that State or country;
 - (c) if the work is an artistic work incorporated in a building or other structure situated in an EEA State or Berne Convention country – that State or country; or
 - (d) in the case of any other work, the EEA State or country of which the author of the work is a national.
- (9) In this paragraph, references to simultaneous publication are to publication within 30 days of the first publication.

SCHEDULE 2

(Article 13)

MODIFICATION OF PART 6 OF THE LAW – QUALIFYING PERFORMANCES OF FOREIGN PROVENANCE

1 Application of Schedule 2

This Schedule applies to qualifying performances, whether taking place before or following commencement.

2 Duration of performers' protection

Notwithstanding Article 272 of the Law, where the performer of a performance is not a national of an EEA State, the duration of the rights conferred by Part 6 of the Law in relation to the performance shall be whichever is the lesser of –

- (a) the term to which the performance is entitled in the country of which the performer is a national; and
- (b) the term determined in accordance with Part 6 of the Law.

3 Further modifications of Part 6 of Law

- (1) This paragraph applies to a performance that is a qualifying performance only by virtue of either or both of –
 - (a) the performer being an individual prescribed in Article 9; and
 - (a) the performance taking place in a country prescribed in Article 10.
- (2) Part 6 of the Law is modified as specified in sub-paragraph (3), in its application in relation to the performance, if –
 - (a) the performer is not a national of or domiciled or resident in Guernsey, the Isle of Man, a WPPT country or a Rome Convention country; and
 - (b) the performance does not take place in Guernsey, the Isle of Man, a WPPT country or a Rome Convention country.
- (3) The modifications are that –
 - (a) in Article 254(1) of the Law, the definition “recording” shall not include a film recording; and
 - (b) the following Articles of the Law shall not apply –
 - (i) Article 263,
 - (ii) Article 264,
 - (iii) Article 266,
 - (iv) Articles 268 to 271, and
 - (v) Article 318(2) and (3).
- (4) Part 6 of the Law is modified as specified in sub-paragraph (6), in its application in relation to the performance, if –
 - (a) the performer is not a national of, or domiciled or resident in, Guernsey, the Isle of Man or a Rome Convention country;
 - (b) the performance does not take place in Guernsey, the Isle of Man or a Rome Convention country; and
 - (c) the performance satisfies either or both of the conditions in sub-paragraph (5).
- (5) The conditions are that –
 - (a) the performer is a national of, or domiciled or resident in, a WPPT country; or
 - (b) the performance takes place in a WPPT country.
- (6) The modifications are that –
 - (a) in Article 254(1) of the Law, the definition “recording” shall not include a film recording; and
 - (b) the following Articles of the Law shall not apply –
 - (i) Article 264,
 - (ii) Article 266,
 - (iii) Articles 268 to 271, and
 - (iv) Article 318(3).



INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (MISCELLANEOUS PROVISIONS) (JERSEY) ORDER 201-

Explanatory Note

This Order contains miscellaneous provisions that supplement the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (the "Law").

Article 1 is the interpretation provision.

Article 2 prescribes, for the purposes of Article 7 of the Law, establishments and peripatetic teachers employed by the States as, respectively, establishments and persons who are, for the purposes of Part 1 of the Law, to be treated as educational establishments.

Articles 3 to 6 supplement Articles 60 to 66 of the Law as to the circumstances in which librarians and archivists may make and supply copies of works, and the administrative arrangements for such supply. *Schedules 1 and 2* contain forms to be used in those circumstances.

Article 7 prescribes circumstances in which an article is to be regarded, for the purposes of Article 80 of the Law, as made by an industrial process.

Article 8 prescribes bodies who may make recordings of broadcasts (but not of encrypted transmissions) for archival purposes.

Article 9 gives effect to *Schedule 3*, which contains a form of notice of seizure of infringing goods that must be left at premises at which the goods are seized under Article 131 or 317 of the Law.

Article 10 provides for the citation and commencement of the Order.

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Article 1

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THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of
Articles 7, 60 to 66, 80, 103, 131, 317 and 400 of the Intellectual Property
(Unregistered Rights) (Jersey) Law 2011, orders as follows –

1 Interpretation

(1) In this Order –

“The Jersey Heritage Trust” means the trust accorded an act of
incorporation by the Loi (1983) accordant un Acte d’Incorporation à
l’Association dite “The Jersey Heritage Trust”;

“Law” means the Intellectual Property (Unregistered Rights) (Jersey)
Law 2011.

(2) For the purposes of this Order, a library or archive is conducted for profit
if it is established or conducted for profit or forms part of, or is
administered by, a body established or conducted for profit.

2 Educational establishments and teachers - Article 7 of Law

(1) The following descriptions of establishment are prescribed for the
purposes of Article 7(1)(b) of the Law –

(a) any establishment in Jersey, to the extent that it provides
instruction in one or more courses of higher education;

- (b) any establishment in Jersey, to the extent that it provides instruction in one or more courses of vocational education; and
 - (c) any establishment in Jersey, to the extent that it provides instruction in more or more courses of continuing education.
- (2) The provisions of Part 1 of the Law relating to educational establishments shall apply in relation to States employees who are peripatetic teachers as they apply in relation to such establishments.
- (3) In this Article –
 - (a) “continuing education”, “higher education” and “vocational education” have the same meaning as in the Education (Jersey) Law 1999;
 - (b) “peripatetic teacher” means a person employed to give instruction, otherwise than in an educational establishment, to pupils who are unable to attend such an establishment.

3 Supply of copies by librarians - Articles 61 and 62 of Law

- (1) The following libraries are prescribed for the purposes of Articles 61 and 62 of the Law –
 - (a) the public library service of Jersey;
 - (b) a library in a school in Jersey;
 - (c) a library in an establishment prescribed in Article 2(1), to the extent that the library is provided for the purposes of the instruction described in that provision;
 - (d) a library provided by and for the purposes of an administration of the States or the States Assembly;
 - (e) a library provided by The Jersey Heritage Trust; and
 - (f) any other library in Jersey, if it is not conducted for profit.
- (2) The following conditions must be complied with when a librarian makes and supplies a copy of any material to a person (the “recipient”) pursuant to Article 61 or 62 of the Law –
 - (a) the recipient must have delivered to the librarian a declaration, in writing, in relation to the material, in the form in Schedule 1 and signed as indicated in that form;
 - (b) the librarian must be satisfied that the recipient requires the copy of the material for the purposes of research or private study and will not use it for any other purpose;
 - (c) the librarian must be satisfied that the recipient is not furnished –
 - (i) under Article 61 of the Law, with more than one copy of an article or more than one article contained in the same issue of a periodical, or
 - (ii) under Article 62 of the Law, with more than one copy of the same material or with a copy of more than a reasonable proportion of any work; and

- (d) the librarian must be satisfied that the requirements of the recipient and of any other person –
 - (i) are not similar, that is to say, are not for copies of substantially the same material at substantially the same time and for substantially the same purposes, and
 - (ii) are not related, that is to say, the recipient and the other person do not receive instruction to which the material is relevant at the same time and place.
- (3) Unless the librarian is aware that the signed declaration delivered by an recipient pursuant to paragraph (2)(a) is false in a material particular, the librarian may rely on it as to the matter the librarian is required to be satisfied of under paragraph (2)(b) before making or supplying the copy.

4 Supply of copies by librarians - Article 64 of Law

- (1) All libraries in Jersey are prescribed as libraries the librarians of which may make and supply copies of material pursuant to Article 64(1) of the Law.
- (2) The following libraries are prescribed as libraries to which copies of material may be supplied pursuant to Article 64(1) of the Law –
 - (a) any library specified in Article 3(1); and
 - (b) any library that is outside Jersey and is not conducted for profit.
- (3) The following conditions must be complied with when a librarian makes and supplies to another library (the “receiving library”) a copy under Article 64 –
 - (a) the receiving library must not be furnished with more than one copy of the material; and
 - (b) where the requirement is for a copy of more than one article in the same issue of a periodical, or for a copy of the whole or part of a published edition, the librarian of the receiving library must furnish a written statement to the effect that –
 - (i) it is a prescribed library, within paragraph (2), and
 - (ii) the librarian does not know, and could not by reasonable inquiry ascertain, the name and address of a person entitled to authorize the making of the copy.

5 Supply of copies by librarians or archivists - Article 65 of Law

- (1) All libraries and archives in Jersey are prescribed as libraries and archives the librarians or archivists of which may make a copy from an item for either of the purposes in Article 65(1) of the Law.
- (2) The following libraries and archives are prescribed as libraries and archives to which copies of material may be supplied pursuant to Article 65(1)(b) of the Law –
 - (a) any library specified in Article 3(1);
 - (b) any archive provided by The Jersey Heritage Trust;

- (c) any other archive in Jersey, if it is not conducted for profit; and
 - (d) if or to the extent that it does not fall within sub-paragraph (b) or (c), any archive of a public institution of its public records, within the meaning of the Public Records (Jersey) Law 2002;
 - (e) any library or archive that is outside Jersey, if it is not conducted for profit.
- (3) The following conditions must be complied with when a librarian or archivist makes a copy of an item for either of the purposes in Article 65(1) of the Law –
- (a) that it is not reasonably practicable for the librarian or archivist to purchase a copy of that item to fulfil the purpose in Article 65(1)(a) or (b) of the Law;
 - (b) that the item in question –
 - (i) is an item in the part of the permanent collection maintained by the library or archive wholly or mainly for the purposes of reference on the premises of the library or archive, or
 - (ii) is an item in the permanent collection of the library or archive which is available on loan only to other libraries or archives; and
 - (c) that, in the case of a copy made for the purpose in Article 65(1)(b) of the Law, librarian of the library or the archivist of the archive prescribed in paragraph (2) furnishes a written statement to the effect that –
 - (i) the item has been lost from that library or archive, destroyed or damaged,
 - (ii) it is not reasonably practicable for the library or archive to purchase a copy of that item, and
 - (iii) if a copy is supplied it will only be used to fulfil the purpose in Article 65(1)(b) of the Law.

6 Supply of copies by librarians or archivists - Article 66 of Law

- (1) All libraries and archives in Jersey are prescribed for the purposes of Article 66 of the Law.
- (2) The following conditions must be complied with when a librarian or archivist makes and supplies a copy of material to a person (the "recipient") under Article 66(1) of the Law –
 - (a) the recipient must have delivered to the librarian or archivist a declaration, in writing, in relation to the material, in the form in Schedule 2, and signed as indicated in the form;
 - (b) the librarian or archivist must be satisfied that the recipient requires the copy for the purposes of research or private study and will not use it for any other purpose; and
 - (c) the recipient must not be furnished with more than one copy of the same material.

- (3) Unless the librarian or archivist is aware that the signed declaration delivered pursuant to paragraph (2)(a) is false in a material particular, the librarian or archivist may rely on it as to the matter he or she is required to be satisfied of under paragraph (2)(b) before making or supplying the copy.
- (4) In paragraph (2) "material" means any document, film, sound recording or other matter in the library or archive.

7 Designs made by industrial process - Article 80 of Law

- (1) An article is to be regarded, for the purposes of Article 80 of the Law, as made by an industrial process if –
 - (a) it is one of more than 50 articles which –
 - (i) all fall to be treated, for the purposes of Part I of the Law, as copies of a particular artistic work, but
 - (ii) do not, all together, constitute a single set of articles as defined in Article 1(1) of the Registered Designs (Jersey) Law 1957; or
 - (b) it consists of goods manufactured in lengths or pieces, not being hand-made goods.
- (2) There are excluded from the operation of Article 80 of the Law –
 - (a) works of sculpture, other than casts or models used or intended to be used as models or patterns to be multiplied by any industrial process;
 - (b) wall plaques, medals and medallions; and
 - (c) printed matter primarily of a literary or artistic character, including book jackets, calendars, certificates, coupons, dress-making patterns, greeting cards, labels, leaflets, maps, plans, playing cards, postcards, stamps, trade advertisements, trade forms and cards, transfers and similar articles.
- (3) Paragraph (1) shall not be taken to limit the meaning of "industrial process" in paragraph (2)(a).

8 Archiving of recordings of broadcasts - Article 103 of Law

- (1) All broadcasts, other than encrypted transmissions, are broadcasts of a designated class for the purpose described in Article 103(1) of the Law.
- (2) The following bodies are designated for the purposes of Article 103(1) of the Law –
 - (a) the public library service of Jersey; and
 - (b) The Jersey Heritage Trust.

**9 Notice of seizure of infringing copy or illicit recording - Articles 131 and
317 of Law**

A notice required by Article 131(5) or 317(5) of the Law shall be in the form
and contain the particulars in Schedule 3.

10 Citation and commencement

This Order may be cited as the Intellectual Property (Unregistered Rights)
(Miscellaneous Provisions) (Jersey) Order 201- and shall come into force on the
same day as the Law.

SCHEDULE 1

(Article 3(2)(a))

DECLARATION: COPY OF ARTICLE OR PART OF PUBLISHED WORK

TO:

The Librarian of Library (address of library)

Please supply me with a copy of [the article in the periodical] [the part of the
published work]¹ the particulars of which are –

.....
.....
required by me for the purposes of research or private study.

I DECLARE THAT –

- (a) I will not use the copy except for research or private study and will not supply a copy of it to any other person;
- (b) I have not previously been supplied with a copy of the same material by you or any other librarian; and
- (c) to the best of my knowledge, no other person with whom I work or study has made or intends to make, at or about the same time as this request, a request for substantially the same material for substantially the same purpose.

I UNDERSTAND THAT if this declaration is false in a material particular the copy supplied to me by you will be an infringing copy AND THAT I shall be liable for infringement of copyright as if I had made the copy myself.

Signature

(This must be the personal signature of the person making the request. A stamped or typewritten signature, or the signature of an agent, is not acceptable.)

Date

Name

Address

.....

¹ delete whichever does not apply

SCHEDULE 2

(Article 6(2)(a))

DECLARATION: COPY OF WHOLE OR PART OF MATERIAL NOT PREVIOUSLY MADE AVAILABLE TO THE PUBLIC

TO:

The Librarian/Archivist of Library/Archive
(address of library/archive)²

Please supply me with a copy of the whole/part¹ of the document/film/sound recording/other material¹ which has not previously been made available to the public the particulars of which are –

.....
.....

required by me for the purposes of research or private study.

I DECLARE THAT –

- (a) I will not use the copy except for research or private study and will not supply a copy of it to any other person;
- (b) I have not previously been supplied with a copy of the same material by you or any other librarian or archivist; and
- (c) to the best of my knowledge –
 - (i) copies of the material were not issued to the public, and the material was not made available to the public by way of an electronic retrieval system, before the document was deposited in your library/archive¹, and
 - (ii) the owner of a copyright work recorded or comprised in the material has not prohibited copying of the work.

I UNDERSTAND THAT if this declaration is false in a material particular the copy supplied to me by you will be an infringing copy AND THAT I shall be liable for infringement of copyright as if I had made the copy myself.

Signature

(This must be the personal signature of the person making the request. A stamped or typewritten signature, or the signature of an agent, is not acceptable.)

Date.....Name.....

Address

.....

² delete whichever does not apply

SCHEDULE 3

(Article 9)

NOTICE OF SEIZURE

TO WHOM IT MAY CONCERN

Goods in which you were trading have been seized. This notice tells you who carried out the seizure, the legal grounds on which this has been done and the goods which have been seized and detained. As required by the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (the "Law"), notice of the proposed seizure was given to the Connétable of the parish of –

..... (insert name of parish)

The seizure was carried out by –

Name

Address

acting on the authority of³ –

Name

Address

Legal grounds for seizure and detention

This action has been taken under Article 131/317⁴ of the Law which, subject to certain conditions, permits a copyright owner, or a person having performing rights or recording rights to seize and detain infringing copies or illicit recordings found exposed or immediately available for sale or hire, or to authorize such seizure. The right to seize or detain is subject to a decision of the Royal Court under Article 143/321² of the Law (order as to disposal of goods seized and detained).

Nature of the goods seized and detained

The following [infringing copies of works (within the meaning of the Article 42 of the Law)] [illicit recordings (within the meaning of Article 255 of the Law)]² have been seized –

Signed

Date

³ complete if the seizure was carried out on the authority of another person

⁴ delete whichever does not apply



INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (FEES) (JERSEY) ORDER 201-

Explanatory Note

This Order prescribes fees in respect of applications and references to the licensing authority under the Intellectual Property (Unregistered Rights) (Jersey) Law 2011.

Arrangement

Article

1	Interpretation	1
2	Fees	1
3	Citation and commencement	2

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Articles 243(3), 383(2) and 400 of the Intellectual Property (Unregistered Rights) (Fees) (Jersey) Law 2011, orders as follows –

1 Interpretation

In this Order “Law” means the Intellectual Property (Unregistered Rights) (Jersey) Law 2011.

2 Fees

- (1) The fee required to accompany a notice of complaint issued under Article 243(2) of the Law is –
 - (a) £25, where the notice is issued by a person in the person’s own behalf;
 - (b) £200, where the notice is issued by a person as a representative of a class of persons.
- (2) A fee paid by a person in the person’s own behalf upon the issue of a notice of complaint under Article 243(2) of the Law shall be refunded if

the Minister gives directions under Article 243(4)(b) in respect of the complaint.

- (3) The fee payable in respect of an application or reference to the licensing authority under the Law is £200.

3 Citation and commencement

This Order may be cited as the Intellectual Property (Unregistered Rights) (Fees) (Jersey) Order 201- and shall come into force on the same day as the Law.



INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (PROCEEDINGS BEFORE LICENSING AUTHORITY) (JERSEY) ORDER 201-

Explanatory Note

This Order provides for the appointment of advisers to assist the licensing authority in proceedings before the licensing authority under the Intellectual Property (Unregistered Rights) (Jersey) Law 2011. The licensing authority is permitted by the Order to appoint advisers to advise upon technical matters, matters of law, taxation of costs and whether to award interest in proceedings before the licensing authority.

The Minister for Economic Development may, by Order, make provision as to who is the licensing authority. In the absence of provision for the appointment or establishment of a licensing authority, the Minister for Economic Development is the licensing authority.

THE MINISTER FOR ECONOMIC DEVELOPMENT, in pursuance of Articles 384 and 400 of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011, orders as follows –

1 Interpretation

In this Order, “Law” means the Intellectual Property (Unregistered Rights) (Jersey) Law 2011.

2 Appointment of advisers

- (1) The licensing authority may appoint one or more advisers to assist the authority in proceedings before the authority under the Law.
- (2) The assistance given by an adviser may be –
 - (a) to advise upon a technical matter to which the proceedings relate;
 - (b) to give legal advice in connection with the proceedings;
 - (c) to advise upon the taxation of costs in the proceedings; or

Intellectual Property (Unregistered Rights) (Proceedings Before
Licensing Authority) (Jersey) Order 201-

Article 3

- (d) to advise upon the inclusion of awards of interest under Article 386 of the Law.
- (3) If the parties to the proceedings are to state their cases orally, the licensing authority may allow an adviser in the proceedings to be present.
- (4) If the licensing authority appoints one or more advisers in proceedings, the parties to the proceedings shall be given a reasonable opportunity to comment on any information, opinion or advice offered by the adviser.

3 Citation and commencement

This Order may be cited as the Intellectual Property (Unregistered Rights) (Proceedings Before Licensing Authority) (Jersey) Order 201- and shall come into force on the same day as the Law.

Explanatory Note

These Regulations determine how the Intellectual Property (Unregistered Rights) (Jersey) Law 2011 (the “Law”) applies to things already in existence, or performances that have already taken place, when the Law comes into force.

Part 1 – General

Regulation 1 contains definitions. A reference to “commencement” in the Regulations is a reference to the date the Law comes into force.

Part 2 – Copyright

Regulation 2 contains definitions for the purposes of this Part of these Regulations. In particular –

“1911 Act” means the Copyright Act 1911 as it has effect in Jersey;

“existing copyright work” means a work in which, before commencement, copyright subsists in accordance with the 1911 Act;

“existing work” means a work in existence at commencement, whether or not copyright subsists in it before commencement.

Regulation 3 provides for the continuity of the law relating to copyright, notwithstanding the repeal of the 1911 Act and the commencement of the Law.

Regulation 4 provides for the provisions of the Law concerning copyright to apply to things in existence at commencement. However, that general rule is qualified by the rules that follow.

Regulation 5 contains rules regarding the subsistence of copyright in existing works.

If a work is an existing copyright work, copyright may subsist in it following commencement, if it satisfies the requirements in Part 1 of the Law. The work will be deemed to satisfy the rules for qualification for copyright, by virtue of Regulation 16, below, but it must also be tested against the other rules in Part 1, such as the descriptions of work that may be protected. The descriptions of work that may be protected that are contained in Part 1 of the Law are wider than those contained in the 1911 Act.

If copyright does not subsist in an existing work before commencement, the work may only qualify for copyright following commencement in one of two ways. Firstly, a work with a foreign author may qualify when an Order is made under Article 399 of the Law prescribing nationals, etc., of a country as qualifying persons for the purposes of Article 21 (qualification by reference to author). Secondly, a work may qualify by virtue of being first published in a qualifying country (being Jersey or a country prescribed in an Order made under Article 399 of the Law). There are 3 circumstances in which an existing work that is not already in copyright cannot qualify for copyright following commencement of the Law –

- an existing work cannot qualify for copyright following commencement if it had copyright under the 1911 Act but that copyright expired before commencement;

- an existing work cannot qualify for copyright following commencement if, had it qualified for copyright under the 1911 Act, such copyright would have expired before commencement;
- an existing work that was first published before commencement cannot qualify for copyright following commencement by virtue of the author being a qualifying person.

The following Regulations in Part 2 of these draft Regulations specify modifications of the Law which apply in relation to existing works.

Regulation 6 modifies what is meant in the Law by an act being “unauthorized”, where the act was done before commencement. Whether an act done before commencement is authorized or unauthorized is to be determined in accordance with the 1911 Act.

Regulation 7 modifies what is meant in the Law by the “author” of an existing work. Generally, authorship is to be determined in accordance with the law in force at the time the work was made. However, Chapter 5 of Part 1 of the Law confers new moral rights in works which are personal to the author. For the purposes of moral rights, who is the author of an existing work is to be determined in accordance with the Law. Authorship of existing works that are photographs is also to be determined in accordance with the Law, but only for the purposes of determining the duration of copyright in the photograph.

Regulation 8 applies Part 1 of the Law to an existing work that is a database, as if it were a literary work.

Regulation 9 applies Part 1 of the Law to an existing copyright work that is a record embodying a recording as if it were a sound recording.

Regulation 10 provides for the application of the Law to an existing work that is a film. The Law applies to the film as if it were an original dramatic work, if it would have been so treated under the 1911 Act. Photographs forming part of the film, and the sound track to the film, are not treated as part of the film.

Regulation 11 makes it clear that copyright cannot exist in a broadcast made before commencement. However, the Law applies to an existing work that is a film or sound recording of a broadcast in the same way that it applies to other such recordings.

Regulation 12 is concerned with copyright in typographical arrangements, which is a new right conferred by the Law. It makes it clear that such copyright cannot subsist in a published edition made before commencement.

Regulation 13 provides that copyright only subsists in a computer-generated work made before commencement if it had an author.

Regulation 14 provides that copyright cannot subsist in an existing work that is a design if copyright could not subsist in it under the 1911 Act, by reason that it was capable of registration under the Patents and Designs Act 1907.

Regulation 15 limits the application of Article 9(3) of the Law. Article 9(3) provides that, in the case of a work of architecture or an artistic design incorporated in a building, construction of the building is treated as publication of the work. This rule is only to apply where construction starts following commencement.

Regulation 16 deems an existing copyright work to satisfy the requirements for qualification for copyright, contained in Articles 20 to 23 of the Law.

Regulation 17 modifies Article 21(2) of the Law. Article 21(2) describes who is a qualifying person, the significance of which is that, if the author was a qualifying person at the time the work was made, the work qualifies for protection. The modification relates to existing works that are photographs or sound recordings and the effect is that the rule regarding qualifying persons who are corporate entities is consistent with the rule that applied under sections 19 and 21 of the 1911 Act.

Regulation 18 provides that first ownership of an existing work is determined in accordance with the law in force at the time it was made. However, if an engraving, photograph or plate is ordered by a person before commencement, but made after commencement, ownership is determined in accordance with the law in force before commencement.

In many cases, the consequence of copyright in an existing work continuing under the Law is that the work acquires a longer period of copyright. In those cases, whoever owns the copyright immediately before commencement becomes the owner of the extended copyright. However, if that person's ownership was already for a period less than the period of copyright for the work, his or her period of ownership is unaltered and it is the reversionary owner who benefits from the extended period of copyright.

Regulation 19 states the basic rule that existing works acquire the period of copyright provided for under the Law. This Regulation is subject to Regulations 20 to 23.

Regulation 20 provides for Jersey, Guernsey and the Isle of Man to be treated as EEA States, in order that, under Regulations 21 to 23, authors in Jersey, Guernsey and the Isle of Man acquire the full term of copyright in their works that is provided by Part 1 of the Law.

Regulation 21 applies to an existing literary, dramatic, musical or artistic work that does not have Jersey, Guernsey, the Isle of Man or an EEA State as its country of origin. The term of copyright in the work is whichever is the lesser of the term to which it is entitled in the country of origin and the term determined in accordance with Part 1 of the Law.

Regulation 22 applies to an existing sound recording that does not have an author from Jersey, Guernsey, the Isle of Man or an EEA State. Again, the term of copyright in the work is whichever is the lesser of the term to which it is entitled in the country of which the author is a national and the term determined in accordance with Part 1 of the Law.

Regulation 23 applies to repeat broadcasts. There is no copyright in a broadcast made before commencement. However, copyright may arise in a repeat, following commencement, of a broadcast made before commencement. In that case, the general rule is that the term of copyright in the repeat expires 50 years from the end of the calendar year in which the original broadcast was made. There is an exception to this for a repeat that does not have an author from Jersey, Guernsey, the Isle of Man or an EEA State. In such a case, the term of copyright in the work is whichever is the lesser of the term to which it is entitled in the country of which the author is a national and the term determined in accordance with the general rule in this Regulation.

Regulation 24 preserves a right in the 1911 Act for authors of articles in newspapers or other periodicals to restrain the publication of the work other than as part of a

newspaper or periodical (unless the author has entered into an agreement to waive this right).

Regulation 25 preserves reversionary rights of publication originally conferred by section 18 of the Copyright Act 1842 on authors of essays, etc., published in reviews or other periodicals.

Regulation 26 states the rule that whether or not an act infringes copyright is to be determined in accordance with the law in force at the time the act is done. Similarly, if an agreement is entered into before commencement and an act done before commencement in reliance on the agreement would not have infringed copyright, the act does not infringe copyright if done after commencement. Further, if arrangements are made before commencement to exploit an existing work, anything done following commencement pursuant to those arrangements does not infringe copyright in the work if either the act would not have infringed copyright if done before commencement or there was no copyright in the work before commencement.

Regulation 27 is concerned with dramatic or musical works made before commencement of the 1911 Act. The 1911 Act made transitional arrangements for its application to such works, and the effect of those transitional arrangements is preserved by this Regulation.

Regulation 28 has the effect of delivering the level of copyright protection required for foreign works, according to whether the author is a national, etc., of a country that is a member of the World Trade Organisation, a party to the WIPO Performances and Phonograms Treaty or a party to the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the “Rome Convention”). This Regulation also provides that a Guernsey or Isle of Man work receives the same level of protection as a Rome Convention country work.

Regulation 29 provides that, generally, whether an article made before commencement is an infringing copy is determined in accordance with the law in force at the time it was made.

The Law, specifically Chapter 4 of Part 1, creates a wide range of circumstances in which a person may use copyright material without infringing copyright. So, this Regulation provides an exception to the general rules about use of material, to the effect that if an article made before commencement would not have been an infringing copy if made after commencement, it is not an infringing copy for the purposes of the Law. There is also a specific exception from liability for a librarian or archivist who, before commencement, provided a copy of a work to a person for the purposes of private study or research.

Regulation 30 is concerned with the application of Chapter 4 of Part 1 to existing works.

Firstly, it expands upon the application of the Chapter to existing works. For the purposes of determining whether something done following commencement is permitted by that Chapter, the Chapter is taken to have been in force at all relevant times. This is relevant where a rule in Chapter 4 depends upon circumstances or factors that have arisen wholly or partly before commencement.

Secondly, the Chapter is modified in its application to designs that were recorded or embodied in a design document or model less than 10 years before commencement and which qualify for copyright protection. Article 79 of the Law permits an article to

be made to a design that is for anything other than an artistic work or a typeface, without infringing copyright. The article so made may also be issued to the public, included in a film or communicated to the public without infringing copyright. Article 79 is disapplied for the period of 10 years commencing with the date the design was recorded or embodied in the design document or model. Therefore making an article to a design that is not an artistic work or a typeface and that is recorded or embodied in a document or model in which copyright subsists, or making a copy of such an article, would continue to be an infringement of copyright during the 10 year transitional period.

Regulation 31 is concerned with assignments of copyright and the grants of interests in copyright in literary, dramatic, musical or artistic works by the author, as first owner of copyright. If, whilst the 1911 Act was in force, the author assigned copyright or granted an interest in copyright, the assignment or grant does not create rights beyond the expiry of 25 years following the death of the author. The author may further assign the right that would revert to his or her estate 25 years after his or her death. If the author does not, the right forms part of his or her estate, on death.

Regulation 32 is concerned with copyright in works made before the 1911 Act came into force, and in which copyright subsists. Section 24 of the 1911 Act made provision for the application of that Act to works in which copyright subsisted, immediately before the Act came into force, under the Copyright Act 1842. Broadly, the 1911 Act extended copyright from death plus 7 years to death plus 50 years. Section 24 provided that an assignment or the grant of an interest for the whole of the copyright term, before the 1911 Act came into force, would, in the absence of express agreement to the contrary, expire at the time that copyright would have expired under the 1842 Act, but that the assignee or grantee had the right to serve notice to acquire the remainder of the term, or a right to continue to reproduce the work, subject to the author's right to demand royalties. This Regulation has the effect that any such event taking place or notice given before commencement has the corresponding effect under Part 1. Further, those rights may be exercised after commencement in accordance with section 24, notwithstanding its repeal.

Regulation 33 saves sections 3 and 19 of the 1911 Act in force, for the year following commencement, in cases where a statutory licence subsists, before commencement under the section.

The 1911 Act introduced copyright for sound recordings, on the same terms as if they were musical works. Section 19 allowed a person who has made records or other devices on which a musical work is recorded, either with the prior consent of the owner of copyright in the work, or in a case where the owner of copyright has previously made such records, etc., to continue to do so, without infringing copyright. The person may continue to make records pursuant to a statutory licence – that is to say, by giving notice to the owner of copyright of his or her intention to make the records, etc., and paying royalties calculated by reference to the number and price of records, etc., sold. The effect of this Regulation is to keep any such statutory licence in force for a further year following commencement.

Section 3 of the 1911 Act conferred a right to a statutory licence to reproduce a work 25 years after the death of the author and such a statutory licence is saved in force, for the year following commencement, in accordance with the terms of section 3 and regulations made under it.

Regulation 34 is concerned with the operation of Chapter 5 of Part 1. Chapter 5 creates new moral rights in works: (1) the right to be identified as the author or director of a work; (2) the right to object to derogatory treatment of work; and (3) the right to not have a work or film falsely attributed to a person as author or director. Although these Regulations confer moral rights in existing copyright works, this Regulation qualifies those rights. The rights are not enforceable in relation to things done before commencement. No rights arise if the person entitled to the right dies before commencement. The first two rights do not apply to anything done pursuant to an assignment or licence or the grant of an interest in copyright. The third right (the right to not have a work falsely attributed to a person) may arise where a statement falsely attributing the work is affixed to the work or copy before commencement but, after commencement, the work or copy is issued, exhibited, performed, communicated or shown in public, or dealt with in the course of a business.

Regulation 35 disapplies the right to privacy of photographs or films commissioned for private and domestic purposes if the photographs were taken or the films made before commencement.

Regulation 36 is concerned with the operation of Chapter 6 of Part 1. Chapter 6 makes provision about how copyright may be dealt with – that is to say, the ability to assign it, grant interests in it and bequeath it. This Regulation is a general rule that documents made and events occurring before commencement that affected copyright in existing works continue to have effect following commencement. This rule is subject to modifications that follow.

Regulation 37 provides that Article 119 does not apply to agreements made before commencement. Article 119 confers a right for a person to whom a prospective copyright owner has assigned future copyright to have that copyright vested in the person when the copyright comes into existence.

Regulation 38 provides that Article 120 does not apply to an exclusive licence granted before commencement. Article 120 provides that a licensee under an exclusive licence has the same rights against the successor in title to the person who granted the licence as the licensee has against the person who granted the licence.

Regulation 39 makes provision for the applicable law in a case where the owner of copyright bequeaths an unpublished work. If the owner dies after commencement, Article 121 applies and raises a rebuttable presumption that the bequest of the work includes a bequest of copyright in it. If the author of an unpublished manuscript died before commencement, section 17(2) of the 1911 Act similarly provides that the bequest of the manuscript is prima facie proof of copyright being with the owner of the manuscript.

Regulation 40 applies Article 122 to agreements made before commencement, but with a modification. The effect is that an agreement made before commencement between an author and a film producer regarding film production is presumed to transfer rental right in the author's contribution to the film from the author to the producer.

Regulation 41 is concerned with the operation of Article 123. Article 123 provides that an author who has transferred rental right in a sound recording or film to the producer retains the right to equitable remuneration for the rental. This Regulation provides that there is no right to remuneration for anything done before commencement. It further disapplies the right of an author to equitable remuneration for rental of a film

following commencement, where the agreement between the author and producer was made before commencement.

Regulation 42 applies in a situation where a copyright licence or agreement for exploitation of an existing copyright work was made before commencement, for the period of the whole of the copyright term under the 1911 Act. Unless there is an agreement to the contrary, the licence or agreement continues to have effect for the extended copyright period under Part 1.

Regulation 43 provides for the continued subsistence of compulsory licences granted under section 4 of the 1911 Act. Section 4 created a right to apply for a licence to be granted by the Judicial Committee of the Privy Council where, following the death of the author of a work, the current owner has refused to allow the republication or performance of a work, with the consequence that the work is withheld from the public. Such licences shall only remain in force for whichever is the lesser of the period of one year following commencement or the period for which it would remain in force in accordance with its terms.

Regulation 44 provides for the application of Articles 127 and 128 and associated Articles. If an act that infringes copyright is done before commencement, the rights and remedies conferred by the 1911 Act apply. If an infringing act is done after commencement, the rights and remedies conferred by Part 1 apply. However, an order under Part 1 for delivery up of infringing copies may be made under Part 1, and the right of the copyright owner to seize infringing copies applies to all infringing copies, whenever made.

Regulation 45 provides that the offence provisions in the 1911 Act and the Loi (1913) au sujet des auteurs apply to acts done before commencement whilst the offence provisions in Part 1 apply to acts done after commencement.

Regulation 46 has the effect of delivering the level of protection in criminal law required for foreign works, according to whether the author is a national, etc., of a country that is a member of the World Trade Organisation, a party to the WIPO Performances and Phonograms Treaty or a party to the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (the “Rome Convention”). This Regulation further provides that a Guernsey or Isle of Man work has the same level of protection as a Rome Convention country work.

Regulation 47 is concerned with the application of Chapter 8 of Part 1. Chapter 8 contains provisions connected with the licensing of copyright. In particular, it provides for disputes regarding licensing schemes and licences already in existence at commencement to be referred to the licensing authority. This Regulation, generally, applies Chapter 8 to existing licensing schemes. However, it does not apply any right of application or referral to the licensing authority regarding things done before commencement. Existing licensing schemes under which licences may be granted permitting acts that would otherwise be permitted by Article 52, 58, 59, 88 or 102 of the Law are deemed to have been notified in accordance with Article 180 of the Law. However, the deeming provision only lasts until whichever is the first to occur of – the scheme being modified, a licence being granted under the scheme, the terms of an existing licence being modified, or one year elapsing following commencement. The consequence is that all existing licensing schemes must be notified by, at the latest, the end of the year following commencement.

Regulation 48 is concerned with States Assembly copyright in existing works. An existing work that is Crown copyright continues to be Crown copyright. Any other

existing work that, if made following commencement, would be States Assembly copyright, continues to belong to the owner but, if the States Assembly does not have any existing right to exploit the work, this Regulation confers such a right by creating a statutory licence. The States Assembly may then exploit the work without infringing copyright but, if it does so, the owner of copyright may claim royalties from the States Assembly for such use.

Regulation 49 makes provision in connection with States copyright upon the same terms as Regulation 48.

Regulation 50 is concerned with Crown copyright. Crown copyright under Article 184 shall only apply to an existing work if the work was Crown copyright before commencement.

Regulation 51 is concerned with copyright in Jersey's Laws, Regulations and Orders, and in the Revised Edition of the Laws of Jersey. Article 186(1) provides that these shall be States Assembly copyright, and this Regulation applies that rule to existing works.

Regulation 52 provides that Article 187, which itself provides for Her Majesty to be entitled to copyright in Acts of Parliament, Orders in Council and Measures of the General Synod of the Church of England, applies to existing works.

Regulation 53 applies Article 188 to existing works, but only if the work is first published after commencement. Article 188 confers copyright in a work made or published by an international organization prescribed by Order of the Minister for Economic Development, if the work would not otherwise qualify for copyright.

Regulation 54 makes provision for the continuation of university copyright. The 1911 Act repealed the Copyright Act 1775. The 1775 Act gave certain universities rights in perpetuity to copies given or bequeathed to them. The rights already acquired were preserved by the 1911 Act, although no further rights accrued. The Copyright, Designs and Patents Act 1989 abolished the right in perpetuity, but provided for university copyright to continue until the end of 2039, and then expire. This Regulation preserves any university copyright in Jersey for that same period, and then it shall expire.

Part 3 – Database Right

Regulation 55 provides for the interpretation of this Part of these draft Regulations. In particular, “existing database” means a database completed before commencement, and “Part 2” means Part 2 of the Law.

Regulation 56 confers database right in an existing database if, had the Law been in force from the time when the database was made, the database would have qualified for database right and database right would have subsisted in it immediately before commencement.

Regulation 57 provides for the duration of database right in an existing database. From commencement, Article 197 provides for database right to expire 15 years from the end of the year in which the database is complete. If, within that period, the database is made available to the public, the term is extended so as to expire 15 years from the end of the year in which the database is made available to the public. This Regulation provides that Article 197 shall apply to an existing database as if it had been in force at all material times. So, if an existing database was completed in 1999 and made

available to the public in 2000, database right in it expires at the end of 2015. Equally, if an existing database was completed and made available to the public in 1995, there is no database right in it as, had the Law been in force at all material times, the period of protection would have expired at the end of 2010.

Regulation 58 provides that Chapter 2 of Part 2, which describes acts that may be done without infringing database right, is deemed to have been in force, in relation to existing databases, at all material times.

Regulation 59 provides that the new provisions for database do not affect agreements made before commencement. Further, things done before commencement, or done after commencement pursuant to an agreement or arrangements made before commencement, do not infringe database right.

Regulation 60 is concerned with the States Assembly, the States and the Crown. If, by virtue of Regulation 48, 49 or 50, any of those institutions owns copyright in an existing database, it shall also be the owner of any database right. If the States or States Assembly does not own copyright in an existing database described in Regulation 48(1), Regulation 48 or 49 provides for any existing right to exploit the work to continue following commencement or, if the States or States Assembly doesn't have any such right, deems that the States or States Assembly holds a licence to exploit the database without infringing copyright. If the States or States Assembly has a continued right to exploit copyright in a database, it is also taken to have the same right to exploit any database right in the database. If the States or States Assembly is deemed by Regulation 48 or 49 to have a licence to exploit copyright in a database, the deeming provisions are extended by Regulation 60, so as to deem the institution to hold, in addition, a licence to exploit the database without infringing database right.

Part 4 – Circumvention of protection measures and electronic rights management

Regulation 61 is concerned with Part 4 of the Law (“Part 4”). Part 4 creates new civil rights and offences where protection measures are circumvented. Examples of protection measures are the restrictions that prevent a copy being made of a DVD or a downloaded file. This Regulation provides that no rights arise, and no offences are committed, under Part 4, in respect of things done before commencement.

Part 5 – Fraudulent reception of transmissions

Regulation 62 is concerned with Part 5 of the Law. Part 5 of the Law creates civil rights and offences where decoders are fraudulently used, made or supplied. An example of a decoder is equipment to unscramble a satellite television service signal. This Regulation provides that no rights arise, and no offence is committed, in respect of things done before commencement.

Part 6 – Performers’ Protection

This Part of these draft Regulations is concerned with Part 6 of the Law (“Part 6”), which confers rights in performances.

Regulation 63 provides for the interpretation of this Part of these draft Regulations. In particular, it defines “moral rights” as being the rights conferred by Chapter 7 of Part 6. Moral rights are the right of a performer to be identified as such, and the right of a performer to object to derogatory treatment of his or her performance.

Regulation 64 provides that the rights conferred by Part 6 (apart from moral rights) apply to performances taking place before commencement. However, this general rule is qualified by the rules that follow.

Regulation 65 provides that Part 6 does not affect an agreement made before commencement. Furthermore, anything done before commencement, or done after commencement pursuant to an agreement or arrangements made before commencement, does not infringe the rights conferred by Part 6.

Regulation 66 provides that, for the purpose of determining whether an act done in relation to a performance that took place before commencement is a permitted act, the provisions regarding permitted acts are deemed to have been in force at all material times.

Regulation 67 provides that a recording of a performance made before commencement is not an illicit recording. Further, for the purposes of Part 6, it is not a recording made without the consent of the performer or other person having recording rights.

Regulation 68 is concerned with Article 264 of the Law. Article 264 confers a right for a performer to equitable remuneration where a commercially published sound recording is played in public or communicated to the public. The Regulation provides that the right does not arise in relation to anything done before commencement.

Regulation 69 is concerned with Article 303 of the Law. Article 303 provides that, in the absence of provision to the contrary, an agreement between a performer and a film producer regarding film production is presumed to transfer to the producer any rental right which the performer has by virtue of the inclusion of a recording of his or her performance in the film. Article 304 goes on to confer a right to equitable remuneration for a performer where there is such a presumed transfer of rental right. The Regulation provides that there is a presumed transfer of rental right in connection with a film production agreement made before commencement.

Regulation 70 is concerned with Article 304 of the Law, described above. It provides that where a performer has entered into a film production agreement before commencement, no right to equitable remuneration arises following commencement in respect of the rental, following commencement, of a sound recording or film made pursuant to the agreement, irrespective of whether the sound recording or film itself was made before or following commencement.

Regulation 71 provides that an act done before commencement is not an offence under Part 6. Part 6 makes it an offence to make deal with or use an illicit recording or for a person to falsely represent that he or she has consent to do anything.

Part 7 – Design Right

Regulation 72 provides for the interpretation of this Part of these draft Regulations.

Regulation 73 provides that there is no design right in a design recorded in a design document before commencement or in a design to which an article has been made before commencement.

Regulation 74 provides that existing agreements concerning designs are not affected by the commencement of the provisions for design right. Further, design right is not infringed by things done before commencement, or by things done after commencement pursuant to agreements or arrangements made before commencement.

Regulation 75 provides that an article made before commencement does not infringe design right.

Part 8 – Liability of and remedies against service providers

Regulation 76 provides that Schedule 1 to the Law does not alter the liability of a service provider for anything done before commencement.

Part 9 – Closing

Regulation 77 provides for the citation of these Regulations and for their commencement on the same day as the Intellectual Property (Unregistered Rights) (Jersey) Law 2011.



Jersey

**DRAFT INTELLECTUAL PROPERTY
(UNREGISTERED RIGHTS) (APPLICATION,
TRANSITIONAL PROVISIONS AND SAVINGS)
(JERSEY) REGULATIONS 201-**

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Jersey

DRAFT INTELLECTUAL PROPERTY (UNREGISTERED RIGHTS) (APPLICATION, TRANSITIONAL PROVISIONS AND SAVINGS) (JERSEY) REGULATIONS 201-

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of Article 408 of the Intellectual Property (Unregistered Rights) (Jersey) Law 2011¹, have made the following Regulations –

PART 1

GENERAL

1 Interpretation

(1) In these Regulations –

“Berne Convention” means the Convention for the Protection of Literary and Artistic Works, signed at Berne on 9th September 1886;

“Berne Convention country” means a country which is a party to any Act of the Berne Convention;

“commencement” means the day the Law comes into force;

“Law” means the Intellectual Property (Unregistered Rights) (Jersey) Law 2011²;

“Rome Convention” means the Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations, adopted in Rome on 26th October 1961;

“Rome Convention country” means a country that is a party to the Rome Convention;

“WIPO” means the World Intellectual Property Organisation;

“WPPT” means the WIPO Performances and Phonograms Treaty adopted at Geneva on 20th December 1996;

“WPPT country” means a country that is a party to the WPPT.

- (2) In these Regulations, a reference to an Article or other sub-division of a Law by number only is a reference to the Article or other sub-division of that number in the Law.

PART 2

COPYRIGHT

2 Interpretation of this Part

- (1) In this Part –

“1911 Act” means the Copyright Act 1911 of the United Kingdom as it had effect in Jersey by virtue of the Loi (1913) au sujet des droits d’auteur³ and includes the offences in Article 1 of that Loi;

“existing copyright work” means an existing work in which copyright subsisted, in accordance with the 1911 Act and any Order in Council made under it, immediately before commencement;

“existing work” means a work made before commencement and, for this purpose, a work of which the making extended over a period shall be taken to have been made when its making was completed;

“Part 1” means Part 1 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 1 of the Law.

- (2) Except where the context otherwise requires, other expressions used in this Part have the same meaning as in Part 1.

- (3) In this Part –

(a) a reference to copyright subsisting in accordance with the 1911 Act includes the right conferred by section 24 of that Act in substitution for the right subsisting immediately before 8th March 1913;

(b) a reference to copyright in an existing work that is a sound recording is a reference to copyright under the 1911 Act in records embodying the recording;

(c) a reference to copyright in an existing work that is a film is a reference to any copyright under the 1911 Act in –

(i) the film, so far as it constituted a dramatic work for the purposes of the 1911 Act, or

(ii) the photographs forming part of the film.

- (4) In this Part a reference to a section or other sub-division of an Act by number only is a reference to the section or other sub-division of that number in the 1911 Act.

3 Continuity of law relating to copyright – construction of enactments, instruments, etc.

- (1) Article 17(2) of the Interpretation (Jersey) Law 1954⁴ shall apply in relation to the repeal of the 1911 Act and the enactment of Part 1 as it would apply in relation to the repeal and re-enactment, with or without modification, of an enactment.
- (2) A reference in an enactment, instrument or other document to copyright or to a work or other subject-matter in which copyright subsists which, apart from the repeal of the 1911 Act and enactment of Part 1, would be construed as a reference to copyright under the 1911 Act shall be construed, so far as may be required for continuing its effect, as being or, as the case requires, including, a reference to copyright under Part 1 or to works in which copyright subsists under Part 1.
- (3) Anything done, or having effect as done, under or for the purposes of a provision of the 1911 Act shall have effect as if done under or for the purposes of the corresponding provision of Part 1.
- (4) A reference, express or implied, in the Law or any other enactment or instrument or document, to a provision of the Law relating to copyright shall, so far as the context permits, be construed as including, in relation to times, circumstances and purposes before commencement, a reference to corresponding earlier provisions.
- (5) A reference, express or implied, in an enactment, instrument or other document, to a provision of the 1911 Act shall be construed, so far as may be required for continuing its effect, as a reference to the corresponding provision of the Law.
- (6) This Regulation is subject to any enactment, including a provision of these Regulations, to the contrary.

4 Application of Part 1 to things in existence at commencement

- (1) Part 1 shall apply in relation to things in existence at commencement as it applies in relation to things coming into existence following commencement.
- (2) Paragraph (1) is subject to any enactment, including a provision of these Regulations, to the contrary.

5 Subsistence of copyright in existing works

- (1) Following commencement, copyright shall subsist in an existing work in accordance with Part 1 only if it is an existing copyright work.
- (2) However, an existing work that is not an existing copyright work may qualify for copyright protection following commencement –
 - (a) subject to paragraphs (3) to (5), under Article 21, by virtue of the author being a qualifying person prescribed for the purposes of paragraph (2)(d) of that Article; or
 - (b) subject to paragraphs (3) and (4), under Article 22, by virtue of the work being first published in a qualifying country.

- (3) Where copyright subsisted in an existing work in accordance with the 1911 Act but expired before commencement, copyright in the work cannot be revived or acquired following commencement.
- (4) An existing work cannot qualify for copyright protection following commencement if –
 - (a) the work did not qualify for copyright protection in accordance with the 1911 Act, by reason that it did not satisfy the requirements of section 1(1)(a) or (b); and
 - (b) had the work qualified for such copyright protection by reason that it satisfied the requirements of section 1(1)(a) or (b), copyright would have expired before commencement.
- (5) An existing work that was first published before commencement cannot, by virtue of the author being a qualifying person prescribed for the purposes of Article 21(2)(d), qualify for copyright protection following commencement.
- (6) The subsistence, following commencement, of copyright in an existing copyright work or in any other existing work that qualifies for copyright in accordance with paragraph (2) is subject to the exceptions, deeming provisions and modifications in the following provisions of this Part.

6 Definition “unauthorized” – Article 2

Part 1 shall have effect in relation to things done before commencement with the substitution for the definition “unauthorized” in Article 2(1) of the following definition –

“ ‘unauthorized’, as regards anything done in relation to a work, means done otherwise than –

- (a) by or with the consent or acquiescence of the copyright owner; or
- (b) if copyright does not subsist in the work, by or with the licence of the author or any person lawfully claiming under him;”.

7 Definition “author” – Article 3

- (1) Subject to paragraphs (2) and (3), who is the author, in relation to an existing work, shall be determined in accordance with the law in force at the time the work was made.
- (2) For the purposes of the moral rights conferred by Chapter 5 of Part 1, who is the author, in relation to an existing work, shall be determined in accordance with Part 1.
- (3) For the purposes of determining the duration of copyright in an existing work that is a photograph, who is the author, in relation to the work, shall be determined in accordance with Part 1.

8 Databases

Part 1 shall have effect in relation to an existing copyright work that is a database as if it were an original literary work.

9 Sound recordings

Part 1 shall have effect in relation to an existing copyright work that is a sound recording as if it were a sound recording within the meaning of Part 1.

10 Films

- (1) Part 1 shall not have effect in relation to an existing work that is a film, as a film.
- (2) Instead, Part 1 shall have effect –
 - (a) in relation to an existing work that is a film that was an original dramatic work within the meaning of the 1911 Act, as if it were an original dramatic work within the meaning of Part 1; and
 - (b) in relation to photographs that form part of a film that is an existing work, as if the photographs were not part of a film.
- (3) Notwithstanding Article 17(2), an existing work that is a sound track to a film shall not be treated as part of the film.

11 Broadcasts

- (1) Copyright cannot subsist in a broadcast made before commencement.
- (2) Paragraph (1) shall not prevent an existing work that is a sound recording or film recording that is a recording of a broadcast qualifying for copyright protection as a sound recording or film.
- (3) Part 1 shall have effect, in relation to an existing sound recording of a broadcast that qualifies for copyright protection, as if it were a sound recording within the meaning of Part 1.
- (4) Regulation 10 applies to an existing film recording of a broadcast as it applies to other existing works that are films.

12 Published editions

Copyright cannot subsist in a typographical arrangement of a published edition made before commencement.

13 Computer-generated works

Copyright can only subsist, following commencement, in an existing work which is computer-generated if and to the extent that the work has an author.

14 Design capable of registration

Copyright shall not subsist, following commencement, in an existing work which is a design to which the 1911 Act could not apply by virtue of section 22.

15 Treatment of construction of building as publication of work – Article 9(3)

Article 9(3) shall apply only where construction of the building begins following commencement.

16 Qualification for copyright protection – Articles 20 to 23

An existing copyright work shall be deemed to satisfy the qualification requirements described in Articles 20 to 23 including, as the case requires, the requirements prescribed for the purposes of Articles 21(2)(d) and 22(2)(b).

17 Existing photographs and sound recordings – Article 21

Article 21(2) is modified in its application to an existing work that is a photograph or sound recording so as to substitute for sub-paragraph (c) the following sub-paragraph –

“(c) a body corporate with an established place of business in Jersey;”.

18 Ownership of copyright

- (1) Who is the first owner of copyright in an existing work shall be determined in accordance with the law in force at the time the work was made.
- (2) In the case of a plate or other original ordered by a person before commencement in the circumstances described in paragraph (a) of the proviso to section 5(1), who is the first owner of copyright shall be determined in accordance with the law in force at the time the plate or other original was ordered.
- (3) Subject to paragraph (4), where, by virtue of these Regulations, copyright in an existing copyright work is extended, the person who is the owner of the copyright in the work immediately before commencement is, at commencement, the owner of the extended copyright.
- (4) If the person described in paragraph (3) is entitled to copyright for a period less than the whole of the copyright period that applies (disregarding the extended period of copyright), the extended period of copyright is part of the reversionary interest expectant on the termination of that period.

19 Duration of copyright: general rule

- (1) This Regulation has effect with respect to the duration of copyright in existing works.

- (2) The duration of copyright in an existing work shall be determined in accordance with Part 1.
- (3) This Regulation is subject to Regulations 20 to 23.

20 Regulations 21 to 23: interpretation

- (1) In Regulations 21 to 23 and this Regulation, a reference to an EEA State shall be construed as if Jersey, Guernsey and the Isle of Man were also EEA States.
- (2) In Regulations 21 to 23 –
 - (a) a reference to a national of an EEA State includes a reference to a body incorporated under the law of an EEA State; and
 - (b) a reference to a national of a country includes a reference to a body incorporated under the law of a country.

21 Duration of copyright in foreign literary, dramatic, musical or artistic works – Article 25

- (1) Where the country of origin of an existing work that is a literary, dramatic, musical or artistic work is not an EEA State and the author of the work is not a national of an EEA State, the duration of copyright in the work shall be whichever is the lesser of –
 - (a) the term to which the work is entitled in the country of origin; and
 - (b) the term determined in accordance with Part 1.
- (2) If the work is of joint authorship, the reference in paragraph (1) to the author not being a national of an EEA State shall be construed as a reference to none of the authors being such a person.
- (3) The country of origin of a work shall be determined in accordance with the following provisions of this Regulation.
- (4) If the work is first published in an EEA State, and is not simultaneously published elsewhere, the country of origin is an EEA State.
- (5) If the work is first published simultaneously in 2 or more countries, one or more of which is an EEA State, the country of origin is an EEA State.
- (6) Paragraphs (7) to (9) apply to a work to which neither paragraph (4) or (5) applies.
- (7) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin is that country.
- (8) If the work is first published simultaneously in 2 or more countries, only one of which is a Berne Convention country, the country of origin is that country.
- (9) If the work is first published simultaneously in 2 or more countries of which 2 or more are Berne Convention countries, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.

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- (10) If the work is unpublished or is a published work to which none of paragraphs (4) to (9) apply, the country of origin is –
- (a) if the work is a film and the maker of the film has his or her headquarters in, or is domiciled or resident in an EEA State or Berne Convention country – that State or country;
 - (b) if the work is a work of architecture constructed in an EEA State or Berne Convention country – that State or country;
 - (c) if the work is an artistic work incorporated in a building or other structure situated in an EEA State or Berne Convention country – that State or country; or
 - (d) in the case of any other work, the EEA State or country of which the author of the work is a national.
- (11) In this Regulation, references to simultaneous publication are to publication within 30 days of the first publication.

22 Duration of copyright in foreign sound recordings – Article 26

Where the author of an existing work that is a sound recording is not a national of an EEA State, the duration of copyright in the sound recording shall be whichever is the lesser of –

- (a) the term to which the sound recording is entitled in the country of which the author is a national; and
- (b) the term determined in accordance with Part 1.

23 Duration of copyright in repeat broadcasts – Article 28

- (1) Subject to paragraph (2), copyright in a repeat broadcast following commencement of a broadcast originally made before commencement shall expire at the end of the period of 50 years from the end of the calendar year in which the original broadcast was made.
- (2) If the author of the repeat broadcast is not a national of an EEA State, the duration of copyright in the repeat broadcast shall be whichever is the lesser of –
 - (a) the term to which the work is entitled in the country of which the author is a national; and
 - (b) the term determined in accordance with paragraph (1).
- (3) No copyright shall arise in a repeat broadcast that is broadcast after the end of the period of copyright that would otherwise apply in its case in accordance with paragraph (1) or (2).

24 Saving for right to restrain publication of article

Notwithstanding the repeal of the 1911 Act, the author of an existing copyright work that is an article or other contribution to a newspaper, magazine, or similar periodical shall continue, following commencement, to have the right, conferred by paragraph (b) of the proviso to section 5(1) in the absence of any agreement

to the contrary, to restrain publication of the work otherwise than as part of a newspaper, magazine, or similar periodical.

25 Limitation of right in respect of essay, etc. made before commencement of 1911 Act

Where an existing copyright work made before 8th March 1913 consists of an essay, article or portion forming part of, and first published in, a review, magazine or other periodical or work of a like nature, the copyright shall be subject to any right of publishing the essay, article or portion in a separate form to which the author was entitled on that date or would, if the 1911 Act had not been passed, have become entitled under section 18 of the Copyright Act 1842 of the United Kingdom.

26 Whether activities infringe copyright in existing work

- (1) The 1911 Act shall continue to apply for the purpose of determining whether anything done before commencement constitutes an infringement of copyright.
- (2) Part 1 shall apply for the purpose of determining whether anything done following commencement constitutes an infringement of copyright.
- (3) Anything done following commencement pursuant to an agreement made before commencement shall not infringe any copyright in a work if, had it been done before commencement, it would not have infringed copyright in the work.
- (4) Anything done following commencement pursuant to arrangements made before commencement for the exploitation of an existing work shall not infringe copyright in the work if –
 - (a) had it been done before commencement, it would not have infringed copyright in the work; or
 - (b) there was no copyright in the work before commencement.

27 Pre-1911 Act works – acts restricted by copyright

- (1) Where, in the case of a dramatic or musical work made before 8th March 1913, the right conferred by the 1911 Act did not include the sole right to perform the work in public, the acts restricted by the copyright shall be treated as not including –
 - (a) performing the work in public;
 - (b) communicating the work to the public; or
 - (c) doing any of the above in relation to an adaptation of the work.
- (2) Where, in the case of a dramatic or musical work made before 8th March 1913, the right conferred by the 1911 Act consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall be treated as consisting only of those acts.

28 Rights of copyright owner in foreign sound recording – Articles 34, 35 and 41

- (1) This Regulation applies to a sound recording that is –
 - (a) an existing copyright work –
 - (i) in which, immediately before commencement, copyright subsisted under the 1911 Act by virtue of the extension of the protection of that Act by Order in Council under section 29, and
 - (ii) which is not first published in Jersey following commencement; or
 - (b) an existing work which –
 - (i) is not an existing copyright work, and
 - (ii) qualifies for copyright only by virtue of its author being a person prescribed for the purposes of Article 21(2)(d) or its country of first publication being a country prescribed for the purposes of Article 22(2)(b).
- (2) Articles 34, 35 and 41 shall not apply in the work's case if –
 - (a) the author is not a national of, or domiciled or resident in, or a body incorporated under the law of, Guernsey, the Isle of Man, a WPPT country or a Rome Convention country; and
 - (b) the country of first publication (if any) is not Guernsey, the Isle of Man, a WPPT country or a Rome Convention country.
- (3) Articles 34, 35 (to the extent that it would otherwise apply to a broadcast of a sound recording) and 41 shall not apply in the work's case if –
 - (a) the author is not a national of, or domiciled or resident in, or a body incorporated under the law of Guernsey, the Isle of Man or a Rome Convention country;
 - (b) the country of first publication (if any) is not Guernsey, the Isle of Man or a Rome Convention country; and
 - (c) the work satisfies either or both of the conditions in paragraph (4).
- (4) The conditions are that –
 - (a) the author of the work is a national of, or domiciled or resident in, or a body incorporated under, the law of a WPPT country; or
 - (b) the country of first publication (if any) of the work is a WPPT country.

29 Infringing copies – Article 42

- (1) Whether or not an article that was made before commencement is an infringing copy, or would have been an infringing copy if it had been made in Jersey, shall be determined in accordance with the law in force at the time the article was made.
- (2) Notwithstanding paragraph (1), an article made before commencement that was an infringing copy by virtue of the 1911 Act but which, if made

following commencement, would not be an infringing copy by virtue of Chapter 4 of Part 1, is not an infringing copy.

- (3) A librarian or archivist who, before commencement, made a copy of a work and supplied it to a person, reasonably believing the person required the copy for the purposes of research or private study, shall not, following commencement, incur any liability for infringement of copyright by reason of the act.

30 Permitted acts – Chapter 4

- (1) Subject to paragraphs (3) and (4), a provision of Chapter 4 of Part 1 that, following commencement, would permit anything done in relation to an existing work or a copy, made before commencement, of an existing work, shall be taken to have been in force at all material times.
- (2) For the purposes of the application of Chapter 4 of Part 1 to existing works, a reference to the copyright owner shall be construed in accordance with the law in force at the material time.
- (3) Paragraph (4) applies to a design first recorded or embodied in a design document or model less than 10 years before commencement.
- (4) Article 79 shall not apply in relation to the design until the expiry of 10 years following the date the design was first recorded or embodied in the design document or model.
- (5) Paragraph (4) does not affect any rule of law preventing or restricting the enforcement of copyright in relation to a design.

31 Assignment, licence, etc., by first owner after commencement of 1911 Act

- (1) Where the author of an existing copyright work that is a literary, dramatic, musical or artistic work was the first owner of the copyright in it, no assignment of the copyright and no grant of any interest in it, made by him or her (otherwise than by will) after 8th March 1913 and before commencement shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of 25 years from the death of the author.
- (2) The reversionary interest in the copyright expectant on the termination of the period referred to in paragraph (1) may, following commencement, be assigned by the author during his or her life but in the absence of any assignment shall, on his or her death, devolve as part of his or her estate.
- (3) Nothing in this Regulation affects –
 - (a) an assignment of the reversionary interest by a person to whom it has been assigned;
 - (b) an assignment of the reversionary interest, after the death of the author, by any person becoming entitled to it; or
 - (c) an assignment of the copyright after the reversionary interest has fallen in.

- (4) Nothing in this Regulation applies to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.
- (5) In paragraph (4) “collective work” means –
 - (a) an encyclopaedia, dictionary, yearbook or similar work;
 - (b) a newspaper, review, magazine or similar periodical; or
 - (c) a work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated.

32 Assignment or grant by author before commencement of 1911 Act

- (1) Without prejudice to the generality of Regulation 3, this Regulation applies where –
 - (a) the author of a work made before 8th March 1913 had, before that date made such an assignment or grant as is mentioned in paragraph (a) of the proviso to section 24(1); and
 - (b) copyright subsists in the work by virtue of these Regulations and Part 1.
- (2) If, before commencement, any event occurred or notice was given which, in accordance with paragraph (a) of the said proviso had any operation –
 - (a) affecting the ownership of the right conferred by the 1911 Act in relation to the work; or
 - (b) creating, transferring or terminating an interest, right or licence in respect of that right,that event or notice shall have the corresponding operation in relation to the copyright in the work under Part 1.
- (3) Any right which, at a time after commencement would, by virtue of paragraph (a) of the said proviso, have been exercisable in relation to the work, or to the right conferred by the 1911 Act, if the Act had not been repealed, shall be exercisable in relation to the work or to the copyright in it under Part 1, as the case may be.
- (4) If, in accordance with paragraph (a) of the said proviso, the right conferred by the 1911 Act would have reverted to the author or his or her personal representative on the date referred to in that paragraph, and that date falls after commencement then, on that date –
 - (a) the copyright in the work under Part 1 shall revert to the author or his or her personal representatives, as the case may be; and
 - (b) any interest of any other person in that copyright which subsists on that date by virtue of any document made before the commencement of the 1911 Act shall determine.

33 Statutory licences under 1911 Act

- (1) Section 19(2) to (8), and regulations made under that section, shall continue to apply, for one year following commencement, in a case

where, before commencement, a person was entitled, by virtue of section 19(2), to make records without infringing copyright in the work.

- (2) The number of records that a person may make pursuant to the right described in paragraph (1) shall not exceed the number intended to be sold, as stated by the person in his or her notice given, before commencement, pursuant to section 19(2)(b).
- (3) In a case where, before commencement, a person has, in the case of a work, complied with the requirements of the proviso to section 3 and regulations made under it, those provisions shall continue to apply, following commencement, as respects reproduction by that person of that work.

34 Moral rights – Chapter 5

- (1) No right of action shall arise under Chapter 5 of Part 1 in respect of anything done before commencement.
- (2) The rights conferred by Articles 105 and 108 shall only apply in relation to an existing work if the author of the work has not died before commencement.
- (3) The rights conferred by Articles 105 and 108 shall not apply in relation to an existing work –
 - (a) where the copyright first vested in the author, to anything which, by virtue of an assignment of copyright or a licence granted before commencement, may be done without infringing copyright; or
 - (b) where copyright first vested in a person other than the author, to anything done by or with the licence of the copyright owner.
- (4) The right conferred by Article 112 only applies in relation to an existing work where the person who would have the right has not died before commencement.
- (5) Where the right conferred by Article 112 applies in relation to an existing work, the right arises where anything described in any of paragraphs (2) to (6) of that Article is done following commencement, notwithstanding that the false attribution was inserted in or affixed to the work or copy before commencement.

35 Right to privacy of certain photographs and films – Article 113

The right conferred by Article 113 shall not apply to photographs taken or films made before commencement.

36 Dealings in copyright works – Chapter 6

- (1) Without prejudice to the generality of Regulation 3, any document made or event occurring before commencement which had any operation –
 - (a) affecting the ownership of the copyright in an existing work; or
 - (b) creating, transferring or terminating an interest, right or licence in respect of the copyright in an existing work,

shall have the corresponding operation in relation to copyright in the work under Part 1.

- (2) Expressions used in a document described in paragraph (1) shall be construed in accordance with their effect immediately before commencement.
- (3) This Regulation is subject to any express provision to the contrary in these Regulations.

37 Prospective ownership of copyright – Article 119

Article 119 shall not apply in relation to an agreement made before commencement.

38 Exclusive licences – Article 120

Article 120 shall not apply in relation to an exclusive licence granted before commencement.

39 Bequest of unpublished work construed as including copyright – Article 121

- (1) Article 121 shall not apply where the testator making the bequest died before commencement.
- (2) Section 17(2) shall continue to apply where an author making a bequest of a manuscript which has not been published or performed or delivered in public died before commencement.

40 Film production agreements – Article 122

- (1) Article 122 shall apply in relation to an agreement made before commencement.
- (2) In its application pursuant to paragraph (1), Article 122 is modified so as to omit paragraph (3).

41 Right to equitable remuneration – Article 123

- (1) No right to equitable remuneration shall arise under Article 123 in respect of anything done before commencement.
- (2) No rights shall arise under Article 123 in respect of the rental, following commencement, of a sound recording or film made (whether before or following commencement) pursuant to an agreement made before commencement with a person who is, in relation to the work, the author to whom Article 123 applies.

42 Extended copyright and existing licences and agreements

Any copyright licence and any term or condition of an agreement relating to the exploitation of a copyright work which –

- (a) subsists immediately before commencement in relation to an existing copyright work; and
- (b) is not to expire before the end of the copyright period under the 1911 Act, shall continue to have effect during the period of any extended copyright, subject to any agreement to the contrary.

43 Compulsory licences granted pursuant to 1911 Act

- (1) A licence granted in relation to an existing copyright work in compliance with an order made under section 4 and which subsists immediately before commencement shall continue to subsist following commencement, subject to paragraph (2) and the terms and conditions specified in the order.
- (2) A licence described in paragraph (1) shall expire upon whichever is the earlier of –
 - (a) the date it would expire in accordance with its terms;
 - (b) the expiry of one year following commencement.

44 Civil remedies for infringement – Chapter 7

- (1) Articles 127 and 128 shall apply only in relation to an infringement of copyright committed following commencement.
- (2) Sections 6 and 8 shall continue to have effect in relation to an infringement of copyright committed before commencement.
- (3) Articles 129 and 131 shall apply in relation to infringing copies and other articles, whether made before or following commencement.
- (4) Section 7 shall continue to have effect following commencement, for the purposes only of proceedings commenced, pursuant to that section, before commencement.
- (5) Articles 132, 133 and 134 shall apply only in relation to a licence granted following commencement.
- (6) Articles 136 to 138 shall apply only in relation to proceedings brought under Part 1.

45 Offences – Article 139

- (1) Article 139 shall apply only in relation to acts done following commencement.
- (2) Section 11 and Article 1 of the Loi (1913) au sujet des droits d’auteur⁵ shall continue to have effect in relation to acts done before commencement.

46 Offences: foreign sound recordings – Article 139

- (1) This Regulation applies to a sound recording that is –

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- (a) an existing copyright work –
 - (i) in which, immediately before commencement, copyright subsisted under the 1911 Act by virtue of the extension of the protection of that Act by Order in Council under section 29, and
 - (ii) which is not first published in Jersey following commencement; or
 - (b) an existing work which –
 - (i) is not an existing copyright work, and
 - (ii) qualifies for copyright only by virtue of its author being a person prescribed for the purposes of Article 21(2)(d) or its country of first publication being a country prescribed for the purposes of Article 22(2)(b).
- (2) Article 139(3) and (4) shall not apply in the work's case if –
- (a) the author is not a national of, or domiciled or resident in, or a body incorporated under the law of, Guernsey, the Isle of Man, a WPPT country or a Rome Convention country; and
 - (b) the country of first publication (if any) is not Guernsey, the Isle of Man, a WPPT country or a Rome Convention country.
- (3) Article 139(3) (to the extent that it would otherwise apply to a broadcast of a sound recording) and Article 139(4) shall not apply in the work's case if –
- (a) the author is not a national of, or domiciled or resident in, or a body incorporated under the law of, Guernsey, the Isle of Man or a Rome Convention country;
 - (b) the country of first publication (if any) is not Guernsey, the Isle of Man or a Rome Convention country; and
 - (c) the work satisfies either or both of the conditions in paragraph (4).
- (4) The conditions are that –
- (a) the author is a national of, or domiciled or resident in, or a body incorporated under, the law of a WPPT country; or
 - (b) the country of first publication (if any) is a WPPT country.

47 Copyright licensing – Chapter 8

- (1) Subject to paragraphs (2) to (10), Chapter 8 of Part 1 shall apply to –
- (a) an existing licensing scheme;
 - (b) an existing licence under an existing licensing scheme;
 - (c) an existing licence granted by a licensing body otherwise than in pursuance of a licensing scheme,
- as it applies to a licensing scheme that comes into operation following commencement and to a licence that is granted following commencement.
- (2) An existing licensing scheme under which licences may be granted permitting the making and supply of accessible copies, as described in

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- Article 52, shall, until the transition date, be taken to have been notified for the purposes of Article 52, in accordance with Article 180.
- (3) An existing licensing scheme under which licences may be granted permitting the making of recordings of broadcasts or copies of such recordings as described in Article 58(1) or the communication to the public of recordings of broadcasts or copies of such recordings as described in Article 58(2) shall, until the transition date, be taken to have been notified for the purposes of Article 58, in accordance with Article 180.
 - (4) An existing licensing scheme under which licences may be granted permitting the making of reprographic copies, as described in Article 59(1), shall, until the transition date, be taken to have been notified for the purposes of Article 59, in accordance with Article 180.
 - (5) An existing licensing scheme under which licences may be granted permitting the copying of an abstract or the issue of copies of an abstract to the public, as described in Article 88(1), shall, until the transition date, be taken to have been notified for the purposes of Article 88, in accordance with Article 180.
 - (6) An existing licensing scheme under which licences may be granted permitting the making of copies of broadcast and the issue of such copies to the public, as described in Article 102(1), shall, until the transition date, be taken to have been notified for the purposes of Article 102, in accordance with Article 180.
 - (7) For the purposes of paragraph (2), (3), (4), (5) or (6), the “transition date” is whichever is the earliest of –
 - (a) the first date on which, following commencement, the existing licensing scheme is modified;
 - (b) the first date on which, following commencement, a licence is granted permitting the act described in that paragraph;
 - (c) the first date on which, following commencement, any term of existing licences permitting the act described in that paragraph is modified (including any term as to the amount of any fee or charge); and
 - (d) the expiry of the period of one year following commencement.
 - (8) A right of referral shall not arise under Article 147 in respect of terms of a licensing scheme that are proposed before commencement.
 - (9) A right to apply to the licensing authority shall not arise under Article 150 –
 - (a) in respect of a refusal, by an operator of a licensing scheme, that occurs before commencement; or
 - (b) where a licence was granted in accordance with a licensing scheme but expired or otherwise ceased to have effect before commencement.
 - (10) A right of referral shall not arise under Article 154 in respect of the terms of a licence that are proposed before commencement.

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- (11) For the purposes of paragraph (7)(b), the grant of a licence does not include the renewal of an existing licence.
- (12) In this Regulation –
- “existing licensing scheme” means a licensing scheme that is in operation immediately before commencement;
- “existing licence” means a licence that is in operation immediately before commencement.

48 States Assembly copyright – Article 182

- (1) Subject to the following paragraphs of this Regulation, Article 182 shall apply to an existing work if –
- (a) copyright subsisted in the work immediately before commencement and such copyright was not owned by the Crown; and
- (b) had the work been made following commencement, copyright in it would be States Assembly copyright.
- (2) The person or entity who, immediately before commencement, was the owner of copyright in a work to which Article 182 applies by virtue of paragraph (1) shall be the owner immediately following commencement.
- (3) Where the States Assembly is not, immediately following commencement, the owner of copyright in a work to which Article 182 applies by virtue of paragraph (1) or by, virtue of Regulation 24, the author reserves the right conferred by paragraph (b) of the proviso to section 5(1) –
- (a) any right to exploit the work to which the States Assembly was entitled immediately before commencement shall continue, following commencement, upon the same terms; and
- (b) if or to the extent that the States was not entitled, immediately before commencement, to the right to exploit the work, paragraph (4) shall apply.
- (4) The States Assembly shall, following commencement, be in the same position as regards infringement of copyright in a work to which Article 182 applies by virtue of paragraph (1) as if it were the holder of a licence granted by, as the case requires, the owner of the copyright in the work or the author.
- (5) Where the States Assembly exploits a work in reliance on a deemed licence under paragraph (4), the owner of the copyright in the work or author, as the case requires, may, by notice in writing given to the Greffier of the States, require payment of a royalty by the States Assembly for such use.
- (6) Where notice has been given under paragraph (5), either the owner of the copyright or author, as the case requires, or the Greffier of the States may apply to the licensing authority for the licensing authority to settle the terms of payment.

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- (7) Where an application is made under paragraph (6), the licensing authority shall consider the matter and make such order as the licensing authority may determine to be reasonable in the circumstances.
- (8) The following provisions shall apply, with the necessary modifications, to an order made pursuant to paragraph (7) as they apply to an order made under Article 169(1), as if any reference in them to the right conferred by Article 168 was a reference to the right conferred by paragraph (4) of this Regulation –
- (a) Article 169(2);
- (b) Articles 171 and 172.
- (9) Where a work was made, before 9th December 2005, by –
- (a) a person in the course of his or her employment, under a contract of service or apprenticeship, by the States or a Committee of the States; or
- (b) a person who, at the time the work was made, was a *délégué* appointed under the *Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée⁶* and had signed a contract of employment with the Probation Board of the Royal Court,
- the person shall, for the purposes of determining ownership of the work pursuant to section 5, be deemed to have been, at the time the work was made, a States employee.

49 States copyright – Article 183

- (1) Subject to the following paragraphs of this Regulation, Article 183 shall apply to an existing work if –
- (a) copyright subsisted in the work immediately before commencement and such copyright was not owned by the Crown; and
- (b) had the work been made following commencement, copyright in it would be States copyright.
- (2) The person or entity who, immediately before commencement, was the owner of copyright in a work to which Article 183 applies by virtue of paragraph (1) shall be the owner immediately following commencement.
- (3) Where the States are not, immediately following commencement, the owner of copyright in a work to which Article 183 applies by virtue of paragraph (1) or, by virtue of Regulation 24, the author reserves the right conferred by paragraph (b) of the proviso to section 5(1) –
- (a) any right to exploit the work to which the States were entitled immediately before commencement shall continue, following commencement, upon the same terms; and
- (b) if or to the extent that the States were not entitled, immediately before commencement, to the right to exploit the work, paragraph (4) shall apply.
- (4) The States shall, following commencement, be in the same position as regards infringement of copyright in a work to which Article 183 applies

by virtue of paragraph (1) as if they were the holder of a licence granted by, as the case requires, the owner of the copyright in the work or the author.

- (5) Where the States exploit a work in reliance on a deemed licence under paragraph (4), the owner of the copyright in the work or author, as the case requires, may, by notice in writing given to the Greffier of the States, require payment of a royalty by the States for such use.
- (6) Where notice has been given under paragraph (5), either the owner of the copyright or author, as the case requires, or the Greffier of the States may apply to the licensing authority for the licensing authority to settle the terms of payment.
- (7) Where an application is made under paragraph (6), the licensing authority shall consider the matter and make such order as the licensing authority may determine to be reasonable in the circumstances.
- (8) The following provisions shall apply, with the necessary modifications, to an order made pursuant to paragraph (7) as they apply to an order made under Article 169(1), as if any reference in them to the right conferred by Article 168 was a reference to the right conferred by paragraph (4) of this Regulation –
 - (a) Article 169(2);
 - (b) Articles 171 and 172.
- (9) Where a work was made, before 9th December 2005, by –
 - (a) a person in the course of his or her employment, under a contract of service or apprenticeship, by the States or a Committee of the States; or
 - (b) a person who, at the time the work was made, was a *délégué* appointed under the *Loi (1937) sur l’atténuation des peines et sur la mise en liberté surveillée*⁷ and had signed a contract of employment with the Probation Board of the Royal Court,the person shall, for the purposes of determining ownership of the work pursuant to section 5, be deemed to have been, at the time the work was made, a States employee.
- (10) In this Regulation “States” means –
 - (a) the Chief Minister, in relation to a work of which the Chief Minister would have been the first owner of copyright by virtue of Article 183(2), if the work had been made following commencement;
 - (b) the Bailiff, in relation to a work of which the Bailiff would have been the first owner of copyright, by virtue of Article 183(3), if the work has been made following commencement;
 - (c) the Attorney General, in relation to a work of which the Attorney General would have been the first owner of copyright, by virtue of Article 183(4), if the work had been made following commencement.

50 Crown copyright – Article 184

- (1) Article 184 shall apply to an existing work only if, immediately before commencement, copyright subsisted in the work and was vested in the Crown.
- (2) Article 184 shall apply to a work described in paragraph (1) with the following modifications –
 - (a) the omission of paragraph (1);
 - (b) in paragraph (2), the substitution for the words “Subject to paragraph (1)” of the words “Subject to any agreement made before commencement with the author regarding ownership”.
- (3) This Regulation does not apply to a work to which Regulation 52 applies.

51 Copyright in enactments and revised edition – Article 186

- (1) Article 186(1) shall apply to existing enactments and existing revised editions.
- (2) In this Regulation, “revised edition” has the same meaning as in Article 186.

52 Copyright in Acts and Measures – Article 187

- (1) Article 187 shall apply to existing Acts of Parliament, Orders in Council and Measures of the General Synod of the Church of England.
- (2) For the purposes of the application of Article 187 to existing works pursuant to paragraph (1), references in that Article to Measures of the General Synod of the Church of England includes references to Church Assembly Measures.

53 International organizations – Article 188

Article 188 shall apply to an existing work only if it is first published following commencement.

54 University copyright previously saved under 1911 Act

- (1) Copyright that subsisted immediately before commencement by virtue of the saving in section 33 shall continue to subsist until the end of 2039 and shall then expire.
- (2) The following provisions of Part 1 shall apply in relation to the rights described in paragraph (1) as they apply to copyright under Part 1 –
 - (a) Chapter 4;
 - (b) Chapter 7;
 - (c) Chapter 8,and Parts 8 and 9 shall also apply, to the extent necessary for the operation of those provisions of Part 1.

PART 3

DATABASE RIGHT

55 Interpretation of this Part

- (1) In this Part –
“existing database” means a database completed before commencement;
“Part 2” means Part 2 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 2 of the Law.
- (2) Other expressions used in this Part have the same meaning as in Part 2.

56 Database right in existing databases

Database right shall, from commencement, subsist in an existing database if, had Part 2 been in force at all material times, database right would have subsisted in the database immediately before commencement.

57 Duration of database right – Article 197

Article 197(1) and (2) shall have effect in relation to an existing database in which database right subsists by virtue of Regulation 56 as if they had been in force at all material times.

58 Permitted acts – Chapter 2

- (1) A provision of Chapter 2 of Part 2 that, following commencement, would permit anything done in relation to an existing database shall be taken to have been in force at all material times.
- (2) For the purposes of the application of Chapter 2 of Part 2 to existing databases, the reference in Article 202(2) to Chapter 4 of Part 1 shall be construed as a reference to that Chapter as it has effect by virtue of Regulation 30.

59 Whether agreements, activities and arrangements infringe database right

- (1) Nothing in Part 2 shall affect any agreement made before commencement.
- (2) Anything done –
 - (a) before commencement; or
 - (b) following commencement, in pursuance of an agreement made before commencement,shall not infringe database right.
- (3) Anything done following commencement pursuant to arrangements made before commencement for the exploitation of an existing database shall not infringe database right in the database.

60 States, States Assembly and Crown

- (1) Notwithstanding Article 194(3) to (5) –
 - (a) where, by virtue of these Regulations, States Assembly copyright subsists in an existing database and the States Assembly is the owner of the copyright, the States Assembly shall be regarded as the maker of the database;
 - (b) where, by virtue of these Regulations, States copyright subsists in an existing database and the States are the owner of the copyright, the States shall be regarded as the maker of the database.
 - (c) where, by virtue of these Regulations, Crown copyright subsists in an existing database, the Crown shall be regarded as the maker of the database.
- (2) Where by virtue of Regulation 48(3)(a), the States Assembly has a right to exploit an existing database in which copyright subsists, the States Assembly shall also have a right to exploit, on the same terms, any database right that subsists in the database.
- (3) Where, by virtue of Regulation 48(3)(b) and (4), the States Assembly is deemed to be the holder of a licence to exploit an existing database in which copyright subsists, Regulation 48(4) to (8) shall apply, with the necessary modifications, for the purpose of deeming the States Assembly to be the holder of a licence to exploit any database right that subsists in the database.
- (4) Where, by virtue of Regulation 49(3)(a), the States have a right to exploit an existing database in which copyright subsists, the States shall also have a right to exploit, on the same terms, any database right that subsists in the database.
- (5) Where, by virtue of Regulation 49(3)(b) and (4), the States are deemed to be the holder of a licence to exploit an existing database in which copyright subsists, Regulation 49(4) to (8) shall apply, with the necessary modifications, for the purpose of deeming the States to be the holder of a licence to exploit any database right that subsists in the database.
- (6) In paragraphs (1)(b), (4) and (5), “States” has the same meaning as in Regulation 49(10).

PART 4

**CIRCUMVENTION OF PROTECTION MEASURES AND ELECTRONIC
RIGHTS MANAGEMENT**

61 Application of Part 4 of Law

- (1) Part 4 shall not apply to anything done before commencement.
- (2) In paragraph (1) “Part 4” means Part 4 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 4.

PART 5

FRAUDULENT RECEPTION OF TRANSMISSIONS

62 Application of Part 5 of Law

- (1) Part 5 shall not apply to anything done before commencement.
- (2) In paragraph (1) “Part 5” means Part 5 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 5 of the Law.

PART 6

PERFORMERS’ PROTECTION

63 Interpretation of this Part

- (1) In this Part –
“moral rights” means the rights conferred by Chapter 7 of Part 6;
“Part 6” means Part 6 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 6 of the Law.
- (2) Other expressions used in this Part of these Regulations have the same meaning as in Part 6.

64 Application of rights conferred by Part 6 of Law to performances taking place before commencement

- (1) The rights conferred by Part 6 (other than moral rights) shall apply in relation to performances taking place before commencement.
- (2) Paragraph (1) is subject to the following provisions of this Part of these Regulations.
- (3) Moral rights shall not arise in a performance taking place before commencement.

65 Whether agreements, activities and arrangements infringe rights conferred by Part 6 of Law

- (1) Nothing in Part 6 shall affect any agreement made before commencement.
- (2) Anything done –
 - (a) before commencement; or
 - (b) following commencement, in pursuance of an agreement made before commencement,shall not infringe any rights conferred by Part 6.

- (3) Anything done following commencement pursuant to arrangements made before commencement for the exploitation of a performance that took place before commencement shall not infringe any rights conferred by Part 6.

66 Permitted acts – Chapter 3

- (1) A provision of Chapter 3 of Part 6 that, following commencement, would permit anything done in relation to a performance taking place before commencement, a recording of such a performance or a copy of such a recording, shall be taken to have been in force at all material times.
- (2) For the purposes of the application of Chapter 3 of Part 6 to a performance taking place before commencement, a reference to the owner of the rights conferred by Chapter 2 of Part 6 shall be construed as if Chapter 2 had been in force at the material time.

67 Recordings made before commencement

A recording of a performance made before commencement is not –

- (a) an illicit recording; or
- (b) made without the consent of the performer or a person having recording rights.

68 Remuneration rights – Article 264

No right to equitable remuneration shall arise under Article 264 in respect of anything done before commencement.

69 Film production agreements – Article 303

Article 303 shall apply in relation to an agreement made before commencement.

70 Right to equitable remuneration – Article 304

No rights shall arise under Article 304 in respect of the rental, following commencement, of a sound recording or film made (whether before or following commencement) pursuant to an agreement made before commencement with a performer of whose performance a recording is included in the sound recording or film.

71 Offences – Articles 318 and 320

Articles 318 and 320 shall apply only in relation to things done following commencement.

PART 7

DESIGN RIGHT

72 Interpretation of this Part

- (1) In this Part “Part 7” means Part 7 of the Law and includes any provision of Part 8 or 9 of the Law to the extent that it has effect in relation to or for the purposes of Part 7 of the Law.
- (2) Other expressions used in this Part of these Regulations have the same meaning as in Part 7.

73 Application of design right

Design right shall not subsist in a design –

- (a) recorded in a design document before commencement; or
- (b) to which an article has been made before commencement.

74 Whether agreements, activities and arrangements infringe design right

- (1) Nothing in Part 7 shall affect any agreement made before commencement.
- (2) Anything done –
 - (a) before commencement; or
 - (b) following commencement, in pursuance of an agreement made before commencement,shall not infringe design right.
- (3) Anything done following commencement pursuant to arrangements made before commencement for the exploitation of a design shall not infringe design right.

75 Infringing article – Article 344

An article made before commencement is not an infringing article.

PART 8

LIABILITY OF AND REMEDIES AGAINST SERVICE PROVIDERS

76 Application and construction of Schedule 1 to the Law

- (1) Schedule 1 to the Law shall not affect the liability of a service provider for anything done before commencement.
- (2) The reference in paragraph 2(1) of Schedule 1 to the Law to any right conferred by Part 1 of the Law shall be construed as including a reference

to any right conferred by Part 1 of the Law as applied by Part 2 of these Regulations.

- (3) In paragraph (1), “service provider” has the same meaning as in Schedule 1 to the Law.

PART 9

CLOSING

77 Citation and commencement

These Regulations may be cited as the Intellectual Property (Unregistered Rights) (Application, Transitional Provisions and Savings) (Jersey) Regulations 201- and shall come into force on the same day as the Intellectual Property (Unregistered Rights) (Jersey) Law 2011⁸.

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- ¹ *L.29/2011*
² *L.29/2011*
³ *chapter 05.150*
⁴ *chapter 15.360*
⁵ *chapter 05.150*
⁶ *chapter 08.020*
⁷ *chapter 08.020*
⁸ *L.29/2011*