

MEMORANDUM FOR THE CABINET
ON THE COPYRIGHT BILL BY THE HON. MINISTER
OF JUSTICE AND PARLIAMENTARY AFFAIRS AND BY
THE HON. MINISTER OF TRADE, INDUSTRY AND
AGRICULTURE

1. History of copyright law in Malta and necessity of new law.

Copyright has been so far governed in Malta by the United Kingdom Copyright Act, 1911, whose extension to Malta was promulgated by Proclamation No. VI of 28th June, 1912.

In 1956, the United Kingdom enacted the Copyright Act, 1956, in order to effect such changes as were desirable in its law with particular regard to technical developments and to the revised International Convention for the protection of literary and artistic works signed at Brussels in June, 1948.

The said Act of 1956 repealed the previous one of 1911 in so far as the latter had the force of law in the United Kingdom but did not affect the operation of the Act of 1911 in the Colonies, including Malta, and, although it was possible by Order in Council, in so far as Malta was concerned, to replace, with certain modifications, the Act of 1911 with the Act of 1956, this was never done.

The consequence of the foregoing is that copyright law in Malta goes as far back as, and has stopped at, 1911, and that a new law, which takes into account recent developments in the technical field in particular and in the field of copyright in general, is overdue.

2. Overwhelming considerations in drafting of new Bill.

The draft Bill which is attached to this Memorandum represents the joint effort of Dr G. Straschnov, Director of Legal Affairs of the European Broadcasting Union, an expert on the subject, whose participation in the matter was sponsored by the Malta Broadcasting Authority and approved by the Honourable the Prime Minister, and of the Crown Advocate-General. Indeed, the effort mainly is Dr Straschnov's since the first draft was produced by him; but, after discussions held in Malta and after a prolonged exchange of correspondence between Dr Straschnov and the Crown Advocate-General, certain modifications and improvements were carried out, some of them having been rendered necessary in the light of local requirements.

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The draftsmen of the said Bill have been guided by two particular considerations, namely:-

(i) In respect of copyright, there is an outflow of money from Malta to abroad completely out of proportion with the influx of foreign money into Malta, that is to say, we pay much to foreign authors for copyright but we receive little in view of the small number of Maltese authors. Where we have the largest number of authors, namely in the field of Maltese literature, copyright is not instrumental to bringing any money from abroad, in view of the limited field of circulation of such literature.

(ii) In the circumstances of Malta, also because of (i), a copyright law should be as simple as possible and should avoid the complicate provisions carried in the United Kingdom Act of 1956.

In brief, Malta should endeavour to have a copyright law which compares favourably with laws of other civilised countries in the protection of intellectual property and by which it will be enabled to accede to the main International Conventions on the matter, but it should not overreach itself in such endeavour.

3. Main features of copyright law

The main features of a copyright law are determined by -

- a) the category of works which the law protects;
- b) the circumstances under which such works are protected;
- c) the nature and effect of such protection;
- d) exceptions to such protection;
- e) the duration of such protection;
- f) the protection of foreign works on a basis of reciprocity;
- g) the setting up and the functions of a Copyright Board.

The manner in which the said points are dealt with in the attached Draft Bill is briefly explained below.

4. Categories of works protected by the Draft Bill

The following categories of works are protected:-

Literary works/....

Literary works;
 musical works;
 artistic works;
 cinematograph films;
 sound recordings;
 broadcasts.

It is worth noting that films and sound recordings are not fully covered by the Act of 1911, while broadcasts are not covered at all for obvious reasons.

5. Circumstances in which protection is granted

Copyright is granted -

- a) in all cases, where the author or one of the authors is an individual who is a citizen of, or is domiciled in, Malta; or
- b) in all cases, where the author is a body of persons constituted under the laws of Malta and established in Malta (e.g. a band club) or a commercial partnership registered in Malta in accordance with the provisions of the Commercial Partnerships Ordinance, 1962; or
- c) in all cases where the work is made by or under the direction or control of the Government and also such international bodies or other governmental organizations as may be prescribed; or
- d) in the case of a literary, musical or artistic work or of a cinematograph film, where such work or film is first published in Malta; or
- e) in the case of a sound recording, where it is made in Malta.

6. Nature and effect of protection granted by copyright

(1) Literary, musical or artistic work or cinematograph film

Copyright in a literary, musical or artistic work or in a cinematograph film confers upon its author, or an assignee under him, the exclusive right to control, namely, to authorise against the payment of such fee and under such conditions as he deems proper, the reproduction or the communication to

the/....

the public or the broadcasting of such work or film or any substantial part thereof. Such right does not extend to the control of the rebroadcasting of a work or film, a question which will be dealt with, in this Memorandum, at a later stage and on which Honourable Ministers will be required to take an "ad hoc" decision.

(ii) Sound recordings

Copyright in a sound recording confers upon the author of the recording the right to control the reproduction (but not the communication to the public) of the work or any part thereof.

The position as regards sound recordings is as follows:-

A sound recording has its own "author", namely, the person by whom the arrangements for the making of the recording were undertaken (e.g. His Master's Voice), as quite distinct from the author of the work recorded. The author of the sound recording is only conferred the right to control (i.e. authorise against payment and other terms) a reproduction of the sound recording, but he is not conferred by the attached draft Bill the right, which he is granted in some legislations, to control the communication (i.e. the playing) of the recording to the public. The legislations which do not grant such right consider that, when a sound recording is played to the public, its author is having his recording advertised to the public free of any charge, which will increase its sale. It is pointed out that this limitation of the rights of the author of the sound recording does not affect the right of the author of the work included in the sound recording (e.g. the author of a symphony) to receive compensation whenever such included work (e.g. the symphony) is communicated to the public.

(iii) Broadcasts

Copyright in a broadcast confers on the author the exclusive right to control the recording and rebroadcasting of a broadcast or a substantial part thereof and the communication to the public in places where an admission fee is charged of such a broadcast or part thereof.

7./....

7. Exceptions to the author's rights under copyright.

Broadly speaking, an author is completely deprived of his right to control the reproduction, communication to the public or rebroadcasting of his work, where any of such acts takes place for the purpose of research, criticism, public utility, judicial proceedings, limited inclusion in an anthology for use in a school or university, or for any other educational purposes. Particularly, an author is deprived of such right if his work is communicated to the public "in a place where no admission fee is charged in respect of such communication and no profit is derived therefrom": this means that, if an amateur orchestra plays a song in a public garden where no admission fee is charged and where there is no business going on, the author is not entitled to any compensation; but if an orchestra plays the same song in a cafe' to attract customers, the author is then entitled to compensation.

The author's rights under copyright are in certain specific instances not totally ignored but only limited in that, while the author or the assignee under him is in any case entitled to receive compensation, his permission is not required for the reproduction, broadcasting or communication, to the public, as the case may be, of his work. These are in general cases where the author has already made his work accessible to the public or has already sold his copyright or where, the work being the product of co-owners, one of them has given the required permission while the other or others are refusing it.

8. Duration of copyright.

The term of copyright lasts -

- a) in respect of literary, musical or artistic works other than photographs: until 25 years after the end of the year in which the author dies;
- b) in respect of cinematograph films and photographs: until 25 years after the end of the year in which the work was first made lawfully accessible to the public;
- c) in respect of sound recordings: until 20 years after the end of the year in which the recording was made;

(d)/....

- d) in respect of broadcasts, until 20 years after the end of the year in which the broadcast took place.

The term established in the attached Bill in respect of literary, musical or artistic works constitutes an important departure from the term established under the Copyright Act, 1911 and confirmed in the new United Kingdom Act of 1956, which lasts until 50 years from the author's death. This innovation has been strongly recommended by Dr Straschnov for the reason, already referred to, that a good deal of money goes out of Malta in respect of copyright, but very little comes in. Moreover, Dr Straschnov points out that, while the reduced term is not in accordance with the Berne Convention at the Brussels level (The Brussels Convention on Copyright of 1948), it falls in line with the Berne Convention at the Rome level (The Rome Convention on Copyright of 1928). The term of 25 years, computed as above, is also in accordance with the Universal (U.N.E.S.C.O.) Copyright Convention.

9. Provisions for extension of Malta copyright to foreign works.

The Bill provides for the application of its provisions to foreign works, vis-a-vis countries which are parties to a treaty to which Malta is also a party and which in their own laws provide copyright protection to Maltese works. This is a reciprocity provision which is found in all copyright laws and ensures protection of copyright not only in one's own country but also abroad.

10. Setting up of a Copyright Board.

The Bill also provides for the setting up of a Copyright Board whose functions mainly will be to decide whether a licensing body or a co-owner is unreasonably refusing to grant a licence in respect of copyright (such as for the purpose of publishing a book) and whether such body or co-owner is imposing unreasonable terms for the granting of such licence. The Board is also to assess the amount of compensation payable in respect of copyright in certain cases. Decisions of the Board shall be subject to appeal only on points of law.

11. Points to be particularly considered and decided upon by the Cabinet.

- a) When copyright in respect of a literary, musical

a)/....

or artistic work or a cinematograph film was being dealt with above (Heading No.6(i), special emphasis was laid on the fact that the Bill, as drafted, does not confer on the author of such work or film the right to control (namely does not reserve to him the right to authorise nor to receive compensation and impose conditions for) the re-broadcasting of his work. There is no precedent to this in any national legislation and it constitutes a novelty introduced into the Bill by Dr Straschnov at the request of the Malta Broadcasting Authority. The Crown Advocate-General, while accepting this text provisionally, made it clear that the Government does not accept in the making of its legislation any interference by the Malta Broadcasting Authority or its contractor and that Government will be guided solely, in the exercise of its said function, by its self-determined policy.

As a matter of fact, the Crown Advocate-General does not agree with the said departure from a generally accepted principle, because it is unfair to the author and because it would preclude Malta from acceding to the Berne Convention, even at the Rome level, since article 11 bis of the Rome Convention confers to the author the right to control not only original broadcasts of his work but also rebroadcasts thereof, speaking, as it does, in general terms about "the communication of their (the authors') works by radio-communication".

The final decision on this very important point rests with the Cabinet and, should it endorse the Crown Advocate-General's opinion, the Bill will be amended accordingly.

- b) Another point which the Cabinet is asked to consider particularly is whether it agrees that the basic period of copyright in general should be 25 years after the author's death instead of, as at present, 50 years after such death. The Shorter term is in accordance with the Berne Convention at the Rome level (1928) but not at the Brussels level (1948). It is in accordance with the U.N.E.S.C.O. Copyright Convention. (See Heading No.8, above).

(c)/....

- c) Hon. Ministers are also required to approve particularly that copyright on sound recordings will enable the author of such recording to control (namely to authorise against payment of compensation and other terms) the reproduction of the sound recording, but not its communication to the public or its being broadcast. (See Heading 6(ii) above).

12. Applicability of new law to all works.

The attached Bill is so drafted that the new law would apply to all works, without any reservation being made as regards works already enjoying copyright under the Copyright Act, 1911. Thus, a literary work, whose author died 30 years ago and in respect of which copyright is due to expire under the existing law within 20 years, would on the enactment of the new law cease forthwith to enjoy copyright. But, besides this example on the term of copyright there could be other examples which concern the contents of copyright.

Dr Straeschnov, with the full support of the Crown Advocate-General, has strongly advised against a special position being reserved for works already enjoying copyright under the Copyright Act, 1911, since this would render necessary extremely complicated provisions of a transitory character, would create confusion and would defeat to a very large extent the purpose of the reduction of the basic term of copyright from 50 years to 25 years after the author's death. As a matter of fact, if works already enjoying copyright were to continue to be governed by the provisions of the Copyright Act, 1911, there could be cases in which, the author of a work being still alive, the operation of that Act would extend into well over 50 years after the enactment of the new law.

Cabinet's decision.

Honourable Ministers are requested to approve the attached draft Bill, but they are to consider particularly the points raised under Headings 11 and 12, above, and should they endorse the Crown Advocate-General's views expressed under paragraph (a) of Heading 11, they are requested to approve that the draft Bill be amended accordingly.

6th October, 1966.

A B I L L
entitled

AN ACT to make new provision in respect of
copyright and related matters, in substitution for the
provisions of the Copyright Act, 1911.

BE IT ENACTED by the Queen's most Excellent
Majesty, by and with the advice and consent of the House
of Representatives of Malta, in this present Parliament
assembled, and by the authority of the same, as follows:-

Short title
and commence-
ment.

1. This Act may be cited as the Copyright Act,
1966, and shall come into force on such date as the
Minister may, by notice in the Government Gazette, appoint.

Interpreta-
tion.

2. (1) In this Act, unless the context otherwise
requires -

"artistic work" means, irrespective of artistic
quality, any of the following, or works similar thereto -

- (a) paintings, drawings, etchings, lithographs,
woodcuts, engravings and prints;
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in a cinematograph
film;
- (e) works of architecture in the form of
buildings or models; and
- (f) works of artistic craftsmanship, including
pictorial woven tissues and articles of
applied handicraft and industrial art;

"author", in the case of a cinematograph film or
sound recording, means the person by whom the arrange-
ments for the making of the film or recording were
undertaken, and, in the case of a broadcast transmitted
from within any country, means the person by whom the
arrangements for the making of the transmission from
within that country were undertaken;

"Board"/....

"Board" means the Copyright Board established under section 17 of this Act;

"body of persons" means any company or society of persons whether corporate or unincorporate, whether vested with legal personality or not;

"broadcast" means broadcast by wireless telegraphy or wire or both but does not include a rebroadcast, and "broadcasting" shall be construed accordingly;

"broadcasting authority" means the Broadcasting Authority established by section 121 of the Constitution of Malta and any other broadcaster whether licensed under the Broadcasting Ordinance, 1961, or any other law of Malta, and includes a broadcasting contractor ^{/in Malta,} operating /

"building" includes any structure;

"cinematograph film" means the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a soundtrack associated with the cinematograph film;

"communication to the public" includes, in addition to any public live performance or delivery, any mode of public visual or acoustic presentation, but does not include a broadcast or rebroadcast, and "communicate to the public" shall be construed accordingly;

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

"copyright" means copyright under this Act;

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

"licence" means a lawfully granted licence permitting the doing of an act controlled by copyright;

"literary work" means, irrespective of literary quality, any of the following, or works similar thereto:

(a)/....

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

but does not include any written law, law report or judicial decision;

"Malta" shall have the same meaning as assigned to it in the Constitution of Malta;

"Minister" means the Minister responsible for Industry;

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

"owner of copyright" means the first owner, an assignee or an exclusive licensee, as the case may be, of a copyright;

"person" includes a body of persons;

"prescribed" means prescribed by regulations made under section 16 of this Act;

"rebroadcast" means simultaneous or subsequent broadcast by a broadcasting authority of the broadcast of any broadcasting station not under its control, whether situated in Malta or abroad, and includes diffusion of such broadcast over wires, and "rebroadcasting" shall be construed accordingly;

"reproduction" means the making of one or more copies of a literary, musical or artistic work, cinematograph film or sound recording;

"sound recording" means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced, but does not include a soundtrack

associated/....

associated with a cinematograph film;

"The Copyright Act, 1911" means the Act of the Parliament of the United Kingdom, referred to in Proclamation No. VI of the 28th June, 1912;

"work" includes translations, adaptations, new versions or arrangements of pre-existing works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character;

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

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

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

Works eligible for copyright.

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

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) cinematograph films;
- (e) sound recordings;
- (f) broadcasts.

(2)/....

(2) A literary, musical or artistic work shall not be eligible for copyright unless -

- (a) sufficient effort has been expended on making the work to give it an original character; and
- (b) the work has been written down, recorded or otherwise reduced to material form.

(3) A design or model of manufacture eligible for copyright under this Act shall not, by registration under the Industrial Property (Protection) Ordinance, acquire a term of copyright beyond that specified under subsection (2) of section 4 of this Act.

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

Copyright by virtue of nationality or domicile. 4. (1) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the joint authors is, at the time when the work is made, a qualified person, that is to say -

- (a) an individual who is a citizen of, or is domiciled in, Malta; or
- (b) a body of persons constituted and vested with legal personality under the laws of Malta and established in Malta or a commercial partnership registered in Malta in accordance with the provisions of the Commercial Partnership Ordinance, 1962.

(2) The terms of copyright conferred by this section shall be calculated according to the following table -

Type of Work	Date of Expiration of Copyright
(i) Literary, musical or artistic works other than photographs	Twenty-five years after the end of the year in which the author dies.
(ii) Cinematograph films and photographs	Twenty-five years after the end of the year in which the work was first made lawfully accessible to the public.

(iii)/....

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|------------------------|---|
| (iii) Sound recordings | Twenty years after the end of the year in which the recording was made. |
| (iv) Broadcasts | Twenty years after the end of the year in which the broadcast took place. |

(3) In the case of anonymous or pseudonymous literary, musical or artistic works whose term of copyright is established under paragraph (i) of the last preceding subsection the copyright therein shall subsist until the end of the expiration of twenty-five years from the end of the year in which it was first published.

Provided that in the event of the identity of the author becoming known the terms of copyright shall be calculated in accordance with the provisions of paragraph (i) of the last preceding subsection.

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

Copyright by reference to country of origin.

5. (1) Copyright shall be conferred by this section on every work, other than a broadcast, which is eligible for copyright and which -

(a) being a literary, musical or artistic work or a cinematograph film, is first published in Malta; or

(b) being a sound recording, is made in Malta, and which has not been the subject of copyright conferred by section 4 of this Act.

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

Copyright in works of Government and international bodies.

6. (1) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the Government and also such international bodies or other governmental organizations as may be prescribed.

(2) Copyright conferred by this section on a literary, musical or artistic work, other than a photograph, shall subsist until the end of the expiration of twenty-five years from the end of the year in which it was first published.

(3) Copyright conferred by this section on a film, photograph, sound recording or broadcast shall have the same duration as is provided for by section 4 of this Act in relation to the same type of work.

(4) Sections 4 and 5 of this Act shall not be deemed to confer copyright on works to which this section applies.

Nature of copyright in literary, musical or artistic works and cinematograph films.

7. (1) Copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Malta of any of the following acts, namely the reproduction in any material form, the communication to the public and the broadcasting, of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original:

Provided that copyright in any such work shall not include the right to control -

- (a) the doing of any of the aforesaid acts by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, provided that if such use is public, it is accompanied by an acknowledgment of the title of the work and its authorship, except where the work is incidentally included in a broadcast;
- (b) the doing of any of the aforesaid acts by way of parody, pastiche or caricature;
- (c) the inclusion in a film or broadcast of any artistic work situated in a place where it can be viewed by the public;
- (d) the reproduction and distribution of copies of any artistic work permanently situated in a place where it can be viewed by the public;
- (e) the incidental inclusion of an artistic work in a film or broadcast;

(f)/....

- (f) the inclusion in a collection of literary or musical works of not more than two excerpts from any such work, if the collection is designed for use in any school or university and includes an acknowledgment of the title and authorship of the work;
- (g) the broadcasting of a work if the broadcast is intended to be used for educational purposes;
- (h) any use made of a work in any school or university for the educational purposes of that school or university, subject to the condition that, if a reproduction is made for any such purpose, it shall be destroyed before the end of the period of twelve calendar months after it was made;
- (i) the making or reproduction of a sound recording of a literary or musical work the copies whereof are intended for retail sale in Malta, if such work has already been previously recorded, whether in Malta or abroad, under licence from the owner of the relevant copyright, subject to such conditions and to the payment of such compensation as the Minister may prescribe;
- (j) the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgment;
- (k) any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific institutions as may be prescribed, where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used;
- (l) the reproduction of a work by or under the direction or control of a broadcasting authority where such reproduction or any copies thereof are intended exclusively for a lawful broadcast and are destroyed before the end of the period of six calendar months immediately following

the/....

the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant copyright in the work:

Provided that any reproduction of a work made under this paragraph may, if it is of an exceptional documentary character, be preserved in the archives of the Broadcasting Authority, but shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant copyright in the work;

- (m) the broadcasting of a work already lawfully made accessible to the public with which no licensing body referred to under section 15 of this Act is concerned, subject to the condition that, saving the provisions of this section, the owner of the broadcasting right in the work receives a fair compensation which shall be determined, in the absence of agreement, by the Board;
- (n) the communication to the public of a work in a place where no admission fee is charged in respect of such communication and no profit is derived therefrom;
- (o) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding.

(2) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original;

Provided that the copyright in any such work shall not include the right to control the reconstruction, in the same style as the original, of a building to which that copyright relates.

Broadcast- 8. (1) Where the owner of the copyright in any
ing of literary, musical or artistic work authorizes a person to
works incorporate the work in a cinematograph film and a broad-
incorpor-ate the work in a cinematograph film and a broad-
ated in a casting authority broadcasts the film, it shall, in the
cinema- absence of any express agreement to the contrary between
tograph such owner and person, be deemed that the owner of the
film. copyright authorized such broadcast.

(2)/....

(2) Notwithstanding the provisions of subsection (1) of this section where a broadcasting authority broadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority.

(3) In the absence of agreement on the compensation payable under the last preceding subsection the amount of such compensation shall be determined by the Board.

Nature of
copyright
in sound
record-
ings.

9. Copyright in a sound recording shall be the exclusive right to control in Malta the direct or indirect reproduction of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original:

Provided that the provisions of paragraphs (a), (h), (k), (l) and (o) of the proviso to subsection (1) of section 7 of this Act shall apply to the copyright in a sound recording in like manner as they apply to copyright in a literary, musical or artistic work or in a cinematograph film.

Nature of
copyright
in broad-
casts.

10. Copyright in a broadcast shall be the exclusive right to control the doing in Malta of any of the following acts, namely, the recording and the rebroadcasting of the whole or a substantial part of the broadcast and the communication to the public in places where an admission fee is charged of the whole or a substantial part of a television broadcast, either in its original form or in any form recognizably derived from the original:

Provided that -

- (a) the provisions of paragraphs (a), (h), (k) and (o) of the proviso to subsection (1) of section 7 of this Act shall apply to the copyright in a broadcast in like manner as they apply to copyright in a literary, musical or artistic work or a cinematograph film;
- (b) the copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts.

First
ownership
of copy-
right.

11. (1) Copyright conferred by sections 4 and 5 of this Act shall vest initially in the author:

Provided that where a work -

- (a) is commissioned by a person who is not the author's employer under a contract of service; or
- (b) not having been so commissioned, is made in the course of the author's employment,

the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting such transfer.

(2) Copyright conferred by section 6 of this Act shall vest initially in the Government or such international bodies or other governmental organizations as may be prescribed, and not in the author.

(3) Subject to the provision of the last preceding subsection -

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

Assign-
ments and
licences.

12. (1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law, as movable property.

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

(3) No assignment of copyright and no licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing:

Provided that a licence to communicate to the public any work which is subject to copyright may be oral or may be inferred from conduct.

(4) An assignment or licence of copyright granted by a joint author shall have effect as if granted by the other joint authors.

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

Provided that such assignment or licence shall not be deemed to include a copyright which in terms of subsection (1) of section 11 of this Act vests in the person who commissions the work or in the author's employer, unless the parties expressly include it.

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

13. (1) Copyright shall be infringed by any person who does or causes any other person to do, without a licence from the owner thereof, an act the doing of which is controlled by copyright.

(2) Copyright shall also be infringed by any person who, without the licence of the owner of the copyright, imports into Malta, otherwise than for his private and domestic use, or distributes therein by way of trade, hire or otherwise, or by way of trade exhibits in public, any article in respect of which copyright is infringed under the last preceding subsection.

(3) Where any person infringes the copyright in a work he shall be liable, at the suit of the owner of such copyright, to be condemned by Her Majesty's Commercial Court

to the/....

to the payment of damages or to the payment of a fine of not less than £10 nor exceeding £500 as the said Court, having regard to the circumstances of the case, may deem proper, and to the restitution of all the profit derived from the infringement of the copyright:

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

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

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

(a) after the construction of the building has been begun, so as to prevent it from being completed, or

(b) so as to require the building, in so far as it has been constructed, to be demolished.

Prohibition to mutilate or modify a work.

14. (1) It shall not be lawful for any person, including the assignee of the copyright or a licensee thereunder, without the author's consent, to mutilate or modify any work in a way prejudicial to the honour or reputation of the author.

(2) Saving the provisions of the last preceding section, any person who contravenes the provision of subsection (1) of this section shall be liable at the suit of the author or his heirs to be condemned by Her Majesty's Commercial Court to the payment of a fine, as and for damages, of not less than £10 and not exceeding £500.

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

(4)/....

(4) The provision of the last preceding subsection shall not apply where the infringing article is a building, but in that case the fine referred to in subsection (2) of this section shall be of not less than £50 and not exceeding £1000.

Functions
of the
Copyright
Board.

15. (1) In any case where it appears to the Board that a licensing body or a co-owner -

- (a) is unreasonably refusing to grant a licence in respect of copyright; or
- (b) is imposing unreasonable terms or conditions for the granting of such licence,

the Board may direct that, as respects the doing of any act relating to a work with which the licensing body or the co-owner, as the case may be, is concerned, a licence shall be deemed to have been granted by the licensing body or by the co-owner at the time the act is done, provided the appropriate fees fixed by such Board are paid or tendered before the expiration of such period or periods as the Board may determine.

(2) Saving the provisions of paragraph (m) of the proviso to subsection 1 of section 7 of this Act, the provisions of the last preceding subsection shall not apply where the refusal to grant a licence, or the terms and conditions for the granting of a licence, represent the unanimous decision of all the co-owners.

(3) In this section -

"co-owners" means two or more persons having distinct copyrights in a composite production, namely any production consisting of two or more works;

"licensing body" means an organization which has as its main object, or one of its main objects, the negotiation and granting of licences in respect of copyright works, and includes an individual carrying on the same activity.

Regula-
tions
and ex-
tensions
of applica-
of Act.

16. The Minister shall make regulations prescribing anything which may be prescribed under this Act and may make regulations extending the application of this Act in respect of any or all of the works referred to in subsection (1) of section 3 of this Act -

(a)/....

- (a) to individuals who are citizens of or are domiciled in,
- (b) to bodies of persons constituted in or registered under the laws of,
- (c) to works, other than sound recordings and broadcasts, first published in,
- (d) to sound recordings made in,

a country which is a party to a treaty to which Malta is also a party and which provides for the protection of copyright in works which are protected under this Act.

Copy-
right
Board.

17. (1) The Minister shall by notice in the Government Gazette appoint a Copyright Board, consisting of a Chairman and two other members for the purpose of performing the functions assigned to such Board by the provisions of this Act.

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

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

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

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

(6) The Chairman or any other member of the Board may abstain or may be challenged by any of the contending parties for any of the causes mentioned in section 735 of the Code of Organization and Civil Procedure.

Any/....

Any question regarding any cause of abstention or challenge and any question which is a question of law alone shall be decided by the Chairman of the Board.

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

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

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

- (a) prescribing the manner in which any matter may be referred to the Board;
- (b) prescribing the procedure to be adopted by the Board in dealing with any matter referred to it under this Act and the records to be kept by the Board;
- (c) prescribing the manner in which the Board shall be convened and the place where the Board shall hold its sittings;
- (d) prescribing a scale of costs and fees; and
- (e) generally for the better carrying out of the functions assigned to the Board by this Act.

Appeal from 18. (1) No appeal shall lie from a decision of the decisions^s Board except on a point of law.
of Copy-
right
Board.

(2) Any appeal on a point of law shall be brought before Her Majesty's Court of Appeal by application within fifteen days of service of the Board's decision.

(3) The Board established under section 30 of the Code of Organization and Civil Procedure may make rules concerning appeals to Her Majesty's Court of Appeal under this Act, and prescribing a scale of costs and fees in relation to such appeals.

Costs and fees.

19. Costs and fees in respect of proceedings before the Board and before Her Majesty's Court of Appeal shall be borne by the parties in such manner as the said Board or Court, as the case may be, shall decide.

Amendment of the Industrial Property (Protection) Ordinance.

20. The provisions of section 69 of the Industrial Property (Protection) Ordinance, shall have effect subject to the amendment shown in the Schedule hereto.

Application to works made before commencement of Act.

21. This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter.

Repeals.

22. The Copyright Act, 1911, so far as in force in the law of Malta shall cease to have such force on the coming into operation of this Act.

SCHEDULE

(Section 20)

In section 69 of the Industrial Property (Protection) Ordinance, immediately after subsection (3) there shall be added the following new section:-

"(4) The provisions of this section shall have effect subject to the provision of subsection (3) of section 3 of the Copyright Act, 1966".

Objects and Reasons

The object of this Bill is to repeal the Copyright Act, 1911 of the Parliament of the United Kingdom so far as is in force in the law of Malta, and to provide in respect of copyright by new legislation which takes into account recent developments in the field of copyright and particularly technical developments in regard to which it is desirable that copyright should operate.