

Eighth Meeting of the Working Group on Cyber-crime

**PREPARATORY QUESTIONNAIRE
FOR THE EIGHTH MEETING OF THE WORKING GROUP ON CYBER-CRIME**

INTRODUCTION

The object of this questionnaire is to collect useful information for the purposes of the Eighth Meeting of the Working Group on Cyber-Crime, which will take place in early 2014, with regard to the recommendations that have been put forward at previous meetings and that been adopted in the framework of the process of Meetings of Ministers of Justice or other Ministers or Attorneys General of the Americas (REMJA), which are in accordance therewith.

To that end, the questionnaire is divided into five thematic areas: (I) Legislation; (II) International Cooperation; (III) Specialized Units and National Efforts; (IV) Results of Cyber-Crime Investigations and Prosecutions; and (V) Training.

Bearing the foregoing in mind, kindly submit the response of your State to this questionnaire by e-mail (LegalCooperation@oas.org) or fax (+ (202) 458-3598) to the OAS General Secretariat (Department of Legal Cooperation, Secretariat for Legal Affairs) by **Tuesday, December 10, 2013.**

Please use any extra space that might be required for each response, or attach additional pages, as necessary.

I. LEGISLATION

A. SUBSTANTIVE LEGISLATION:

1.1. Has your country criminalized the following types of cyber-crime?

- | | |
|--|--|
| a) Illegal access | Yes () No (<input checked="" type="checkbox"/>) |
| b) Illegal interception | Yes () No (<input checked="" type="checkbox"/>) |
| c) Data interference | Yes () No (<input checked="" type="checkbox"/>) |
| d) System interference | Yes () No (<input checked="" type="checkbox"/>) |
| e) Misuse of devices | Yes () No (<input checked="" type="checkbox"/>) |
| f) Computer-related forgery | Yes (<input checked="" type="checkbox"/>) No () |
| g) Computer-related fraud | Yes () No (<input checked="" type="checkbox"/>) |
| h) Child pornography | Yes (<input checked="" type="checkbox"/>) No () |
| i) Offences related to infringements of copyright and related rights | Yes (<input checked="" type="checkbox"/>) No () |
| j) Other offences (please list): _____ | Yes () No () |

If you answered yes to any of the foregoing, please list and enclose a copy, preferably electronic, of those laws: Criminal Code CAP. 171, 2009 Rev; Sections 242 and 284; Copyright Act CAP. 311, 2009 REV.

1.2. Has your country implemented legislation which:

- a) Criminalizes the attempted commission of any of the above-noted types of cyber-crime? Yes () No ()

If so, please list and enclose a copy, preferably electronic, of those laws:

Criminal Code CAP. 171. Section 315, 2009 REV.

- b) Criminalizes aiding and abetting in the commission of any of the above-noted types of cyber-crime? Yes () No ()

If so, please list and enclose a copy, preferably electronic, of those laws:

Criminal Code CAP. 171 Section 318, 2009 REV

- c) Contemplates the possibility of corporate responsibility for cyber-crimes, i.e., legislation wherein legal persons can be held responsible for criminal offenses related to cyber-crime? Yes () No ()

If so, please list and enclose a copy, preferably electronic, of those laws:

B. PROCEDURAL LEGISLATION:

- 1.3. If your country does not have a cyber-crime law that criminalizes any of the above conduct, are there currently any efforts to enact such laws: Yes () No ()

If so, please describe those efforts:

The Government has created policy in this regard and therefore the Bill is to be drafted and taken through the relevant stages i.e. consultations, parliament, select committees etc.

- 1.4. Does the legislation of your country allow criminal investigators to compel Internet Service Providers to preserve electronic evidence without the need for a court order?

Yes () No () N/A A Bill shall be drafted to encapsulate same.

If so, kindly provide a brief description of the provisions and/or other measures in place in that regard, together with a copy, preferably electronic, thereof: _____

1.5. Has your country adopted legislation or other necessary measures whereby its competent authorities can:

a) Seize, confiscate, or attach computer systems or computer-data storage media? Yes (√) No ()

b) Copy and keep the computer data accessed? Yes (√) No ()

If so, kindly provide a brief description of the provisions and/or other measures in place together with a copy, preferably electronic, thereof:

Criminal Procedure Code Cap. 172 2009 REV, Section 238 (2) allows the seizure of instruments provided for the commission of an offence.

II. INTERNATIONAL COOPERATION

2.1. Has your country joined the G8 24/7 High Tech Crime Network? Yes () No (√)

If not, has your country taken any steps to join it? Yes () No () Do Not Know (√)

If so, please describe those steps: _____

2.2. Do the laws of your country allow for the processing of requests for mutual assistance from other states for the purpose of obtaining evidence in electronic form?

Yes (√) No () Do Not Know ()

If so, kindly provide a brief description of the provisions and/or other measures in place in that regard, together with a copy, preferably electronic, thereof:

Mutual assistance in Criminal Matters Cap. 177, 2009 REV

2.3. Has your government presented or received requests for mutual assistance for the investigation or prosecution of cyber-crimes or for the purpose of obtaining evidence in electronic form and taking other steps necessary to facilitate the investigation or prosecution of cyber-crimes? Yes () No (√) Do Not Know ()

If so, please indicate the number of requests presented and/or received and the status of those requests: _____

III. SPECIALIZED UNITS & NATIONAL EFFORTS

- 3.1. Is there a specialized unit or agency in your country specifically charged with the **investigation** of cyber-crimes? (police authority) Yes (√) No ()

If so, please supply the following information:

- Name of the unit or agency: Financial Intelligent Unit
- Institution to which it reports: -
- Internet address of the unit or agency: www.fiusvg.com/www.svgfsa.com
- Contact information:
 - o Name of contact: Grenville Williams
 - o Address: Kingstown P.O Box 1826, Saint Vincent
 - o Telephone(s): 1(784) 4571344 Fax: 1(784) 4856903
 - o E-mail address: svgfiu@vincysurf.com

- 3.2. Is there a specialized unit or agency in your country specifically assigned the responsibility of **prosecuting** cyber-crimes? Yes (√) No ()

If so, please supply the following information:

- Name of the unit or agency: Office of the Director of Public Prosecutions
- Institution to which it reports: -
- Internet address of the unit or agency: -
- Contact information:
 - o Name of contact: Mr. Colin Williams
 - o Address: Granby Street, Kingstown, Saint Vincent
 - o Telephone(s): 1(784)4571344 Fax: 1(784)4856903
 - o E-mail address: dpsvg@vincysurf.com

- 3.3. Has your country established any Internet pages to provide citizens with information on how to avoid falling prey to cybercrimes and on how to detect and report such crimes to competent authorities when they do occur?

Yes (√) No ()

If so, kindly provide the respective Internet address/es of the page/s, as well as a brief description of the website/s: www.fiusvg.com, www.svgfsa.com

- 3.4. Has your country implemented any probity or awareness-raising programs on the dangers of cyber-crime, or produced manuals or guides to orient and alert the public on the dangers of cyber-crime and how to avoid becoming a victim thereof:

Yes (√) No ()

If so, kindly provide a brief description of those programs, manuals, or guides:

Workshops with youth population on cyber-crime, the danger, insecurity on the internet. Visual aids, presentations and interactive media are used.

IV. RESULTS OF CYBERCRIME INVESTIGATIONS AND PROSECUTIONS

4.1. Please indicate the number of **investigations** that your country has carried out with respect to each of the following cyber-crime offenses or conduct, from January, 2012 to the present:

- | | |
|--|--------------------------------------|
| a) Illegal access | Number of investigations: <u>Nil</u> |
| b) Illegal interception | Number of investigations: <u>Nil</u> |
| c) Data interference | Number of investigations: <u>Nil</u> |
| d) System interference | Number of investigations: <u>Nil</u> |
| e) Misuse of devices | Number of investigations: <u>Nil</u> |
| f) Computer-related forgery | Number of investigations: <u>Nil</u> |
| g) Computer-related fraud | Number of investigations: <u>Nil</u> |
| h) Child pornography | Number of investigations: <u>Nil</u> |
| i) Offences related to infringements of copyright and related rights | Number of investigations: <u>Nil</u> |

4.2. If your country has criminalized any of the cyber-crime offenses referred to in question 1.1, above, please indicate the number of **prosecutions** that your country has carried out with respect to each of the corresponding cyber-crime offenses, from January, 2012 to the present, as well as the number of cases that resulted in a **conviction**:

- | | | |
|------------------------------------|------------------------------|------------------------|
| a) Illegal access | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |
| b) Illegal interception | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |
| c) Data interference | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |
| d) System interference | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |
| e) Misuse of devices | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |
| f) Computer-related forgery | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |
| g) Computer-related fraud | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |
| h) Child pornography | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |
| i) of copyright and related rights | Cases prosecuted: <u>Nil</u> | Convictions <u>Nil</u> |

4.3. Have you encountered any difficulties with respect to the investigation and/or prosecution of the above offenses? Yes () No () N/A

If so, please provide a detailed and specific description of the type of difficulties that have been encountered: _____

4.4. Are there any areas related to the fight against cyber-crime in which your country could benefit from technical cooperation provided by other Member States? Yes () No ()

If so, please provide a detailed and specific description of the type of technical cooperation that would be of benefit to your country:

Resources, training, workshops, exchange of personnel, the provision of personnel to carry out seminars locally.

V. TRAINING

- 5.1. Does your country provide training to law enforcement personnel on cyber-crimes and the collection of electronic evidence? Yes () No ()

If so, please provide a brief description on the type of training and number of personnel trained: Personnel attend overseas training programs under the auspices of overseas agencies and governments.

- 5.2. Does your country provide training to prosecutors on cyber-crimes and the collection of electronic evidence? Yes () No ()

If so, please provide a brief description on the type of training and number of personnel trained: workshops and seminars

- 5.3. Does your country provide training to judges on cyber-crimes and the collection of electronic evidence? Yes () No ()

If so, please provide a brief description on the type of training and number of personnel trained: _____

INFORMATION ON THE OFFICIAL RESPONSIBLE FOR COMPLETION OF THIS QUESTIONNAIRE

Please provide the following information:

- (a) State: Saint Vincent and the Grenadines
(b) The official to be consulted regarding the responses to the questionnaire is:
() Mr.: _____
() Ms: Michelle S. Davidson
Title/position: Crown Counsel 1
Agency/office: Ministry of Legal Affairs
Address: Methodist Church Building, Granby Street, Kingstown

Telephone number: 1(784)4561762
Fax number: 1(784)72898
E-mail address: ag.gov.vc@gmail.com

1.1 Criminal Code CAP. 171, 2009 Rev; Sections 242 and 284; Copyright Act CAP. 12, 2009 REV

242. Forgery

Any person who makes a false instrument, with the intention that he or another shall use it to induce somebody to accept it as genuine and by reason of so accepting it to do or not to do some act to his own or any other person's prejudice, is guilty of an offence and liable to imprisonment for ten years.

284. Obscene publications

(1) Any person who—

- (a) for the purpose of, or by way of, trade, or for the purpose of distribution or public exhibition, makes, produces or has in his possession any obscene writing, drawing, print, painting, printed matter, pictures, posters, emblems, photographs, films, discs or any other obscene objects tending to corrupt morals;
- (b) for any of the above purposes imports, conveys or exports, or causes to be imported, conveyed or exported, any such matter or thing, or in any manner whatsoever puts any of the same into circulation;
- (c) carries on or takes part in any business, whether public or private, concerned with any such matters or things, or deals in the same in manner whatsoever, or distributes them publicly or makes a business of lending them;
- (d) advertises or makes known by any means whatsoever, with a view to assisting circulation of or traffic in, any such matter or thing, that a person is engaged in any of the acts referred to in this section, or advertises or makes known how, or from whom, any such matter or thing can be produced either directly or indirectly; or
- (e) publicly exhibits any indecent show or performance or any show or performance tending to corrupt public morals,

is guilty of an offence and liable to imprisonment for nine months.

(2) On the application of the Commissioner of Police, the court may order the destruction of any obscene matter or thing to which this section relates and which has been seized by, or otherwise come into the possession of, the police whether or not any person has been convicted under the provisions of this section in respect of such obscene matter or thing.

CHAPTER 311 COPYRIGHT ACT

• Act • Subsidiary Legislation •

ACT

Act No. 21 of 2003

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4. Lawful reception of encrypted broadcasts.

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CHAPTER 311 COPYRIGHT ACT

An Act to make a comprehensive copyright law for Saint Vincent and the Grenadines, to afford better protection for literary, dramatic, musical, artistic and other works and creative products, to provide for the right of performers and others in performances and to repeal the Copyright Act, Chapter 262 of the Revised Laws 1990 Edition, and provide for matters connected therewith or incidental hereto.

Be it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same as follows.

[Act No. 21 of 2003.]

[Date of commencement: 30th November, 2004.]

PART I

Preliminary

1. Short title and commencement

(1) This Act may be cited as the Copyright Act, 2003.

(2) This Act shall come into force on a day to be appointed by the Governor-General by order published in the *Gazette*, and different days may be appointed for different provisions and different purposes.

2. Interpretation

(1) In this Act—

“**adaptation**” includes—

- (a) in relation to a computer programme, a version of the programme in which it is converted into or out of a computer language or code, or into a different language or code otherwise than incidentally in the course of running the programme;
- (b) in relation to a literary work in a non-dramatic form, a version of the work, whether in its original language or in a different language, in a document form;
- (c) in relation to a literary work in a dramatic form, a version of the work whether in its original language, or different language, in a non-dramatic form;
- (d) in relation to a literary work, whether in a non-dramatic form or in a dramatic form—
 - (i) a translation of the work,
 - (ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures in a form suitable for reproduction in a book or a newspaper, a magazine or similar periodical; and
- (e) in relation to a musical work, an arrangement or transcription of the work;

“**article**”, in the context of an article in a periodical, includes an item of any description;

“**artistic work**” means—

- (a) a graphic work, photograph, sculpture or collage, whether the work is of artistic quality or not;
- (b) a building or model of a building, irrespective of artistic quality or not; or
- (c) a work of artistic craftsmanship to which neither paragraph (a) nor (b) applies;

“**author**” means the person who creates a work, being—

- (a) in relation to a literary or dramatic work, the author of the work;
- (b) in relation to musical work, the composer;
- (c) in relation to an artistic work other than a photograph, the artist;
- (d) in relation to a photograph, the person taking the photograph;
- (e) in relation to a sound recording or film, the person by whom the arrangements necessary for the making of the recording or film are undertaken;
- (f) in relation the typographical arrangement of a published edition, the publisher;
- (g) in relation to a broadcast, the person making the broadcast as described in section 4(2) or, in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person making that other broadcast;
- (h) in relation to a cable programme, the person providing the cable programme service in which the programme is included;
- (i) in relation to a computer-generated literary, dramatic, musical or artistic work, the person by whom the arrangements necessary for the creation of the work are undertaken;

“**broadcasting**” means a transmission of wireless telegraphy of visual images, sounds or other information which—

- (a) having regard to section 4 is capable of being lawfully received by members of the public; or
- (b) is transmitted for presentation to members of the public;

“**building**” includes a fixed structure of any kind and a part of a building or fixed structure;

“business” includes a trade or profession;

“cable programme service” means any item included in a cable programme service, and any reference in this Act—

- (a) to the inclusion of a cable programme or work in a cable programme service is a reference to its transmission as part of the service; and
- (b) to the person included in it is a reference to the person providing the service;

“collective works” means—

- (a) a work of joint authorship; or
- (b) a work in which there are distinct contributions by different authors or in which works or parts of works of different authors are incorporated;

“communication to the public” means the transmission by wire or wireless means of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by person outside the normal circle of a family and its closes, social acquaintances at a place or places so distant from he place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and further, irrespective of whether the person can receive the images or sounds at the same place and time, or different places or times;

“Comptroller” means the Comptroller of Customs and Excise;

“computer generated work” means a work generated by a computer in circumstances such that the work has no human author;

“computer programme” means a set of instructions whether expressed in words or in a dramatic or other form, which is capable when incorporated in a machine readable medium, of causing an electronic or other device having information process capabilities to indicate, perform or to achieve a particular function, task or result;

“copy” includes—

- (a) in relation to a work that is literary, dramatic, musical or artistic work, a reproduction of the work in any material form; or
- (b) in respect of an artistic work, a reproduction in three-dimensions, if the artistic work is a two dimensional work and a reproduction in two dimensions if the artistic work is a three dimensional work; or
- (c) in respect of a literary, dramatic or musical work includes a reproduction in the form of a record or film;
- (d) in relation to a work that is a film, television broadcast, or cable programme includes a photograph of the whole or any substantial part of any image forming part of the film, broadcast or cable programme;
- (e) in relation to a work that is a typographical arrangement of a published edition, a facsimile copy of the arrangement; and
- (f) any category of work includes any copy of the work, however made and in whatever medium, that is transient or is incidental to some other use of the work,

and references to the **“copying of a work of any description”** shall be construed to include a reference to storing the work in any medium by electronic means;

“copyright” means copyright subsisting under Part II of this Act;

“country” includes any territory;

“Court” means the High Court;

“distribution” means the distribution to the public, for commercial purposes, of copies of work by way of rental, lease, hire, loan or similar arrangement and distributing has a corresponding meaning;

“dramatic work” includes—

- (a) a choreographic show or entertainment in dumb show; and
- (b) a scenario or script for a film but does not include a film as distinct from the scenario or script;

“drawing” includes a diagram, map, chart or plan;

“educational institution” means any school, college or other educational body designated by the Minister by order either specifically or by reference to a class, for the purposes of this Act;

“engraving” includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;

“exclusive licence” means a licence in writing signed by or on behalf of the owner of copyright in a work authorising the licensee, to the exclusion of all other persons, including the person granting the licence, to exercise a right which would otherwise be exercisable exclusively by the owner of the copyright;

“exclusive recording contract” means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons, including the performer, to make recordings of one or more of his performances with a view to their being shown or played in public, sold, let for hire, or otherwise commercially exploited;

“film” means a recording of any medium from which a moving image may by any means be produced;

“future copyright” includes—

- (a) copyright which will or may come into existence in respect of any future work or class of works or on the occurrence of a future event;
- (b) in relation to such copyright a person prospectively entitled thereto by virtue of such an arrangement as stated in section 21;

“graphic work” includes—

- (a) any painting, drawing, diagram, map, chart or plan; and
- (b) any engraving, etching, lithograph, woodcut or similar work;

“illicit recording” means—

- (a) for the purposes of a performer’s rights, a recording of the whole or a substantive part of a performance of his if it is made, otherwise than for private purpose, without his consent;
- (b) for the purposes of the rights of a person having recording rights under an exclusive recording contract, a recording of the whole or any substantial part of a performance subject to the exclusive recording contract, if it is made otherwise than for private purposes, without his consent or that of the performer;
- (c) the purposes of any offence under this Act, a recording which is an illicit recording by virtue of either paragraph (a) or (b) of this definition;

“infringing copy”, in relation to a protected work, means—

- (a) any copy of the work, the making of which is not authorised under or by virtue of any provisions of this Act;
- (b) any copy of the work that is or is proposed to be imported into Saint Vincent and the Grenadines and its making in Saint Vincent and the Grenadines would have constituted an infringement of the copyright in the work of a breach of an exclusive agreement relating to that work;

“literary work” means—

- (a) any work, other than a dramatic or musical work, which is written, spoken or sung;
- (b) a written table or compilation;
- (c) a computer programme;

“manuscript”, in relation to a work, means the original document embodying the work whether written by hand or not;

“Minister” means the Minister responsible for copyright;

“musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;

“owner of rights” means a legal or natural person who owns the rights to a work;

“performance”, in relation to—

- (a) copyright in a protected work, includes—
 - (i) delivery in the case of lectures, addresses, speeches and sermons,
 - (ii) any mode of visual acoustic presentation including presentation by means of a sound recording, film, broadcast or cable programme of the work;
- (b) the rights conferred under Part IX, means—
 - (i) a dramatic performance which includes dance and mime,
 - (ii) a musical performance, or
 - (iii) a reading or recitation of a literary work, which is, or to the extent that it is, a live programme given by one or more individuals;

“performer” means any actor, singer, musician, dancer or other person who acts, sings, depicts, delivers, declaims, plays in or otherwise performs a literary, dramatic, musical or artistic work; and references to the performer in the context of the person having performer’s rights, shall be construed to include references to the person who, pursuant to any provision of this Act, is for the time being entitled to exercise those rights;

“person having recording rights”, in relation to a performance, means a person who being a qualified person—

- (a) is either a party to or has the benefit of an exclusive recording contract to which the performance is a subject or is a person to whom the benefit of such a contract has been assigned; or
- (b) is licenced to make recordings of the performance with a view to them being sold or let for hire or shown or played in public, by a person who is within the definition in paragraph (a) but is not a qualified person;

“photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of a film;

“place of public entertainment” includes any premises which are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment, and the premises that are occupied mainly for other purposes;

“prospective owner” has the meaning assigned to it in the definition of “future copyright”;

“protected work” is work of any category in which copyright subsists by virtue of this Act;

“published edition”, in relation to copyright in the typographical arrangement of a published edition, means the published edition of the whole or any part of one or more literary, dramatic, musical or artistic works;

“qualified person”—

- (a) in the case of an individual, means a person who is a citizen of, or whose habitual residence is in Saint Vincent and the Grenadines;
- (b) in the case of a body corporate, means a body incorporated or established under the Companies Act;

[Chapter 143.]

“qualifying performance” means a performance that—

- (a) is given by an individual who is a qualified person; or
- (b) takes place in Saint Vincent and the Grenadines, or a specified country;

“record” means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom irrespective of the form in which the sounds are represented, other than a sound track associated with a film, but includes in relation to a performance, a film incorporating the performance;

“recording”, in relation to a performance, means a film or sound recording—

- (a) made directly from the live performance;
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made directly or indirectly from another recording of the performance;

“rental” means any arrangement under which a copy of a work is made available—

- (a) for payment in money or money’s worth; or
- (b) in the course of a business, as part of services or amenities for which payment is made,

on terms that it will or may be returned;

“reprographic process” includes—

- (a) a process for making facsimile copies;
- (b) a process involving the use of an appliance for making multiple copies; or
- (c) in relation to a work held in electronic form, any copying by electronic means of the work, except for the making of a film or sound recording;

“sculpture” includes a cast or model made for purposes of sculpture;

“sound recording” means—

- (a) a recording of sounds from which the sounds may be reproduced; or
- (b) a recording of the whole or any part of a literary, dramatic or musical work from which sounds reproducing the work or part thereof may be produced,

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced or the form in which the sounds are represented;

“**specified country**” means a country specified by the Minister by order;

“**telecommunications system**” means a system for conveying visual images, sounds or other information by electronic means;

“**to broadcast**” means to transmit by the emission of electromagnetic energy otherwise than over a path that is provided by a material substance, visual images or sounds, or other information, irrespective of the form in which the sounds, images or information are represented for reception by the public notwithstanding that—

- (a) subsequent to the initial transmission, but before reception by the public, the images or sounds may be carried on a path provided by a material substance;
- (b) the public receiving or capable of receiving the images or sounds is in a country other than that from which the original transmission took place; or
- (c) no member of the public actually received the images or sounds, provided only that members of the public could, if in possession of suitable apparatus, receive them,

and “**broadcasting**” and “**re-broadcasting**” shall have corresponding meanings;

“**typeface**” includes an ornamental motif used in printing;

“**unauthorised**”, when used to describe any act done in relation to a work, means—

- (a) if copyright subsists in the work, an act done otherwise than by or with the licence of the owner of the copyright;
- (b) if copyright does not subsist in the work, an act done otherwise than by or with the licence of the author or person lawfully claiming under him;

“**wireless telegraphy**” means the emitting or receiving otherwise than over a path that is provided by a material substance of electromagnetic energy transmitting visual images or sounds or both visual images or sounds;

“**work**” means—

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording, film, broadcast or cable programme;
- (c) the typographical arrangement of a published edition;

“**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 separate from the contribution of the other author or authors;

“**writing**” includes any form of notation, whether by hand or by printing, typewriting or by any other process.

(2) References in this Act to the time at which, or the period during which, a literary, dramatic or musical work was made are references to the time or period at or during which it was first written down, recorded or expressed in some other material form.

3. Publication

(1) For the purposes of this section, “**publication in relation to work**” means—

- (a) the issue of copies to the public and related expression shall be construed accordingly;
- (b) in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system.

(2) In the case of a work or architecture in the form of a building, or an artistic work incorporated in a building, completed construction of the building shall be treated as equivalent to publication of the work.

(3) The following do not constitute publication for the purposes of this Act—

- (a) in the case of a literary, dramatic or musical work—
 - (i) the performance of the work,
 - (ii) the broadcasting of the work or its inclusion in a cable programme service, otherwise than for the purposes of an electronic retrieval system;
- (b) in the case of an artistic work—
 - (i) the exhibition of the work, or
 - (ii) the issue to the public of copies of photographs of a work of architecture in the form of building, or a model, a sculpture or a work of artistic craftsmanship, or
 - (iii) the issue to the public of copies of a film including the work, or
 - (iv) the broadcasting of the work or its inclusion in a cable programme service, otherwise than for the purposes of an electronic retrieval system;
- (c) in the case of a sound recording or film—
 - (i) the work being played or shown in public, or
 - (ii) the broadcasting of the work or its inclusion in a cable programme service.

(4) A publication that is merely colourable that does not constitute an infringement of copyright or constitute an offence under this Act shall be disregarded for the purposes of this Act.

(5) For the purposes of this Act, a publication outside of Saint Vincent and the Grenadines shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

(6) In determining for the purposes of this Act—

- (a) whether a work has been published;
- (b) whether a publication of a work was the first publication of work; or
- (c) whether a work was published or otherwise dealt with in the lifetime of a person,

any unauthorised publication or the doing of any other unauthorised act shall be disregarded.

(7) A publication or other act shall for the purposes of subsection (6) be taken to have been unauthorised if—

- (a) copyright subsisted in the work and the act concerned was done otherwise than by, or with the licence of the owner of the copyright; or
- (b) copyright did not subsist in the work and the act concerned was done otherwise than by, or with the licence of—

- (i) the author, or
- (ii) persons lawfully claiming under the author.

(8) Nothing in either subsection (6) or (7) affects any provisions of this Act relating to the acts conferred in copyright or to the acts constituting infringements of copyright or offences under this Act.

4. Lawful reception of encrypted broadcasts

(1) In relation to the broadcast of a work, an encrypted transmission shall be regarded as capable of being lawfully received by members of the public only if decoding equipment has been lawfully made available to members of the public by or with the authority of the person making the transmission or the persons providing the contents of the transmission.

(2) References in this Act to the person making a broadcast, broadcasting a work or including a work in a broadcast are references—

- (a) to the person transmitting the programme, to the extent that he has responsibility for its contents; and
- (b) to any person providing the programme who makes with the person transmitting it, the arrangements necessary for receiving its transmission,

and references in this Act to a programme, in the context of broadcasting, are to any item included in a broadcast.

PART II

Copyright

Protected Works

5. Categories of protected works

(1) Subject to this section, the categories of works in which copyright under this Act may subsist are—

- (a) original literary, dramatic, musical or artistic works;
- (b) sound recordings, films, broadcasts or cable programmes;
- (c) typographical arrangements of published editions.

(2) A literary, dramatic or musical work shall not be eligible for copyright protection unless it is written down, recorded or otherwise fixed in a material form; and the storage of the work in a computer shall be regarded as a recording of the work in a material form.

(3) For the purposes of subsection (2), it is immaterial whether the work is recorded by or with the permission of the author; and where it is not recorded by the author, nothing in that subsection shall affect the question whether copyright subsists in the record of the work as distinct from the work recorded.

6. Qualification for copyright protection

(1) A literary, dramatic, musical or artistic work, or, subject to subsection (2) a typographical arrangement of a published edition, qualifies for copyright protection where—

- (a) the author thereof was a qualified person at the time at which the work was made or, if the making of the work extended over a period of time and the author was a qualified person for a substantial part of that period; or
 - (b) in the case of a published work—
 - (i) where having regard to section 3, the first publication took place in Saint Vincent and the Grenadines or in a specified country,
 - (ii) the author was a qualified person at the time at which the work was first published,
 - (iii) where the author had died before publication but was a qualified person immediately before his death; or
 - (c) in the case of an artistic work which is a building or incorporated in a building, if the building is erected in Saint Vincent and the Grenadines or in a specified country.
- (2) Copyright shall not subsist in the typographical arrangement of a published edition, or to the extent that it reproduces the typographical arrangement of a previous edition.
- (3) A sound recording or film qualifies for copyright protection if—
- (a) the maker of the recording or film was a qualified person for the whole or substantial part of the period during which the sound recording or film was made; or
 - (b) having regard to section 3, if the sound recording or film has been published and the first publication took place in Saint Vincent and the Grenadines or in a specified country.
- (4) Copyright does not subsist in a sound recording or film which is, or to the extent that it is, a copy taken from a previous sound recording or film.
- (5) A broadcast qualifies for copyright protection if it is made in Saint Vincent and the Grenadines or in a specified country by a transmitting station in respect of which there is a valid licence granted under the Telecommunications Act.
- [Chapter 418.]
- (6) Copyright does not subsist in a broadcast which infringes or to the extent that it infringes the copyright in another broadcast or programme.
- (7) A cable programme qualifies for copyright protection if it is sent from a place in Saint Vincent and the Grenadines or in a specified country, in accordance with any law in force regulating transmission by cable.
- (8) Subject to subsection (7), copyright shall not subsist in any cable programme—
- (a) if it is included in a cable programme service by reception and immediate re-transmission of a broadcast; or
 - (b) if it infringes, or to the extent that it infringes, the copyright in another cable programme or in a broadcast.
- (9) In relation to a work of joint ownership the references in subsection (1) to author shall be construed as references to any one of the authors.
- (10) If the qualification requirements of this section are once satisfied in respect of a work, copyright does not cease to exist by reason of any subsequent event.
- (11) The provisions of this Act shall also apply to works that are eligible for protection in Saint Vincent and the Grenadines by virtue of and in accordance with any international convention or other international agreement to which Saint Vincent and the Grenadines is party.

7. Nature of copyright economic rights

(1) Subject to the provisions of this Act, the owner of Copyright shall have the exclusive right to do, authorise, or prohibit the following acts in relation to the work—

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement or other transformation of the work;
- (d) the first public distribution of the original and each copy of the work by sale, rental, or otherwise;
- (e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer programme, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;
- (f) importation of copies of the work, even where the imported copies were made with the authorisation of the owner of copyright;
- (g) public display of the original or a copy of the work;
- (h) public performance of the work;
- (i) broadcasting of the work;
- (j) communication to the public of the work.

(2) The rights of rental and lending under subsection (1)(e) shall not apply—

- (a) to rental or lending of computer programmes where the programme itself is not the essential object of the rental or lending; or
- (b) to cinematographic works unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of production.

(3) The onus of proving that widespread copying of a cinematographic work has materially impaired the exclusive right of production under this section rests upon the person who alleges that this is the case.

Duration of Copyright Protection

8. Duration of copyright in literary works, etc.

(1) Subject to the provisions of this section, copyright in any literary, dramatic, musical or artistic work expires at the end of the period of seventy-five years from the end of the calendar year in which the author dies.

(2) Where the authorship of a work referred to in subsection (1) is unknown, copyright in that work expires at the end of the period of fifty years from the end of the calendar year in which it was first made available to the public, and subsection (1) shall not apply if the identity of the author becomes known after the end of that period.

(3) For the purposes of subsection (2), acts that constitute the making available of a work to the public include—

- (a) in relation to a literary, dramatic or musical work, the performance of the work in public or its broadcast or inclusion in a cable programme service;

- (b) in relation to an artistic work, the exhibition of the work in public or its inclusion in a film shown to the public or in a broadcast or cable programme service,

so, however, that in determining for the purpose of this subsection whether a work has been made available to the public any unauthorised act shall be disregarded.

(4) The provisions of subsections (1) and (2) shall not apply to computer-generated work, the copyright in which expires at the end of the period of fifty years from the end of the calendar year in which the work is made.

(5) In relation to a work of joint authorship—

(a) the reference in subsection (1) to the death of the author shall be construed—

- (i) where the identity of all the authors is known, as a reference to the death of the last of them to die,
- (ii) where the identity of one or more of the authors is known and the identity of one or more others is not, as a reference to the death of the last of the authors whose identity is known; and

(b) the reference in subsection (2) to the identity of the author becoming known, shall be construed as a reference to the identity of any of them becoming known.

(6) A work is of unknown authorship if the identity of the author is unknown or, in the case of a work of joint authorship, if the identity of none of the authors is known.

(7) The identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry, but if his identity is once known it shall not subsequently be regarded as unknown.

9. Duration of copyright in sound recordings and films

(1) Copyright in a sound recording or film expires at the end of the period of fifty years from the end of the calendar year in which it was made or, where it is made available to the public before the end of that period, seventy-five years from the end of the calendar year in which it is so made available.

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

- (a) it is first published, broadcasted or included in a cable programme service;
- (b) in the case of a film or film sound track, the film is first shown in public.

(3) In determining whether a sound recording or film has been made available to the public, any unauthorised act shall be disregarded.

10. Duration of copyright in broadcasts and cable programmes

(1) Copyright in a broadcast or cable programme expires at the end of the period of fifty years from the end of the calendar year in which the broadcast was made or the programme included in a cable programme service.

(2) Copyright in a repeat broadcast or a repeat cable programme expires at the same time as copyright in the original broadcast or cable programme.

(3) No copyright arises in respect of a repeat broadcast or a repeat cable programme which is broadcast or, as the case may be, included in a cable programme service after the expiry of the copyright in the original broadcast or cable programme.

(4) References in subsection (2) to a repeat broadcast of a repeat programme means one that is a repeat of a broadcast previously made or, as the case may be, of a cable programme previously included in a cable programme service.

11. Duration of copyright in typographical arrangements

Copyright in the typographical arrangement of a published edition expires at the end of period of twenty-five years from the end of the calendar year in which the edition was first published.

PART III

Moral Rights and Related Rights

12. Moral rights

(1) By virtue of and subject to the provisions of this Act—

- (a) the author of a literary, dramatic, musical or artistic work that is protected work; or
- (b) the director of a film that is a protected work,

shall have in respect of such work, the rights specified in sections 13 and 14.

13. Right to be identified as author

(1) Subject to the provisions of this Part, the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work shall have, respectively, the right to be identified as the author or, as the case may be, director of the work in the circumstances specified in this section.

(2) The author of a literary work other than words intended to be sung or spoken with music, or a dramatic work has the right to be identified as such whenever—

- (a) the work or an adaptation of it is published commercially, performed in public, broadcast or included in a cable programme service;
- (b) copies of a film or sound recording including the work or an adaptation of it are issued to the public.

(3) The author of a musical work or a literary work consisting of words intended to be sung or spoken with music, has the right to be identified as the author whenever—

- (a) the work or an adaptation of it is published commercially;
- (b) copies of a sound recording of the work or an adaptation of it are issued to the public; or
- (c) a film, the soundtrack of which includes the work, is shown in public or copies of the film are issued to the public.

(4) The author of an artistic work has the right to be identified as such whenever—

- (a) the work is published commercially or exhibited in public or a visual image of it is broadcast or included in a cable programme service;
- (b) a film including a visual image of the work is shown in public or copies of the film are issued to the public; or

- (c) in the case of a work of architecture in the form of a building or a model for a building, a sculpture of a work of artistic craftsmanship, copies of a graphic work representing it or of a photograph of it, are issued to the public.

(5) In addition to the right specified in subsection (4)(c), the author of a work of architecture in the form of a building has the right to be identified on the building as constructed or, where more than one building is constructed to the design, on the first to be constructed.

(6) The director of a film has the right to be identified as director whenever the film is shown in public, broadcast or included in a cable programme service or copies of the film are issued to the public.

(7) The right of an author or director under this section is—

- (a) in the case of commercial publication or the issue to the public of copies of a film or sound recording, to be identified in or on each copy or, if that is not appropriate, in some other manner likely to bring his identity to the notice of a person acquiring a copy;
- (b) in the case of identification on a building, to be identified by appropriate means visible to persons entering or approaching the building; and
- (c) in any other case, to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, film, broadcast or cable programme in question,

and the identification must, in each case, be clear and reasonably prominent.

(8) For the purposes of this section, any reasonable form of identification may be used.

(9) Except as may be provided by contract, the right conferred by this section shall not apply in relation to—

- (a) a computer programme, the design of a typeface or a computer-generated work;
- (b) any work made for the purpose of reporting current events;
- (c) the publication in a newspaper, magazine or similar periodical or in an encyclopaedia, dictionary, yearbook or other collective work of reference, of a literary, dramatic, musical or artistic work made for the purposes of the publication or made available with the consent of the author for purposes of the publication;
- (d) a work in which copyright originally vested in an international organisation by virtue of section 144 unless the author or director has previously been identified as such in or on published copies of the work.

14. Right to object to derogatory treatment of work

(1) For the purposes of this section, “**treatment of a work**” means any addition to, deletion from, alteration to or adaptation of the work other than—

- (a) a translation of a literary or dramatic work; or
- (b) an arrangement or transcription of a musical work involving no more than a change of key or register.

(2) The treatment of a work is derogatory if it amounts to distortion or multiplication of the work or is otherwise prejudicial to the honour or reputation of the author or director, and references to a derogatory treatment of a work shall be construed accordingly.

(3) Subject to the provisions of this part the author of a literary, dramatic, musical or artistic work that is a protected work and the director of a film that is a protected work have, respectively, the right not to

have the work or any part of it subjected to derogatory treatment, and the right is infringed by any person who does any of the acts specified in section 36 of this Act.

15. False attribution of work

(1) For the purposes of this section, “**attribution**”, in relation to work, means a statement whether expressed or implied, as to the identity of the author or director.

(2) A person has the right—

- (a) not to have a literary, dramatic, musical or artistic work falsely attributed to him as author; and
- (b) not to have a film falsely attributed to him as director.

(3) The right conferred by subsection (1) is infringed in the circumstances specified in section 38.

16. Right to privacy commissioned photographs and films

Subject to section 38, a person who for private and domestic purposes commissions the taking of a photograph or the making of a film shall have, where the resulting work is a protected work, the right not to have—

- (a) copies of the work issued to the public;
- (b) the work exhibited or shown in public; or
- (c) the work broadcast or included in a cable programme service.

17. Duration of moral rights and related rights

(1) The rights conferred by sections 13, 14 and 16 shall subsist so long as copyright subsists in the work.

(2) The right conferred by section 15 shall subsist until the end of the period of twenty years from the end of the calendar year in which the person dies.

18. Consent and waiver of rights

(1) A person having a right conferred under this Part may consent to the doing of any act affecting the right or may waive the right.

(2) A right to which subsection (1) refers may be waived by instrument in writing signed by the person giving up the right and the waiver—

- (a) may relate to works generally or to a specific work or class of works and may relate to existing or future works; and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation.

(3) Where a waiver is made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall unless a contrary intention is expressed, be presumed to extend to his licensees and successors in title.

(4) Nothing in this Part shall be construed as excluding the operation of the general law of contract or estoppel in relation to an informed waiver or other transaction in relation to any of the rights to which this Part relates.

19. Application of provisions to joint works

(1) A film is “jointly directed” if it is made by the collaboration of two or more directors and the contribution of each director is not distinct from that of the other director.

(2) The right conferred by section 13 is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author.

(3) The right conferred by section 14 is, in the case of a work or joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

(4) A waiver of rights under section 18 by one joint author does not affect the rights of the other joint authors.

(5) Subsections (1), (2) and (3) also apply, with such modifications as are necessary, in relation to a film which was, or is alleged to have been, jointly directed as they apply to a work which is, or is alleged to be, a work of joint authorship.

(6) The right conferred by section 16 is, in the case of a work made in pursuance of a joint commission, a right of each person who commissioned the making of the work, so that—

- (a) the right of each is satisfied if he consents to the act in question; and
- (b) a waiver under section 18 by one of them does not affect the rights in the others.

20. Application of provisions to part of work

The rights conferred by—

- (a) sections 13 and 16 apply in relation to the whole or any substantial part of a work; and
- (b) sections 14 and 15 apply in relation to the whole or any part of a work.

PART IV

Ownership and Assignment of Rights

Ownership of Copyright

21. Ownership of copyright

(1) Subject to this Act the author of a protected work is the first owner of any copyright in that work unless there is an agreement to the contrary.

(2) Subsection (1) shall not apply to copyright subsisting in a work pursuant to section 41.

(3) Where a protected work is a work of joint authorship the authors of the work shall be co-owners of the copyright in that work.

(4) Where a protected work has been made by or under the direction or control of the Government and, apart from this subsection, no copyright would subsist in the work, then copyright shall subsist therein by virtue of this subsection and shall belong to the Crown.

(5) The copyright subsisting in a protected work which has, with the author’s written consent been first published in Saint Vincent and the Grenadines by or under the direction of control of the Government shall initially belong to the Crown.

(6) Subsection (5) shall have effect subject to any agreement whereby it is agreed that the copyright in the work shall vest in the author or in some other person designated in the agreement.

(7) For the purposes of this section, the term “**agreement**” includes any conditions regulating or applying to the employment of a person in the service of the Crown.

22. Assignment and licences

(1) Subject to this section, copyright in a work may be transferred by assignment, by testamentary disposition or by operation of law, as personal or moveable property.

(2) A transfer pursuant to this section by way of assignment shall not be effective unless it is in writing and signed by or on behalf of the assignor.

(3) An assignment or other transfer of copyright may be partial, so as to apply—

(a) to one or more, but not all, of the things the owner of the copyright has the exclusive right to do;

(b) to part, but not the whole, of the period for which copyright is to subsist.

(4) A licence granted by the owner of copyright in a work shall be binding on every successor in title to his interest in copyright, except a purchaser in good faith for valuable consideration and without actual or constructive notice of the licence or a person deriving title from the purchaser.

(5) References in this Act to doing anything with or without the licence of the owner of the copyright shall be construed accordingly.

23. Prospective ownership of copyright

(1) Where, by an agreement made in relation to any future copyright and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright wholly or partially to another person (in this section referred to as the assignee), then, if on the coming into existence of the copyright, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright to be vested in him, wholly or partly as the case may be, the copyright shall vest, on coming into existence, in the assignee or his successor in title by virtue of this subsection.

(2) If, at a time when any copyright comes into existence the person who, if he were then living would be entitled to the copyright is dead, the copyright shall devolve as if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) Section 22(4) shall apply, in relation to a licence granted by a prospective owner of any copyright, as it applies in relation to a licence granted by the owner of a subsisting copyright and as if any reference in that subsection to the owner’s interest in the copyright included a reference to his prospective interest therein.

24. Copyright in unpublished works passes under will

(1) Where under a bequest a person is entitled, beneficially or otherwise, to—

(a) the manuscript or other support on which a literary, dramatic, musical or artistic work was first expressed in material form; or

(b) the material support embodying a sound recording or film,

and the work had not been published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil to it, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

25. Moral rights not assignable

The rights conferred under Part III shall be not assignable.

26. Transmission of moral rights on death

(1) On the death of a person entitled to a right conferred by section 13, 14 or 16 the right passes—

- (a) to a person as he may by testamentary disposition specifically direct; or
- (b) in the absence of any direction, then if the copyright in the work in question forms part of his estate, to the person to whom the copyright passes,

and to the extent that, the right does not pass under paragraph (a) or (b), it is exercisable by his personal representatives.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Where by virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person, then—

- (a) where the right is conferred by section 14 or 16, it is a right exercisable by each of them;
- (b) where the right is conferred by section 13 or 16 it is a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and
- (c) any waiver of the right in accordance with section 18 by one of them does not affect the rights of the others.

(4) A consent or waiver previously given binds any person to whom a right passes by virtue of subsection (1).

(5) Any infringement after a person's death of the right conferred by section 15 is actionable by his personal representatives.

(6) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

PART V

Infringement of Rights

27. Meaning of action

For the purposes of this Part, “**action**” includes a counter claim, and references to the claimant and to the defendant in an action shall be construed accordingly.

28. Acts infringing copyright

(1) The copyright in a protected work is infringed by any person who, not being the owner of the copyright and without the licence of the owner of the work thereof—

- (a) does or authorises another unauthorised person to do any of the acts mentioned in section 7 in relation to that work;
- (b) imports an article otherwise than for his private and domestic use in Saint Vincent and the Grenadines that he knows or has reason to believe is an infringing copy of the work;
- (c) in Saint Vincent and the Grenadines or on any ship or aircraft registered in Saint Vincent and the Grenadines—
 - (i) possesses in the course of business,
 - (ii) sells, lets for hire, or by way of trade offers or exposes for sale or hire, or
 - (iii) by way of trade exhibits in public,

an article which he knows or has reason to believe is an infringing copy of the work.

(2) Subsection (1)(c) shall apply, in relation to the distribution of any article either—

- (a) for the purposes of trade; or
- (b) for other purposes, but only to such an extent as to affect prejudicially the owner of the copyright,

as it applies in relation to the sale of the article.

(3) Copyright in a work is infringed by a person who, without the licence of the copyright owner—

- (a) makes;
- (b) imports into Saint Vincent and the Grenadines;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire or offers for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(4) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by means of a telecommunications system otherwise than by broadcasting or inclusion in a cable programme service; knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Saint Vincent and the Grenadines or elsewhere.

(5) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed, on reasonable grounds that the performance would not infringe copyright.

(6) Where copyright in a work is infringed by a public performance of the work or by playing or showing of the work in public by means of apparatus for playing sound recordings or showing films or receiving visual images or sounds conveyed by electronic means, the person specified in subsection (8) is also liable for the infringement.

(7) The person referred to in subsection (6) is a person who, when he supplied the apparatus or part of it—

- (a) knew or had reason to believe that the apparatus was likely to be used as to infringe copyright; or

- (b) in the case of an apparatus which normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would be so used to infringe copyright.

(8) An occupier of premises who gave permission for the apparatus to be brought onto the premises, is liable for the infringement, if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.

(9) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement, if when he supplied it he knew or had reason to believe that what he supplied or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

Remedies for Infringement of Economic Rights

29. Action by owner of copyright for infringement

(1) An infringement of copyright shall be actionable in the Court at the suit of the copyright owner, and subject to the provisions of this section, in any action for such an infringement all relief by way of damages, injunction, accounts or otherwise, shall be available to the claimant as is available in any corresponding proceedings in respect of the infringements of other proprietary rights.

(2) Where, in an action for infringement of copyright, it is proved or admitted that—

- (a) an infringement was committed; but
- (b) at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting, that copyright subsisted in the work which the action relates,

the claimant shall not be entitled under this section to any damages against the defendant in respect of the infringement but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(3) Where in an action under this section an infringement of copyright is proved or admitted, the Court, having regard to the flagrancy of the infringement, shall have power in assessing damages for the infringement, to award such additional damages as the Court may consider appropriate in the circumstances.

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

- (a) after the construction of the building has 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.

30. Order for delivery up in civil proceedings

(1) Subject to the provisions of this section where a person—

- (a) in the course of his business has an infringing copy of a work in his possession, custody or control; or
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies,

the copyright owner may apply to the Court for an order that the infringing copy or article be delivered up to him or to such other person as the Court may direct.

(2) An application under subsection (1) shall not be made after the end of the period specified in section 138 and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 135 for the disposal of the infringing copies.

(3) A person to whom an infringing copy or other article is delivered up pursuant to an order made under this section shall, if an order under section 135 is not made, retain it pending the making of an order or the decision not to make an order, under that section.

31. Right to seize infringing copies

(1) Subject to any decision of the Court under section 135 and to the conditions specified under subsections (2), (3) and (4) of this section, an infringing copy of a work which is found to be exposed or otherwise immediately available for sale or hire, and in respect of which the copyright owner would be entitled to apply for an order under section 30 may be seized and detained by him or a person authorised by him.

(2) Prior to the seizure of anything under this section notice of the time and place of the proposed seizure shall be given to the nearest police station.

(3) At the time that anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(4) For the purposes of this section, “**premises**” includes land, buildings, fixed or moveable structures, vehicles, vessels and aircraft.

32. Wide injunction available to licensing bodies

Where, in an action under this Part—

- (a) the infringement of copyright is proved or admitted;
- (b) the plaintiff is a licensing body as defined in section 84; and
- (c) the Court having regard to all material circumstances is satisfied that effective relief would not otherwise be available to the plaintiff,

the Court may grant an injunction extending to all the protected works of which the claimant is an owner of the copyright notwithstanding that the infringement related to only one or some of the works.

33. Definition of exclusive licence

(1) For the purposes of this section, “**exclusive licence**” means a licence in writing, signed by or on behalf of an owner or prospective owner of copyright, authorising the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would apart from the licensee be exercisable exclusively by the owner of the copyright.

(2) Subject to the following provisions of this section an exclusive licensee shall have, except against the copyright owner, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(3) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 29, relates to an infringement in respect of which the owner and the exclusive licensee have concurrent rights of action under this section, the owner or exclusive licensee as the case may be, shall not be entitled, except with the leave of the Court to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the

other party is either joined as a claimant in the action or added as defendant, save that this section shall not affect the granting of an interlocutory injunction on the application of either of them.

(4) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a respondent in the action, if this section had not been enacted and the action had been brought by the owner of the copyright shall be available to that respondent as against the exclusive licensee—

- (a) if the claimant is the exclusive licensee, shall take into account any liabilities in respect of royalties or otherwise, to which the licence is subject; and
- (b) whether the claimant is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 29 in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(5) Where an action is brought in the circumstances mentioned in subsection (2) and the owner of the copyright and the exclusive licensee are not both claimants in the action, the court in assessing damages in respect of any such infringement as is mentioned in that subsection—

- (a) if the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or otherwise) to which the licence is subject; and
- (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to other party under section 29 in respect of that infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(6) Where an action, in so far as it is brought under section 29, relates wholly or partly to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action whether they are both parties to it or not; an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the Court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the Court shall apportion the profits between them as the Court may consider just and shall give such directions as the Court may consider appropriate for giving effect to that apportionment.

(7) In an action brought either by the owner of the copyright or by the exclusive licensee—

- (a) no judgement or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 29, if a final judgement or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and
- (b) no judgement or order for an account of profits in respect of an infringement of copyright shall be given or made under that section, if a final judgement or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

(8) Where, in an action brought in the circumstances mentioned in subsection (2), whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a claimant either at the commencement of the action or subsequently but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(9) The copyright owner shall notify any exclusive licensee having concurrent rights before applying under section 30 for an order for the delivery up of infringing copies of a work or before exercising the right of seizure under section 31; and the Court may, on the application of the licensee, if it thinks fit,

having regard to the terms of the licence, make an order under section 30 or make an order prohibiting or permitting the exercise by the copyright owner of the right conferred under section 31.

Moral and Related Rights

34. Infringement of right to be identified as author or director

(1) Subject to subsection (2), the right conferred by section 13 is infringed by any person who fails to identify the author of a work or the director of a film whenever any action specified in that section occurs in relation to that work or film.

(2) The following acts shall not constitute an infringement of the right conferred by section 13 in relation to a work to the extent that such acts are permitted under Part VI in relation to the work—

- (a) fair dealing with the work for the purposes of criticism, review or the reporting of current events by means of a sound recording, film, broadcast or cable programme;
- (b) the incidental inclusion of the work in an artistic work, sound recording, film, broadcast or cable programme;
- (c) the use of the work for examination purposes;
- (d) acts done for the purposes of parliamentary or judicial proceedings or proceedings of a statutory inquiry;
- (e) the use of design documents and models;
- (f) the use of a design derived from artistic work;
- (g) acts permitted in relation to anonymous or pseudonymous works on the assumption that copyright in the work has expired or that the author is dead.

35. Infringement of right to object to derogatory treatment of work

(1) For the purposes of this section, “**derogatory treatment**” has the same meaning as that specified in section 14.

(2) The right conferred on an author and a director by section 13 to object to derogatory treatment of his work is infringed where the following acts are done in relation to that work—

- (a) in the case of a literary, dramatic or musical work, the right is infringed by a person who—
 - (i) publishes commercially, performs in public, broadcasts or includes in a cable programme service, a derogatory treatment of the work, or
 - (ii) issues to the public copies of a film or sound recording of or including a derogatory treatment of the work;
- (b) in the case of an artistic work, the right is infringed by a person who—
 - (i) publishes commercially or exhibits in public a derogatory treatment of the work, or broadcasts or includes in a cable programme service a visual image of a derogatory treatment of the work,
 - (ii) shows in public a film which includes a visual image of a derogatory treatment of the work or issues to the public copies of such film, or

- (iii) in the case of a work of architecture in the form of a model for a building or in the case of a sculpture or work of craftsmanship issues to the public copies of a graphic work representing or of a photograph of, a derogatory treatment of the work;
- (c) paragraph (b) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed;
- (d) in the case of a film, the right is infringed by a person who—
 - (i) shows in public, broadcasts or includes in a cable programme service a derogatory treatment of the film, or
 - (ii) issues to the public copies of a derogatory treatment of the film,

or who, along with the film, plays in public, broadcasts or includes in a cable programme service, or issues to the public copies of, a derogatory treatment of the film sound track.

36. Infringement by possession of infringing article

(1) The right conferred by section 14 is also infringed by a person who—

- (a) possesses in the course of a business; or
- (b) sells or lets for hire or offers or exposes for sale or hire;
- (c) in the course of a business, exhibits in public or distributes; or
- (d) distributes otherwise than in the course of a business, so as to affect prejudicially the honour or reputation of the author or director,

an article that is, and which he knows or has reason to believe is an infringing article.

(2) For the purposes of this section, an “**infringing article**” means a work or a copy of a work which—

- (a) has been subjected to derogatory treatment as defined in section 14; and
- (b) has been or is likely to be subject of any of the acts mentioned in section 35 in circumstances infringing that right.

37. False attribution of work infringement of right

(1) Subject to the provisions of this section, the right conferred on a person not to have a literary, dramatic, musical or artistic work falsely attributed to him as author, is infringed by a person who—

- (a) issues to the public copies of a work of any of those descriptions in or on which there is a false attribution; or
- (b) exhibits in public an artistic work or a copy of an artistic work in or on which there is false attribution.

(2) The right conferred on a person not to have a film falsely attributed to him as director is infringed by a person who issues to the public copies of a work of any person of those descriptions in or on which there is a false attribution—

- (a) in the case of a literary, dramatic or musical work, performs the work in public, broadcasts it or includes it in a cable programme service as being the work of a person; or

- (b) in the case of a film, shows it in public, broadcasts it or includes it in a cable programme service as being directed by a person,

who knows or ought to have known that the attribution is false;

- (c) in the course of a business—
 - (i) possesses or deals with a copy of a work referred to in subsection (1) in or on which there is a false attribution, or
 - (ii) in the case of an artistic work, possesses or deals with the work itself when there is a false attribution in or on it,

knowing or having reason to believe that there is an attribution and that it is false;

- (d) in the case of an artistic work—
 - (i) deals with a work which has been altered after the author parted with possession of it as being the unaltered work of the author, or
 - (ii) deals with a copy of such a work as testing a copy of the unaltered work of the author,

knowing or having reason to believe that this is not the case.

(3) For the purposes of this section—

- (a) “**attribution**”, in relation to a work, means a statement expressed or implied, as to who is the author or director;
- (b) references to dealing are to selling or letting for hire, offering or exposing for sale or hire, exhibiting in public or distributing.

(4) This section shall apply where, contrary to the fact—

- (a) a literary, dramatic or musical work is falsely represented as being an adaptation of the work of a person; or
- (b) a copy of an artistic work is falsely represented as being a copy made by the author of the artistic work,

as it applies where the work is falsely attributed to a person as author.

38. Infringement of privacy right in photographs, etc.

The right conferred by section 16 in relation to a commissioned photograph or film is infringed by a person who does or authorises the doing of any act mentioned in that section in relation to that work; but the right is not infringed by any act which, pursuant to Part VI would not infringe copyright in the work.

Remedies for Infringement of Moral Rights and Related Rights

39. Remedies for infringing moral rights, etc.

(1) The infringement of a right conferred under section 13, 14, 15 or 16 is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) In an action for infringement of the right conferred by section 14, the Court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made on such terms and in such manner as may be approved by the Court, disassociating the author or director from the treatment of the work.

(3) Where in any action an infringement of a right referred to in subsection (1) is proved or admitted, the Court may order the defendant to publish such correction in the terms and in a manner as the Court may direct.

Presumptions

40. Presumptions as to subsistence and ownership of copyright

In an action brought by virtue of this Part—

- (a) copyright shall be presumed to subsist in the work to which the action relates if the defendant does not put in issue the question whether copyright subsists therein;
- (b) where the subsistence of the copyright is proved or is presumed in pursuance of paragraph (a), the claimant shall be presumed to be the owner of the copyright, if he claims to be the owner of it and the defendant does not put in issue the question of his ownership thereof; and
- (c) if the question arises as to whether an article is an infringing copy of a work and it is shown—
 - (i) that the article is a copy of the work, and
 - (ii) that the copyright subsists in the work or has subsisted at any time,

it shall be presumed until the contrary is proved that the article was made at a time when copyright subsisted in the work.

41. Presumption in relation to authorship of protected works

(1) Subject to section 40, where in the case of a protected work, a name purporting to be that of the author appears on copies of the work as published or, in the case of an artistic work, appeared on the work when it was made, the person whose name appears, shall, in any action brought by virtue of this Part, be presumed, unless the contrary is proved, to be the author.

(2) In the case of a protected work alleged to be a work of joint ownership, subsection (1) shall apply in relation to each person alleged to be one of the authors of the work as if references in the subsection to the author were references to one of the authors.

(3) Where in an action brought by virtue of this Part with respect to a protected work, subsection (1) does not apply, but it is established that—

- (a) pursuant to section 6(1)(b) the work qualifies for copyright protection by virtue of the country of first publication; and
- (b) a name purporting to be that of the publisher appeared on copies of the work as first published,

then, unless the contrary is proved, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of the copyright at the time of the publication.

(4) Where in an action brought by virtue of this Part with respect to a protected work it is established that the author of the work is dead—

- (a) the work shall be presumed to be an original work unless the contrary is proved; and
- (b) if it is alleged by the claimant that a publication specified in the allegation was the first publication of the work and it took place in a country and on a date so specified, that

publication shall be presumed, unless the contrary is proved, to have been the first publication of the work and to have taken place in that country and on that date.

(5) For the purpose of this section, a fact shall be taken to be established if it is proved or admitted or if it is presumed in pursuance of this section.

42. Presumptions where action relates to sound recordings, films and computer programme

(1) In an action brought by virtue of this Part with respect to a sound recording, film or computer programme, the presumptions specified in this section shall apply.

(2) In an action brought by virtue of this Part with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—

- (a) that a named person was the owner of copyright in the recording at the date of issue of the copies; or
- (b) that the recording was first published in a specified year or in a named country,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(3) In an action brought by virtue of this Part with respect to a film, where copies of the film as issued to the public bear a statement—

- (a) that a named person was the author or director of the film;
- (b) that a named person was the owner of copyright in the film at the date of issue of the copies; or
- (c) that the film was first published in a specified year or in a named country,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) In an action brought by virtue of this Part with respect to a computer programme, where copies of the programme are issued to the public in electronic form bearing a statement—

- (a) that a named person was the owner of copyright in the programme at the date of issue of the copies; or
- (b) that the programme was first published in a named country or that copies of it were first issued to the public in electronic form in a specified year, the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(5) The presumptions specified in subsections (2), (3) and (4) apply in an action relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

(6) In an action brought by virtue of this Part with respect to a film, where the film as shown in public, broadcast or included in a cable programme service bears a statement—

- (a) that a named person was author or director of the film; or
- (b) that a named person was the owner of copyright in the film immediately after it was made,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(7) Pursuant to subsection (1) the presumptions shall also apply in an action relating to an infringement alleged to have occurred before the date on which the film was shown in public, broadcast or included in a cable programme service.

Offences

43. Withdrawal of privilege against illumination of self or spouse in infringement and related proceedings

(1) For the purposes of this section, “**related offence**”, in relation to any proceedings to which subsection (2) applies, means—

- (a) in the case of proceedings within subsection (4)(a) or (b)—
 - (i) any offence committed by or in the course of the infringement to which those proceedings relate, or
 - (ii) any offence not within subparagraph (i) committed in connection with that infringement being an offence involving fraud or dishonesty;
- (b) in the case of proceedings within section (4)(c) any offence revealed by the facts on which the claimant relies in those proceedings;

(2) “**related penalty**”, in relation to any proceedings to which subsection (3) applies, means—

- (a) in the case of proceedings within subsection (4)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement to which those proceedings relate;
- (b) in the case of proceedings within subsection 4(c) any penalty incurred in respect of any act or omission revealed by the facts on which the claimant relies in those proceedings.

(3) In any proceedings to which this subsection applies a person shall not be excused, by reason of the fact that to do so would tend to expose that person, or his or her spouse, to proceedings for a related offence or for the recovery of a related penalty—

- (a) from answering any question put to that person in the first mentioned proceedings; or
- (b) from complying with any order made in those proceedings.

(4) Subsection (3) applies to the following civil proceedings in the High Court, namely—

- (a) proceedings for infringement of copyright;
- (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights; and
- (c) proceedings brought to prevent any apprehended infringement of such rights.

(5) Subject to subsection (6), no statement or admission made by a person—

- (a) in answering a question put to him in any proceedings to which subsection (3) applies; or
- (b) in complying with an order made in any such proceedings,

shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or against the spouse of that person.

(6) Nothing in subsection (5) shall render any statement or admission made by a person as therein mentioned inadmissible in evidence against that person in proceedings in the Court.

(7) Any reference in this section to civil proceedings in the High Court of any description includes a reference to proceedings on appeal arising out of civil proceedings in the High Court of that description.

44. Offences in respect of dealings which infringe copyright

(1) Any person who, without a licence of the copyright owner, at a time when copyright in a work subsists by virtue of this Act—

- (a) makes for sale or hire; or
- (b) in the course of a business sells or lets for hire, or offers or exposes for sale or hire, exhibits in public or distributes;
- (c) imports into Saint Vincent and the Grenadines for purposes other than his private and domestic use; or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright,

any article which he knows or has reason to believe is an infringing copy of that work, commits an offence.

(2) Any person who, at the time when copyright subsists in a work by virtue of this Act makes or has in his possession an article specifically designed or adapted for making copies of a particular work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence.

(3) Any person who causes—

- (a) a literary, dramatic or musical work to be performed in public; or
- (b) a sound recording or film to be played, or as the case may be, shown in public, otherwise than by reception of a broadcast or cable programme, knowing or having reason to believe that copyright subsists in the work or that the performance constitutes an infringement of the copyright,

commits an offence.

(4) Any person who is convicted of an offence under subsection (1) shall be liable on summary conviction in the case of a first conviction to a fine not exceeding five thousand five hundred dollars for each article to which the offence is related, and in the case of any subsequent conviction, to a fine as may be determined by the Magistrates Court or to imprisonment for a term not exceeding two years.

(5) Any person who is convicted of an offence under this section, other than an offence referred to under subsection (1), shall be liable on summary conviction to a fine not exceeding one thousand five hundred dollars and, in the case of any subsequent conviction to such fine, or to imprisonment for a term not exceeding twelve months.

(6) For the purposes of this Part, “**article**” includes every infringed copy of a work.

45. Presumptions not to apply

The presumptions specified in sections 40 and 41 do not apply to proceedings for an offence under section 44 but without prejudice to their application to proceedings for an order under section 46.

46. Order to deliver up in criminal proceedings

(1) Subject to subsection (2), the Court before which proceedings are brought against a person for an offence under section 46 may, if it is satisfied that at the time of his arrest or charge—

- (a) he had in his possession, custody or control in the course of a business an infringing copy of a protected work; or
- (b) he had in his possession, custody or control an article specifically designed or adapted for making copies of a particular protected work knowing or ought to have known that it has been or was to be used to make infringing copies,

order that the infringing copy or article be delivered up to the copyright owner or to any other person as the Court may direct.

(2) An order may be made by the Court of its own motion or on the application of the prosecution and such order may be made whether or not the person is convicted of the offence, so, however, that the Court shall not make an order—

- (a) after the time specified in section 133; or
- (b) if it appears to the Court unlikely that any order will be made under section 134.

(3) An appeal lies from an order made under this section to the Court of Appeal.

(4) A person to whom an infringing copy or other article is delivered up in pursuance of an order under this section shall retain it pending the making of an order or the decision not to make an order under section 135.

Supplementary

47. Application of provisions re-entry

For the purposes of this Part, the provisions of sections 131 and 132 shall apply in respect of the entry and search of any premises.

48. Provisions for restricting importation of infringing copies

(1) The owner of the copyright in any published literary, dramatic or musical work may give notice in writing to the Comptroller—

- (a) that he is the owner of the copyright in the work; and
- (b) that he requests the Comptroller during a period specified in the notice to treat as prohibited goods copies of the work, film, or sound recording to which this section applies.

(2) The period specified in a notice given under subsection (1) shall not exceed five years and shall not extend beyond the end of the period for which the copyright may subsist.

(3) This section shall apply in the case of a literary or musical work, film or sound recording, to any copy made outside Saint Vincent and the Grenadines which is an infringing copy of the work, film or sound recording.

(4) Where a notice has been given under this section in respect of a literary or a musical work, film or sound recording and has not been withdrawn, the importation into Saint Vincent and the Grenadines at a time before the end of the period specified in the notice, of any copy of the work, film or sound recording to which this section applies shall, subject to the following provisions of this section, be prohibited but this subsection shall not apply to the importation of any article by a person for his private and domestic use.

(5) The owner of the copyright in a literary or musical work, film or sound recording who gives notice to the Comptroller under this section shall comply with such conditions with respect to—

- (a) the form of the notice;
- (b) the furnishing of evidence;
- (c) the payment of fees;
- (d) the giving of security; and
- (e) any other incidental or supplementary matters,

as may be prescribed.

(6) Notwithstanding any provision in the Customs (Control and Management) Act, a person shall not be liable to any penalty under that Act, other than forfeiture of the goods, by reason that any goods are prohibited by virtue of this section.

[Chapter 422.]

PART VI

Exceptions to Infringement of Copyright

Preliminary

49. Definitions

(1) For the purposes of this Part—

“**facsimile copy**” includes a copy which is reduced or enlarged in scale;

“**sufficient acknowledgement**” means an acknowledgement identifying the work in question by its title or other description and, unless the work is anonymous, or the author has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

General Exceptions

50. Research and private study

(1) Subject to section 52, fair dealing with a literary, dramatic, musical or artistic work for the purposes of research or private study does not infringe copyright in the work or, in the case of a published edition, in the typographical arrangement.

(2) Copyright by a person other than the researcher or student himself is not fair dealing if—

- (a) in the case of a librarian, or a person acting on behalf of a librarian he does anything which regulations, would not permit to be done under section 62(a) or 63(1)(b);
- (b) in any other case, the person doing the copying knows or has reason to believe it will result in copies of substantially the same material being provided to more than one person at substantially the same time for substantially the same purpose.

51. Criticism, review and reporting

(1) Subject to section 52 fair dealing with a work for the purposes of criticism or review, of that or another work or of a performance of a work, does not infringe any copyright in the work provided it is accompanied by a sufficient acknowledgement.

(2) Subject to section 53(3), fair dealing with a protected work other than a photograph, for the purpose of reporting current events does not infringe copyright in the work so long as it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement is required in connection with the reporting of current events by means of a sound recording, film, broadcast or cable programme.

52. Determining fair dealing

For the purpose of determining whether an act done in relation to a work constitutes fair dealing, the Court in determining the question shall take account of all factors which appear to it to be relevant, including—

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for or the commercial value of the work.

53. Incidental inclusion of protected work

Copyright in a work is not infringed—

- (a) by its incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme; or
- (b) by the issue to the public of copies or the playing, showing, broadcasting or inclusion in a cable programme service of anything whose making was not an infringement of copyright by virtue of paragraph (a),

and for the purposes of this section, a musical work, words spoken or sung with music, or so much of a sound recording, broadcast or cable programme as includes a musical work or such words, shall not be regarded as incidentally included if it is deliberately included.

54. Anonymous and pseudonymous literary works

(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by any act done at a time when, or in pursuance of an arrangement made at any time when—

- (a) it is not possible by reasonable inquiry to ascertain the identity of the author; and
- (b) it is reasonable to assume that—
 - (i) the copyright has expired, or
 - (ii) the author died seventy five years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(2) Subsection (1)(b)(ii) does not apply in relation to work in which copyright originally vested in an international organization by virtue of section 143 and in respect of which an order under that section specified a copyright period longer than seventy-five years.

(3) In relation to a work of joint authorship—

- (a) the reference in subsection (1) to its being possible to ascertain the identity of the author shall be construed as a reference to its being possible to ascertain the identity of any of the authors; and
- (b) the reference in subsection (1)(b)(ii) to the author having died shall be construed as a reference to all the authors having died.

55. Use of notes of recordings of spoken words, etc.

(1) Where a record of spoken word is made, in writing or otherwise, for the purpose of—

- (a) reporting current events; or
- (b) broadcasting or including in a cable programme service the whole or part of the work,

it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it for that purpose providing the conditions specified in subsection (2) are met.

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

- (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast or cable programme;
- (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
- (c) the use of the record or material taken from it is not a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the record.

Use of Work for Educational Purposes

56. Acts done for purposes of instruction or examination

(1) Copyright in a literary, dramatic, musical or artistic work is not infringed by being copied in the course of instruction or of preparation for instruction, provided the copying is done by a person giving or receiving instruction and is not by means of a reprographic process.

(2) Copyright in a sound recording, film, broadcast or cable programme is not infringed by its being copied by making a film or film soundtrack in the course of instruction, or of preparation for instruction in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.

(3) Copyright in a work is not infringed by anything done for the purposes of an examination by way of setting the questions, communicating the questions to candidates or answering the questions.

57. Anthologies for educational use

(1) The inclusion, in a collection intended for use in educational institutions of a short passage from a published literary or dramatic work does not infringe copyright in the work if—

- (a) the collection is described in the title and in any advertisements thereof issued by or on behalf of the publisher, as being so intended;
- (b) the work was not itself published for the use of educational institutions;

- (c) the collection consists mainly of material in which no copyright subsists;
- (d) the inclusion is accompanied by a sufficient acknowledgement; and
- (e) not more than one other such passage or parts from works by the same author is published by the same publisher within the period of five years immediately preceding the publication of that collection.

(2) Subsection (1) does not authorise the inclusion of more than two excerpts from protected works by the same author in collections published by the same publisher over any period of five years.

(3) In relation to any given passage, the reference in subsection (2) to excerpts from works by the same author—

- (a) shall be taken to include excerpts from works by him in collaboration with another; and
- (b) if the passage in question is from such a work, shall be taken to include excerpts from works by any of the authors, whether alone or in collaboration with another.

58. Performing, playing or showing works in course of educational activities

(1) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational institution and other persons directly connected with the activities of the institution—

- (a) by a teacher or pupil in the course of the activities of the institution; or
- (b) at the institution by any person for the purposes of the instruction,

is not a public programme for the purposes of infringement of copyright.

(2) The play or showing of a sound recording, film, broadcast or cable programme before such an audience at an educational institution for the purposes of instruction is not a playing or showing of the work in public for the purposes of the infringement of copyright.

(3) A person is not for this purpose directly connected with the activities of the educational institution simply because he is the parent of the pupil at the institution.

59. Recording of broadcast by educational establishments

(1) Subject to subsection (2), a recording of a broadcast or cable broadcast programme or a copy of such a recording may be made by or on behalf of an educational institution for the educational purposes of that institution without thereby infringing the copyright in the broadcast or cable programme or in any work included in it.

(2) Subsection (1) shall not apply if or to the extent that, there is a licensing scheme under which licences are available authorising the making of the recordings or copies, and the person making the recordings knows or ought to have been aware of that fact.

60. Restriction on reprographic copying from published works

(1) Subject to the provisions of this section, reprographic copies of passages from published literary, dramatic or musical work may be made by or on behalf of an educational institution for the purposes of instruction without infringing any copyright in the work or in the typographical arrangement.

(2) Not more than one percent of any work may be copied by or on behalf of an educational institution by virtue of this section in any quarter, that is to say, in any period 1st January to 31st March, 1st April to 30th June, 1st July to 30th September, 1st October to 31st December.

(3) Copyright is not authorised by this section if, or to the extent that, there is a licensing scheme under which licences are available authorising the copying in question and the person making the copies know or ought to have been aware of that fact.

(4) Where a licence is granted to an educational institution authorising the reprographic copying of passages from any published literary, dramatic or, musical work, for use by the institution, then, any term of that licence which purports to restrict the proportion of work which may be copied whether on payment or free of charge, to less than that permitted under this section shall be of no effect.

61. Subsequent dealing with authorised copies

(1) Where a copy of a work would be an infringing copy if the making thereof were not authorised under section 56, 59 or 66 and such copy is subsequently dealt with, it shall be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

(2) For the purposes of this section, “**dealt with**” means sold, or let for hire or offered or exposed for sale or hire.

Exceptions Affecting Libraries and Archives

62. Interpretation of references

(1) In sections 62 to 66 references to “**librarian**” or “**archivist**” include references to a person acting on his behalf.

(2) Regulations may provide that a librarian or archivist who is required to be satisfied as to a material matter before making or supplying a copy of a work—

- (a) is entitled to rely on a declaration as to that matter, signed by the person requesting the copy, unless he is aware that the declaration is false in any material particular;
- (b) in such cases, shall not make or supply a copy to any person in the absence of a declaration by that person.

(3) Where a person requesting a copy makes a declaration that is false in a material particular and is supplied with a copy which would have been an infringing copy if made by him, that person shall be liable for infringement of copyright as if he had made the copy himself, and the copy supplied shall be treated as an infringing copy.

63. Supply by librarian of copies of published work

(1) The librarian of a prescribed library or archive may, if the conditions are complied with—

- (a) make and supply a copy of an article in a periodical; or
- (b) make and supply from a published edition, a copy of part of a literary, dramatic or musical work, not being an article in a periodical,

without infringing any copyright subsisting in the text of the article or in the work, as the case may be, or in any illustrations accompanying such article or work, or in the typographical arrangement thereof.

(2) The conditions prescribed pursuant to subsection (1) shall include the following—

- (a) that copies shall be supplied only to persons satisfying the librarian that they require them for purposes of research or private study, and will not use them for any other purpose;

- (b) in relation to an article, that no person shall be furnished with more than one copy of the same article or with copies of more than one article contained in the same issue of a periodical;
- (c) in relation to a work referred to in subsection (1)(b), that no person shall be furnished with more than one copy of the same material or of a copy of more than a reasonable proportion of any work;
- (d) that persons to whom copies are supplied are required to pay for them a sum not less than the cost, including a contribution to the general expenses of the library, attributable to their production;
- (e) that requirement of persons shall be regarded as similar if the requirements are for copies of substantially the same material at substantially the same hire and substantially the same purpose; and
- (f) that requirements of persons shall be regarded as related if those persons received instruction to which the material is relevant at the same time and place.

(3) Subsection (1) shall not apply if or to the extent that there is a licensing scheme under which licences are available authorising the making of such copies and the person making the copies know or ought to have been aware of that fact.

64. Supply of copies to other libraries

(1) The librarian of a library or archive may, if the prescribed conditions are complied with, make and supply to another library or archive a copy of—

- (a) an article in a periodical; or
- (b) the whole or part of a published edition of a literary, dramatic or musical work,

without infringing any copyright in the text of the article or the work, or in any illustrations accompanying such article or work or, in the case of a published edition, in the typographical arrangement.

(2) Subsection (1)(b) shall not apply if, at the time the copy is made, the librarian making it has knowledge or could, by reasonable inquiry, ascertain the name and address of a person entitled to authorise the making of the copy.

65. Replacing copies of works

(1) The librarian of a library or archive may, if the prescribed conditions are complied with, make a copy from any item in the permanent collection of the library or archive for the purpose of—

- (a) preserving or replacing the item by placing the copy in such permanent collection in addition to or in place of the item;
- (b) replacing in the permanent collection of an other prescribed library or archive an item which has been lost, destroyed or damaged,

without infringing the copyright in any literary, dramatic or musical work, in any illustrations accompanying such a work or, in the case of a published edition, in the typographical arrangement.

(2) The conditions shall include provisions restricting the making of copies to cases where it is not reasonably practicable to purchase a copy of the item in question for the purpose.

66. Copying of unpublished work

(1) Subject to subsection (2), the librarian of a library or archive may, if the conditions are complied with, make and supply a copy of the whole or part of a literary, dramatic or musical work from a document in the library or archive without infringing any copyright in the work or in any illustrations accompanying it.

(2) Subsection (1) shall not apply where—

- (a) the work is published at the time when the copies are made; or
- (b) the copyright owner has prohibited copying of the work, and at the time of the making of the copy the librarian ought to have been aware of that fact.

(3) The prescribed conditions shall include the following—

- (a) that copies are supplied only to persons satisfying the librarian that they require them for purposes of research or private study and will not use them for any other purpose;
- (b) that no person is furnished with anymore than one copy of same material; and
- (c) that persons to whom copies are supplied are required to pay for them a sum not less than the cost; including a contribution to the general expenses of the library or archive, attributable to their production.

Exceptions Relating to Public Administration

67. Recording for archival purposes

(1) A recording of a broadcast or cable programme of a designated class, or a copy of such a recording, may be made for the purpose of being placed in an archive maintained by a designated body without thereby infringing any copyright in the broadcast or cable programme or in any work included in it.

(2) The designated body referred to under subsection (1) shall be prescribed by the Minister, and the Minister shall not designate a body unless he is satisfied that it is not established or conducted for profit.

68. Parliamentary and judicial proceedings, etc.

(1) Copyright in a work is not infringed by anything done for the purposes of parliamentary or judicial proceedings or, subject to subsection (3), for the purposes of reporting such proceedings.

(2) Copyright in a work is not infringed by anything done for the purposes of the proceeding of a statutory inquiry or, subject to subsection (4), for the purposes of reporting any such proceeding held in public.

(3) The provisions of subsections (1) and (2) relating to the reporting of proceedings shall not be construed as authorising the copying of a work which is itself a published report of the proceedings.

(4) Copyright in a work is not infringed by the issue to the public of copies of the report of a statutory inquiry containing the work or material from it.

(5) For the purposes of this section, “**statutory inquiry**” means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an Act of Parliament.

69. Public records

Where any protected work or a reproduction of any such work is comprised in any public record and is open to public inspection, the copyright in the work is not infringed by the making or supplying to any person of any copy of the work by or under the direction of any officer in charge of the record.

70. Design documents and models

(1) It is not an infringement of any copyright in a design document or in a model that records or embodies a design for anything save for an artistic work or a typeface, to make an article to the design or to copy an article made to the design.

(2) It is not an infringement of any copyright to issue to the public or to include in a film, broadcast or cable programme service anything the making of which was, by virtue of subsection (1), not an infringement of that copyright.

(3) For the purposes of this section—

“**design**” means the design of any aspect of the shape or configuration whether internal or external, of the whole or part of an article other than surface decoration;

“**design document**” means any record of a design, whether in the form of a drawing, a written description, a photograph, data stored in a computer or otherwise.

71. Exploitation of a design derived from artistic work

(1) Where an artistic work has been exploited by or with the licence of the copyright owner by—

- (a) making by an industrial process articles falling to be treated under this Act as copies of the work; and
- (b) marketing such articles in Saint Vincent and the Grenadines or elsewhere,

then, after the end of the period of fifty years from the end of the calendar year in which the articles are first marketed, a person may, without infringing copyright in the work, copy the work by making articles of any description or by doing anything in relation to articles so made.

(2) Where only part of an artistic work is exploited in the manner described in subsection (1), then, the provisions of that subsection apply only in relation to that part.

(3) The Minister may by order make provision—

- (a) as to the circumstances in which an article or any description of article is to be regarded for the purposes of this section as made by an industrial process;
- (b) excluding from the operation of this section such articles of a primarily literary or artistic character as he thinks fit.

(4) In this section—

- (a) references to articles do not include films; and
- (b) references to the marketing of an article are references to its being sold or let for hire or offered or exposed for sale or hire.

Exception Relating to Works in Electronic Form

72. Transfer of works in electronic form

(1) Where a work in electronic form has been purchased on terms which expressly or impliedly or by virtue of any rule of law, allow the purchaser to copy the work or to adapt it or to make copies of an adaptation in connection with his use of it, then, in the absence of any express terms—

- (a) prohibiting the transfer of the copy by the purchaser or imposing an obligation which continues after a transfer or prohibiting the assignment of any licence or terminating any licence on a transfer; or
- (b) providing for the terms on which a transferee may do the things which the purchaser was permitted to do anything which the purchaser was allowed to do may also be done by a transferee without infringement of copyright.

(2) Any copy, adaptation or copy of an adaptation made by the purchaser which is not also transferred shall, after the transfer, be treated as an infringing copy for all purposes.

(3) Subsections (1) and (2) apply where the original purchased copy is no longer usable and what is transferred is a further copy used in its place.

(4) This section applies also on a subsequent transfer.

*Miscellaneous Exceptions Relating to Literary, Dramatic,
Musical and Artistic Works*

73. Statutory licences: recordings for broadcasting

(1) Where by virtue of an assignment or licence a person is authorised to broadcast or include in a cable programme service, a literary, dramatic, musical or artistic work or a film or sound recording from a place into Saint Vincent and the Grenadines but, apart from this subsection, would not be entitled to make copies of it, then, subject to the conditions specified in subsection (2), the authority contained in the assignment or licence shall be deemed to extend to making one copy only for the purposes, and subject to the conditions, in subsection (2).

(2) Subsection (1) shall apply only if the following conditions are satisfied—

- (a) the copy shall not be used for making any further copies or for any other purpose except either for broadcasting or inclusion in a cable programme service in accordance with the assignment or licence, or for archival purposes; and
- (b) the copy, unless kept for archival purposes, shall be destroyed before the end of the period of ninety days beginning with the day on which it is first used for broadcasting or included in a cable programme service in pursuance of the assignment or licence, or such extended period as may be agreed between the person who made the copy and the person who in relation to the making of copies of the description in question is the owner of the copyright.

(3) A copy made in accordance with subsection (1) shall be treated as an infringing copy—

- (a) for the purposes of any use in breach of condition (a) of subsection (2); and
- (b) for all purposes after that condition or condition (b) of subsection (2) has been broken.

(4) Where records of a literary, dramatic or musical work have with the licence of the owner of the copyright in the work, been previously made or imported into Saint Vincent and the Grenadines, for the purposes of retail sale, then, any person may after the expiry of the period of four months immediately following the date of the first authorised manufacture in, or importation into, Saint Vincent and the Grenadines of such records, and without first obtaining a licence from the owner of the copyright in the work, make or authorise the making of records of it.

(5) Subsection (4) shall only apply where—

- (a) the person intends to sell the records by retail, or to supply them for the purposes of being sold by retail by another person, or intends to use them for making other records which are to be so sold or supplied;
- (b) the person pays royalties calculated at the prescribed rates;
- (c) complies with such conditions relating to notice, method and time of payment, administration of royalties paid and other matters, as may be prescribed; and
- (d) the person who makes or authorises the making of records pursuant to this subsection shall not make or authorise the making of any alterations in, or omissions from the work, unless records of that work containing similar alterations and omissions have been previously made by, or with the licence of, the owner of the copyright or unless such alterations and omissions are reasonably necessary for the adaptation of the work to the record in question.

(6) Where a literary, dramatic, musical or artistic work or film or sound recording is broadcast from a place within Saint Vincent and the Grenadines or another country with the licence of the copyright owner, any person may, without obtaining the licence of the copyright owner incorporate by means of the reception of the broadcast, the work in a cable programme service:

Provided that—

- (a) the transmission by the cable service takes place simultaneously with the reception of the broadcast;
- (b) the programme in which the literary, dramatic, musical or artistic work or film or sound recording is incorporated, is transmitted without any alteration of any kind; and
- (c) the copyright owner shall be entitled to receive from the person providing the cable programme service, equitable remuneration in respect of the transmission, to be fixed in remuneration in respect of the transmission, to be fixed in default of agreement, by the Court,

and for the purposes of this subsection, an alteration to a programme includes the addition thereto of new material not contained in the programme as broadcast, or the omission from the transmission of any material contained in the programme as broadcast; and the term “**material**” includes a commercial advertisement.

74. Reading or recitation in public

(1) The reading or recitation in public of any reasonable extract from a published literary or dramatic work is not an infringement of copyright in the work, if accompanied by a sufficient acknowledgement.

(2) Copyright in a work is not infringed by the making of a sound recording, or the broadcasting or inclusion in a cable programme service of a reading or recitation which, by virtue of subsection (1), does not infringe copyright in the work, if the recording, broadcast or cable programme consists mainly of material in relation to which it is not necessary to rely on that subsection.

75. Representation of artistic works on public display

(1) This section applies to—

- (a) buildings;
- (b) sculptures, models of buildings and works of artistic craftsmanship, if permanently situated in a public place or in premises open to the public.

(2) The copyright in such a work is not infringed by—

- (a) making a graphic work representing it;
- (b) making a photograph or film of it; or
- (c) broadcasting or including in a cable programme service a visual image of it.

(3) The copyright in such a work is not infringed by the issue to the public of copies, or the broadcasting or inclusion in a cable programme service, of anything whose making was, by virtue of this section, not an infringement of copyright.

76. Reconstruction of buildings

Anything done for the purposes of reconstructing a building does not infringe any copyright in the building or in any drawings or plans in accordance with which the building was, by or with the licence of the copyright owner, constructed.

77. Subsequent work by same artist

Where the author of an artistic work is not the copyright owner, he does not infringe the copyright in the work by copying it in making another artistic work, provided he does not repeat or imitate the main design of the earlier work.

Miscellaneous Exceptions Respecting Broadcasts

78. Recording broadcasts for programme supervision

Copyright is not infringed by the making or use by a licensed broadcasting organisation or entity for the purpose of maintaining supervision and control over programmes, of recordings of those programmes.

79. Recording for purposes of time shifting

The making for private and domestic use of a recording of a broadcast or cable programme solely for the purpose of enabling it to be viewed or listened to at a more convenient time does not infringe any copyright in the broadcast or cable programme or in any work included in it.

80. Provision of subtitled copies of broadcast or cable programme

(1) A designated body may, for the purpose of providing people who are deaf or hard of hearing, or physically or mentally handicapped in other ways, copies which are sub-titled or otherwise modified for their special needs, make copies of television broadcasts or cable programmes and issue copies to the public, without infringing any copyright in the broadcasts or cable programmes or works included in them.

(2) For the purposes of this section, “**designated body**” means a body designated for the purposes of this section by order of the Minister, except that the Minister shall not designate a body unless he is satisfied that it is not established or conducted for profit.

81. Adaptations

An act which by virtue of this Part may be done without infringing copyright in a literary, dramatic or musical work does not where that work is an adaptation, infringe any copyright in the work from which the adaptation was made.

Prescribed Exceptions

82. Power of Minister to prescribe exceptions to infringement

(1) Subject to the provisions of this section, the Minister may by order provide that the copyright in a work of the description or category specified in the order is not infringed where, in relation to such work, such acts as are specified in the order are done in the circumstances so specified.

(2) The Minister shall not make an order under subsection (1) unless he is satisfied that the acts specified in the order in relation to the work—

- (a) are necessary in the public interest in connection with an event of national importance;
- (b) would not conflict with the normal exploitation of the work; and
- (c) would not unreasonably prejudice the legitimate interest of the owner of the copyright in the work.

(3) An order made under subsection (1) may—

- (a) contain such consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purposes of giving due effect to the order;
- (b) subject to section 96 prescribe the amount, or the formula by which the amount shall be calculated, which shall be paid by way of equitable remuneration to the owner of the copyright in any work to which the order relates.

(4) No order may be made under this section unless the Minister is satisfied—

- (a) that the acts specified are to be done in the public interest in connection with an event of national importance; and
- (b) that the effect of the order would not contravene any convention relating to copyright to which Saint Vincent and the Grenadines is a party.

PART VII

Copyright Licensing

Preliminary

83. Definitions

(1) For the purposes of this Part—

“copyright licence” means a licence to do, or authorise the doing of, any of the acts restricted by copyright in relation to works of one or more than one author;

“licensing body” means a society or other organisation which has as its main object or one of its main objects, the negotiation or granting, either as owner or prospective owner of copyright or as agent for him, of licences, and whose objects include the granting of licences covering works of more than one author;

“licensing scheme” means a scheme setting out—

- (a) the classes of cases in which the operator of the scheme, or the person on whose behalf he acts, is willing to grant licences; and

(b) the terms on which licences would be granted in those classes of cases.

(2) References in this Part to licensors or licensing schemes covering works of more than one author do not include licences or schemes covering only—

(a) a single collective work of which the authors are the same; or

(b) works made by, or by employees of or commissioned by, a single individual, firm, company or group of companies.

84. Licensing schemes to which sections 83 to 90 apply

The provisions of sections 83 to 90 apply to licensing schemes of the following descriptions—

(a) licensing schemes operated by licensing bodies in relation to the copyright in literary, dramatic, musical or artistic works or films, or film soundtracks when accompanying a film, which cover works of more than one author, so far as they relate to licences for—

(i) copying the work,

(ii) performing, playing or showing the work in public, or

(iii) broadcasting the work or including it in a cable programme service;

(b) licensing schemes in relation to the copyright in sound recordings other than film soundtracks when accompanying a film, broadcasts or cable programmes or the typographical arrangement of published editions; and

(c) licensing schemes in relation to the copyright in sound recordings, films or computer programmes so far as they relate to licences for the rental of copies to the public.

85. Reference of proposed licensing scheme to Court

(1) The terms of a licensing scheme which a licensing body proposes to operate may be referred to the Court by an organisation claiming to be representative of persons who require licences in cases of a description to which the scheme would apply, either generally or in relation to any description of case.

(2) The Court shall first decide whether to entertain the reference and decline to do so on the ground that the reference is premature.

(3) If the Court decides to entertain the reference it shall consider the matter referred and make such order, confirming or varying the proposed scheme, either generally or so far as it relates to cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

(4) An order may be made under subsection (3) so as to be in force indefinitely or for such period as the Court may determine.

86. Reference of existing licensing scheme to Court

(1) If during the operation of a licensing scheme a dispute arises between the licensing body and—

(a) a person claiming that he requires a licence in a case of a description to which the scheme applies; or

(b) an organisation claiming to be representative of such person,

that person or organisation may refer the scheme to the Court in so far as it relates to cases of that description.

(2) A scheme which has been referred to the Court under this section shall remain in operation until proceedings on the reference are concluded.

(3) The Court shall consider the matter in dispute and make such order, either confirming or varying the scheme so far only as it relates to cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

87. Further reference to Court

(1) Where the Court has on a previous reference of a licensing scheme under section 85 or 86, or under this section, made an order with respect to the scheme then, while the order remains in force—

- (a) the licensing body;
- (b) a person claiming that he requires a licence in a case of the description to which the order applies; or
- (c) an organisation claiming to be representative of such person,

may refer the scheme again to the Court so as it relates to cases of that description.

(2) A licensing scheme shall not, except with the special leave of the Court be referred to again in respect of the same description of cases—

- (a) within twelve months from the date of the order on the previous reference; or
- (b) if the order was made so as to be in force for fifteen months or less, until the last three months before the expiry of the order.

(3) A scheme which has been referred to the Court under this section shall remain in operation until proceedings on the reference are concluded.

(4) The Court shall consider the matter in dispute and make such order, either confirming, varying or further varying the scheme so far only as it relates to cases of the description to which the reference relates, as the Court may determine to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Court may determine.

88. Application for grant of licence in connection with licensing scheme

(1) A person who claims, in a case covered by a licensing scheme, that the operator of the scheme has refused to grant him or procure the grant to him of a licence in accordance with the scheme, or has failed to do so within a reasonable time after being asked, may apply to the Court for redress.

(2) A person who claims, in a case excluded from a licensing scheme, that the operator of the scheme either—

- (a) has refused to grant him a licence or procure the grant to him of a licence, or has failed to do so within a reasonable time of being asked, and that in the circumstances it is unreasonable that it should not be granted; or
- (b) proposes terms for a licence which are unreasonable,

may apply to the Court.

(3) A case shall be regarded as excluded from a licensing scheme for the purposes of subsection (2) if—

- (a) the scheme provides for the grant of licences subject to terms excepting matters from the licence and the case falls within such an exception; or
- (b) the case is so similar to those in which licences are granted under the scheme that it is unreasonable that it should not be dealt with in the same way.

(4) If the Court is satisfied that the claim is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a scheme on such terms as the Court may determine to be applicable in accordance with the scheme or, as the case may be to be reasonable in the circumstances.

(5) The order may be made so as to be in force indefinitely or for such period as the Court may determine.

89. Application for review as to entitlement to licence

(1) Where the Court has made an order under section 86 that a person is entitled to a licence under a licensing scheme, the licensing body or the original applicant may apply to the Court to review its order.

(2) An application shall not be made, except with the special leave of the Court—

- (a) within twelve months from the date of the order or of the decision on a previous application under this section; or
- (b) if the order was made so as to be in force for fifteen months or less, or, as a result of the decision on a previous application under this section is due to expire within fifteen months of that decision, until the last three months before the expiry date.

(3) The Court shall on an application for review confirm or vary its order as it may determine to be reasonable having regard to the terms applicable in accordance with the licensing scheme or, as the case may be, the circumstances of the case.

90. Effect of order of Court as to licensing scheme

(1) A licensing scheme which has been confirmed or varied by the Court under section 85 or 86 shall be in force, or as the case may be, remain in operation so far as it relates to the description of the case in respect of which the order is made, so long as the order remains in force.

(2) While the order is in force a person who in a case of a class to which the order applies—

- (a) pays to the licensing body any charges payable under the scheme in respect of a licence covering the case in question or, if the amount cannot be ascertained, gives an undertaking to the licensing body to pay them when ascertained; and
- (b) complies with the other terms applicable to such a licence under the scheme,

shall be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(3) The Court may direct that the order, so far as it varies the amount of charges payable, shall have effect from a date before that on which it is made, not being a date earlier than the date on which the reference was made or, where the scheme came into operation but no such direction shall be made where subsection (1) applies.

(4) If a direction is made under subsection (3)—

- (a) any necessary repayments, or further payments, shall be made in respect of charges already paid; and

- (b) the reference in subsection (2)(a) to the charges payable under the scheme shall be construed as a reference to the charges so payable by virtue of the order.

(5) Where the Court has made an order under section 88 and the order remains in force, the person in whose favour the order is made shall, if he—

- (a) pays to the licensing body any charges payable in accordance with the order or, if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and
- (b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

*References and Application with Respect to Individual
Licensing by Licensing Bodies*

91. Licences to which sections 91 to 95 apply

Sections 91 to 95 apply to the following descriptions of licence granted by a licensing body otherwise than in pursuance of a licensing scheme—

- (a) licences relating to the copyright in literary, dramatic, musical or artistic works or films or film soundtracks when accompanying a film, which cover works of more than one author, so far as they authorise—
 - (i) copying the works,
 - (ii) performing, playing or showing the work in public, or
 - (iii) broadcasting the works or including it in a cable programme service;
- (b) any licence relating to the copyright in a sound recording other than a film soundtrack when accompanying a film, broadcast or cable programme, or the typographical arrangement of a published edition; and
- (c) any licence relating to the copyright in sound recordings, film or computer programme so far as they relate to the rental of copies to the public,

and for the purpose of these sections, “**a licence**” means a licence of any of those descriptions.

92. Reference to Court of proposed licence

(1) The terms on which a licensing body proposes to grant a licence may be referred to the Court by the prospective licensee.

(2) The Court shall first decide whether to entertain the reference, and may decline to do so on the ground that the reference is premature.

(3) If the Court decides to hear the reference it shall consider the terms of the proposed licence and make such order, either confirming or varying the terms, as it may determine to be reasonable in the circumstances.

(4) The order may be made so as to be in force indefinitely or for such period as the Court may determine.

93. Reference to Court of expiring licence

(1) A licensee under a licence which is due to expire, by effluxion of time or as a result of notice given by the licensing body, may apply to the Court on the ground that it is unreasonable in the circumstances that the licence should cease to be in force.

(2) Such an application may not be made until three months before the licence is due to expire.

(3) A licence in respect of which a reference has been made to the Court shall remain in operation until proceedings on the reference are concluded.

(4) If the Court finds the application well-founded, it shall make an order declaring that the licensee shall continue to be entitled to the benefit of the licence on such terms as the Court may determine to be reasonable in the circumstances.

(5) An order of the Court under this section may be made so as to be in force indefinitely or for such period as the Court may determine.

94. Application for review of order as to licence

(1) Where the Court has made an order under section 92 or 93, the licensing body or the person entitled to the benefit of the order may apply to the Court to review its order.

(2) An application shall not be made, except with the special leave of the Court—

(a) within twelve months from the date of the order or of the decision on previous application under this section; or

(b) if the order was made so as to be in force for fifteen months or less, or as a result of the decision on a previous application under this section is due to expire within fifteen months to that decision, until the last three months before the expiry date.

(3) The Court shall on an application for review confirm or vary its order as the Court may determine to be reasonable in the circumstances.

95. Effect of order of Court as to licence

(1) Where the Court has made an order under section 92 or 93 and the order remains in force, the person entitled to the benefit of the order shall, if he—

(a) pays to the licensing body any charges payable in accordance with the order or if the amount cannot be ascertained, gives an undertaking to pay the charges when ascertained; and

(b) complies with the other terms specified in the order,

be in the same position as regards infringement of copyright as if he had at all material times been the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

(2) The benefit of the order may be assigned—

(a) in the case of an order under section 92, if assignment is not prohibited under the terms of the Court's order; and

(b) in the case of an order under section 93, if assignment was not prohibited under the terms of the original licence.

(3) The Court may direct that an order under section 92 or 93, or an order under section 94 varying such an order, so far as it varies the amount of charges payable, has effect from a date before that on which it is made, but not earlier than the date on which the reference or application was made or, if later, on which the licence was granted or, as the case may be, was due to expire.

(4) If such a direction is made—

- (a) any necessary repayments or further payments, shall be made in respect of charges already paid; and
- (b) the reference in subsection (1)(a) to the charges payable in accordance with the order shall be construed, where the order is varied by a later order, as a reference to the charges so payable by virtue of the later order.

Factors to be Taken into Account in Certain Classes of Case

96. General consideration unreasonable discrimination

In determining what is reasonable on a reference or application under this Part relating to a licensing scheme or licence, the Court shall have regard to—

- (a) the availability of other schemes, or the granting of other licences, to other persons in similar circumstances; and
- (b) the terms of those schemes or licences,

and shall exercise its powers so as to secure that there is no unreasonable discrimination between licences, or prospective licensees, under the scheme or licence to which the reference or application relates and licensees under other schemes operated by, or other licences granted by, the same person.

97. Licences for reprographic copying

Where a reference or application is made to the Court under this Part relating to the licensing of reprographic copying of published literary, dramatic, musical or artistic works, or the typographical arrangement of published editions, the Court shall have regard to—

- (a) the extent to which published editions of the works in question are otherwise available;
- (b) the proportion of the work to be copied; and
- (c) the nature of the use to which the copies are likely to be put.

98. Licences for educational establishments in respect of works included in broadcasts or cable programmes

(1) This section applies to references or applications under this Part relating to licences for the recording by or on behalf of educational establishments of broadcasts or cable programmes which include copyright works, or the making of copies of such recordings, for educational purposes.

(2) Where an application is made to the Court under section 97, the Court shall, in considering what charges if any, should be paid for a licence, have regard to the extent to which the owners of copyright in the works included in the broadcast or cable programme have already received, or are entitled to receive, payment in respect of their inclusion.

99. Licences to reflect conditions imposed by promoters events

(1) This section applies to references or applications under this Part in respect of licences relation to sound recordings, films, broadcasts or cable programmes which include, or are to include, any entertainment or other event.

(2) The Court shall have regard to any conditions imposed by the promoters of the entertainment of other event; and, in particular, the Court shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

(3) Nothing in this section shall require the Court to have regard to any such conditions in so far as they—

- (a) purport to regulate the charges to be imposed in respect of the grant of licences; or
- (b) relate to payments to be made to the promoters of any event in consideration of the grant of facilities for making the recording, film, broadcast or cable programme.

100. Licences to reflect payments in respect of underlying rights

(1) In considering what charges should be paid for a licence on a reference or application under this Part relating to licences for the rental to the public of copies of sound recordings, films, or computer programmes, the Court shall take into account any reasonable payments which the owner of the copyright in the sound recording, film or computer program is liable to make in consequence of granting of the licence, or of the acts authorised by the licence, to owners of copyright in works included in that work.

(2) On any reference or application under this Part relating to licensing in respect of the copyright in sound recordings, films, broadcasts or cable programmes, the Court shall take into account, in considering what charges should be paid for a licence, any reasonable payments which the copyright owner is liable to make in consequence of the granting of the licence, or of the acts authorised by the licence, in respect of any performance included in the recording, film, broadcast or cable programme.

101. Mention of the specific matters not to exclude relevant considerations

The mention in sections 96 to 99 of the specific matters to which the Court is to have regard in certain classes of cases does not affect the Court's general obligation in any case to have regard to all relevant considerations.

PART VIII

Rights in Performances

102. Protection and conferment of rights in performances

(1) The provisions of this Act on the protection of performers shall apply to—

- (a) performers who are nationals of Saint Vincent and the Grenadines; and
- (b) performers who are not nationals of Saint Vincent and the Grenadines but whose performances—
 - (i) take place on the territory of Saint Vincent and the Grenadines, or
 - (ii) are incorporated in sound recordings that are protected under this Act.

(2) The provisions in this Act shall also apply to performers who are eligible for protection by virtue of and in accordance with international conventions or other international agreements to which Saint Vincent and the Grenadines is a party.

(3) By virtue of, and subject to the provisions of this Part, rights are conferred on—

- (a) a performer, requiring his consent to the exploitation of his performance; and

- (b) a person having recording rights in relation to a performance, in respect of recordings made without his consent or that of the performer.
- (4) The rights conferred by this Part are independent of—
- (a) any copyright in, or moral rights relating to, any work used or performed in the performance; and
 - (b) any other right or obligation arising otherwise than under this Part.
- (5) The rights conferred by this Part apply in relation to performances taking place before the commencement of this Part; but no act done before commencement, or in pursuance of arrangements made before commencement, shall be regarded as infringing those rights.

Performer's Rights

103. Consent required for recording or live transmission of performance

- (1) A performer's rights are infringed by a person who, without the performer's consent—
- (a) makes, otherwise than for his private and domestic use, a recording of whole or any substantial part of a qualifying performance; or
 - (b) broadcasts live, or includes live in a cable programme service a recording of, the whole or any substantial part of a qualifying performance;
 - (c) infringes his right of distribution or right of making available to the public a fixed performance by wire or wireless means.
- (2) In an action for infringement of a performer's rights brought by virtue of this section, damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

104. Consent and royalty required for adaptation of recording

- (1) A performer's rights are infringed by a person who, without his consent and payment of royalty at the rate, uses an original recording of a qualifying performance, whether authorised or not, for the purpose of making an adaptation of the recording.
- (2) For the purposes of subsection (1), "**an adaptation of the recording**" means a recording in which the performance is accompanied by lyrics or music not contained in the original recording.

105. Infringement of performer's rights by importing possessory, illicit recording

- (1) A performer's rights are infringed by a person who, without his consent—
- (a) imports into Saint Vincent and the Grenadines otherwise than for his private and domestic use; or
 - (b) in the course of a business, possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes,
- a recording of a qualifying performance which is, and which that person knows or has reason to believe is, an illicit recording.
- (2) Where in an action for infringement of a performer's rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his,

the only remedy in damages available against him in respect of the infringement is damages not exceeding a reasonable payment in respect of the act complained of.

(3) For the purposes of subsection (2), “**innocently acquired**” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

106. Performer’s moral rights

(1) A performer shall have as regards his live oral performances and performances fixed on a phonogram—

- (a) the right to claim to be identified as the performer of a performance, except where omission is dictated by the manner of the use of the performance; and
- (b) to object to any distribution, mutilation or other modification of his performance that would be prejudicial to his reputation.

(2) The provisions of sections 17(1) and 18 shall apply *mutatis mutandis*.

Rights of Person Having Recording Rights

107. Consent required of performance subject to exclusive contract

(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or that of the performer, makes a recording of the whole or any substantial part of the performance, otherwise than for his private and domestic use.

(2) In an action for infringement of those rights brought by virtue of this section damages shall not be awarded against a defendant who shows that at the time of the infringement he believed on reasonable grounds that consent had been given.

108. Infringement of recording rights by use of recording made without consent

(1) A person infringes the rights of a person having recording rights in relation to a performance who, without his consent or, in the case of a qualifying performance, that of the performer—

- (a) shows or plays in public the whole or any substantial part of the performance; or
- (b) broadcasts or includes in a cable programme service the whole or any substantial part of the performance by means of a recording which was, and

which that person knows or has reason to believe was, made without the appropriate consent.

(2) Reference in subsection (1) to “the appropriate consent” is to the consent of—

- (a) the performer; or
- (b) the person who at the time the consent was given had recording rights in relation to the performance or, if there was more than one such person, of all of them.

109. Infringement of recording rights by importing, possessing illicit recording

(1) A person infringes the rights of a person having recording rights in relation to a performance, who, without his consent or, in the case of a qualifying performance, without the consent of the performer—

- (a) imports into Saint Vincent and the Grenadines otherwise than for his private and domestic use; or

- (b) in the course of a business possesses, sells or lets for hire, offers or exposes for sale or hire or distributes,

a recording of the performance which is, and which that person knows or has reason to believe is, an illicit recording.

(2) Where in an action for infringement of those rights brought by virtue of this section a defendant shows that the illicit recording was innocently acquired by him or a predecessor in title of his, the only remedy available against him in respect of the infringement is an amount not exceeding a reasonable payment in respect of the act complained of.

(3) For the purposes of subsection (2), “**innocently acquired**” means that the person acquiring the recording did not know and had no reason to believe that it was an illicit recording.

Exceptions to Infringement

110. Fair dealing for criticism, etc.

Fair dealing with a performance or recording—

- (a) for the purpose of criticism or review of that or another performance or recording, or of a work; or
- (b) for the purpose of reporting current events,

does not infringe any of the rights conferred by this Part, and the provisions of section 57 shall, with the necessary modifications, apply in determining whether or not an act constitutes fair dealing.

111. Acts done to recording of performance for purposes of instruction

(1) The rights conferred by this Part are not infringed by the copying of a recording of a performance in the course of instruction, or of preparation for instruction, in the making of films or film sound-tracks, provided the copying is done by a person giving or receiving instruction.

(2) The rights conferred by this Part are not infringed—

- (a) by the copying of a recording of a performance for the purpose of setting or answering questions in an examination;
- (b) by anything done for the purposes of an examination by way of communicating the questions to the candidates.

(3) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with, it shall be treated as an illicit recording for the purpose of that dealing.

(4) For the purposes of subsection (3) and section 112(2), “**dealt with**” means sold or let for hire, or offered or exposed for sale or hire.

112. Recording of broadcasting and cable programmes by educational establishment

(1) A recording of a broadcast or cable programme, or a copy of such a recording, may be made by or on behalf of an educational institution for the educational purposes of that establishment without thereby infringing any of the rights conferred by this Part in relation to any performance or recording included in it.

(2) Where a recording which would otherwise be an illicit recording is made in accordance with this section but is subsequently dealt with under section 111(4) it shall be treated as an illicit recording for the purposes of that dealing.

113. Acts done to performance or recording for parliamentary proceedings

The rights conferred by this Part are not infringed by anything done for the purpose of—

- (a) parliamentary or judicial proceedings or the reporting of those proceedings; or
- (b) the proceedings of a statutory inquiry or the reporting of those proceedings held in public.

114. Transfer of recording of performance in electronic form

(1) Where a recording of a performance in electronic form has been purchased on terms which, expressly or impliedly or by virtue of any rule of law, allows the purchaser to make further recordings in connection with his use of the recording, then, in the absence of any express terms—

- (a) prohibiting the transfer of the recording by the purchaser;
- (b) imposing obligations which continue after a transfer;
- (c) prohibiting the assignment of any consent;
- (d) terminating any consent on a transfer; or
- (e) providing for the terms on which a transferee may do the things which the purchaser was permitted to do,

anything which the purchaser was allowed to do may also be done by a transferee without infringement of the rights conferred by this Part, but any recording made by the purchaser which is not also transferred shall be treated as an illicit recording for all purposes after the transfer.

(2) Subsection (1) applies where the original purchased recording is no longer usable and what is transferred is a further copy used in its place.

(3) This section does not apply in relation to a recording purchased before the commencement of this Act.

115. Use of recordings of spoken words

(1) Where a recording of the reading or recitation of a literary work is made the purpose of—

- (a) reporting current events; or
- (b) broadcasting or including in a cable programme service the whole or part of the reading or recitation,

it is not an infringement of the rights conferred by this Part to use the recording, or to copy the recording and use the copy for that purpose, provided the conditions specified in subsection (2) are met.

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

- (a) the recording is a direct recording of the reading or recitation and is not taken from a previous recording or from a broadcast or cable programme;
- (b) the making of the recording was not prohibited by or on behalf of the person giving the reading or recitation;

- (c) the use made of the recording is not of a kind prohibited by or on behalf of that person before the recording was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the recording.

116. Playing sound recording for charitable purposes

It is not an infringement of any right conferred by this Part to play a sound recording as part of the activities of, or for the benefit of a club, society or other organisation if—

- (a) the organisation is not established or conducted for profit and its main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare; and
- (b) the proceeds of any charge for admission to the place where the recording is to be heard are applied solely for the purposes of the organisation.

117. Incidental recording for purposes of broadcast or cable programme

(1) Subject to subsection (2), a person who proposes to broadcast a recording of a performance, or to include a recording of a performance in a cable programme service, in circumstances not infringing the rights conferred by this Part, shall be treated as having consent for the purposes of this Part for the making of a further recording for the purposes of the broadcast or cable programme.

(2) The consent given under subsection (1) is subject to the condition that—

- (a) the further recording shall not be used for any other purposes; and
- (b) such recording shall be destroyed within twenty-eight days of being first used for broadcasting the performance or including it in a cable programme service.

(3) A recording made in accordance with this paragraph shall be treated as an illicit recording—

- (a) for the purposes of any use in breach of the condition mentioned in subsection (2)(a); and
- (b) for all purposes after that condition or the condition mentioned in subsection (2)(a) is breached.

118. Recordings for supervision and control of programmes permitted

The rights conferred by this Part are not infringed by the making or use by a prescribed broadcasting organisation for the purpose of maintaining supervision and control over programmes broadcast by that organisation, of recordings of those programmes.

119. Order excepting acts from infringing rights under this Part

(1) Subject to the provisions of this section, the Minister may, by order, provide that the rights conferred by this Part are not infringed by the doing of such acts in relation to the performance as are specified in the order, where such acts are done in the circumstances so specified.

(2) An order made under subsection (1) may—

- (a) contain consequential, supplemental or ancillary provisions as appear to the Minister to be necessary or expedient for the purpose of giving due effect to the order;

- (b) prescribe the amount, or the formula by which the amount shall be calculated, which shall be paid by way of equitable remuneration to the performer or other person whose rights under this Part are affected by the order.
- (3) No order may be made under this section unless the Minister is satisfied—
- (a) that the acts specified are to be done in connection with an event of national importance; and
 - (b) that the effect of the order would not contravene any convention relating to rights in respect of performances to which Saint Vincent and the Grenadines is a party.

120. Court may consent on behalf of performer

(1) Subject to the provisions of this section, the Court may, on the application of a person who wishes to make a recording from a previous recording of a performance, give consent in a case where—

- (a) the identity or whereabouts of a performer cannot be ascertained by reasonable inquiry; or
- (b) a performer unreasonably withholds his consent.

(2) Consent given by the Court has effect as consent of the performer for the purpose of—

- (a) the provisions of this Part relating to performers' rights; and
- (b) section 127(3)(a),

and may be given subject to such conditions as the Court may specify in the order.

(3) The Court shall not give consent under subsection (1)(a) except after the service or publication of such notices as may be required by regulations or as the Court may in any particular case direct.

(4) The Court shall not give consent under subsection (1)(b) unless it is satisfied that the performer's reasons for withholding consent do not include the protection of any legitimate interest of his, but it shall be for the performer to show what his reasons are for withholding consent, and in default of evidence as to his reasons the Court may draw such inferences as it thinks fit.

(5) In any case the Court shall take into account the following factors—

- (a) whether the original recording was made with the performer's consent and is lawfully in the possession or control of the person proposing to make the further recording;
- (b) whether the making of the further recording is consistent with the obligations of the parties to the arrangements under which, or is otherwise consistent with the purposes for which, the original recording was made.

(6) Where the Court gives consent under this section it shall, in default of agreement between the applicant and the performer, make such order as it thinks fit as to the payment to be made to the performer in consideration of consent being given.

Duration and Transmission of Rights in Performances: Consent

121. Duration of rights in performances

The rights conferred by this Part shall continue to subsist until the expiry of seventy-five years from the end of the calendar year in which the performance takes place.

122. Transmission of rights in performances

(1) The rights conferred by this Part are not assignable or transmissible, except to the extent that performers' rights are transmissible as provided in this section.

(2) On the death of a person entitled to performer's rights—

- (a) the rights pass to such person as he may by testamentary disposition specifically direct; and
- (b) if there is no such direction, the rights are exercisable by his personal representative, and references in this Part to the performer, in the context of the person having performer's rights, shall be construed as references to the person for the time being entitled to exercise those rights.

(3) Where by virtue of subsection (2)(a) a right becomes exercisable by more than one person, it is exercisable by each of them independently of the other or others.

(4) Subsections (1), (2) and (3) are without prejudice to any rights conferred by this Act on a person to whom the benefit of a contract or licence is assigned.

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

123. Consent

(1) Consent for the purposes of this Part may be given in relation to a specific performance, a specified description of performances, or performances generally, and may relate to past or future performances.

(2) A person having recording rights in a performance is bound by any prior consent given by a person through whom he derives his rights under the exclusive recording contract or licence in question, in the same way as if the consent had been given by him.

(3) Where a right conferred by this Part passes to another person, any consent binding on the person previously entitled binds the person to whom the right passes in the same way as if the consent had been given by him.

Remedies for Infringement of Rights in Performances

124. Infringement actionable as breach of statutory duty

An infringement of any of the rights conferred by this Part is actionable by the person entitled to the right as a breach of statutory duty.

125. Order for delivery up of illicit recording in Court

(1) Where a person has in his possession, custody or control in the course of a business an illicit recording of a performance, a person having performer's rights or recording rights under this Part in relation to the performance may apply to the Court for an order that the recording be delivered up to him or to such other person as the Court may direct.

(2) An application shall not be made after the end of the period specified in section 135, and no order shall be made unless the Court also makes, or it appears to the Court that there are grounds for making, an order under section 134.

(3) A person to whom a recording is delivered up in pursuance of an order under this section shall, if an order under section 135 is not made, retain it pending the making of an order, or the decision not to make an order under that section.

(4) Nothing in this section affects any other power of the Court.

126. Right to seize illicit recordings

(1) Subject to any decision of the Court under section 134 and the conditions specified in subsections (2), (3) and (4), an illicit recording of a performance which is found exposed or otherwise immediately available for sale or hire and in respect of which a person would be entitled to apply for an order under section 134 may be seized and detained by him or a person authorised by him.

(2) Before anything is seized under this section written notice of the time and place of the proposed seizure must be given to a local police station.

(3) At the time when anything is seized under this section there shall be left at the place where it was seized a notice in the prescribed form containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.

(4) For the purposes of this section, “**premises**” includes land, buildings, fixed or moveable structures, vehicles, vessels and aircraft.

Offences in Relation to Performances

127. Criminal liability for making illicit recordings

(1) A person who without sufficient consent—

- (a) makes for sale or hire;
- (b) imports into Saint Vincent and the Grenadines otherwise than for his private and domestic use;
- (c) possesses in the course of a business with a view to doing any act infringing the rights conferred by this Part; or
- (d) in the course of a business—
 - (i) sells or lets for hire, or
 - (ii) offers or exposes for sale or hire, or
 - (iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording, commits an offence.

(2) A person who causes a recording of a performance made without sufficient consent—

- (a) to be shown or played in public; or
- (b) to be broadcast or included in a cable programme service,

thereby infringing any of the rights conferred by this Part, if he knows or ought to have known that those rights are thereby infringed, commits an offence.

(3) For the purposes of subsections (1) and (2), “**sufficient consent**” means—

- (a) in the case of a qualifying performance, the consent of the performer; and

- (b) in the case of a non-qualifying performance subject to an exclusive recording contract—
 - (i) for the purpose of subsection (1)(a), the consent of the performer or the person having recording rights, and
 - (ii) for the purposes of subsection (2)(a) and (b), the consent of the person having recording rights.

(4) References in this section to “the person having recording rights” are to the person having those rights at the time the consent is given or, if there is more than one such person, to all of them.

(5) No offence is committed under subsection (1) or (2) by the doing of an act which, by virtue of any provision of this Part, may be done without infringing the rights conferred by this Part.

(6) A person guilty of an offence under subsection (1) or (2) shall be liable—

- (a) on summary conviction to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding twelve months; or
- (b) on conviction on indictment to a fine not exceeding fifty thousand dollars or for a term not exceeding five years, or to both a fine and imprisonment.

(7) A person guilty of any other offence under this section is liable on summary conviction to a fine not exceeding one thousand dollars or to imprisonment for a term not exceeding six months, or to both a fine and imprisonment.

128. Order for delivery up of illicit recording in criminal proceedings

(1) The Court before which proceedings are brought against a person for an offence under section 127 may, if satisfied that at the time of his arrest or charge he had in his possession, custody or control in the course of a business an illicit recording of a performance, order that it be delivered up to a person having performer’s rights or recording rights in relation to the performance or to such other person as the Court may direct.

(2) An order may be made by the Court of its own motion or on the application of the prosecution and may be made whether or not the person is convicted of the offence, but shall not be made—

- (a) after the end of the period specified in section 135; or
- (b) if it appears to the Court unlikely that any order will be made under section 134.

(3) An appeal lies to the Court of Appeal from an order made under this section.

(4) A person to whom an illicit recording is delivered up in pursuance of an order under this section shall retain it pending the making of an order, or the decision not to make an order, under section 135.

PART IX

Collective Societies

129. Collective societies to be registered

(1) No person or association of persons shall, after the coming into force of this Act, commence or carry on the business of issuing or granting licences in respect of any work in which copyright or related rights subsists or in respect of any other rights conferred by this Act except in accordance with the registration granted under subsection (3).

(2) Notwithstanding subsection (1)—

- (a) an owner of copyright of related rights shall in his individual capacity, venture to have the right to grant licences in respect of his works consistent with his obligation as a member of a collective society; and
- (b) a collective society functioning immediately before the coming into force of this Act shall be deemed to be a collective society for the purposes of this Act and every such society shall ensure that it is registered within a period of one year from the date of commencement of this Act.

(3) Any association of persons who fulfil the conditions as may be prescribed may apply for permission to do the business specified in subsection (1) to the Registrar.

(4) The Registrar may, having regard to the interests of authors and other owners of rights under this Act, the interest and convenience of the public and ability and professional competence of the applicants, register such association of persons as a collective society subject to such conditions as may be prescribed.

(5) The Registrar shall not ordinarily register more than one Collective Society to do business in respect of the same class of works.

(6) The Registrar may, if he is satisfied that a collective society is being managed in a manner detrimental to the interest of the owners of rights concerned, cancel the registration of the society after such inquiry as may be prescribed.

(7) If the Registrar is of the opinion that in the interest of the owners of rights concerned, it is necessary to do so, he may, by order, suspend the registration of a society pending inquiry for a period not exceeding one year as may be specified in the order and the Registrar shall appoint an administrator to discharge the functions of the collective society.

(8) In the exercise of his functions under this section the Registrar shall act after consultation with the Minister.

130. Administration of rights by collective society

(1) Subject to such conditions as may be prescribed—

- (a) a collective society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and
- (b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the collective society under any contract.

(2) A collective society shall be competent—

- (a) to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act;
- (b) to entrust to such foreign society or organisation the administration in any country of rights administered by the said collective society in Saint Vincent and the Grenadines; and
- (c) for administering in Saint Vincent and the Grenadines the rights administered in a foreign country by such society or organisation.

(3) Subject to such conditions as may be prescribed, a copyright society may—

- (a) issue licences in respect of any rights under this Act;
- (b) collect fees in pursuance of such licences;

- (c) distribute such fees among owners of rights after making deductions for its own expenses;
- (d) perform any functions consistent with its rules and by-laws.

131. Control over the copyright society by the owner of rights

(1) A collective society shall be subject to the control of the owners of rights whose rights it administers, not being owners of rights administered by a foreign society or organisation, and shall, in such manner as may be prescribed—

- (a) prepare a scheme for determining the quantum of remuneration payable to individual owners of rights;
- (b) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;
- (c) obtain the approval of such owners for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and
- (d) provide such owners with regular, full and detailed information concerning all its activities, in reaction to the administration of their rights.

(2) All fees distributed among the owners of rights shall as far as may be, be distributed in proportion to the actual use of their works.

132. Submission of returns and reports

(1) A collective society shall submit to the Registrar such returns as may be prescribed.

(2) The Registrar may call for any report or records of a collective society for the purposes of satisfying himself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provision of this Act.

133. Rights and liabilities of performing rights societies

Nothing in this Part shall affect the rights or liabilities in any work in connection with a performing rights society which had accrued or were accrued on or before the day prior to the commencement of this Act on any legal proceedings in respect of any such rights or liabilities pending on that day.

PART X

General

134. Order for disposal of infringing copy or illicit recording

(1) An application may be made by the owner of a copyright to the Court for an order that—

- (a) an order that an infringing copy or article delivered up in of pursuance of an order under sections 30 and 46 shall be—
 - (i) forfeited to the copyright owner, or
 - (ii) destroyed or otherwise dealt with as the Court may direct;
- (b) an order that an illicit recording of a performance delivered up in pursuance of an order under section 125 or 128 shall be—

- (i) forfeited to such person having performer's rights or recording rights in relation to the performance as the Court may direct, or
- (ii) destroyed or otherwise dealt with as the Court thinks fit,

or a decision that no order under paragraph (a) or (b) should be made.

(2) In considering what order should be made, the Court shall have consideration of the following—

- (a) where the infringement relates to copyright in a work, whether other remedies available in an action for infringement of copyright would be adequate to compensate the copyright owner and to protect his interest;
- (b) where the infringement relates to rights conferred under Part IX, whether other remedies available in an action for infringement of those rights would be adequate to compensate the person or persons entitled to the rights and to protect their interests.

(3) Provisions shall be made by order of Court with respect to the service of notice on persons having an interest in the copy or other articles or the illicit recording, as the case may be, and any such person shall be entitled—

- (a) to appear in proceedings for an order under this section whether or not he was served with notice; and
- (b) to appeal against any order made, whether or not he appeared,

and an order shall not take effect until the end of the period within which notice of an appeal may be given or, if before the end of that period notice of appeal is duly given, until the final determination or abandonment of the proceedings on the appeal.

(4) Where there is more than one person interested in an infringing copy other article, or recording, the Court shall make such order as it thinks just and may in particular, direct that such copy, article or recording be sold, or otherwise dealt with, and the proceeds divided.

(5) If the Court decides that no order should be made under this section, the person in whose possession, custody or control the copy, article or, recording was before being delivered up or seized is entitled to its return.

(6) References in this section to “**a person having an interest in a copy or other article or a recording**” include any person in whose favour an order could be made in respect of the copy, article or, as the case may be, a recording under this section.

135. Period after which delivery up not available

(1) An application for an order under section 30 or 125 may not be made after the end of the period of six years from the date on which the infringing copy or article or, the illicit recording in question was made, subject to the following provisions.

(2) If during the whole or any part of that period a person entitled to apply for an order—

- (a) is under a disability; or
- (b) is prevented by fraud or concealment from discovering the facts entitling him to apply,

an application may be made by him at any time before the end of the period of six years from the date on which he ceased to be under a disability or, could with reasonable diligence have discovered those facts.

(3) An order made under section 30 or 126 shall not, in any case be made after the end of the period of six years from the date in which the infringing copy or article or, the illicit recording in question was made.

136. General civil remedies

(1) The Court shall have the authority—

- (a) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorisation of the owner of any right protected under this Act when the making or importation of copies as subject to such authorisation as well as the impounding of the packaging of the implements that could be used for the making of such copies;
- (b) to order the forfeiture and seizure of air plates, moulds, matrices masters tapes, film negatives or other articles by means of which such copies of works or sound recordings may be reproduced, and all electronic, mechanical or other devices for manufacturing, reproducing or assembling such copies of works or sound recordings.

(2) The provisions of subsection (1)(a) shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

(3) Where there is a danger that acts of infringement may be continued, the Court shall, in addition to any penalty imposed, impose a fine of five hundred dollars for each day on which the infringement is continued.

137. Time limit for prosecution

No prosecution for an offence under this Act shall be commenced after the expiration of one year after the discovery of the offence.

138. Powers of members of Police Force

(1) Subject to section 139, a police officer not below the rank of an Sergeant may—

- (a) enter and search any premises or place;
- (b) stop, board and search any vessel other than a ship of war, or any aircraft other than a military aircraft; or
- (c) stop and search any vehicle,

in which he reasonably suspects there is an infringing copy of a work or an illicit recording or any article used or intended to be used for making infringing copies or illicit recordings; and

- (d) seize, remove or detain—
 - (i) any article which appears to him to be an infringing copy or an illicit recording or any other article which appears to him to be intended for use for making such copies or recordings, and
 - (ii) anything which appears to him to be or to contain, or to be likely to be or to contain, evidence of an offence under this Act.

(2) A police officer not below the rank of an Sergeant may—

- (a) break open any outer or inner door of any place which he is authorised by this section to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is authorised under this Act to stop, board and search;

- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- (d) detain any person found in any place which he is authorised under this section to search until such place has been searched;
- (e) detain any vessel or aircraft which he is authorised under this section to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;
- (f) detain any vehicle which he is empowered under this Act to stop and search until it has been searched.

139. Restrictions on entry and search of premises

(1) Pursuant to section 138, no premises shall be entered and searched by a police officer unless a magistrate has issued a warrant under subsection (2).

(2) A Magistrate or Justice of the Peace may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises any article which may be seized, removed or detained under any provision of this Act, issue a warrant authorising a police officer not below the rank of Inspector to enter and search the premises, and such member may call upon any Constable to assist him in entering and searching the premises.

(3) A police officer not below the rank of Sergeant authorised under subsection (2) to enter and search any premises may call upon any police officer to assist him in entering and searching the premises.

(4) Premises means any premises or a part thereof, used exclusively or mainly as a dwelling.

140. Obstruction of members of Police Force

(1) Without prejudice to any other written law, any person who—

- (a) wilfully obstructs a member of the Police Force in the exercise of his powers or the performance of his duties under this Act;
- (b) wilfully fails to comply with any requirement properly made to him by any such member; or
- (c) without reasonable excuse fails to give such member any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

commits an offence and is liable on summary conviction to a fine not exceeding two thousand five hundred dollars or to imprisonment for a term not exceeding twelve months.

(2) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

141. Offences by body corporate

Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and is liable to be prosecuted against and punished accordingly.

142. Power to make regulations

The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or are necessary or desirable to be prescribed for giving effect to this Act.

143. International organisations

(1) This section applies to international organisations as to which the Minister by order has declared that it is expedient that this section should apply.

(2) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an international organisation to which this section applies in any circumstance whereby copyright would not, except by virtue of this subsection, subsist in the work immediately after the first publication thereof, and—

- (a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright, if any, in the work; or
- (b) the work was made in circumstances that, if it had been first published in Saint Vincent and the Grenadines, the organisation would have been entitled to the copyright in the work,

then, copyright shall subsist in the work by virtue of this section and the organisation shall be first owner of that copyright.

(3) Copyright of which an international organisation is first owner by virtue of this section shall subsist until the end of the period of fifty years from the end of the calendar year in which the work was made or such longer period as may be specified by the Minister, by order, for the purpose of complying with the international obligations of Saint Vincent and the Grenadines.

(4) An organisation to which this section applies which otherwise has not, or at some material time otherwise has not, the legal capacities of a body corporate shall have, and shall be deemed at all material times to have had, the enforcing copyright, and in connection with all legal proceedings relating to copyright.

144. Act binds Crown

This Act binds the Crown save that nothing in this Act shall render the Crown liable to prosecution.

145. Regulations

The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or as are necessary or desirable to be prescribed for giving effect to this Act.

146. Repeal

The Copyright Act is repealed.

[Chapter 262 of the Revised Laws 1990 Edition.]

147. Savings

Nothing in this Act shall affect the operation of any rule of equity relating to a breach of trust or confidence.

148. Transitional provisions

(1) Where immediately prior to the appointed day copyright subsists in Saint Vincent and the Grenadines in any literary, dramatic, musical or artistic work by virtue of the Copyright Act, such copyright shall continue to subsist, and the person entitled thereto by virtue of that Act shall be the owner thereof, under and subject to this Act, and in particular—

- (a) the duration of such copyright;
- (b) the acts comprised within the exclusive rights attaching to such copyright; and
- (c) the effect upon the ownership of such copyright of any event or transaction occurring or of any contract or agreement made on or after the appointed day,

shall be governed by this Act.

(2) Where before the appointed day any person has incurred any expenditure or liability in connection with or in contemplation of the doing of an act in relation to a protected work or to a performance in respect to which rights are conferred by this Act, being an act which prior to that date would have been lawful, nothing in this Act shall diminish or prejudice any rights or interests which, in relation to that work or performance, are subsisting and valuable on the appointed day, unless the person who, by virtue of this Act, is the owner of the copyright or the person having rights in the performance, agrees to pay such compensation as, in default of agreement, may be fixed by the Court.

(3) Where an act done before the appointed day was then an infringement of copyright but is not an infringement of copyright or rights in a performance under this Act, then, proceedings in respect of that act may be taken as if this Act had not been passed.

(4) An act done before the appointed day shall not be an infringement of copyright or rights in a performance conferred by this Act if that act would not, but for the passing of this Act, have constituted an infringement.

(5) Proceedings under this Act for infringement may be taken notwithstanding the alleged infringement occurred before the appointed day.

(6) For the purposes of this section, “**appointed day**” means the day appointed by the Governor-General pursuant to section 1.

**CHAPTER 311
COPYRIGHT ACT**

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

1. Copyright (Specified Countries) Order
-

Copyright (Specified Countries) Order

SRO 16 of 2005

ARRANGEMENT OF ORDERS

1. Citation.
 2. Specified countries.
 3. Proof of status as a Berne Convention country.
 4. Effect of specifying countries.
- Schedule
-

COPYRIGHT (SPECIFIED COUNTRIES) ORDER

In exercise of the power conferred by sections 2(1) and 6(11) of the Copyright Act (No. 21 of 2003), the Minister makes the following Order.

[SRO 16 of 2005.]

[Date of commencement: *2nd August, 2005.*]

1. Citation

This Order may be cited as the Copyright (Specified Countries) Order, 2005.

2. Specified countries

(1) The countries specified in the Schedule to this Order, being members of the Berne Convention for the Protection of Literary and Artistic Works of 1886 as revised and amended, are hereby declared to be specified countries for the purposes of copyright protection in Saint Vincent and the Grenadines.

(2) Where a country becomes a party to the Berne Convention for the Protection of Literary and Artistic Works of 1886, as revised and amended, after the commencement of this Order, the provisions of, and the benefits of copyright protection conferred by, this Order shall apply to such country with effect from the date it becomes a party to the Convention.

3. Proof of status as a Berne Convention country

Any circular, notice or list which may be issued by the World Intellectual Property Organisation from time to time, setting out the countries which are parties to the Berne Convention for the Protection of Literary and Artistic Works, and the dates on which such countries became parties to the Convention, shall be sufficient proof of a country's membership of the Convention for the purposes of paragraph 2(2) of this Order.

4. Effect of specifying countries

The provisions of the Copyright Act shall apply—

- (a) in relation to persons who, at a material time, are citizens or subjects of a country specified in the Schedule, as they apply in relation to persons who, at such a time, are citizens of Saint Vincent and the Grenadines;
- (b) in relation to persons who, at a material time, are domiciled or resident in a country specified in the Schedule, as they apply in relation to persons who, at such a time, are domiciled or resident in Saint Vincent and the Grenadines;
- (c) in relation to literary, dramatic, musical or artistic works, sound recordings, films or editions first published in a country specified in the Schedule, as they apply in relation to literary,

dramatic, musical or artistic works, sound recordings, films or editions first published in Saint Vincent and the Grenadines;

- (d) in relation to bodies incorporated by or under the laws of a country specified in the Schedule, as they apply in relation to bodies incorporated by or under the laws of Saint Vincent and the Grenadines;
- (e) in relation to broadcasts made or cable programmes sent from places in a country specified in the Schedule by persons permitted or authorised by or under the laws of that country to make those broadcasts or send those programmes, as they apply in relation to broadcasts made or cable programmes sent from places in Saint Vincent and the Grenadines by persons permitted or authorised by or under the laws of Saint Vincent and the Grenadines to make those broadcasts or send those cable programmes.

Schedule

[Paragraph 2(1).]

Albania
Algeria
Andorra
Antigua and Barbuda
Argentina
Armenia
Australia
Austria
Azerbaijan
Bahamas
Bahrain
Bangladesh
Barbados
Belarus
Belgium
Belize
Benin
Bhutan
Bolivia
Bosnia and Herzegovina
Botswana
Brazil

Bulgaria
Burkina Faso
Cameroon
Canada
Cape Verde
Central African Republic
Chad
Chile
China, including the Special Administrative regions of Hong Kong and Macau
Colombia
Comoros
Congo
Costa Rica
Croatia
Cuba
Cyprus
Czech Republic
Cote d'Ivoire
Democratic People's Republic of Korea
Democratic Republic of the Congo
Denmark
Djibouti
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador
Equatorial Guinea
Estonia
Fiji
Finland
France
Gabon
Georgia
Germany

Ghana
Greece
Grenada
Guatemala
Guinea
Guinea-Bissau
Guyana
Haiti
Holy See
Honduras
Hungary
Iceland
India
Indonesia
Ireland
Israel
Italy
Jamaica
Japan
Jordan
Kazakhstan
Kenya
Kyrgyzstan
Latvia
Lebanon
Lesotho
Liberia
Libyan Arab Jamahiriya
Liechtenstein
Lithuania
Luxemburg
Madagascar
Malawi
Malaysia
Mali

Malta
Mauritania
Mauritius
Mexico
Micronesia (Federated States of)
Monaco
Mongolia
Morocco
Namibia
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Republic of Korea
Republic of Moldova
Romania
Russian Federation
Rwanda
Saint Kitts and Nevis
Saint Lucia
Saudi Arabia
Senegal
Serbia and Montenegro
Singapore

Slovakia
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Syrian Arab Republic
Tajikistan
Thailand
The former Yugoslav Republic of Macedonia
The Gambia
Togo
Tonga
Trinidad and Tobago
Tunisia
Turkey
Ukraine
United Arab Emirates
United Kingdom
United Republic of Tanzania
United States of America
Uruguay
Uzbekistan
Venezuela
Viet Nam
Yugoslavia
Zambia
Zimbabwe

1.2. (a) Criminal Code CAP. 171. Section 315, 2009 REV.

315. Attempting to commit an offence

(1) Any person who, with intent to commit an offence, does an act which is more than merely preparatory to the commission of the offence, is guilty of attempting to commit the offence.

(2) A person may be guilty of attempting to commit an offence even though the facts are such that the commission of the offence is impossible.

(3) In any case where—

- (a) apart from this subsection, a person's intention would not be regarded as having amounted to an intent to commit an offence; but
- (b) if the facts of the case had been as he believed them to be, his intention would be so regarded,

then, for the purposes of subsection (1), he shall be regarded as having an intent to commit that offence.

(4) This section applies to any offence, whether under this Code or any other written law, which, if completed, would be triable in Saint Vincent and the Grenadines other than—

- (a) conspiracy;
- (b) aiding, abetting, counselling, procuring or suborning the commission of an offence.

(b) Criminal Code CAP. 171 Section 318, 2009 REV.

318. Assisting offenders

(1) Subject to the provisions of subsection (2), where a person has committed an offence punishable with death or imprisonment (other than with imprisonment in default of payment of a fine), any other person who, knowing him to be guilty of that offence or of some other offence similarly punishable, does, without lawful authority or reasonable excuse, an act to impede his apprehension or prosecution is guilty of an offence and is said to be an accessory after the fact.

(2) A wife does not become an accessory after the fact to an offence which her husband has committed by receiving him or assisting him to escape punishment, or by receiving in her husband's presence and by his authority another person who has committed an offence in the commission of which her husband has taken part, in order to enable that other person to escape punishment or avoid apprehension, nor does a husband become an accessory after the fact to an offence which his wife has committed by receiving her or assisting her to enable her to escape punishment or avoid apprehension.

(3) If, on the trial of an indictment for any offence as is specified in subsection (1), the court is satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but finds the accused not guilty of it, it may find him guilty of being an accessory after the fact to the offence charged or that other offence.

(4) Any person who is guilty of being an accessory after the fact is liable to imprisonment according to the gravity of the offence to which he was accessory as follows—

- (a) if the offence is one for which the sentence is fixed by law, to imprisonment for ten years;
- (b) if the offence is punishable by imprisonment for ten years or more, to imprisonment for seven years;

- (c) if the offence is not included in paragraph (a) or (b) but is punishable with seven years imprisonment, to imprisonment for five years; and
- (d) in any other case to imprisonment for two years or the period with which the offence is punishable, whichever is the less.

1.5. Criminal Procedure Code Cap. 172 2009 REV238 (2), Section

238. Seizure of property obtained by offence

(2) Any court may order the seizure of any books, documents, instruments, materials, or things which there is reason to believe are provided, or prepared or being prepared, with a view to the commission of any offence and may direct them to be held and dealt with in the same manner as property seized under subsection (1).

2.2. Mutual assistance in Criminal Matters Cap. 177, 2009 REV

**CHAPTER 177
MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT**

• Act • Subsidiary Legislation •

ACT

Act No. 46 of 1993

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CHAPTER 177

MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

An Act to make provisions with respect to the scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth and to facilitate its operation in Saint Vincent and the Grenadines, and to make provision concerning mutual assistance in criminal matters between Saint Vincent and the Grenadines and countries other than Commonwealth countries.

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines, and by the authority of the same, as follows.

[Act No. 46 of 1993.]

[Date of commencement: 22nd August, 1994.]

PART I

Preliminary

1. Short title

This Act may be cited as the Mutual Assistance in Criminal Matters Act, 1993.

2. Commencement

This Act shall come into effect on a day appointed by the Governor-General by Proclamation published in the *Gazette*.

3. Interpretation

(1) In this Act, unless the context otherwise requires—

“central authority” means—

- (a) in relation to this State, the person or authority designated pursuant to section 4; or
- (b) in relation to any Commonwealth country, the person or authority designated by that country for the purpose of transmitting and receiving requests under the Scheme;

“Commonwealth country” means—

- (a) a sovereign and independent country within the Commonwealth, other than Saint Vincent and the Grenadines, together with any dependent territories which the country designates; and
- (b) a territory within the Commonwealth which, though not sovereign and independent, is not designated as provided in paragraph (a);

“confiscation order” means such an order made under the Drug Trafficking Offences Act, 1993;

[Chapter 173.]

“criminal proceedings” means—

- (a) for the purposes of Part II, proceedings certified by the central authority for this State to be criminal proceedings which have been, or could be, instituted in this State; or
- (b) for the purposes of Part III, proceedings certified by the central authority for any Commonwealth country making a request for assistance under this Act to be criminal proceedings which have been, or could be, instituted in that country,

in respect of an offence committed, or suspected on reasonable grounds to have been committed, against the law of Saint Vincent and the Grenadines or, as the case may be, of the Commonwealth country making the request for assistance;

“judicial records” means judgements, orders and decisions of courts, and other records held by judicial authorities;

“official records” means documents held by the government departments or agencies or prosecution authorities;

“property” includes money and all other property, real or personal, immovable or movable, including things in action and other intangible or incorporeal property;

“regulations” means regulations made under section 36;

“restraining order” means such an order made under the Drug Trafficking Offences Act, 1993;

[Chapter 173.]

“Scheme” means the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth, the text of which is set out in the Second Schedule;

“serious offence” means—

- (a) in relation to this State, an offence against the laws of Saint Vincent and the Grenadines which is an indictable offence—
 - (i) for which a sentence of death, or imprisonment for a term of not less than three years, may be, or is required to be, imposed, or
 - (ii) the value of the property derived or obtained from the commission of which is, or is likely to be, not less than twenty thousand dollars, or such greater amounts as may be prescribed; or

- (b) in relation to a Commonwealth country, an offence against the law of the country—
- (i) for which a sentence such as is specified in paragraph (a)(i) may be, or is required to be, imposed, or
 - (ii) the value of the property derived or obtained from the commission of which is certified by the central authority for the country to be, or to be likely to be, not less than such amount as is prescribed by or under the law of the country;

“**State**” means Saint Vincent and the Grenadines;

“**transmitted**”, in relation to a request, means—

(1) (a) In Part II, transmitted by the central authority for this State to the central authority for the Commonwealth country from which assistance is requested; or

(b) in Part III, transmitted by the central authority for the Commonwealth country, making a request for assistance, to the central authority for this State.

(2) A reference in this Act to the law of a Commonwealth country includes a reference to the law of a part of, or the law in force in a part of, the country.

(3) For the purposes of this Act, a ship or aircraft of, or registered in, a Commonwealth country shall be deemed to be part of the country.

(4) For the purposes of this Act, a person shall be deemed to have been charged with a serious offence in this State or, as the case may be, in a Commonwealth country, if any information has been laid against the person for the offence, whether or not—

(a) a summons to require the attendance of the person to answer to the information; or

(b) a warrant for the apprehension of the person,

has been issued.

4. Central authority for Saint Vincent and the Grenadines

The Governor-General may, by order published in the *Gazette*, designate any person or authority as the central authority for this State.

5. Application of Act

(1) Subject to subsection (2), this Act, other than Part IV, shall apply in relation to all Commonwealth countries.

(2) The Governor-General may, by order published in the *Gazette*, direct that the application of this Act in relation to a particular Commonwealth country shall be subject to such conditions, exceptions or qualifications as are specified in the order, and in that event this Act shall apply accordingly.

6. Restrictions with respect to operation of Act

(1) Nothing in this Act derogates from, or prevents the development of, other forms of co-operation (whether formal or informal) in respect of criminal matters, between this State and any Commonwealth country, or between this State, or any organisation in this State, and the International Criminal Police Organisation or any other organisation.

(2) Nothing in this Act authorises the extradition, or the arrest or detention with a view to extradition, of any person.

PART II

Requests to Commonwealth Countries for Assistance

DIVISION 1

General Assistance

7. Assistance in obtaining evidence

Where there are reasonable grounds to believe that evidence or information relevant to any criminal proceedings may be obtained if, in a Commonwealth country—

- (a) evidence is taken from any person;
- (b) any—
 - (i) person, or sample, specimen or other item from, or provided by, a person, or
 - (ii) remains which are, or may be, human, is or are subjected to any examination or test;
- (c) judicial records, official records or other records, or documents or other articles, are produced or examined;
- (d) samples of any matter or thing are taken, examined or tested;
- (e) any building, place or thing is viewed or photographed,

a request may be transmitted requesting that assistance be given by the country in so obtaining the evidence or information.

8. Assistance in locating or identifying person

Where there are reasonable grounds to believe that a person who—

- (a) is or might be concerned in or affected by; or
- (b) could give or provide evidence or assistance relevant to,

any criminal proceedings, is in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in locating that person or, if his identity is unknown, in identifying and locating him.

9. Assistance in obtaining article or thing, by search and seizure if necessary

Where there are reasonable grounds to believe that an article or thing is in a Commonwealth country and would, if produced, be relevant to any criminal proceedings, a request may be transmitted requesting that assistance be given by the country in obtaining, by search and seizure if necessary, the article or thing.

10. Assistance in arranging attendance of person

Where there are reasonable grounds to believe that a person in a Commonwealth country could give or provide evidence or assistance relevant to any criminal proceedings, a request may be transmitted requesting that assistance be given by the country in arranging the attendance of the person in this State to give or provide that evidence, or, as the case may be, assistance.

11. Assistance in securing transfer of prisoner

(1) Where there are reasonable grounds to believe that a person who is a prisoner in a Commonwealth country could give or provide evidence or assistance relevant to any criminal proceedings, a request may be transmitted requesting the country to secure the transfer of the prisoner to this State to give or provide that evidence or, as the case may be, assistance.

(2) The central authority for this State shall, to the extent that it is able to do so, ensure that any conditions, subject to which a prisoner is transferred from any Commonwealth country pursuant to a request under subsection (1), are observed, unless and to the extent that country waives their observance.

(3) Where any conditions such as are referred to in subsection (2) require that a prisoner be kept in custody while in this State, the prisoner shall, subject to subsection (4), while in this State or travelling to or from this State pursuant to the request, be kept in such custody as the Attorney-General directs in writing.

(4) A prisoner, in this State pursuant to a request made under this section, may, if both central authorities and the prisoner so agree, be released in this State without first having been returned to the Commonwealth country to which the request was made.

(5) Nothing in this section shall be construed as conferring rights on a prisoner.

(6) In this section, “**prisoner**”, in relation to a Commonwealth country, means a person who is being held in custody pending trial for, or sentence for, or is under a sentence of imprisonment for, an offence against the law of that country, or is subject to any limitation on his personal liberty pursuant to that law.

12. Assistance in serving documents

Where, for the purposes of, or in connection with, any criminal proceedings, it is necessary or desirable to serve any document on a person or an authority in a Commonwealth country, a request may be transmitted requesting that assistance be given by the country in effecting the service.

13. Restriction on use of evidence, etc.

Any—

- (a) evidence or information obtained or, as the case may be, given or provided, by any person pursuant to a request such as is referred to in section 7, 10 or 11; or
- (b) article or thing obtained pursuant to a request such as is referred to in section 9,

shall be used, by or on behalf of this State, only for the purposes of, or in connection with, the criminal proceedings to which the request related, unless the Commonwealth country, to which the request was made, consents to it being otherwise used by or on behalf of this State.

14. Immunities and privileges

(1) Subject to subsection (2), a person in this State pursuant to a request such as is referred to in section 10 or 11—

- (a) is not liable to be detained, prosecuted or punished in this State for any offence that is alleged to have been committed, or that was committed, before the persons’ departure, pursuant to the request, from the Commonwealth country to which the request was made;
- (b) may refuse to answer any questions or to produce any record or thing if the refusal is based on the law of Saint Vincent and the Grenadines; and

- (c) shall not be compelled to give or provide evidence or assistance for the purposes of, or in connection with, any criminal proceedings other than those to which the request related.
- (2) Subsection (1)(a) or (c) does not apply in relation to a person—
- (a) if he leaves this State and then returns otherwise than pursuant to the same or another request; or
 - (b) who has been notified by the central authority for this State that his presence is no longer required for the purposes of the request and who then remains in this State for more than fifteen days after the first date on which he had a reasonable opportunity to leave it.
- (3) For the purposes of subsection (1)(a), an offence shall be treated as having been committed only on the date when the conduct constituting the offence was complete, notwithstanding that the offence concerned may be a continuing offence.

DIVISION 2

Assistance in Connection with Serious Offences

15. Assistance in tracing property, etc.

Where—

- (a) in this State a person—
 - (i) has been charged with, or convicted of, a serious offence, or
 - (ii) is suspected, on reasonable grounds, of having committed such an offence; and
- (b) property derived or obtained, directly or indirectly, by a person from the commission of an offence is suspected, on reasonable grounds, to be in a Commonwealth country,

a request may be transmitted requesting that assistance be given by the Commonwealth country in identifying, locating or assessing the value or amount of any such property.

16. Assistance in relation to certain orders

(1) Where—

- (a) in this State—
 - (i) a restraining order has been made restraining dealings with identified property which is, or is suspected on reasonable grounds of being, property derived or obtained, directly or indirectly, from the commission of a serious offence, or
 - (ii) a confiscation order has been made imposing on a person a pecuniary calculated by reference to the value of property derived or obtained, directly or indirectly, by the person from the commission of a serious offence; and
- (b) property to which a restraining order would apply or, as the case may be, which is available for the satisfaction of a pecuniary penalty under a confiscation order, is suspected, on reasonable grounds, to be in a Commonwealth country,

then, subject to subsection (3), a request may be transmitted requesting that the order concerned be enforced in accordance with the law of the Commonwealth country and that, to that end, the country give appropriate assistance.

(2) In any case where a request to a Commonwealth country under this section has been accepted, the central authority for this state shall inform the central authority for that country if the confiscation order or restraining order concerned is thereafter varied or ceases to have effect.

(3) A request shall not be made under this section for the enforcement of a confiscation order if the value of the property required to satisfy the pecuniary under the order would be less than twenty thousand dollars, or such other amount as may be prescribed.

17. Assistance in obtaining order in nature of restraining order

Where—

(a) in this State—

(i) a person has been charged with, or convicted of, a serious offence, and

(ii) a confiscation order has been, or is likely to be, made imposing on that person a pecuniary penalty calculated by reference to property derived or obtained, directly or indirectly, by that person from the commission of the serious offence; and

(b) property derived or obtained from the commission of a serious offence is suspected, on reasonable grounds, to be in a Commonwealth country,

a request may be transmitted requesting that an order be made, in accordance with the law of the Commonwealth country, restraining dealings with identified property and that, to that end, the country give appropriate assistance.

PART III

Requests by Commonwealth Countries for Assistance

DIVISION 1

Form and Acceptance or Refusal of Requests

18. Form of requests

(1) Subject to subsection (2), the First Schedule applies in relation to a request for assistance under this Act made by a Commonwealth country.

(2) Subsection (1) does not apply in relation to an informal request for assistance under this Act which is transmitted orally, but in the event that such a request is accepted—

(a) it is required to be implemented only to the extent that the central authority for this State considers reasonable; and

(b) it shall be deemed to have been withdrawn if a request in accordance with subsection (1) for the assistance concerned is not transmitted within such period as that central authority considers reasonable.

19. Acceptance or refusal of request, etc.

(1) Subject to this section, a request for assistance under this Act duly made by a Commonwealth country shall be accepted.

(2) A request for assistance under this Act made by a Commonwealth country shall be refused if, in the opinion of the central authority for this State—

- (a) the request relates to the prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political character;
- (b) there are substantial grounds for believing that the request has been made with a view to prosecuting or punishing a person for an offence of a political character;
- (c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, sex, religion, nationality, place of origin or political opinions;
- (d) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in this State, would have constituted an offence under the military law but not also under the ordinary criminal law of this State;
- (e) the granting of the request would be contrary to the Constitution of this State, or would prejudice the security, international relations or any substantial interest related to national security or other essential public policy of this State;
- (f) the request relates to conduct by a person which constitutes an offence in respect of which the person has already been convicted or acquitted by a court or tribunal in this State;
- (g) the prisoner is not prepared to give his consent to the transfer in the case of a request such as is referred to in section 24(1);
- (h) the request is for assistance of a kind which cannot be given under this Act, or would require steps to be taken for its implementation that could not be lawfully taken; or
- (i) the implementation of the request would require an individual to act, or refrain from acting, in a certain way and the individual is not willing to do so and cannot be lawfully compelled to do so.

(3) A request for assistance under this Act made by a Commonwealth country may be refused if, in the opinion of the central authority for this State—

- (a) the request relates to the prosecution or punishment of a person in respect of conduct that, if it had occurred in this State, would not have constituted an offence against the law of this State;
- (b) the request relates to the prosecution or punishment of a person in respect of conduct that occurred, or is alleged to have occurred, outside the country making the request and similar conduct occurring outside this State in similar circumstances would not have constituted an offence against the law of this State;
- (c) the request relates to the prosecution or punishment of a person in respect of conduct where, if it had occurred in this State at the same time and had constituted an offence against the law of this State, the person responsible could no longer be prosecuted by reason of lapse of time or for any other reason;
- (d) the provision of the assistance would impose an excessive burden on the resources of this State;
- (e) the conditions, exceptions or qualifications imposed pursuant to section 5(2) in relation to the country, prevent the request being accepted;

- (f) the request, not being one such as is referred to in section 18(2), does not meet the requirements of the First Schedule; or
- (g) there are reasonable grounds for doing so in the case of a request such as is referred to in section 24(1).

(4) If, in the opinion of the central authority for this State, the expense involved in complying with a request for assistance under this Act made by a Commonwealth country, and accepted, would be of an extraordinary nature, the central authority for this State shall consult with the central authority for the country as to the terms and conditions under which compliance with the request may continue and, in the absence of agreement in that regard, the central authority for this State may refuse to continue further with the request.

(5) If a request for assistance under this Act made by a Commonwealth country, other than an informal one made pursuant to section 18(2), is refused, the fact of, and the grounds for, the refusal shall be given by the central authority for this state to the central authority for that country.

(6) For the purposes of this section, an offence is not an offence of a political character if it is an offence within the scope of any international convention to which both this State and the Commonwealth country making the request are parties and which imposes on the parties thereto an obligation to afford mutual assistance in criminal matters relating to the offence.

DIVISION 2

General Assistance

20. Assistance to country in obtaining evidence

(1) This section applies where a request is transmitted requesting assistance by this State in obtaining, by any of the means stated in section 7, evidence or information relevant to any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Subject to this section, where this section applies evidence or information to which a request relates shall be obtained under and in accordance with prescribed procedures.

(3) A person, from whom evidence is taken in this State pursuant to a request for assistance under this section by a Commonwealth country—

- (a) may refuse to answer any question if—
 - (i) the refusal is based on the law of this State,
 - (ii) to require the person to answer the question would constitute a breach of a privilege recognised by the law of the Commonwealth country, or
 - (iii) to answer the question would constitute the commission by the person or an offence against the law of the Commonwealth country; and
- (b) shall not be compelled to give evidence for the purposes of, or in connection with, any criminal proceedings other than those to which the request relates.

(4) Where the request for assistance under this section is to the effect that evidence or information be obtained by the means stated in section 7(c), copies of records, not publicly available, may be produced or examined only to the extent that they could be produced to, or examined by, enforcement agencies or prosecuting or judicial authorities in this State.

21. Assistance to country in locating or identifying person

(1) This section applies where a request is transmitted requesting assistance by this State in locating, or identifying and locating, a person, believed to be in this State, who—

- (a) is or might be concerned in or affected by; or
- (b) could give or provide evidence or assistance relevant to, any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for this State shall use its best endeavours to have the person located or, as the case may be identified and located, and shall inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.

22. Assistance to country in obtaining article or thing, by search and seizure if necessary

(1) This section applies where a request is transmitted requesting assistance by this State in obtaining, by search and seizure if necessary, an article or thing in this State for the purposes of, or in connection with, any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the Director of Public Prosecutions shall, unless the article or thing concerned is otherwise lawfully obtained, authorise in writing a police officer to apply to a magistrate for a search warrant in respect of the article or thing.

(3) A police officer authorised under subsection (2) may apply for the issue of a search warrant to a magistrate having jurisdiction in the area where the article or thing is believed to be located.

(4) The laws of this State with respect to—

- (a) the making and disposal of an application for a search warrant; and
- (b) the execution of a search warrant,

apply, so far as they are capable of applying, to an application under subsection (3) and to the execution of any warrant issued pursuant to any such application.

(5) The central authority for this State shall provide such certification as may be required by the central authority for the Commonwealth country making the request concerning the result of any search, the place and circumstances of any seizure, and the subsequent custody of any property seized.

23. Assistance to country in arranging attendance of person

(1) This section applies where a request is transmitted requesting that assistance be given by this State in arranging the attendance, in the Commonwealth country making the request, of a person in this State to give or provide evidence or assistance relevant to any criminal proceedings in that Commonwealth country, and the request is accepted.

(2) Where this section applies, the central authority for this State shall—

- (a) inquire whether or not the person concerned is willing to attend as requested;
- (b) inform the central authority for the Commonwealth country making the request as to the outcome of the inquiry; and
- (c) if the person is willing to attend as requested, make appropriate arrangements to facilitate that attendance.

24. Assistance to country in securing transfer of prisoner

(1) This section applies where a request is transmitted requesting this State to secure the transfer of a prisoner in this State to the Commonwealth country making the request to give or provide evidence or assistance relevant to any criminal proceedings in that Commonwealth country, and the request is accepted.

(2) Where this section applies, the Attorney General shall cause a prisoner to be transferred to the Commonwealth country making the request for the purpose of giving effect to the request.

(3) The central authority for this State may state, and inform the central authority for the Commonwealth country making the request as to, conditions subject to which a prisoner is to be transferred, including conditions with respect to the custody, release or return of the prisoner.

(4) Any period during which a prisoner is in custody in a Commonwealth country, pursuant to a request, shall be deemed, for all purposes, to be on time served in custody in this State.

(5) In this section, “**prisoner**” means a person who is being held in custody pending trial for, or sentence for, or is under imprisonment for, and offence, or is subject to any limitation on his personal liberty pursuant to any law.

25. Assistance to country in serving documents

(1) This section applies where a request is transmitted requesting assistance by this State in effecting the service of a document on a person or an authority in this State for the purposes of, or in connection with, any criminal proceedings in the Commonwealth country making the request, and the request is accepted.

(2) Where this section applies, the central authority for this State shall—

(a) use its best endeavours to have the document served—

(i) in accordance with procedures proposed in the request, or

(ii) if those procedures proposed would be unlawful or inappropriate, or no procedures are so proposed, in accordance with the law of this State; and

(b) if the document—

(i) is served, transmit to the central authority for the Commonwealth country making the request a certificate as to service, or

(ii) is not served, transmit to that central authority a statement of the reasons which prevented the service.

DIVISION 3

Assistance in Connection with Serious Offences in Commonwealth Countries

26. Assistance to country in tracing property, etc.

(1) This section applies where—

(a) the Attorney-General or Director of Public Prosecutions of a Commonwealth country gives a certificate to the effect that in the country a named person—

(i) has been charged with, or convicted of, a specified serious offence, or

- (ii) is suspected, on reasonable grounds, of having committed such a specified offence;
 - (b) property derived or obtained, directly or indirectly, by the named person from the commission of that offence is suspected, on reasonable grounds, to be in this State;
 - (c) a request is transmitted requesting assistance by this State in identifying, locating or assessing the value or amount of that property; and
 - (d) the request is accepted.
- (2) Where this section applies, the central authority for this State—
- (a) shall use its best endeavours to give the assistance requested and, in doing so, may invoke such powers and procedures as may be prescribed for the purposes of this section; and
 - (b) shall inform the central authority for the Commonwealth country making the request as to the outcome of those endeavours.

27. Assistance to country in relation to certain orders

- (1) This section applies where—
- (a) the Attorney-General or Director of Public Prosecutions of a Commonwealth country gives a certificate to the effect—
 - (i) that an identified order has been made in accordance with the law of the country,
 - (ii) that the order has the effect under that law—
 - (A) of confiscating property derived or obtained, directly or indirectly, by the person, against whom the order is made, from the commission of a specified serious offence,
 - (B) of imposing on the person, against whom the order is made, a pecuniary penalty calculated by reference to the value of property so derived or obtained, or
 - (C) of restraining dealings with property which is, or is suspected on reasonable grounds of being, property so derived or obtained;
 - (b) property available for the satisfaction of the order or the pecuniary penalty under the order, or to which the order would apply, as the case may be, is suspected, on reasonable grounds, to be in this State;
 - (c) a request is transmitted requesting that the order concerned be enforced in accordance with the law of this State and that, to that end, this State give appropriate assistance; and
 - (d) the request is accepted.
- (2) Where this section applies, the Director of Public Prosecutions shall cause an application to be made to the High Court in accordance with the rules of the High Court for the registration of the order concerned.
- (3) On application made pursuant to subsection (2), the High Court shall register the order if it is satisfied—
- (a) that at the time of registration the order is in force; and
 - (b) that, in the case of an order such as is referred to in subsection (1)(a)(ii)(A) or (B)—

- (i) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received notice of the proceedings in sufficient time to enable him to defend them, and
- (ii) that the order is not subject to appeal.

(4) Where an order is registered in accordance with this section, a copy of any amendments made to the order (whether before or after registration) may be registered in the same way as the order and the amendments do not, for the purposes of this Act, have effect until they are registered.

(5) An order or an amendment of an order shall be registered by the registration, in accordance with the rules of the High Court, of—

- (a) a copy of the order or amendment sealed by the court or other authority making the order or amendment; or
- (b) a copy of the order or amendment duly authenticated in accordance with section 32(2)(a).

(6) The High Court shall, after appropriate notice has been given to the central authority for this State, cancel the registration of an order made in accordance with this section if it appears to the court to have ceased to have effect in the Commonwealth country that made the request for assistance.

(7) The regulations may make provision for and with respect to the enforcement in this State of an order registered in accordance with this section.

(8) In this section, “**appeal**” includes any proceedings by way of discharging or setting aside a judgement or an application for a new trial or stay of execution.

28. Assistance to country in obtaining restraining order

(1) This section applies where—

- (a) the Attorney-General or Director of Public Prosecutions of a Commonwealth country gives a certificate to the effect that—
 - (i) in the country, a named person has been charged with, or convicted of, a specified serious offence, and
 - (ii) in the country, an order has been, or is likely to be, made that has or, as the case may be, will have, the effect under the law of the country—
 - (A) of confiscating property derived or obtained, directly or indirectly, by that person from the commission of the serious offence, or
 - (B) of imposing on that person a pecuniary penalty calculated by reference to the value of the property so derived or obtained by him;
- (b) property so derived or obtained is suspected, on reasonable grounds, to be in this State;
- (c) a request is transmitted requesting that an order be made, in accordance with the law of this State, restraining dealings with identified property and that, to that end, this State give appropriate assistance; and
- (d) the request is accepted.

(2) The regulations may make provision for and with respect to the implementation of a request under this section.

Application of Act to Countries other than Commonwealth Countries

29. Definitions for purposes of Part IV

In this Part—

“**country**” means a country other than one included in the definition of “Commonwealth country” in section 3(1);

“**treaty**” includes a convention, protocol, agreement or arrangement.

30. Implementation of treaty

(1) Regulations may make provisions to give effect to a treaty, set out in the regulations, for bilateral mutual assistance in criminal matters between this State and a country specified in the regulations.

(2) For that purpose, the regulations may, in particular—

(a) direct that this Act shall apply in relation to the country so specified as if it were a Commonwealth country, subject to such limitations, conditions, exceptions or qualifications (if any) as may be prescribed; or

(b) extend, as provided in section 36(2), the application of any other Act in relation to the country so specified,

and this Act or, as the case may be, the other Act shall apply accordingly.

PART V

Miscellaneous

31. Certificates given by the Attorney-General

Where he is satisfied that it is the case, the Attorney-General may give a certificate in such form as he determines, certifying, in relation to a request for assistance under this Act made by a Commonwealth country, either or both of the following facts, namely, that—

(a) the request meets the requirements of this Act;

(b) the acceptance of the request was duly made under and in accordance with this Act.

32. Proof

(1) In any relevant proceedings—

(a) a document that is duly certified is admissible in evidence; and

(b) a relevant certificate shall be received as sufficient proof of the matters certified in the certificate unless the contrary is proved.

(2) A document is duly authenticated for the purposes of subsection (1)(a) if it purports to be—

(a) signed or certified by a Judge or magistrate of a Commonwealth country making a request;

(b) authenticated by the oath of a witness, or of a public officer of a Commonwealth country making a request; or

- (c) sealed with an official or public seal of a Minister of State, or of a department or public office of the Government, of such a country.

(3) Nothing in this section operates to prevent the proof of any matter, or the admission of any document, in accordance with the regulations or any other law.

(4) In this section—

“relevant certificate” means a certificate purporting to be given—

- (a) by the central authority for a Commonwealth country for the purposes of—
 - (i) paragraph (b) of the definition in section 3(1) of “criminal proceedings”, or
 - (ii) paragraph (b)(ii) of the definition in section 3(1) of “serious offence”;
- (b) by the Attorney-General or Director of Public Prosecutions of a Commonwealth country for the purposes of section 26(1)(a), 27(1)(a), or 28(1)(a), or paragraph 8(d) of the First Schedule; or
- (c) by the Attorney-General for the purpose of section 31;

“relevant proceedings” means proceedings under or pursuant to this or any other Act arising directly or indirectly from a request for assistance under this Act made by a Commonwealth country.

33. Transit

(1) Where a person is to be transported in custody from a Commonwealth country through this State to another Commonwealth country pursuant to a request for assistance, of the kind referred to in the Scheme, by the other Commonwealth country, the person—

- (a) may be transported through this State in the custody of another person; and
- (b) if an aircraft or ship by which the person is being transported lands or calls at a place in this State, shall be kept in such custody as the Attorney-General directs in writing until the person’s transportation is continued.

(2) Where a person is being held in custody pursuant to a direction under subsection (1)(b) and the person’s transportation is not, in the opinion of the Attorney-General, continued within a reasonable time, the Attorney-General may direct that the person be transported in custody to the Commonwealth country from which the person was first transported.

34. Escaping

Any person who escapes from lawful custody while in this State pursuant to a request under section 11, or while being kept in custody pursuant to a direction under section 33(1)(b), is guilty of an offence and liable on summary conviction to imprisonment or two years.

35. Arrest of person who has escaped from custody

(1) Any police officer may, without warrant, arrest a person, if the police officer has reasonable grounds to believe that the person—

- (a) has been brought to this State pursuant to a request under section 11, or was being kept in custody pursuant to a direction under section 33(1)(b); and
- (b) has escaped from lawful custody while in this State pursuant to the request, or while being so kept in custody.

(2) A person who has been arrested pursuant to subsection (1) shall be returned to custody in accordance with the Act.

36. Regulations

(1) The Governor-General may make regulations prescribing any matter necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular—

- (a) making provision as to evidence or proof of any matter for the purposes of this Act;
- (b) prescribing the procedures for obtaining evidence pursuant to a request to do so under section 20;
- (c) prescribing expenses and allowances payable to any person in this State pursuant to a request;
- (d) prescribing conditions for the protection of any property sent to or by a Commonwealth country pursuant to a request, and making provision for the return of property in this State pursuant to a request.

(2) The regulations may, with such limitations, conditions, exceptions or qualifications (if any) as may be prescribed, extend the application of any Act so as to enable—

- (a) any request by a Commonwealth country for assistance so requested to be given;
- (b) any order registered pursuant to section 27 to be enforced; or
- (c) an order to be made pursuant to a request for assistance under section 28 and, if made, to be enforced,

and the Act shall apply accordingly.

(3) Regulations made for the purposes of section 20(2) may include procedures for, and powers in relation to, the taking of evidence in this State by commissioners from, or nominated by, the Commonwealth country concerned.

37. This Act to take precedence

The provisions of this Act shall take effect notwithstanding any provision of any other Act to the contrary, to the intent that any such provision of any other Act shall be deemed to have been hereby amended to the extent required to ensure compliance with the relevant provisions of this Act.

First Schedule

[Section 18(1).]

Requests for Assistance Made by Commonwealth Countries

1. A request for assistance under this Act made by a Commonwealth country shall—

- (a) specify the assistance requested;
- (b) identify the person, agency or authority that initiated the request;
- (c) state any wishes of the country concerning the confidentiality of the request and the reasons for those wishes;

- (d) state any period within which the country wishes the request to be complied with;
- (e) if the request would involve travel by any person from this State to the country, give details of allowances and accommodation to which the person would be entitled; and
- (f) contain such information as is available to the central authority for the country as will facilitate compliance with the request.

2. Where the assistance requested by a Commonwealth country is for the purposes of criminal proceedings, the request—

- (a) shall be accompanied by the certificate, in relation to the criminal proceedings, that is referred to in paragraph (b) of the definition of “criminal proceedings” in section 3(1); and
- (b) shall—
 - (i) give details of the proceedings and the offence concerned, including a summary of the known facts,
 - (ii) give the identity, if known, of the person to whom the proceedings relate or would relate, and
 - (iii) if the proceedings have been instituted, state the stage reached in the proceedings and, where applicable, identify the court exercising jurisdiction.

3. Where a request such as is referred to in section 20 is made by a Commonwealth country, the request shall—

- (a) give details of the procedure that the country wishes to be followed in giving effect to the request, including details of the manner and form in which any evidence or information is to be supplied to that country;
- (b) where relevant, indicate whether any person, from whom evidence is to be taken, is to be examined—
 - (i) orally or in writing,
 - (ii) under oath,
 - (iii) in the presence of his legal representative, or
 - (iv) in the presence of the person to whom any relevant proceedings in that country relate;
- (c) where evidence is to be taken from a person, specify the questions to be put to the person or the subject-matter about which the person is to be examined;
- (d) where evidence is to be taken from a person, give details of any special requirements of the country as to the manner of taking evidence relevant to its admissibility in the country; and
- (e) give details of any privileges or exemptions under the law of the country in relation to obtaining evidence or information by the means proposed in the request.

4. Where a request such as is referred to in section 22 is made by a Commonwealth country, the request shall identify the article or thing which is to be obtained and, so far as is reasonably practicable, shall contain all information available to the central authority for the country which may be required to be adduced in an application under the law of this State for any necessary warrant or authorisation to effect a seizure of that article or thing.

5. Where a request such as is referred to in section 24 is made by a Commonwealth country, the request shall identify the subject on which evidence or information is to be provided and state the reasons for requiring the personal appearance of the prisoner.

6. Where a request such as is referred to in section 25 is made by a Commonwealth country, the request shall—

- (a) be accompanied by the document to be served; and
- (b) where that document relates to the attendance of any person in the country, give such notice as that country is able to provide of outstanding warrants or other judicial orders in criminal matters against that person.

7. Where a request such as is referred to in section 26 is made by a Commonwealth country, the request shall—

- (a) be accompanied by the certificate given by the Attorney-General or Director of Public Prosecutions thereof;
- (b) give details of the specified serious offence; and
- (c) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying or locating that property.

8. Where a request such as is referred to in section 27 is made by a Commonwealth country, the request shall—

- (a) be accompanied by the certificate given by the Attorney-General or Director of Public Prosecutions thereof;
- (b) be accompanied by a copy of the identified order made in the country—
 - (i) sealed by the court that made the order, or
 - (ii) duly authenticated in accordance with section 32(2)(a), and identify the relevant law under which the order was made;
- (c) give details of the specified serious offence;
- (d) in the case of an order such as is referred to in section 27(1)(a)(ii)(A) or (B), be accompanied by a certificate given by the Attorney-General to the effect—
 - (i) that the order is not subject to appeal, as defined in section 27(8), and
 - (ii) that the person against whom the order was made appeared in the proceedings or, if he did not do so, that he received the notice of the proceedings specified in the certificate;
- (e) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying or locating the property; and
- (f) give particulars of any amount paid or recovered under the identified order.

9. Where a request such as is referred to in section 28 is made by a Commonwealth country, the request shall—

- (a) be accompanied by the certificate given by the Attorney-General or Director of Public Prosecutions thereof;
- (b) if relevant, be accompanied by a copy of the order made in the country—
 - (i) sealed by the court that made the order, or
 - (ii) duly authenticated in accordance with section 32(2)(a), and identify the law under which the order was made;

- (c) if relevant, state the grounds for believing that an order is likely to be made;
- (d) give details of the serious offence in respect of which the order was or, as the case may be, is likely to be, made; and
- (e) state the grounds for suspecting that the relevant property is in this State and give any information in the possession of the country which will assist in identifying the property.

10. After giving preliminary consideration to a request for assistance under this Act made by a Commonwealth country, the central authority for this State may require the central authority for that country to furnish further information relative to the request and if that information is not furnished within such period as the central authority for this state considers reasonable, the request shall be deemed to have been withdrawn.

Second Schedule

[Section 3(1).]

Text of the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth

1. Purpose and scope

(1) The purpose of this Scheme is to increase the level and scope of assistance rendered between Commonwealth Governments in criminal matters. It augments, and in no way derogates from existing forms of co-operation, both formal and informal; nor does it preclude the development of enhanced arrangements in other fora.

(2) This Scheme provides for the giving of assistance by the competent authorities of one country (the requested country) in respect of criminal matters arising in another country (the requesting country).

(3) Assistance in criminal matters under this Scheme includes assistance in—

- (a) identifying and locating persons;
- (b) serving documents;
- (c) examining witnesses;
- (d) search and seizure;
- (e) obtaining evidence;
- (f) facilitating the personal appearance of witnesses;
- (g) effecting a temporary transfer of persons in custody to appear as a witness;
- (h) obtaining production of judicial or official records; and
- (i) tracing, seizure and forfeiting the proceeds of criminal activities.

2. Meaning of country

For the purposes of this Scheme, each of the following is a separate country, that is to say—

- (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates; and
- (b) each country within the Commonwealth which, though not sovereign and independent, is not designated for the purposes of the preceding subparagraph.

3. Criminal matter

(1) for the purposes of this Scheme, a criminal matter arises in a country if the Central Authority of that country certifies that criminal proceedings have been instituted in a court exercising jurisdiction in that country or that there is a reasonable cause to believe that an offence in respect of which such proceedings could be instituted has been committed.

(2) “**Offence**”, in the case of a federal country or a country having more than one legal system, includes an offence under the law of the country or any part thereof.

4. Central authorities

Each country shall designate a Central Authority to transmit and to receive requests for assistance under this Scheme.

5. Action in the requesting country

(1) A request for assistance under this Scheme may be initiated by any law enforcement agency or public prosecution or judicial authority competent under the law of the requesting country.

(2) The Central Authority of the requesting country shall, if it is satisfied that the request can properly be made under this Scheme, transmit the request to the Central Authority of the requested country and shall ensure that the request contains all the information required by the provisions of this Scheme.

(3) The Central Authority of the requesting country shall provide as far as practicable additional information sought by the Central Authority of the requested country.

6. Action in the requested country

(1) Subject to the provisions of this Scheme, the requested country shall grant the assistance requested as expeditiously as practicable.

(2) The Central Authority of the requested country shall, subject to the following provisions of this paragraph, take the necessary steps to ensure that the competent authorities of that country comply with the request.

(3) If the Central Authority of the requested country considers—

- (a) that the request does not comply with the provisions of this Scheme; or
- (b) that in accordance with the provisions of this Scheme the request for assistance is to be refused in whole or in part; or
- (c) that the request cannot be complied with, in whole or in part; or
- (d) that there are circumstances which are likely to cause a significant delay in complying with the request,

it shall promptly inform the Central Authority of the requesting country, giving reasons.

7. Refusal of assistance

(1) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme if the criminal matter appears to the Central Authority of that country to concern—

- (a) conduct which would not constitute an offence under the law of that country; or
- (b) an offence or proceedings of a political character; or
- (c) conduct which in the requesting country is an offence only under military law or a law relating to military obligations; or

- (d) conduct in relation to which the person accused or suspected of having committed an offence has been acquitted or convicted by a court in the requested country.

(2) The requested country may refuse to comply in whole or in part with a request for assistance under this Scheme—

- (a) to the extent that it appears to the Central Authority of that country that compliance would be contrary to the Constitution of that country, or would prejudice the security, international relations or other essential public interests of that country; or
- (b) where there are substantial grounds leading the Central Authority of that country to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions or would cause prejudice for any of these reasons to any person affected by the request.

(3) The requested country may refuse to comply in whole or in part with a request for assistance to the extent that the steps required to be taken in order to comply with the request cannot under the law of that country be taken in respect of criminal matters arising in that country.

(4) An offence shall not be an offence of a political character for the purposes of this paragraph if it is an offence within the scope of any international convention to which both the requesting and requested countries are parties and which imposes on the parties thereto an obligation either to extradite or prosecute a person accused of the commission of the offence.

8. Applicable Measures

(1) The competent authorities of the requested country shall in complying with a request under this Scheme use only such measures of compulsion as are available under the law of that country in respect of criminal matters arising in that country.

(2) Where under the law of the requested country measures of compulsion cannot be applied to any person to take the steps necessary to secure compliance with a request under this Scheme but the person concerned is willing to act voluntarily in compliance or partial compliance with the terms of the request, the competent authorities of the requested country shall make available the necessary facilities.

9. Scheme not to cover arrest or extradition

Nothing in this Scheme is to be construed as authorising the extradition, or the arrest or detention with a view to extradition, of any person.

10. Confidentiality

The Central Authorities and the competent authorities of the requesting and requested countries shall use their best efforts to keep confidential a request and its contents and the information and materials supplied in compliance with a request except for disclosure in criminal proceedings and where otherwise authorised by the Central Authority of the other country.

11. Limitation of use of information or evidence

The requesting country shall not use any information or evidence obtained in response to a request for assistance under this Scheme in connection with any matter other than the criminal matter specified in the request without the prior consent of the Central Authority of the request country.

12. Responsibility for measures

(1) Except as provided in the following provisions of this paragraph, compliance with a request under this Scheme shall not give rise to any claim against the requesting country for expenses incurred by the Central Authority or other competent authorities of the requested country.

(2) The requesting country shall be responsible for the travel and incidental expenses of witnesses travelling to the requesting country, including those of accompanying officials, for fees of experts, and for the costs of any translation required by the requesting country.

(3) If in the opinion of the requested country the expenses required in order to comply with the request are of an extraordinary nature, the Central Authority of the requested country shall consult with the Central Authority of the requesting country as to the terms and conditions under which compliance with the request may continue, and in the absence of agreement the requested country may refuse to comply further with the request.

13. Contents of request for assistance

(1) A request under the Scheme shall—

- (a) specify the nature of the assistance requested;
- (b) contain the information appropriate to the assistance sought as specified in the following provisions of this Scheme;
- (c) indicate any time-limit within which compliance with the request is desired, stating reasons;
- (d) contain the following information—
 - (i) the identity of the agency or authority initiating the request,
 - (ii) the nature of the criminal matter, and
 - (iii) whether or not criminal proceedings have been instituted;
- (e) where criminal proceedings have been instituted, contain the following information—
 - (i) the court exercising jurisdiction in the proceedings,
 - (ii) the identity of the accused person,
 - (iii) the offences of which he stands accused, and a summary of the facts,
 - (iv) the stage reached in the proceedings, and
 - (v) any date fixed for further stages in the proceedings;
- (f) where criminal proceedings have not been instituted, state the offence which the Central Authority of the requesting country has reasonable cause to believe to have been committed, with a summary of the known facts.

(2) A request shall normally be in writing, and if made orally in case of urgency shall be confirmed in writing forthwith.

14. Identifying and locating persons

(1) A request under this Scheme may seek assistance in identifying or locating persons believed to be within the requested country.

(2) The request shall indicate the purposes for which the information is requested and shall contain such information as is available to the Central Authority of the requesting country as to the whereabouts of the person concerned and such other information as it possesses as may facilitate the identification of that person.

15. Service of documents

(1) A request under this Scheme may seek assistance in the service of documents relevant to a criminal matter arising in the requesting country.

(2) The request shall be accompanied by the documents to be served and, where those documents relate to attendance in the requesting country, such notice as the Central Authority of that country is reasonably able to provide of outstanding warrants or other judicial orders in criminal matters against the person to be served.

(3) The Central Authority of the requested country shall endeavour to have the documents served—

- (a) by any prescribed method stated in the request, unless such method is incompatible with the law of that country; or
- (b) by any method prescribed by the law of that country for the service of documents in criminal proceedings.

(4) The requested country shall transmit to the Central Authority of the requesting country a certificate as to the service of the documents or, if they have not been served, as to the reasons which have prevented service.

16. Examination of witnesses

(1) A request under this Scheme may seek assistance in the examination of witnesses in the requested country.

(2) The request shall specify, as appropriate and so far as the circumstances of the case permit—

- (a) the names and addresses or the official designations of the witnesses to be examined;
- (b) the questions to be put to the witnesses or the subject-matter about which they are to be examined;
- (c) whether it is described that the witnesses be examined orally or in writing;
- (d) whether it is desired that the oath be administered to the witnesses (or, as the law of the requested country allows, that they be required to make their solemn affirmation);
- (e) any provisions of the law of the requesting country as to privilege or exemption from giving evidence which appear especially relevant to the request; and
- (f) any special requirements of the law of the requesting country as to the manner of asking evidence and to its admissibility in that country.

(3) The request may ask that, so far as the law of the requested country permits, the accused person or his legal representative may attend the examination of the witness and ask questions of the witness.

17. Assistance in the search for and seizure of property

(1) A request under this Scheme may seek assistance in the search for and seizure of property in the requested country.

(2) The request shall specify the property to be searched for and seized and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required to be adduced in an application under the law of the requested country for any necessary warrant or authorisation to effect the search and seizure.

(3) The requested country shall provide such certification as may be required by the requesting country concerning the result of any search, the place and circumstances of seizure, and the subsequent custody of the property seized.

18. Other assistance in obtaining evidence

(1) A request under this Scheme may seek other assistance in obtaining evidence.

(2) The request shall specify, as appropriate and so far as the circumstances of the case permit—

- (a) the documents, records or property to be inspected, preserved, photographed, copied or transmitted;
- (b) the samples of any property to be taken, examined or transmitted; and
- (c) the site to be viewed or photographed.

19. Privilege

(1) No person shall be compelled in response to a request under this Scheme to give any evidence in the requested country which he could not be compelled to give—

- (a) in criminal proceedings in that country; or
- (b) in criminal proceedings in the requesting country.

(2) For the purposes of this paragraph any reference to giving evidence includes references to answering any question and to producing any document.

20. Production of judicial or official records

(1) A request under this Scheme may seek the production of judicial or official records relevant to a criminal matter arising in the requesting country.

(2) For the purposes of this paragraph, “**judicial records**” means judgements, orders and decisions of courts and other documents held by judicial authorities and “**official records**” means documents held by government departments or agencies or prosecution authorities.

(3) The requested country shall provide copies of judicial or official records which are publicly available.

(4) The requested country may provide copies of judicial or official records not publicly available, to the same extent and under the same conditions as apply to the provision of such records to its own law enforcement agencies or prosecution or judicial authorities.

21. Transmission and return of material

(1) Where compliance with a request under this Scheme would involve the transmission to the requesting country of any document, record or property, the requested country—

- (a) may postpone the transmission of the material if it is required in connection with proceedings in that country, and in such a case shall provide certified copied of a document or record pending transmission of the original;
- (b) may require the requesting country to agree to terms and conditions to protect third party interests in the material to be transmitted and may refuse to effect such transmission pending such agreement.

(2) Where any document, record or property is transmitted to the requesting country in compliance with a request under this Scheme, it shall be returned to the requested country when it is no longer in connection with the criminal matter specified in the request unless that country has indicated that its return is not desired.

22. Authentication

(1) The requested country shall authenticate material that is to be transmitted by that country.

(2) Authentication shall be by a stamp or seal of a Minister, ministry, government department or Central Authority of the requested country.

23. Personal appearance of witnesses in the requesting country

(1) A request under this Scheme may seek assistance in facilitating the personal appearance of witnesses before a court exercising jurisdiction in the requesting country.

(2) The request shall specify—

- (a) the subject matter upon which it is desired to examine the witnesses;
- (b) the reasons for which the personal appearance of the witnesses is required; and
- (c) details of the travelling, subsistence and other expenses payable by the requesting country in respect of the personal appearance of the witnesses.

(3) The competent authorities of the requested country shall invite persons whose appearance as witnesses in the requesting country is desired, and—

- (a) ask whether they agree to appear;
- (b) inform the Central Authority of the requesting country of their answer; and
- (c) if they are willing to appear, make appropriate arrangements to facilitate the personal appearance of the witnesses.

24. Personal appearance of persons in custody

(1) A request under this Scheme may seek the temporary transfer of persons in custody in the requested country to appear as witnesses before a court exercising jurisdiction in the requesting country.

(2) The request shall specify—

- (a) the subject matter upon which it is desired to examine the witnesses;
- (b) the reasons for which the personal appearance of the witnesses is required.

(3) The requested country shall refuse to comply with a request for the transfer of persons in custody if the persons concerned do not consent to the transfer.

(4) The requested country may refuse to comply with a request for the transfer of persons in custody and shall be under no obligation to inform the requesting country of the reasons for such refusal.

(5) Where persons in custody are transferred, the requested country shall notify the requesting country of—

- (a) the dates upon which the persons are due under the law of the requested country to be released from custody; and
- (b) the dates by which the requested country requires the return of the persons and shall notify any variations in such dates.

(6) The requesting country shall keep the persons transferred in custody, and shall return the persons to the requested country when their presence as witnesses in the requesting country is no longer required, and in any case by the earlier of the dates notified under subparagraph (5).

(7) The obligation to return the persons transferred shall subsist notwithstanding the fact that they are nationals of the requesting country.

(8) The period during which the persons transferred are in custody in the requesting country shall be deemed to be service in the requested country of an equivalent period of custody in that country for all purposes.

(9) Nothing in this paragraph shall preclude the release in the requesting country without return to the requested country of any person transferred where the two countries and the person concerned agreed.

25. Immunity of persons appearing

(1) Subject to the provisions of paragraph 24, witnesses appearing in the requesting country in response to a request under paragraph 23 or persons transferred to that country in response to a request under paragraph 24 shall be immune in that country from prosecution, detention or any other restriction of personal liberty in respect of criminal acts, omissions or convictions before the time of their departure from the requested country.

(2) The immunity provided for in that paragraph shall cease—

- (a) in the case of witnesses appearing in response to a request under paragraph 23, when the witnesses having had, for a period of fifteen consecutive days from the dates when they were notified by the competent authority of the requesting country that their presence was no longer required by the court exercising jurisdiction in the criminal matter, an opportunity of leaving have nevertheless remained in the requesting country, or having left that country have returned to it;
- (b) in the case of persons transferred in response to a request under paragraph 24 and remaining in custody when they have been returned to the requested country.

26. Tracing the proceeds of criminal activities

(1) A request under this Scheme may seek assistance in identifying, locating and assessing the value of property believed to be the proceeds of criminal activities and to be within the requested country.

(2) The request shall contain such information as is available to the Central Authority of the requesting country as to the nature and location of the property and as to any person in whose possession or control the property is believed to be.

27. Seizure and forfeiture of the proceeds of criminal activities

(1) A request under this Scheme may seek assistance in the seizure and forfeiture of the proceeds of criminal activities in the requested country.

(2) The request shall contain, so far as is reasonably practicable, all information available to the Central Authority of the requesting country which may be required to support an application under the law of the requested country for any necessary order, warrant or authorisation to effect the seizure or forfeiture.

(3) “**Seizure**” in this paragraph includes the taking of measures to prevent any dealing in, transfer or disposal of, or the creation of any charge over, property pending the determination or proceedings for the forfeiture of the proceeds of criminal activities.

(4) The law of the requested country shall apply to determine the disposal of any proceeds of criminal activities forfeited as a result of a request under this paragraph.

28. Confirmation and enforcement of orders for forfeiture of the proceeds of criminal activities

(1) A request under this Scheme may seek assistance in invoking procedures in the requested country leading to the recognition or review and confirmation and the enforcement of an order for the forfeiture of the proceeds of criminal activities made by a court or other authority in the requesting country.

(2) The request shall be accompanied by a certified copy of the order and shall contain, so far as reasonably practicable, all information available to the Central Authority of the requesting country which may be required in connection with the procedures to be followed in the requested country.

(3) The law of the requested country shall apply to determine the circumstances and manner in which an order may be recognised, confirmed or enforced.

29. Meaning of “the proceeds of criminal activities”

In this Scheme, “the proceeds of criminal activities” refers to any property derived or realised, directly or indirectly, by a person convicted of an offence in the requesting country or against whom criminal proceedings have been instituted in that country, as a result—

- (a) of the commission of the offence; or
- (b) of any part of a course of conduct by the person convicted or charged, alone or in association with other persons, having as its purpose the carrying out or furtherance of criminal activities, and of which the commission of the offence is shown to be part.

30. Consultation

The Central Authorities of the requested and requesting countries shall consult promptly, at the request of either, concerning matters arising under this Scheme.

31. Other assistance

After consultation between the requesting and the requested countries assistance not within the scope of this Scheme may be given in respect of a criminal matter on such terms and conditions as may be agreed by those countries.

32. Notification of designations

Designations of dependent territories under paragraph 2 and of Central Authorities under paragraph 4 be notified to the Commonwealth Secretary-General.

CHAPTER 177 MUTUAL ASSISTANCE IN CRIMINAL MATTERS ACT

SUBSIDIARY LEGISLATION

1. Mutual Assistance in Criminal Matters (Central Authority Designation) Order
-

Mutual Assistance in Criminal Matters (Central Authority Designation) Order

SRO 6 of 1999

ARRANGEMENT OF ORDERS

1. Citation.
 2. Designation.
-

MUTUAL ASSISTANCE IN CRIMINAL MATTERS (CENTRAL AUTHORITY DESIGNATION) ORDER

In exercise of the powers conferred by section 4 of the Mutual Assistance in Criminal Matters Act, 1993, the Governor-General makes the following order.

[SRO 6 of 1999.]

[Date of commencement: *22nd August, 1994.*]

1. Citation

This Order may be cited as the Mutual Assistance in Criminal Matters (Central Authority Designation) Order, 1999, and shall be deemed to have come into operation on 22nd day of August, 1994.

2. Designation

Pursuant to section 4 of the Act, the Director of Public Prosecutions is designated the central authority for Saint Vincent and the Grenadines for the purposes of the Act.
