

Copyright Bill

Bill No. /2021.

Read the first time on 2021.

COPYRIGHT ACT 2021

(No. of 2021)

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i n t i t u l e d

An Act relating to copyright and performers' rights.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART 5

PERMITTED USES OF
 COPYRIGHTED WORKS AND
 PROTECTED PERFORMANCES

5 *Division 3 — Education and Educational Institutions*

**Copying or communicating authorial works or performances
 for educational purposes of educational institutions [52, 201(1)]**

190.—(1) If the conditions in subsection (2) are met and subject to section 190A, it is a permitted use of —

10 (a) an authorial work to —

- (i) make copies of the work (or part of the work); or
- (ii) communicate the work (or part of the work); and

(b) a protected performance to —

- 15 (i) make a recording of the performance (or part of the performance); or
- (ii) communicate the performance (or part of the performance).

(2) The conditions are —

20 (a) the copy or communication is made by or on behalf of the body (X) administering an educational institution —

- (i) for the educational purposes of any educational institution; or
- (ii) in an electronic form on a network operated or controlled by any educational institution for the purpose of being accessed by persons undertaking a course of education provided by that institution or another educational institution;

25 (b) in the case of an article in a periodical publication —

- (i) the copy or communication does not include the whole or parts of 2 or more articles contained in the same periodical publication; or
 - (ii) the copied or communicated articles relate to the same subject-matter;
- (c) in the case of a work (other than an article in a periodical publication), or a recording of a performance, that has been separately published —
 - (i) not more than a reasonable portion of the work or recording is copied or communicated; or
 - (ii) before the work or recording or any part of the work or recording was copied or communicated, the person who did or caused the copying or communication —
 - (A) made a reasonable investigation; and
 - (B) is satisfied that there is no new copy of the work or recording that could be obtained within a reasonable time at an ordinary commercial price;
- (d) in the case of subsection (1)(a)(i) and (b)(i) — the copy or recording is notated according to section 286; and
- (e) after the copy or communication is made, a record of that fact is made —
 - (i) in the prescribed form and manner; and
 - (ii) by or on behalf of X.
- (3) The record mentioned in subsection (2)(e) —
 - (a) must state any prescribed particulars; and
 - (b) may, if the copy or communication is exempt, state so.
- (4) X must pay equitable remuneration to the rights owner if —
 - (a) the owner makes a written request within the prescribed period after the copy or communication is made; and
 - (b) the copy or communication is —
 - (i) not exempt; or

(ii) not stated as exempt in the record made under subsection (2)(e).

(5) The amount of equitable remuneration is to be —

(a) agreed between X and the rights owner; or

5 (b) in default of agreement, decided by a Copyright Tribunal.

(6) For the purposes of this section, a copy or communication of a work or recording made for the educational purposes of an educational institution is exempt if —

10 (a) the copy was made for distribution, or the communication was made, to persons undertaking a correspondence course or an external study course provided by the institution;

(b) the copy was not distributed, or the communication was not made, as part of the lecture notes prepared for the course;

15 (c) in the case of a work other than an article in a periodical publication — only a reasonable portion of the work has been copied or communicated; and

(d) in the case of a recording of a performance — only a reasonable portion of the recording has been copied or communicated.

20 (7) This section does not affect the right of the rights holder of an authorial work to grant a licence, or the right of the rights holder of a protected performance to give consent, to the body administering an educational institution —

25 (a) to make, or cause to be made, copies of the work (or part of the work) or recordings of the performance (or part of the performance); or

(b) to communicate, or cause to be communicated, the work or performance (or part of the performance).

Suspension of section 190 for contravention of record keeping requirements [166; 167]

- 5 **190A.**—(1) Subject to this section, a Copyright Tribunal may make an order suspending the application of section 190 in relation to a body administering an educational institution.
- (2) An order under subsection (1) may only be made —
- (a) on an application by the Attorney-General;
- (b) if the body, and the custodian in charge of the copying records of the institution, have in total been convicted of 2 or more record-keeping offences.
- 10 (3) An order under subsection (1) must not be made if the Tribunal is satisfied that the body has taken all reasonable steps to ensure that no further record-keeping offences will be committed in relation to copies made by or on behalf of the body.
- 15 (4) The Tribunal may revoke an order under subsection (1) —
- (a) on the application of the body; and
- (b) if the Tribunal is satisfied that the body has taken all reasonable steps to ensure that no further record-keeping offences will be committed in relation to copies made by or on behalf of the body.
- 20 (5) In this section —
- (a) “record-keeping offence” means any prescribed offence relating to the keeping of records for the purpose of section 190(2)(e);
- 25 (b) if a custodian in charge of the copying records of the educational institution and the body administering the institution are both convicted of the same record-keeping offence arising from the same transaction, the convictions are to be treated as a single conviction for the purposes of subsection (2)(b).
- 30

PART 9

REGULATION OF
COLLECTIVE MANAGEMENT ORGANISATIONS*Division 1 — Preliminary*5 **Interpretation of this Part [new]**

428. In this Part, unless the context otherwise requires —

“cessation order” means a cessation order under section 428G;

“collective management organisation” or “CMO” has the meaning given by section 428A;

10 “licence” —

(a) means a class licence established under section 428D;
and

(b) in relation to a CMO, means a licence applicable to the CMO;

15 “licence condition” means a condition of a licence established under section 428D;

“officer” —

(a) in relation to a body corporate, means any director,
20 partner, member of the committee of management, chief executive, manager, secretary or other similar officer of the body corporate and includes any person purporting to act in any such capacity;

(b) in relation to an unincorporated association (other than a partnership), means the president, the secretary, or any
25 member of the committee of the unincorporated association, or any person holding a position analogous to that of president, secretary or member of a committee and includes any person purporting to act in any such capacity; and

30 (c) in relation to a partnership, means any partner;

“permission” —

(a) in relation to a copyrighted work, means a copyright licence relating to the use of the work; and

(b) in relation to a protected performance, means authority relating to the use of the performance;

5 “regulatory direction” means a direction given under section 428F.

What is a collective management organisation (CMO) and who are its members [new]

10 **428A.**—(1) In this Part, a person (*X*) is a “collective management organisation” or “CMO” if —

(a) *X* is in the business of collectively managing the use of copyrighted works and protected performances, including —

(i) negotiating the terms of use;

(ii) granting permission for the use;

15 (iii) administering any conditions of use; and

(iv) collecting and distributing royalties or other payments for the use;

(b) those works and performances —

20 (i) were made or given by different authors, makers, publishers or performers; and

(ii) were not made or given by those authors, makers, publishers or performers —

(A) as employees of *X* or a prescribed related person; or

25 (B) under a commission from *X* or a prescribed related person;

(c) *X* manages those works and performances —

(i) as the rights owner or with the authority of the rights owners; and

30 (ii) for the collective benefit of —

(A) those authors, makers, publishers or performers;
or

(B) the rights owners of those works and
performances (but not including X); and

5 (d) X does not fall under any prescribed class of excluded
persons.

(2) For the purposes of subsection (1) —

(a) to avoid doubt, X and the related person mentioned in
subsection (1)(b) may be —

10 (i) an individual;

(ii) an organisation, an association or a body; or

(iii) a corporate or an unincorporate entity; and

(b) it does not matter whether the business mentioned in
subsection (1)(a) —

15 (i) is carried on for profit or otherwise; and

(ii) is the sole or main business of X.

(3) In this Part, the “members” of a CMO are the authors, makers,
publishers, performers and right owners mentioned in
subsection (1)(c)(ii), but excludes X.

20 **Purpose of this Part [new]**

428B. The purpose of this Part is to —

(a) regulate CMOs under a class licensing scheme administered
by IPOS; and

25 (b) confer on Copyright Tribunals powers over the
circumstances in which, and the terms on which, CMOs grant
permission to use copyrighted works and protected
performances.

Division 2 — Class Licensing of CMOs

CMOs must be licensed [new]

428C.—(1) It is an offence for a person to carry on business as a CMO —

- 5 (a) without a licence; or
 (b) while under a cessation order.

(2) A person who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 3 years or to both.

10 **Class licences [new]**

428D.—(1) The Minister may, by regulations —

- (a) establish one or more class licences, whether for all CMOs or for different classes of CMOs;
 (b) subject to subsection (3), prescribe, change, add to or revoke the conditions of a class licence; and
 15 (c) end a class licence.

(2) Without limiting subsection (1)(b), the conditions of a licence may relate to —

- (a) the rights that a CMO must grant to its members;
 20 (b) the collection and distribution of royalties or other payments by the CMO;
 (c) the information that a CMO must provide to its members or the public;
 (d) the manner by which a CMO must resolve any disputes with
 25 its members; and
 (e) the governance of a CMO.

Financial penalty for non-compliance with licence conditions
[new]

428E.—(1) If IPOS finds that a licensed CMO has contravened any licence condition, IPOS may impose —

- 5 (a) a financial penalty not exceeding \$20,000 on the CMO; and
 (b) a financial penalty not exceeding \$20,000 on each officer of the CMO that IPOS considers to be responsible for the contravention.

10 (2) Before imposing a financial penalty on a person under subsection (1), IPOS must give the person an opportunity to make representations in accordance with the prescribed procedure.

 (3) A financial penalty imposed under subsection (1) is recoverable as a fine.

15 (4) Financial penalties collected under subsection (1) must be paid into the Consolidated Fund.

Regulatory directions to CMOs and officers [new]

428F.—(1) Subject to subsection (3), IPOS may give written directions to a CMO or any officer of a CMO for any of the following purposes:

- 20 (a) to obtain information about the CMO and its business as a CMO, for the purpose of regulating CMOs in general;
 (b) to secure the CMO's compliance with this Division;
 (c) to ensure the good governance of the CMO;
 (d) to investigate or remedy any contravention by the CMO of
 25 this Division;
 (e) where the CMO is under a cessation order, to secure the orderly cessation of the CMO's business as a CMO.

(2) Without limiting subsection (1), the power of IPOS under that subsection includes directing a CMO or any officer of a CMO to —

- 30 (a) provide security for the CMO's compliance with this Division;

- (b) conduct an audit of its business or submit to an audit of its business by IPOS;
 - (c) pay the cost of any audit or investigation of the CMO that is done by or at the direction of IPOS;
 - 5 (d) secure the removal or appointment of a person as an officer of the CMO;
 - (e) turn over the conduct of the CMO's business to persons appointed by IPOS;
 - (f) stop taking on the management of new works or performances; and
 - 10 (g) in the case of an officer of the CMO — resign from or otherwise cease to act in that capacity.
- (3) Regulations may require IPOS to give a person an opportunity to make representations in accordance with the prescribed procedure
- 15 before giving a regulatory direction to the person.
- (4) IPOS may revoke a regulatory direction at any time.
- (5) It is an offence for a person to —
- (a) fail to comply with a regulatory direction; or
 - (b) knowingly do anything that prevents or impedes compliance
 - 20 with a regulatory direction.
- (6) A person who commits an offence under subsection (5) shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 6 months or to both.
- (7) For the purposes of subsection (2)(c) —
- 25 (a) IPOS may certify in writing the cost of any audit or investigation; and
 - (b) unless the contrary is proved, the certified cost is presumed to be the cost of the audit or investigation and is recoverable as a debt due from the CMO or officer to IPOS.

Cessation order [new]

428G.—(1) IPOS may, by notice in writing to the CMO, order a CMO to cease its business as a CMO indefinitely or for a specified period if —

- 5 (a) the CMO fails to comply with —
- (i) a licence condition; or
- (ii) a regulatory direction given to it;
- (b) an officer of the CMO fails to comply with a regulatory direction given to the officer;
- 10 (c) there is significant impropriety in the financial affairs of the CMO; or
- (d) IPOS considers that the public interest so requires.

 (2) Before making a cessation order against a CMO, IPOS must give the CMO an opportunity to make representations in accordance with the prescribed procedure.

15

 (3) To avoid doubt, a cessation order may be made in addition to any financial penalty or sentence imposed on the CMO.

 (4) When a CMO is under a cessation order —

- 20 (a) every licence ceases to apply to it, unless the order otherwise specifies; but
- (b) to avoid doubt, it is still subject to regulatory directions.

 (5) IPOS may revoke a cessation order at any time.

Reconsideration of decisions [new]

428H.—(1) This section applies where IPOS —

- 25 (a) imposes a financial penalty on a person;
- (b) makes a cessation order against a person; or
- (c) gives a regulatory direction to a person.

 (2) The person may apply to IPOS, within the prescribed time and in the prescribed manner, for IPOS to reconsider its decision.

(3) In an application for reconsideration —

(a) IPOS must, within the prescribed period, confirm, vary or set aside its decision; and

5 (b) unless IPOS otherwise orders, the person must pay the financial penalty or comply with the cessation order or regulatory direction (as the case may be) pending reconsideration by IPOS.

Appeal [new]

10 **428I.**—(1) This section applies where IPOS, after reconsideration under section 428H —

(a) imposes or confirms the imposition of a financial penalty on a person;

(b) makes or confirms the making of a cessation order against a person; or

15 (c) gives or confirms the giving of a regulatory direction to a person to turn over the conduct of the CMO's business to persons appointed by IPOS.

(2) The person may appeal to the Minister within the prescribed time and in the prescribed manner.

20 (3) In an appeal —

(a) the Minister may confirm, vary or set aside the decision appealed against;

25 (b) for the purposes of deciding the appeal, the Minister may require the appellant or any other person (whether or not the person is a party to the appeal) to provide the Minister with any information that is relevant to the appeal, and to do so within the time and the manner specified by the Minister; and

30 (c) unless the Minister otherwise orders, the person must pay the financial penalty or comply with the cessation order or regulatory direction (as the case may be) pending the appeal.

Related amendment [new]

428J. The Third Schedule to the Intellectual Property Office of Singapore Act 2001 (Act 3 of 2001) is amended by inserting, immediately after item 4, the following item:

5 “5. Part 9, Division 2 of the Copyright Act 2021.”.

*Division 3 — Reasonableness of Tariff Schemes by CMOs***What is a tariff scheme [149(1)]**

428K. A “tariff scheme” is a scheme (however named) —

- (a) formulated by a CMO; and
- 10 (b) setting out —
 - (i) the classes of cases in which the CMO is willing to grant, or procure the grant of, permission for the use of works and performances that it manages; and
 - 15 (ii) the terms (whether relating to the payment of a fee or charge or otherwise) on which the CMO is willing to grant, or procure the grant of, that permission.

Who is an intending user of a tariff scheme [new; 149(2)(c)]

428L. An “intending user”, in relation to a tariff scheme —

- 20 (a) is a person who requires permission in a case falling under a class of cases to which the scheme applies; and
- (b) includes a person who has been granted permission under the scheme, but who requires further permission of the same kind after the expiry of the granted permission.

Reference of proposed tariff scheme [160]

25 **428M.**—(1) A CMO may refer a tariff scheme to a Copyright Tribunal before bringing it into force.

(2) The Tribunal must, having regard to what is reasonable in the circumstances —

- 30 (a) make an order to confirm or vary the scheme (including substituting the scheme with another scheme);

(b) specify the date from which the order has effect; and

(c) specify whether the order has effect indefinitely or for a specified period.

5 (3) To avoid doubt, the Tribunal is not constrained by any term of the scheme (whether relating to its duration of otherwise) in making an order under subsection (2).

(4) Before an order is made under subsection (2), the CMO may do either or both of the following:

(a) bring the scheme into force;

10 (b) withdraw the reference (whether or not the scheme has been brought into force).

(5) Once an order under subsection (2) takes effect, the scheme —

(a) comes into force (if it has not already been brought into force); and

15 (b) remains in force so long as the order has effect.

Reference of in-force tariff scheme [161]

428N.—(1) This section applies where —

(a) a tariff scheme is in force; and

20 (b) there is a dispute about the terms of the scheme between the CMO that formulated the scheme and —

(i) an intending user of the scheme; or

(ii) an organisation that is representative of intending users of the scheme.

25 (2) The CMO, the user or the organisation may refer the scheme, so far as it relates to the class of cases the user or organisation is concerned with, to a Copyright Tribunal.

(3) The Tribunal must reject the reference without considering its merits if —

(a) it is made by an organisation; and

(b) the organisation is not reasonably representative of the intending users it claims to represent.

(4) Subject to subsection (3), the Tribunal must, having regard to what is reasonable in the circumstances —

- 5 (a) make an order to confirm or vary the scheme (including substituting the scheme with another scheme);
- (b) specify the date from which the order has effect; and
- (c) specify whether the order has effect indefinitely or for a specified period.

10 (5) To avoid doubt, the Tribunal is not constrained by any term of the scheme (whether relating to its duration of otherwise) in making an order under subsection (4).

 (6) The reference may be withdrawn at any time before the Tribunal makes an order under subsection (4).

15 (7) Despite anything in the scheme but subject to any interim order by the Tribunal, the scheme remains in force while the reference is pending.

 (8) Once an order under subsection (4) takes effect, the scheme remains in force so long as the order has effect.

20 **Reference after order made under section 428M or 428N, etc.**

[162]

428O.—(1) This section applies where an order (called in this section the existing order) has been made under section 428M or 428N, or under subsection (6), in respect of a tariff scheme.

25 (2) Subject to subsections (3) and (4), the following persons may refer the scheme to a Copyright Tribunal at any time while the existing order has effect:

- (a) the CMO operating the scheme;
- (b) an intending user of the scheme;
- 30 (c) an organisation that is representative of intending users of the scheme.

(3) If the existing order applies only to one or some (but not all) of the classes of cases to which the scheme applies —

- 5 (a) the intending user mentioned in subsection (2)(b) must be an intending user in respect of the class or classes of cases to which the existing order applies;
- (b) the organisation mentioned in subsection (2)(c) must be representative of intending users in respect of the class or classes of cases to which the existing order applies; and
- 10 (c) the reference only relates to the class or classes of cases to which the existing order applies.

(4) The leave of a Tribunal is required to bring a reference in the following cases:

- 15 (a) if the existing order has effect indefinitely or for a period exceeding 15 months — less than 12 months have elapsed since the date of the order;
- (b) if the existing order has effect for a period of 15 months or less — there are more than 3 months before the order expires.

(5) The Tribunal must reject the reference without considering its merits if —

- 20 (a) it is made by an organisation; and
- (b) the organisation is not reasonably representative of the intending users it claims to represent.

(6) Subject to subsection (5), the Tribunal must, having regard to what is reasonable in the circumstances —

- 25 (a) confirm the existing order; or
- (b) revoke the existing order and make a fresh order to vary the scheme (including substituting the scheme with another scheme), in which case the Tribunal must also —
 - (i) specify the date from which the order has effect; and
 - 30 (ii) specify whether the order has effect indefinitely or for a specified period.

(7) To avoid doubt, the Tribunal is not constrained by any term of the scheme (whether relating to its duration of otherwise) in making a fresh order under subsection (6)(b).

5 (8) The reference may be withdrawn at any time before the Tribunal makes a decision under subsection (6).

(9) Despite anything in the scheme but subject to any interim order by the Tribunal, the scheme remains in force while the reference is pending.

10 (10) Once an order under subsection (6)(b) takes effect, the scheme remains in force so long as the order has effect.

(11) This section does not prevent a person from bringing a reference under section 428M or 428N, or under subsection (6), at any time —

15 (a) in respect of any class of cases to which the existing order does not apply; or

(b) after the existing order expires.

Effect where tariff scheme remains in force pending reference or after Tribunal order [164; 165(1), (2), (3)]

20 **428P.**—(1) This section applies where a tariff scheme remains in force —

(a) under section 428N(7) or 428O(9) while a reference is pending; or

(b) under an order of a Copyright Tribunal made under section 428M(2), 428N(4) or 428O(6).

25 (2) While the scheme remains in force, a person is deemed to have been granted permission in accordance with the scheme if the person complies with the terms of the scheme (including any variations ordered by the Tribunal) at all material times.

30 (3) For the purposes of subsection (2), if the terms of a tariff scheme require the payment of a sum the amount of which cannot be ascertained at the material time, a person is deemed to have complied with those terms if the person —

- (a) gives the CMO operating the scheme a written undertaking to pay the sum when it is ascertained; and
- (b) pays the sum to the CMO as soon as practicable when it is ascertained.

5 (4) If —

- (a) while the scheme remains in force, a person does an act that —

- (i) is a rights infringement; but

- (ii) would not be a rights infringement if permission had been granted under the scheme; and

10

- (b) the terms of the scheme require the payment of a sum for the grant of that permission,

the sum is recoverable as a debt due by the person to the CMO.

15 (5) Upon the recovery of the sum mentioned in subsection (4), the person is deemed for the purposes of subsection (2) to have complied with the terms of the scheme so far as they relate to the payment of the sum.

Application to Tribunal for permission to be granted on reasonable terms [163; 165(4), (5), (6), (7)]

20 **428Q.**—(1) The following persons or organisations may make an application against a CMO to a Copyright Tribunal:

- (a) a person (*X*) who claims, in a case to which a tariff scheme applies, that —

- (i) the CMO operating the scheme has refused to grant *X* (or procure the grant to *X* of) permission in accordance with the terms of the scheme after a request was made by *X*; or

25

- (ii) the terms of the scheme for granting (or procuring the grant of) permission to *X* are unreasonable in the circumstances;

30

- (b) a person (*Y*) who claims to require permission in a case where —

- (i) a tariff scheme does not apply, has not been formulated or is not in force; and
- (ii) a CMO has —
- 5 (A) unreasonably refused to grant (or procure the grant of) the required permission after a request was made by *Y*; or
- (B) proposed to grant (or procure the grant of) permission to *Y* on terms that are unreasonable in the circumstances;
- 10 (c) an organisation that is representative of persons to which paragraph (b) applies.
- (2) For the purposes of subsection (1), a CMO is deemed to have refused to grant (or procure the grant of) permission to a person if it fails to grant (or procure the grant of) the permission within a
- 15 reasonable time after a request to do so.
- (3) The Tribunal must reject the application without considering its merits if —
- (a) it is made by an organisation; and
- (b) the organisation is not reasonably representative of the
- 20 persons it claims to represent.
- (4) Subject to subsection (3), the Tribunal may, having regard to what is reasonable in the circumstances, order the CMO —
- (a) to grant (or procure the grant of) the permission required by *X*, *Y* or the persons represented by the organisation
- 25 mentioned in subsection (1)(c); and
- (b) to do so on the terms specified by the Tribunal.
- (5) While an order under subsection (4) has effect, *X*, *Y* or a person represented by the organisation mentioned in subsection (1)(c) is deemed to have been granted the relevant permission if the person
- 30 complies with the terms specified by the Tribunal at all material times.
- (6) For the purposes of subsection (5), if the terms specified by the Tribunal require the payment of a sum the amount of which cannot

be ascertained at the material time, a person is deemed to have complied with those terms if the person —

(a) gives the CMO a written undertaking to pay the sum when it is ascertained; and

5 (b) pays the sum to the CMO as soon as practicable when it is ascertained.

(7) If —

(a) while the order of the Tribunal has effect, a person does an act that —

10 (i) is a rights infringement; but

(ii) would not be a rights infringement if permission is deemed to have been granted under subsection (5); and

15 (b) the terms of the order require the payment of a sum for the grant of that permission,

the sum is recoverable as a debt due by the person to the CMO.

20 (8) Upon the recovery of the sum mentioned in subsection (7), the person is deemed for the purposes of subsection (5) to have complied with the terms of the order so far as they relate to the payment of the sum.

Orders not to contradict regulatory directions or licence conditions [new]

25 **428R.**—(1) Despite any contrary provision in this Division, a Copyright Tribunal may not order a CMO to do anything that contravenes any licence condition or regulatory direction applicable to the CMO.

30 (2) Without limiting section 429P (reference of question of law), the question whether an order or a proposed order of a Copyright Tribunal requires a CMO to do anything that contravenes any licence condition or regulatory direction applicable to the CMO is a question of law that may be referred under that section.

*Division 4 — Miscellaneous***CMO may apply to Tribunal on behalf of rights owners [172]**

5 **428S.**—(1) A CMO that manages the use of a work or protected performance on behalf of the rights owner may make an application to a Tribunal under this Act on behalf on the rights owner.

(2) A CMO may make a single application under subsection (1) on behalf of 2 or more rights owners.

PART 10**COPYRIGHT TRIBUNALS**10 *Division 1 — Preliminary***Interpretation of this Part [149(1)]**

429. In this Part —

“case”, in relation to a Tribunal, means a proceeding other than an inquiry;

15 “inquiry” means an inquiry under section 252(2);

“member”, in relation to a Tribunal, means the members of the Tribunal as constituted under section 429H, or reconstituted under section 429I, and includes the presiding member;

“officer”, in relation to the Tribunals, includes the secretary;

20 “order” includes an interim order;

“panel” means the panel constituted by section 429C(1)(c);

“party” includes a person making a representation to a Tribunal in an inquiry;

25 “president” means the president of the Tribunals appointed under section 429C(1)(a);

“presiding member”, in relation to a Tribunal, means the presiding member of the Tribunal as constituted under section 429H or reconstituted under section 429I;

“proceeding”, in relation to a Tribunal, includes an inquiry;

“secretary” means the secretary of the Tribunals appointed under section 429D(a).

Agreements or awards not affected [170]

5 **429A.** This Part does not affect the operation of any agreement or of any award made by an arbitrator (whether the agreement or award was made before, on or after, 10 April 1987).

Division 2 — Establishment of Tribunals

Establishment of Tribunals [151(1)]

10 **429B.** There is to be one or more Copyright Tribunals for the purposes of this Act.

Appointment of president, deputy presidents and panel [151A(1), (2), (3), (4); 152; 153(4)]

429C.—(1) The Minister is to appoint, by notification in the *Gazette* —

- 15 (a) a president of the Tribunals;
- (b) not more than 2 deputy presidents of the Tribunals; and
- (c) not more than 15 persons to be members of a panel.
- (2) The president must be a person who is, or is qualified to be appointed as, a District Judge.
- 20 (3) A deputy president must be a person who has been for 5 or more years a qualified person as defined by section 2 of the Legal Profession Act 1966.
- (4) A person appointed under subsection (1) —
- 25 (a) is to hold office for a term specified by the Minister when making the appointment;
- (b) may, if the appointment expires while he or she is hearing a case, continue to hear and decide the case (and is deemed to continue to hold the appointment for this purpose);
- 30 (c) may resign his or her office at any time by writing to the Minister; and

(d) is eligible for reappointment.

(5) The Minister may revoke the appointment of a person under subsection (1) on the grounds of the person's unfitness to continue in office or incapacity to perform the functions of his or her office.

5 **Appointment of secretary and other officers [151A(5)]**

429D. The Minister may appoint —

- (a) a secretary to the Tribunals; and
- (b) other officers of the Tribunals.

Remuneration, allowances and expenses [151B]

10 **429E.**—(1) The Minister may determine that a person (other than a public officer) who sits as a member of a Tribunal is to be paid a remuneration (whether by way of salary or fees) and allowances.

(2) The remuneration and allowances in subsection (1), and the expenses of the Tribunals as determined by the Minister, are to be paid out of moneys provided by Parliament.

(3) The remuneration of the secretary and other officers of the Tribunals are to be paid out of the funds of IPOS.

Protection of members [179(1)]

20 **429F.** A member of a Tribunal has, in the performance of his or her duty as a member, the same protection that a District Judge has under the State Courts Act 1970.

Members and officers deemed to be public servants [new]

25 **429G.** Every member of a Tribunal and every officer of the Tribunals are deemed to be public servants within the meaning of the Penal Code 1867.

Division 3 — Procedure and Evidence

Constitution of Tribunal [151(2), (3)]

429H. Subject to this Act, a Tribunal is constituted by —

- (a) the president, or a deputy president designated by the president, who is to be the presiding member; and
- (b) 2 other members selected by the president from the panel.

Reconstitution of Tribunal if member unable to continue

[153(1), (2), (3)]

429I.—(1) This section applies where any member of a Tribunal (called in this section the former member) is unable to continue taking part in a proceeding because of illness, absence or any other cause.

(2) If the former member is the president, the Tribunal is to be reconstituted with a new president appointed by the Minister.

(3) If the former member is a deputy president, the president is to reconstitute the Tribunal by —

- (a) sitting as the presiding member; or
- (b) designating another deputy president to sit as the presiding member.

(4) If the former member is a member of the panel, the president is to reconstitute the Tribunal by selecting another member of the panel to sit on the Tribunal.

(5) The Tribunal as reconstituted under subsection (2), (3) or (4) —

- (a) may continue to dispose of the proceeding, and for this purpose may consider everything that has been said or done earlier in the proceeding; but
- (b) if the proceeding is a case, the Tribunal must hear the case afresh if all the parties so request.

Sittings [156(1)]

429J. A Tribunal is to sit at the times and places decided by the presiding member.

Proceedings to be in public [171]

429K.—(1) Subject to subsection (2), the proceedings of a Tribunal are to be held in public.

(2) If a Tribunal considers that there is sufficient reason to do so, the Tribunal may —

(a) direct that —

- 5 (i) a proceeding before the Tribunal is to be held in private;
- (ii) only specified individuals may be admitted to a proceeding before the Tribunal; or
- (iii) specified individuals are excluded from a proceeding before the Tribunal; and

10 (b) prohibit or restrict the publication of —

- (i) any evidence given (whether in public or private, or orally or in writing) before the Tribunal; or
- (ii) any information relating to a proceeding before the Tribunal.

15 (3) In subsection (2), “proceeding” includes part of a proceeding.

Decisions how made [155]

429L.—(1) A decision of the Tribunal is to be made in accordance with the opinion of the majority of its members.

20 (2) Subsection (1) does not apply to any matter that the presiding member may decide alone.

Evidence [173(b); 176; 177; 179(2)]

429M.—(1) A Tribunal is not bound by the Evidence Act 1893 or any other rule of evidence.

(2) A Tribunal may —

- 25 (a) take evidence on oath and for that purpose administer an oath;
- (b) take evidence orally or in writing;
- (c) allow or appoint expert witnesses to assist the Tribunal; or
- (d) summon a person to appear before the Tribunal to —

(i) give evidence; or

(ii) produce any document or thing that is in the possession, custody or control of the person.

5 (3) A witness before a Tribunal has the same privileges and immunities, and is subject to the same civil and criminal liabilities (in addition to those under this Act), as if he or she were a witness before a District Court.

Provisions on inquiries [new; 157(3)]

10 **429N.**—(1) After a Tribunal completes an inquiry, it must submit a report to the Minister setting out —

(a) the findings and recommendations required by its terms of reference; and

(b) any other matter that the Tribunal considers to be relevant to its terms of reference.

15 (2) A Tribunal may submit an interim report before submitting its final report.

(3) The Minister may (but need not) cause a report or an interim report of a Tribunal to be made public.

20 (4) In this section, “Minister” means the Minister charged with the responsibility for trade and industry.

Orders of Tribunal [168; 174; 182(2); 183; equitable remuneration provisions]

429O.—(1) A Tribunal may make an interim order in a case before making its final decision on the case.

25 (2) After a Tribunal makes an order, it may —

(a) at any time, correct any clerical error in the order; and

(b) within 7 working days after the order is delivered, correct any other error in the order.

30 (3) In any proceedings, a document purporting to be certified by the secretary as a true copy of an order of the Tribunal is evidence of the order.

(4) To avoid doubt, subsection (3) does not prevent an order of a Tribunal from being proved in any other way.

(5) Where a Tribunal orders a person to pay a sum to another person (whether as equitable remuneration, costs or otherwise), that sum is recoverable from the former person as a debt due to the latter person.

Reference on question of law arising in case to General Division of High Court [169]

429P.—(1) A Tribunal may, in accordance with this section, refer a question of law arising in any case before the Tribunal for the opinion of the General Division of the High Court.

(2) A reference is to be made by way of a case stated.

(3) A reference —

(a) may be made by the Tribunal on its own motion (whether or not it has decided the case);

(b) may be made by the Tribunal on the request of a party, which request may only be made —

(i) before the Tribunal has decided the case; or

(ii) within 14 days after the date on which the Tribunal decided the case; and

(c) must be made by the Tribunal if it is so directed by the General Division of the High Court in an application, which application may only be made —

(i) by a party who made a request under paragraph (b) that was refused by the Tribunal; and

(ii) within 14 days after the date of the refusal.

(4) Every party to the case is entitled to be heard in a reference under subsection (1) or an application under subsection (3)(c).

(5) Where a reference is made —

(a) the General Division of the High Court is to give its opinion on the referred question of law and remit the case to the Tribunal; and

(b) the Tribunal must then give effect to the opinion of the General Division of the High Court and for this purpose may —

- (i) reconsider or rehear any matter in the case;
- 5 (ii) modify or revoke any order previously made by the Tribunal; and
- (iii) make a fresh order.

(6) The decision of the General Division of the High Court on a reference is final.

10 (7) In this section, “question of law” does not include a question whether there is sufficient evidence to justify a finding of fact by a Tribunal.

Representation [178]

429Q. In any proceeding before a Tribunal —

- 15 (a) any party may be represented by an advocate;
- (b) an individual who is a party may appear in person; and
- (c) a party that is not an individual may be represented by a prescribed person, but only if leave is granted by the Tribunal.

Costs [182(1), (3)]

429R. A Tribunal may make any order as to, or relating to, the costs of any proceeding.

Regulations on procedure [175]

25 **429S.**—(1) Regulations may prescribe the practice and procedure to be followed in the Tribunals.

(2) Without limiting subsection (1), regulations under that subsection may prescribe —

- (a) the persons who may bring proceedings before a Tribunal;
- 30 (b) the manner in which, and the time within which, a proceeding is to be brought;

- (c) the parties to a proceeding before a Tribunal (including persons who may be joined as parties);
- (d) any notice or publicity to be given of a proceeding or an intended proceeding before a Tribunal;
- 5 (e) any notice or publicity to be given of an order or an intended order of a Tribunal;
- (f) the manner in which a summons of a Tribunal is to be made or served;
- (g) the scale of costs, fees and expenses to be paid to any party or witness;
- 10 (h) the costs and fees payable in proceedings before a Tribunal;
- (i) the manner in which an order or a report of a Tribunal is to be made;
- (j) the procedure to be followed in a Tribunal in relation to making a reference under section 429P;
- 15 (k) circumstances in which a Tribunal must or may suspend an order made by it and, in relation to a suspended order, modifications to any provisions of this Act relating to the effect of an order; and
- 20 (l) matters that are to be or may be regulated by practice directions issued for the time being by the president.

Other provisions on procedure [173(a), (c)]

25 **429T.**—(1) A Tribunal is to conduct proceedings with as little formality, and with as much expedition, as the requirements of this Act and a proper consideration of the matters before the Tribunal permit.

(2) Subject to this Act, a Tribunal may regulate its own procedure.