



Copyright, Designs and Patents Act 1988

1988 CHAPTER 48

PART I

COPYRIGHT

CHAPTER X

MISCELLANEOUS AND GENERAL

Interpretation

172 General provisions as to construction.

- (1) This Part restates and amends the law of copyright, that is, the provisions of the ^{M1}Copyright Act 1956, as amended.
- (2) A provision of this Part which corresponds to a provision of the previous law shall not be construed as departing from the previous law merely because of a change of expression.
- (3) Decisions under the previous law may be referred to for the purpose of establishing whether a provision of this Part departs from the previous law, or otherwise for establishing the true construction of this Part.

Modifications etc. (not altering text)

C1 Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by [S.I. 1996/2967](#), [reg. 17\(4\)](#) (with Pt. III)

Marginal Citations

M1 1956 c. 74.

Status: Point in time view as at 02/12/1999.

Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Interpretation. (See end of Document for details)

^{F1}
^{F2} **172A** **Meaning of EEA and related expressions.**

- (1) In this Part—
- “the EEA” means the European Economic Area;
 - “EEA national” means a national of an EEA state; and
 - “EEA state” means a state which is a contracting party to the EEA Agreement.]
- (2) References in this Part to a person being an EEA national shall be construed in relation to a body corporate as references to its being incorporated under the law of an EEA state.
- (3) The “EEA Agreement” means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992, as adjusted by the Protocol signed at Brussels on 17th March 1993.]

Textual Amendments

- F1** S. 172A inserted (1.1.1996) by [S.I. 1995/3297](#), **reg. 11(1)** (with Pt. III)
- F2** S. 172A(1) and sidenote substituted (1.12.1996) by [S.I. 1996/2967](#), **reg. 9(5)** (with Pt. III)

Modifications etc. (not altering text)

- C2** Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by [S.I. 1996/2967](#), **reg. 17(4)** (with Pt. III)

173 Construction of references to copyright owner.

- (1) Where different persons are (whether in consequence of a partial assignment or otherwise) entitled to different aspects of copyright in a work, the copyright owner for any purpose of this Part is the person who is entitled to the aspect of copyright relevant for that purpose.
- (2) Where copyright (or any aspect of copyright) is owned by more than one person jointly, references in this Part to the copyright owner are to all the owners, so that, in particular, any requirement of the licence of the copyright owner requires the licence of all of them.

Modifications etc. (not altering text)

- C3** Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by [S.I. 1996/2967](#), **reg. 17(4)** (with Pt. III)

174 Meaning of “educational establishment” and related expressions.

- (1) The expression “educational establishment” in a provision of this Part means—
- (a) any school, and
 - (b) any other description of educational establishment specified for the purposes of this Part, or that provision, by order of the Secretary of State.
- (2) The Secretary of State may by order provide that the provisions of this Part relating to educational establishments shall apply, with such modifications and adaptations as may be specified in the order, in relation to teachers who are employed by a local education authority to give instruction elsewhere to pupils who are unable to attend an educational establishment.

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Interpretation. (See end of Document for details)

- (3) In subsection (1)(a) “school”—
- (a) in relation to England and Wales, has the same meaning as in [^{F3}the Education Act 1996];
 - (b) in relation to Scotland, has the same meaning as in the ^{M2}Education (Scotland) Act 1962, except that it includes an approved school within the meaning of the ^{M3}Social Work (Scotland) Act 1968; and
 - (c) in relation to Northern Ireland, has the same meaning as in the ^{M4}Education and Libraries (Northern Ireland) Order 1986.
- (4) An order under subsection (1)(b) may specify a description of educational establishment by reference to the instruments from time to time in force under any enactment specified in the order.
- (5) In relation to an educational establishment the expressions “teacher” and “pupil” in this Part include, respectively, any person who gives and any person who receives instruction.
- (6) References in this Part to anything being done “on behalf of” an educational establishment are to its being done for the purposes of that establishment by any person.
- (7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

F3 Words in s. 174(3) substituted (1.11.1996) by 1996 c. 56, ss. 582(1), 583(2), **Sch. 37 Pt. I para. 83** (with **Sch. 39**)

Modifications etc. (not altering text)

C4 Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by **S.I. 1996/2967, reg. 17(4)** (with **Pt. III**)

Marginal Citations

M2 1962 c. 47.

M3 1968 c. 49.

M4 **S.I. 1986/594 (N.I.3).**

175 Meaning of publication and commercial publication.

- (1) In this Part “publication”, in relation to a work—
- (a) means the issue of copies to the public, and
 - (b) includes, in the case of a literary, dramatic, musical or artistic work, making it available to the public by means of an electronic retrieval system;
- and related expressions shall be construed accordingly.
- (2) In this Part “commercial publication”, in relation to a literary, dramatic, musical or artistic work means—
- (a) issuing copies of the work to the public at a time when copies made in advance of the receipt of orders are generally available to the public, or
 - (b) making the work available to the public by means of an electronic retrieval system;

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Interpretation. (See end of Document for details)

and related expressions shall be construed accordingly.

- (3) In the case of a work of architecture in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.
- (4) The following do not constitute publication for the purposes of this Part and references to commercial publication shall be construed accordingly—
 - (a) in the case of a literary, dramatic or musical work—
 - (i) the performance of the work, or
 - (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,
 - (ii) the issue to the public of copies of a graphic work representing, or of photographs of, a work of architecture in the form of a building or a model for a building, a sculpture or a work of artistic craftsmanship,
 - (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.
- (5) References in this Part to publication or commercial publication do not include publication which is merely colourable and not intended to satisfy the reasonable requirements of the public.
- (6) No account shall be taken for the purposes of this section of any unauthorised act.

Modifications etc. (not altering text)

C5 Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by S.I. 1996/2967, reg. 17(4) (with Pt. III)

176 Requirement of signature: application in relation to body corporate.

- (1) The requirement in the following provisions that an instrument be signed by or on behalf of a person is also satisfied in the case of a body corporate by the affixing of its seal—
 - section 78(3)(b) (assertion by licensor of right to identification of author in case of public exhibition of copy made in pursuance of the licence),
 - section 90(3) (assignment of copyright),
 - section 91(1) (assignment of future copyright),
 - section 92(1) (grant of exclusive licence).
- (2) The requirement in the following provisions that an instrument be signed by a person is satisfied in the case of a body corporate by signature on behalf of the body or by the affixing of its seal—

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section 78(2)(b) (assertion by instrument in writing of right to have author identified),
section 87(2) (waiver of moral rights).

Modifications etc. (not altering text)

C6 Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by S.I. 1996/2967, reg. 17(4) (with Pt. III)

177 Adaptation of expressions for Scotland.

In the application of this Part to Scotland—

“account of profits” means accounting and payment of profits;

“accounts” means count, reckoning and payment;

“assignment” means assignation;

“costs” means expenses;

“defendant” means defender;

“delivery up” means delivery;

“estoppel” means personal bar;

“injunction” means interdict;

“interlocutory relief” means interim remedy; and

“plaintiff” means pursuer.

Modifications etc. (not altering text)

C7 Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by S.I. 1996/2967, reg. 17(4) (with Pt. III)

178 Minor definitions.

In this Part—

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

“business” includes a trade or profession;

“collective work” 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;

“computer-generated”, in relation to a work, means that the work is generated by computer in circumstances such that there is no human author of the work;

“country” includes any territory;

“the Crown” includes the Crown in right of [F⁴the Scottish Administration or of] Her Majesty’s Government in Northern Ireland or in any country outside the United Kingdom to which this Part extends;

“electronic” means actuated by electric, magnetic, electro-mechanical energy, and “in electronic form” means in a form usable only by electronic means;

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“employed”, “employee”, “employer”, and “employment” refer to employment under a contract of service or of apprenticeship;

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

“international organisation” means an organisation the members of which include one or more states;

“judicial proceedings” includes proceedings before any court, tribunal or person having authority to decide any matter affecting a person’s legal rights or liabilities;

“parliamentary proceedings” includes proceedings of the Northern Ireland Assembly [^{F5}of the Scottish Parliament][^{F6}, of the New Northern Ireland Assembly]or of the European Parliament;

[^{F7}“producer”, in relation to a sound recording or a film, means the person by whom the arrangements necessary for the making of the sound recording or film are undertaken;]

[^{F8}“public library” means a library administered by or on behalf of—

- (a) in England and Wales, a library authority within the meaning of the Public Libraries and Museums Act 1964;
- (b) in Scotland, a statutory library authority within the meaning of the Public Libraries (Scotland) Act 1955;
- (c) in Northern Ireland, an Education and Library Board within the meaning of the Education and Libraries (Northern Ireland) Order 1986;]

^{F9}

[^{F10}“rental right” means the right of a copyright owner to authorise or prohibit the rental of copies of the work (see section 18A);]

“reprographic copy” and “reprographic copying” refer to copying by means of a reprographic process;

“reprographic process” means a process—

- (a) for making facsimile copies, or
- (b) involving the use of an appliance for making multiple copies, and includes, in relation to a work held in electronic form, any copying by electronic means, but does not include the making of a film or sound recording;

“sufficient acknowledgement” means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless—

- (a) in the case of a published work, it is published anonymously;
- (b) in the case of an unpublished work, it is not possible for a person to ascertain the identity of the author by reasonable inquiry;

“sufficient disclaimer”, in relation to an act capable of infringing the right conferred by section 80 (right to object to derogatory treatment of work), means a clear and reasonably prominent indication—

- (a) given at the time of the act, and
- (b) if the author or director is then identified, appearing along with the identification,

that the work has been subjected to treatment to which the author or director has not consented,

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

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Interpretation. (See end of Document for details)

“typeface” includes an ornamental motif used in printing;
“unauthorised”, as regards anything done in relation to a work, means done otherwise than—

- (a) by or with the licence of the copyright owner, or
- (b) if copyright does not subsist in the work, by or with the licence of the author or, in a case where section 11(2) would have applied, the author’s employer or, in either case, persons lawfully claiming under him, or
- (c) in pursuance of section 48 (copying, &c of certain material by the Crown);

“wireless telegraphy” means the sending of electro-magnetic energy over paths not provided by a material substance constructed or arranged for that purpose [F11], but does not include the transmission of microwave energy between terrestrial fixed points];

“writing” includes any form of notation or code, whether by hand or otherwise and regardless of the method by which, or medium in or on which, it is recorded, and “written” shall be construed accordingly

Textual Amendments

- F4** Words in s. 178 inserted (6.5.1999) by 1998 c. 46, s. 125(1), **Sch. 8 para. 25(7)(a)**; S.I. 1998/3178, art. 2(2), **Sch. 3**
- F5** Words in s. 178 inserted (6.5.1999) by 1998 c. 46, s. 125(1), **Sch. 8 para. 25(7)(b)**; S.I. 1998/3178, art. 2(2), **Sch. 3**
- F6** Words in s. 178 cease to have effect (2.12.1999) by virtue of 1998 c. 47, s. 99, **Sch. 13 para. 8(7)** (with s. 95); S.I. 1999/3209, art. 2, **Sch.**
- F7** Definition in s. 178 inserted (1.12.1996 with effect in relation to films made on or after 31.7.1994) by S.I. 1996/2967, **regs. 18(5), 36** (with Pt. III)
- F8** Definition in s. 178 inserted (1.12.1996) by S.I. 1996/2967, **reg. 11(5)** (with Pt. III)
- F9** Definition in s. 178 omitted (1.12.1996) by virtue of S.I. 1996/2967, **reg. 10(3)** (with Pt. III)
- F10** Definition in s. 178 inserted (1.12.1996) by S.I. 1996/2967, **reg. 10(3)** (with Pt. III)
- F11** Words in s. 178 inserted (1.12.1996) by S.I. 1996/2967, **reg. 8** (with Pt. III)

Modifications etc. (not altering text)

- C8** Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by S.I. 1996/2967, **reg. 17(4)** (with Pt. III)

179 Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section)—

account of profits and accounts (in Scotland)	section 177
acts restricted by copyright	section 16(1)
adaptation	section 21(3)
archivist (in sections 37 to 43)	section 37(6)
article (in a periodical)	section 178
artistic work	section 4(1)

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Interpretation. (See end of Document for details)

assignment (in Scotland)	section 177
author	sections 9 and 10(3)
broadcast (and related expressions)	section 6
building	section 4(2)
business	section 178
cable programme, cable programme service (and related expressions)	section 7
collective work	section 178
commencement (in Schedule 1)	paragraph 1(2) of that Schedule
commercial publication	section 175
computer-generated	section 178
copy and copying	section 17
copyright (generally)	section 1
copyright (in Schedule 1)	paragraph 2(2) of that Schedule
copyright owner	sections 101(2) and 173
Copyright Tribunal	section 145
copyright work	section 1(2)
costs (in Scotland)	section 177
country	section 178
[^{F12} country of origin]	[^{F12} section 15A.]
the Crown	section 178
Crown copyright	sections 163(2) and 164(3)
[^{F13} database]	[^{F13} section 3A(1)]
defendant (in Scotland)	section 177
delivery up (in Scotland)	section 177
dramatic work	section 3(1)
educational establishment	sections 174(1) to (4)
electronic and electronic form	section 178
employed, employee, employer and employment	section 178
exclusive licence	section 92(1)
[^{F14} EEA,][^{F15} EEA national and EEA state]	[^{F15} section 172A]
existing works (in Schedule 1)	paragraph 1(3) of that Schedule
facsimile copy	section 178
film	[^{F16} section 5B]

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Interpretation. (See end of Document for details)

future copyright	section 91(2)
general licence (in sections 140 and 141)	section 140(7)
graphic work	section 4(2)
infringing copy	section 27
injunction (in Scotland)	section 177
interlocutory relief (in Scotland)	section 177
international organisation	section 178
issue of copies to the public	[^{F17} section 18]
joint authorship (work of)	sections 10(1) and (2)
judicial proceedings	section 178
[^{F18} lawful user (in sections 50A to 50C)]	[^{F18} section 50A(2).]
[^{F19} lending]	[^{F19} section 18A(2) to (6)]
librarian (in sections 37 to 43)	section 37(6)
licence (in sections 125 to 128)	section 124
licence of copyright owner	sections 90(4), 91(3) and 173
licensing body (in Chapter VII)	section 116(2)
licensing scheme (generally)	section 116(1)
licensing scheme (in sections 118 to 121)	section 117
literary work	section 3(1)
made (in relation to a literary, dramatic or musical work)	section 3(2)
musical work	section 3(1)
[^{F20} needletime]	[^{F20} section 135A]
the new copyright provisions (in Schedule 1)	paragraph 1(1) of that Schedule
the 1911 Act (in Schedule 1)	paragraph 1(1) of that Schedule
the 1956 Act (in Schedule 1)	paragraph 1(1) of that Schedule
on behalf of (in relation to an educational establishment)	section 174(5)
[^{F13} original (in relation to a database)]	[^{F13} section 3A(2)]
Parliamentary copyright	sections 165(2) and (7) [^{F21} 166(6) [^{F22} 166A(3) and 166B(3)]]
parliamentary proceedings	section 178
performance	section 19(2)
photograph	section 4(2)
plaintiff (in Scotland)	section 177

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Interpretation. (See end of Document for details)

prescribed conditions (in sections 38 to 43)	section 37(1)(b)
prescribed library or archive (in sections 38 to 43)	section 37(1)(a)
[^{F23} producer (in relation to a sound recording or film)]	[^{F23} section 178.]
programme (in the context of broadcasting)	section 6(3)
prospective owner (of copyright)	section 91(2)
[^{F24} public library]	[^{F24} section 178.]
publication and related expressions	section 175
published edition (in the context of copyright in the typographical arrangement)	section 8
pupil	section 174(5)
rental	[^{F25} section 18A(2) to (6)]
[^{F19} rental right]	[^{F19} section 178.]
reprographic copies and reprographic copying	section 178
reprographic process	section 178
sculpture	section 4(2)
signed	section 176
sound recording	[^{F26} sections 5A and 135A]
sufficient acknowledgement	section 178
sufficient disclaimer	section 178
teacher	section 174(5)
telecommunications system	section 178
[^{F20} terms of payment]	[^{F20} section 135A]
typeface	section 178
unauthorised (as regards things done in relation to a work)	section 178
unknown (in relation to the author of a work)	section 9(5)
unknown authorship (work of)	section 9(4)
wireless telegraphy	section 178
work (in Schedule 1)	paragraph 2(1) of that Schedule
work of more than one author (in Chapter VII)	section 116(4)

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Changes to legislation: There are currently no known outstanding effects for the Copyright, Designs and Patents Act 1988, Cross Heading: Interpretation. (See end of Document for details)

writing and written

section 178

Textual Amendments

- F12** Words in s. 179 inserted (1.1.1996) by S.I. 1995/3297, **reg. 8(2)** (with Pt. III)
- F13** Words in s. 179 inserted (1.1.1998) by S.I. 1997/3032, **reg. 11** (with Pt. IV)
- F14** Words in s. 179 inserted (1.12.1996) by S.I. 1996/2967, **reg. 9(6)(a)** (with Pt. III)
- F15** Words in s. 179 inserted (1.1.1996) by S.I. 1995/3297, **reg. 11(2)** (with Pt. III)
- F16** Words in s. 179 substituted (1.1.1996) by S.I. 1995/3297, **reg. 9(5)(a)** (with Pt. III)
- F17** Words in s. 179 inserted (1.12.1996) by S.I. 1996/2967, **reg. 9(6)(b)** (with Pt. III)
- F18** Words in s. 179 inserted (1.1.1993) by S.I. 1992/3233, **reg. 9**
- F19** Words in s. 179 inserted (1.12.1996) by S.I. 1996/2967, **reg. 10(4)** (with Pt. III)
- F20** Words inserted by **Broadcasting Act 1990** (c.42, SIF 96), **s. 175(3)**
- F21** Words in s. 179 substituted (6.5.1999) by 1998 c. 46, s. 125(1), **Sch. 8 para. 25(8)**; S.I. 1998/3178, art. 2(2), **Sch. 3**
- F22** Words in s. 179 substituted (2.12.1999) by 1998 c. 47, s. 99, **Sch. 13 para. 8(8)** (with s. 95); S.I. 1999/3209, art. 2, **Sch.**
- F23** Words in s. 179 inserted (1.12.1996 with effect in relation to films made on or after 1.7.1994) by S.I. 1996/2967, **regs. 18(6), 36** (with Pt. III)
- F24** Words in s. 179 inserted (1.12.1996) by S.I. 1996/2967, **reg. 11(6)** (with Pt. III)
- F25** Words in s. 179 substituted (1.12.1996) by S.I. 1996/2967, **reg. 10(4)** (with Pt. III)
- F26** Words in s. 179 substituted (1.1.1996) by S.I. 1995/3297, **reg. 9(5)(b)** (with Pt. III)

Modifications etc. (not altering text)

- C9** Ss. 161, 162, 171(1)(3), 172-179 applied (1.12.1996) by S.I. 1996/2967, **reg. 17(4)** (with Pt. III)

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