

## 1. Copyright etc (Amendment) Bill 2013 – Second Reading approved

Mr Crowe to move:

*That the Copyright etc (Amendment) Bill 2013 be read a second time.*

**The President:** Hon. Members, we have three Readings and clauses to consider.

I call on the Hon. Member, Mr Crowe, to take the Second Reading of the Copyright etc (Amendment) Bill 2013.

**Mr Crowe:** Thank you, Madam President.

The purpose of Copyright etc (Amendment) Bill 2013 is to amend the Copyright Act 1991, the Design Right Act 1991 and the Performers' Protection Act 1996.

The Bill is one important part of the Department of Economic Development's programme to modernise the Island's intellectual property law. The Bill increases maximum penalties for infringement of copyright in performers' rights and gives additional powers for forfeiture of infringing copies and illicit recordings. This will ensure that copyright piracy on a commercial scale can be adequately dealt with.

It makes new provision to allow publication of works for which the copyright owner cannot be traced, and provision to allow streamlined copyright clearance where copyright is owned by more than one individual. A new right gives protection to the first publisher of an out of copyright work allowing the commercial exploitation of such works.

The Bill also changes the ownership of commissioned designs from the commissioner to the designer, in order to simplify the rules over first ownership of designs.

Finally the Bill makes provision on the Isle of Man for performers' 'moral rights', which remain with the performer even when economic rights for a particular work have been transferred.

Madam President, the Department has also proposed some amendments to clause 14 of the Bill. Members have received a note on the reasons for those amendments. These changes alongside those of the Department have progressed through subordinate legislation, and orders in Council will ensure that the Isle of Man offers intellectual property protection in line with that of the UK and the European Union.

Madam President, I beg to move that the Bill be read a second time.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

At this Second Reading, I would like to thank the Hon. Member for meeting with me a number of weeks ago to discuss a couple of issues that I had experience of, and I should just declare it was in a matter a couple of years ago in a copyright issue. The reason for me meeting with the Member was to actually discuss the procedure that was experienced in trying to get a copyright issue resolved through the local Copyright Tribunal. The experience we had was that it was very difficult for that particular dispute to get to the local tribunal when it was dealing with a UK copyright – they were the rights holders in the dispute.

The regulations were incredibly messy. They were partly adopting UK regulations, they were partly Manx regulations: there was no one-stop shop where somebody with a dispute in the Isle of Man for the use of material could pick up a set of regulations and actually understand them.

So what I would like is assurance that the Department, in taking this Bill forward, will be reviewing the whole procedures that local people, businesses or individuals who have a copyright

dispute can ensure that it is a clear and concise process. And can we have assurances that disputes in the Isle of Man can actually be dealt with by the Isle of Man Copyright Tribunal – because that is the whole purpose of having one – and not allow UK rights bodies, such as the likes of PRS and PPL who we hear so much about with shops and all that having disputes with them, almost riding roughshod over the fact that there is an Isle of Man tribunal... and relying on what the UK has decided.

The whole point of having our own legislation is so that we can exercise our own functions in dealing with these matters. It would seem pointless to me having a whole bureaucracy of a tribunal if they are actually going to be able to deal with disputes that are originating in the Isle of Man, *for* the Isle of Man.

I know that the bulk of this is not particularly related to that but, whilst we are on this Second Reading and discussing the deeper principles of the Copyright Amendment Bill, I wonder whether the Member could give us assurance that the Department will continue to look at this area and ensure that, first of all the guidance is clear to the public and the procedures are clear, and when bringing regulations if they could maybe bring a *full* set of regulations rather than having people go searching the UK statutes to try and find the missing bits.

I hope that is a clear explanation.

Thank you, Madam President.

**The President:** The mover to reply.

**Mr Crowe:** Thank you, Madam President.

I thank Mr Turner for his comments. We did meet on a particular issue a few weeks ago and we did talk about the Copyright Tribunal, and this is actually being changed under the Tribunals Act instead of being dealt with by the Council of Ministers. So there are issues with the Tribunal that we need to look at, that we *are* going to look at, and the Department will be bringing regulations to Tynwald which will clear up the powers of the Tribunal, the procedures and to make sure that guidance is clear.

So I have taken that on board and a member of the Department is here, taking notes... Mr Tallach will be taking notes on these issues.

So with that, I beg to move the Second Reading.

**The President:** The motion is that the Bill be read a second time. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

### **Copyright Etc (Amendment) Bill 2013 – Clauses considered**

**The President:** We turn now to clauses. Perhaps we could take clauses 1 and 2 together?

**Mr Crowe:** Thank you, Madam President.

Clause 1 gives the Act its short title.

Clause 2 provides for the Act to be brought into force by order.

Madam President, I beg to move that clauses 1 and 2 stand part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clauses 1 and 2 do stand part of the Bill, Hon. Members.

Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 3.

**Mr Crowe:** Clause 3, Madam President, amends the Copyright Act 1991 to bring the maximum penalties for some offences into line with those in the United Kingdom. As I made clear in the Second Reading of the Bill, normally breach of copyright is only a civil wrong but the increase in maximum fines and custodial sentences will ensure that copyright piracy on a commercial scale can be dealt with appropriately.

The change brings the maximum penalties into line with those for counterfeit goods in the Island.

Madam President, I beg to move that clause 3 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 3 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 4.

**Mr Crowe:** Clause 4 gives additional powers under which a court can order the forfeiture of pirated goods or a 'master' from which infringing copies can be made over and above those available after seizure of, or on a conviction for dealing with, infringing copies.

Currently, the Copyright Act 1991 enables a court to order the forfeiture or destruction of infringing copies or masters which have been ordered to be handed over, either on an application by the copyright owner or on the conviction for an offence or which have been seized by the copyright owner.

The new powers will be available whenever such articles have come into anyone's possession in the course of investigating or prosecuting certain offences, including offences relating to trade descriptions, fraud or theft.

The change brings the law into line with that for counterfeit goods in the Isle of Man.

Madam President, I beg to move that clause 4 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 4 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 5.

**Mr Crowe:** Madam President, clause 5 repeals provisions of the Copyright Act 1991 which limit to 25 years the term of copyright in certain mass-produced artistic works. As a result of this change, these works will enjoy copyright protection for 70 years from the designer's death, which is the term of protection applying to all other copyrighted works.

This clause repeals section 52 of the Copyright Act 1991, which creates the exception. Section 52 applies where an artistic work, following the authorisation of the copyright holder, has been copied by an industrial process and marketed anywhere in the world. Twenty-five years after copies of the artistic work were first marketed, the work may be copied by third parties without infringing copyright. With repeal of the clause, such works will receive protection for 70 years.

Clause 5 also repeals section 79(4)(g), which provides a similar exception to the moral rights of the designer to be identified as such; and schedule 1, paragraph 19, which makes a transitional modification in relation to works existing before the 1991 Act came into force.

Madam President, I beg to move that clause 5 stands part of the Bill.

**Mr Downie:** I beg to second, and reserve my remarks.

**The President:** The motion is that clause 5 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 6.

**Mr Crowe:** Madam President, clause 6 extends an exemption which deals with the sometimes overlapping rights for copyright and designs. Designs of objects can attract two separate intellectual property rights: firstly, they are copyright protected; secondly, the design can also be registered.

The extension of this existing exemption will mean that a person who uses a design registered in the Isle of Man and the United Kingdom, with the permission of its registered owner, is not treated as infringing any associated copyright in the design. The exemption is extended so as to also cover designs registered at the European Union design registry – otherwise known as Community Designs.

Madam President, I beg to move that clause 6 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 6 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 7.

**Mr Crowe:** Clause 7 removes a duplication in the legislation under which procedural rules for the Isle of Man Copyright Tribunal may be made by the Council of Ministers under either the Copyright Act 1991 or the Tribunals Act 2006. In future, the rules will be made under the 2006 Act with a saving for the existing rules made under the 1991 Act.

The Isle of Man Copyright Tribunal is an independent specialist tribunal whose main responsibility is to decide disputes over the terms of licenses granted by licensing bodies on behalf of copyright owners. It was created in 1991 in place of the UK Copyright Tribunal, which had previously had jurisdiction in the Isle of Man, and was brought into the common system of tribunal appointments in 2006. Its procedure is laid down by the Copyright Tribunal Rules 1996, made under section 145 of the Copyright Act.

The rules apply, with modifications of the UK Copyright Tribunal Rules 1989, as amended. It should also be noted – and this is in response to Mr Turner's earlier query – that the Department intends to bring forward updated Isle of Man Copyright Tribunal Rules, based on the UK Copyright Tribunal Rules 2010, later this year.

Madam President, I beg to move that clause 7 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Thank you, Madam President.

I thank the Member for the information in this clause and I think it highlights one of the things I was referring to, where it refers to parts of the UK rules. I think that is something that we should be trying to get away from when bringing in our own time subordinate legislation: to simply have lines in where you have to then go and look for the UK rules. I would hope that we start seeing more and more subordinate legislation actually brought in in full – it may well be based on rules in other countries but actually bring in the full set so that there is the one place where people can go.

It does, I think, slightly concern me that we simply shoehorn the UK rules in and then there is a question of, well if we are simply going to do what *they* do, why are we bothering setting up our

own at all? If we are going to rely constantly on UK legislation then what is the whole purpose of having our own? Is it not just an extra cost we do not want?

I have to say that is not what I am advocating because I would much prefer to see the Isle of Man deal with its issues in its own right. But, I think the fact that the UK is doing something as a principle, we should not always rely on, we should be looking at rules that suit our own purpose and are right for the Isle of Man. That is something I have highlighted in this place on other issues before.

So it is just a final observation on that.

**The President:** Does the Hon. Member wish to respond?

**Mr Crowe:** I thank Mr Turner. Obviously if we have a tribunal it must be meaningful and it must have rules which are meaningful (**Mr Turner:** Absolutely.) and deal with Isle of Man issues, because if there is no benefit in having an Isle of Man tribunal then the benefit of having it ceases to exist. So I think what we have to do is have a tribunal that will deal with local issues properly.

As for the rules, they will be based on the UK rules because we do not want to reinvent the wheel, but we need to 'Manxify' them to make sure they are relevant to the Isle of Man.

**Mr Turner:** That is my point.

**Mr Crowe:** I beg to move, Madam President, clause 7.

**The President:** The motion is that clause 7 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 8.

**Mr Crowe:** Clause 8, Madam President, concerns unpublished works created prior to 1992, that is before the Copyright Act 1991 came into force. The Copyright Act 1991, which replaced the UK Copyright Act 1956, contains transitional provisions to protect such works. The provisions mean that the works remain in copyright until the end of 2042 – 50 years from the end of 1992.

The provision, however, has absurd effects for older documents. For example, as set out in the explanatory notes, a library in possession of an unpublished 13th century manuscript may not publish it until 2043, nor may it copy the manuscript without risking legal action, except for use in non-commercial research or private study.

In the United Kingdom, the Enterprise and Regulatory Reform Act 2013 enables the Secretary of State to make regulations reducing the term of copyright in the corresponding provisions of the UK Copyright, Designs and Patents Act 1988. Clause 8 gives a similar power to the Department of Economic Development so that any changes in the UK can be adopted here.

I beg to move clause 8 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

I was only going to make the observation that if we looked at an unpublished 13th century manuscript being published today, I am not quite sure who would actually take the legal action! (*Laughter*)

**Mr Corkish:** They would not understand it anyway!

**The President:** Do you wish to reply, Mr Crowe?

**Mr Crowe:** No, it is a comment more than a query, (*Laughter*) thank you.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Just a query for the mover: who makes the decision in this case, then, who decides which works need the extension or the reduction in time? As an individual, when you say it is the Department, is there anybody of expertise to actually make those decisions?

**The President:** If there are no further Members' queries, could the mover reply.

**Mr Crowe:** This clause gives the Department power to make regulations, I do not think anybody has been delegated to make these decisions yet, regulations will set all this out. So it will be dealt with in regulations which will come before Tynwald and have to be approved by Tynwald.

**Mr Butt:** Thank you.

**The President:** The motion before Council is that clause 8 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.  
Clause 9.

**Mr Crowe:** Clause 9 gives the Department power to make regulations to introduce a licensing system for so-called 'orphan works' and for what is referred to as extended collective licensing.

Orphan works are copyright works for which the owner cannot be traced. Such works may be held by libraries, archives, museums and galleries but, without the permission of the copyright owner, they are limited in what they can do to make such works available for public view without threat of legal action.

The UK is introducing a system to license the use of orphan works, subject to safeguards, for the missing copyright owners – and this clause enables provision to be made for the use of orphan works on the Isle of Man too.

Extended collective licensing allows a streamlined, simplified system to be put in place, subject to safeguards, for works which have more than one copyright owner. For example, in the case of a film, copyright may be owned by the screenwriter, the producer, the director and the composer of the soundtrack. At present the agreement of all is required before a public performance can take place: as *all* need to opt into this agreement, this can take time.

The change in this clause is to enable regulations to be made allowing licenses to be granted on behalf of *all* the owners of copyright in a work except any who opt out.

Madam President, I beg to move clause 9 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Turner.

**Mr Turner:** Yes, thank you, Madam President.

I accept the Member's explanation about the orphan works, but talking about collective licensing for, say, performances, I am not quite sure whether it would fall under the new provisions here, but if I give an example... I dealt with something to do with public performance in a shop.

A butcher's shop (**A Member:** Playing music.) had a CD on, or the radio on, and suffered very aggressive behaviour by one of the collective bodies, because of the number of people involved in a performance.

Again, I am not sure whether this is particularly the area that covers it but, if they are looking at regulations, is there going to be any provision in those regulations to cover the conduct of the bodies which may represent a group? Because, like I mentioned earlier on, we are seeing some of these collective agencies rely on UK provisions and UK decisions and schemes, and come to the Isle of Man and act in a very aggressive way towards local users of material. If we are talking about performances of films, for example, we could have a shop playing music, or it could be a church hall screening a film.

In these regulations, will there be any thought of providing for a way of regulating the conduct and behaviour of the bodies who may be assigned the right to act on behalf of the copyright owners? I think that is something that does need looking at, because there have been some horrendous cases of aggressive behaviour towards shops and businesses.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Thank you, Madam President.

Just a query about the orphan works.

If there has been a diligent search for the owner and they have not been found and then a licence is issued under this section, if an owner then comes forward at a later date and says, 'this is my work', has he got a right to actually have the license changed into his own favour or to take back his copyright ownership?

Is there a process under this Act to do that – presuming of course at the time it was done legitimately because they could not find the owner, but then the owner comes forward? So I wonder is there an answer to that, Madam President.

**The President:** The mover to reply.

**Mr Crowe:** Thank you, Madam President, and I thank Mr Turner for his queries.

I think this Bill, this clause itself, is talking more about collective licensing, which is collective of the people that own the copyright in a particular film. It does not deal with the performance rights societies or people administering the use of these in, say, a butcher's shop. But I will check that issue out and come back at the Third Reading for an explanation if I have misinterpreted what you are trying to say.

**Mr Turner:** Madam President, if I may just clarify? (**The President:** Yes.) I think that is why I was saying I am not sure whether this is the relevant clause, but these bodies license the collective piece of material to, for example, a shop to perform that, whether it be TV screens or a radio or a CD or whatever, and I think that is where I am coming from... as I say, it might not be the right clause but it appears to be similar...

**Mr Crowe:** I will clarify that on the Third Reading, Madam President.

As for Mr Butt's query: yes, if the copyright owner is found or a relative claims copyright, that will all be dealt with in the regulations as to they get their proper rights and entitlement to the (**Mr Butt:** Return.) value of the copyright ownership.

**Mr Butt:** Thank you.

**The President:** The motion is, Hon. Members, that clause 9 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 10.

**Mr Crowe:** Thank you, Madam President.

Clause 10 removes the need to make orders applying the provisions of the Copyright Act 1991 to countries that have qualified for reciprocal copyright protection. Currently, under the Copyright Act 1991, orders need to be made which specify the countries that qualify for reciprocal copyright protection. Instead, this clause incorporates the countries into the Act, removing the need for such orders.

Madam President, I beg to move clause 10 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 10 stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 11, introducing schedule 1.

**Mr Crowe:** Madam President, clause 11 introduces schedule 1. This creates a 'publication right', which gives protection for 25 years to the first publisher of an out of copyright work.

Publication right gives rights broadly equivalent to copyright to a person who publishes for the first time a literary, dramatic, musical or artistic work or a film in which copyright has expired. However, there is one major difference which is that the publication right only lasts for 25 years from the year of publication of the material, rather than 70 years from the death of the creator in the case of copyright.

Madam President, I beg to move that clause 11 and schedule 1 stands part of the Bill.

**The President:** The motion... (**A Member:** Second.) I think Mr Downie seconds –

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 11 and schedule 1 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 12.

**Mr Crowe:** Madam President, clause 12 simplifies and clarifies the scope of 'design right', which is the right of the creator of an industrial design – for example, the shape of a car body – to control the exploitation of the design.

The protection for designs is clarified in two respects. Firstly, trivial features of designs are excluded by making sure the protection does not extend to 'any aspect' of part of an article. It is expected that this will reduce the tendency to overstate claims as to the extent of the rights in the design. Secondly, protection only applies to original designs and, to be considered original, a design should not be 'commonplace' in the relevant field. It is not certain whether this means commonplace in the Isle of Man or elsewhere and, to remove that confusion, it is provided that it means commonplace in the Isle of Man and other qualifying countries, designs from which are protected in Manx law.

Madam President, I beg to move clause 12 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 12 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 13.

**Mr Crowe:** Madam President, clause 13 changes the initial ownership of designs created on commission from another person.

Under the Design Right Act 1991, the person by whom the design is commissioned is the first owner of the design right in it. It should be noted that in the closely-related system of copyright, in the case of commissioned works copyright rests with the creator. Further, in the system of EU designs which the Department of Economic Development is seeking to introduce recognition in the Island, the first owner of a design is the creator, rather than any commissioner.

This potentially could lead to a confusing situation where a commissioner of a design could claim ownership under Manx design right, whereas the designer could claim EU design right and any copyright associated with the design.

To avoid the anomaly of design right belonging to one person and Community rights to another, the clause brings the Isle of Man into line with the UK and the EU by making the designer the first owner of design right, even where the design is commissioned by another person. However, it should be noted that the provision will not prevent a commissioner of a design transferring ownership to themselves. However, that would need to be specifically addressed in a contract.

Madam President, I beg to move clause 13 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President.

I have a slight concern with this clause. If we are talking perhaps of someone commissioning a portrait of the wife – and you get the portrait after the artist has completed the work – I can understand that. And I can understand why the actual artist might wish to keep the rights to do things like Christmas cards, not with the... of a scene, or something like that – or maybe the wife...  
*(Laughter and interjections)*

I think we get into quite dangerous territory here, and maybe I am getting totally the wrong end of the stick here. Suppose I, as a business, bring in a software developer to develop a system for me. As a part of that, you would actually be providing business-sensitive information to the person commissioned. That can actually be factors which make your business stand alone in the marketplace.

Now I take the idea that you can contractually transfer the rights from the designer to the commissioner. But I think that this... people would need to be very aware of this change, certainly in the software commissioning industry, because you are actually saying the designer has the rights on it and unless you contractually have handed them back to the commissioner, they can then go out and sell your unique software selling points to your competitors.

If I have got the wrong end of the stick I apologise, but that is how I perceived that clause.

**The President:** The Hon. Member, Mr Butt.

**Mr Butt:** Yes, just moving on from that, I think, and as the mover said, it highlights the need for a person commissioning work to actually have in the contract that they will then take over the ownership. I think that is what you said in moving the clause. So the public, the 'us', the people commissioning work, need to be aware of that from the moment this is made into an Act.

**The President:** Lord Bishop.

**The Lord Bishop:** Madam President.

Surely this is not something that people are going to be surprised about. Twenty years ago – when I was part of a thing the Church of England and the Church in Wales calls a ‘liturgical commission’ – when you write liturgical work, before you write it, you sign away that writing to the church that you are writing it for.

Now, if the church can catch up with this 20 years ago, surely commissioners of electronic material have caught up to it sooner than that.

**The President:** The mover to reply.

**Mr Crowe:** Thank you, Madam President, and I thank Mr Coleman and Mr Butt and the Lord Bishop for their comments.

I think Mr Coleman had mentioned this to me last week after the Second Reading, because we are actually turning the legislation round, in effect, flipping the Isle of Man legislation, but it will accord with EU legislation.

I thank Mr Butt, as he mentioned the contract will override any commissioning rights. And the Lord Bishop, we are hopefully catching up with the church.

**The President:** The motion is that clause 13 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 14: Mr Crowe.

**Mr Crowe:** Thank you, Madam President.

The Design Right Act 1991 extends protection to unregistered designs. As stated in the explanatory notes for the Bill: to qualify for this protection currently the designer, or the article made to the design, must have a connection either with the Island or with the qualifying countries – such countries as specified in an order.

Countries qualify on the basis that reciprocal protection for Manx designers is available there. The intention of the clause is to simplify the criteria by making it dependent on where the designer or the employer is economically active, or where the designs are first marketed.

If the designer or his employers are economically active in a qualifying country, or the article is made to the design first marketed in the qualifying country, then the design will be protected.

Madam President, I beg to move clause 14 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The Hon. Member, Mr Wild.

**Mr Wild:** Thank you, Madam President.

May I on behalf of the Department of Economic Development, propose four amendments to clause 14. These were alluded to by my hon. colleague in the introduction to the clauses stage of the Bill, and there has been an explanatory note from the Legislative Council on these amendments.

So that clause closely mirrors a provision in the UK Intellectual Property Bill, which is currently nearing the end of its progress through Parliament there. However, at the end of January 2014 the United Kingdom Government proposed, and Parliament agreed to, amendments to the clause.

The amendments were the result of the concerns that the clause will inadvertently give undue protection in the United Kingdom to designs by businesses based in foreign countries, even though reciprocal protection would not be available to United Kingdom businesses in those countries.

The same situation would apply in the case of the Isle of Man should the Bill not be amended, and so it is in the interests of the Island that the amendments should be made.

The first amendment omits subsection (1) of clause 14.

The second amendment amends subsection (2) of clause 14.

The third amendment substitutes a new definition of 'qualifying person' in subsection (2) to ensure that businesses must have a legal personality under the law of a qualifying country for their designs to receive protection on the Isle of Man.

The fourth amendment ensures that any designs protected on the basis that they were first marketed on the Island are by a qualifying person as referred to in subsection (2).

Madam President, I beg to move the amendments standing in my name:

*Amendments to clause 14*

*Page 15, omit subsection (1).*

*Page 15, in subsection (2), for "that Act" substitute "the Design Right Act 1991".*

*Page 15, in subsection (2)(a), for the definition of "qualifying person" substitute —  
" "qualifying person" means —*

*(a) an individual habitually resident in a qualifying country, or*

*(b) a body corporate or other body having legal personality which—*

*(i) is formed under the law of the Island or another qualifying country, and*

*(ii) has in any qualifying country a place of business at which substantial business activity is carried on."*

*Page 16, for subsection (4) substitute —*

*"(4) In section 8 of that Act (qualification by reference to first marketing) —*

*(a) in subsection (1)(a), omit "who is exclusively authorised to put such articles on the market in the Island";*

*(b) in subsection (2), for "requirements" substitute "requirement";*

*(c) in subsection (3), for "those requirements" substitute "that requirement"; and*

*(d) omit subsection (4)."*

**Mr Downie:** I beg to second, Madam President.

**The President:** As you have seconded the clause, Mr —

**Mr Downie:** Do you want somebody else to do it?

**Mr Braidwood:** I was going to second the amendment, Madam President.

**The President:** Mr Braidwood, right, thank you.

Hon. Members, the motion before Council is that clause 14 do stand part of the Bill, and to that we have the amendments in the name of Mr Wild.

As no Member seems to wish to speak on it, I will move the amendments as one. Those in favour of the amendments, please say aye; against no. The ayes have it. The ayes have it.

I now put to you the clause as amended. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 15.

**Mr Crowe:** Madam President, this clause introduces two new exceptions to infringement of unregistered design right: one for use of protected designs for experimental or teaching purposes; and one which exempts from infringement action the use of a protected design in a ship or aircraft registered outside the Isle of Man which is temporarily in the Island.

These mirror exemptions applying to registered designs under the Registered Designs Act 1949 of Parliament, and will harmonise with EU regulations.

Madam President, I beg to move clause 15 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** Hon. Member, Mr Coleman.

**Mr Coleman:** Thank you, Madam President.

I seem to recollect that in the United States when a drug is coming to the end of its patent, for a year or so before the end of the patent rights, other drug companies can incorporate that drug into the development of another drug.

Would this be covering things like that?

**Mr Crowe:** If I can find my notes on the Roche-Bolar exemption –

**Mr Coleman:** That is the one!

**The President:** The mover to reply, at least when he has found the right notes.

**Mr Crowe:** Thank you, Madam President.

Mr Coleman is absolutely right. The Roche-Bolar exemption allows that the trials of a generic medicinal product within the EU for the purpose of obtaining a market authorisation do not count as an infringement of patent. The order would apply to the Island in a directive containing this exemption. The order would also apply to the Island a directive which contains a simpler exemption with respect to veterinary medicinal products.

The Roche-Bolar exemption was introduced to the Island as a result of the Patents (Isle of Man) Order 2013.

**The President:** Hon. Members, the motion before the Court is that clause 15 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 16.

**Mr Crowe:** Clause 16 amends the Performers' Protection Act 1996 so as to increase the maximum penalties for unauthorised dealings with recordings of performances on similar lines to the increases in respect of breaches of copyright made by clause 3.

Madam President, I beg to move that clause 16 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 16 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 17.

**Mr Crowe:** Thank you, Madam President.

Clause 17 gives additional powers under which a court can order the forfeiture of an 'illicit recording' of a performance over and above those available after seizure of, or on a conviction for dealing with, infringing copies – in other words, pirated copies.

The powers are similar to those conferred by clause 4 in relation to infringing copies, and are available whenever such recordings have come into anyone's possession in the course of

investigating or prosecuting certain offences, including offences relating to trade descriptions, fraud or theft.

An illicit recording is one made without the consent of the performer or, if a record company has an exclusive recording contract, without the record company's consent. Recordings made for private purposes do not qualify as illicit recordings.

The Performers' Protection Act 1996 currently enables a court to order the forfeiture or destruction of illicit recordings which have been ordered to be handed over either on an application by the rights owner under section 16, *or* on a conviction for an offence under section 21, *or* which have been seized by the rights owner under section 17.

Madam President, I beg to move that clause 17 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 17 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 18 and schedule 2.

**Mr Crowe:** Thank you, Madam President.

Clause 18 with schedule 2 provides for performers to have artistic, non-commercial rights in relation to their performances, similar to those which authors and directors have in relation to certain copyright works.

These are referred to as 'moral rights' and are concerned with protection of the personality and reputation of the performers. Specifically the rights are: firstly, the right to be identified as a performer; and, secondly, the right to object to derogatory treatment of the performance.

The protection of authors' moral rights was introduced by the Rome revision of the Berne Convention in 1928 and is given effect in Manx law by the Copyright Act 1991. Protection for performers was introduced by the World Intellectual Property Organisation's Performance and Phonograms Treaty in 1996. Authors' moral rights were introduced by a revision of the International Berne Convention 1928 and are given effect in Manx law by the Copyright Act 1991.

This clause makes provision for performers' moral rights in the Isle of Man for the first time.

Madam President, I beg to move that clause 18 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 18 introducing schedule 2 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 19.

**Mr Crowe:** Clause 19 makes provision for the licensing of 'orphan rights' and extended collective licensing in relation to performances. This corresponds to the provision made in clause 9 for orphan works and extended collective licensing for copyright works.

Clause 19 amends schedule 1A of the Performers' Protection Act 1996, which deals with the licensing of performers' commercial rights and is based on amendments made to the UK Copyright, Designs and Patents Act 1988 by the Enterprise and Regulatory Reform Act 2013.

Madam President, I beg to move that clause 19 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 19 stands part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

Clause 20.

**Mr Crowe:** Clause 20, as in the case of copyright and design right, the Performers' Protection Act 1996 includes the concept of 'qualification'. For a performance to be protected it, or the performer, must have a connection with the Isle of Man, an EU member state including the United Kingdom, or another qualifying country specified in an order.

At present, the other qualifying countries are specified in the Performers' Rights (Reciprocal Protection) Order 2003. That Order applies to the Isle of Man a UK order which lists numerous other countries.

New UK orders have been made almost annually since 2003, to reflect the accession of countries to various international conventions, and should in turn have been applied to the Isle of Man. In consequence, Manx law does not afford protection in all cases required under those conventions. Under this provision, it will no longer be necessary to replace or amend the order every year, as a list of most of the relevant countries will be incorporated in the Performers' Protection Act 1996.

Madam President, I beg to move that clause 20 stands part of the Bill.

**Mr Downie:** I beg to second, Madam President, and reserve my remarks.

**The President:** The motion is that clause 20 do stand part of the Bill. Those in favour, please say aye; against no. The ayes have it. The ayes have it.

That concludes consideration of the Copyright etc (Amendment) Bill, Hon. Members.  
(*Interjections*)

**Mr Butt:** Clause 21 –

**The President:** Clause 21 was not moved in another place, Hon. Members.

**Mr Crowe:** Do you want me to put that on *Hansard*, Madam President?

**The President:** It was an *amendment* in the other place (**Mr Crowe:** Oh, right.) and therefore it comes forward in its *amended* form without that clause, Hon. Member.

**Mr Crowe:** Right, thank you, Madam President.