

BILLET D'ÉTAT No. XXIII, 2012

28th NOVEMBER 2012

	<i>Page</i>
The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012	1
The Image Rights (Bailiwick of Guernsey) Ordinance, 2012	9
The Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2012	168
The Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2012	170

PROJET DE LOI

ENTITLED

The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012

THE STATES, in pursuance of their Resolution of the 28th day of November, 2012^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

General power to make Ordinances regulating employment agencies.

1. The States may by Ordinance make such provision as they think fit -
 - (a) to secure the proper conduct of employment agencies and employment businesses, and
 - (b) to protect the interests of persons availing themselves of the services of such agencies and businesses.

Specific matters for which Ordinances may make provision.

2. (1) An Ordinance under section 1 may, without limitation, make provision in relation to the following matters -
 - (a) requiring persons carrying on such agencies and businesses to keep records,

^a Article * of Billet d'État No. ** of 2012.

- (b) prescribing the form of such records and the entries to be made in them,
- (c) prescribing qualifications appropriate for persons carrying on such agencies and businesses,
- (d) regulating advertising by persons carrying on such agencies and businesses,
- (e) safeguarding clients' money deposited with or otherwise received by persons carrying on such agencies and businesses,
- (f) restricting the services which may be provided by persons carrying on such agencies and businesses,
- (g) regulating the way in which and the terms on which services may be provided by persons carrying on such agencies and businesses, and
- (h) restricting or regulating the charging of fees by persons carrying on such agencies and businesses.

(2) An Ordinance under section 1 may implement the provisions, or any provision, of any relevant convention, treaty or agreement.

General provisions as to Ordinances.

3. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).

(2) Any power to make an Ordinance under this Law may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or

subject to any prescribed conditions.

(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may, subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences and may (for the avoidance of doubt) specify penalties which may be imposed by the courts,
- (b) may empower the Department, any other department, and any other body, to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance made under it,
- (c) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith,
- (d) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (e) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1,

(f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and

(g) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) The power conferred by subsection (3)(a) to create offences and specify penalties does not include power -

(a) to provide for offences to be triable only on indictment,

(b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008^b, or

(c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding five years.

(5) The power to make an Ordinance under this Law shall -

^b Order in Council No. XVIII of 2009.

- (a) where it is exercised in respect of Alderney, be exercised following consultation with the Policy and Finance Committee of the States of Alderney, and
- (b) where it is exercised in respect of Sark, be exercised following consultation with the Finance and Commerce Committee of the Chief Pleas of Sark,

but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

Interpretation.

4. (1) In this Law, unless the context otherwise requires –

a "**department**" means any department, council or committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, however styled,

"**the Department**" means the States of Guernsey Commerce and Employment Department,

"**employment agency**" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them,

"**employment business**" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with

any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity,

"enactment" means any Law, Ordinance or subordinate legislation,

"implement" includes the enforcement or enactment, and the securing of the administration, execution, recognition, exercise or enjoyment, in or under domestic law -

- (a) of the provision or provisions of the convention, treaty or agreement in question, and
- (b) of any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the same,

"relevant convention, treaty or agreement" means any convention, treaty or agreement having as its object the proper regulation of employment agencies and employment businesses or the protection of the interests of persons availing themselves of the services of such agencies and businesses; and, for the avoidance of doubt, includes any convention, treaty or agreement adopted by the General Conference of the International Labour Organisation and whether or not directly applicable in or binding upon the Bailiwick, and

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Law throughout the Bailiwick of Guernsey.

Citation.

5. This Law may be cited as the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012.

Commencement.

6. (1) This Law shall come into force -
- (a) in respect of Guernsey and Alderney, on the day appointed by Ordinance of the States, and
 - (b) in respect of Sark, on the day appointed by Ordinance of the Chief Pleas.

(2) An Ordinance under subsection (1) may appoint different dates for different provisions and for different purposes.

^c Ordres en Conseil Vol. XIII, p. 355.

The Image Rights (Bailiwick of Guernsey) Ordinance, 2012

ARRANGEMENT OF SECTIONS

PART I REGISTERED PERSONALITY AND IMAGE RIGHTS

Introductory

1. Personnage and personality.
2. Registered personality and rights that subsist in the personality.
3. Image.
4. Registered image.
5. Image rights.

Grounds for refusal of registration

6. Grounds for refusal of registration.
7. Specially protected emblems.
8. Existing personalities, existing images and existing rights.
9. Meaning of "existing personality" and "existing image".
10. Power to require that grounds be raised in opposition proceedings.

Application for registration

11. Application for registration.
12. Application for registration: supplementary provisions.
13. Date of filing.

Registration procedure

14. Examination of application.
15. Publication, opposition proceedings and observations.
16. Withdrawal or amendment of application.
17. Registration.
18. Duration of registration.
19. Renewal of registration.
20. Restoration of a personality or an image.
21. Alteration of registered personality or registered image.
22. Surrender of registered personality or registered image.
23. Grounds for invalidity of registration.

24. Revocation of registration.
25. Effect of acquiescence.
26. Registration: supplementary provisions.

Infringement of image rights

27. Infringement of image rights.
28. Distinctive image.
29. Actual or potential value.
30. Registration subject to disclaimer or limitation.

Limitations to image rights

31. Matters which do not constitute an infringement of image rights.
32. Fair dealing for the purposes of news reporting, commentary and satire.
33. Fair dealing for the purpose of the arts.
34. Fair dealing for any other purpose.
35. Incidental inclusion of an image.
36. Things done for the purposes of education.
37. Acts of public administration and law enforcement, or done under statutory authority.
38. Making of temporary copies.
39. Use of image by personage or a person's use of their own image.
40. Goods or services put on the market.

Infringement proceedings

41. Action for infringement.
42. Order to cease production etc, of offending image.
43. Order for delivery up of infringing goods, material, publications or articles.
44. Period after which remedy of delivery up not available.
45. Order as to disposal of infringing goods, material, publications or articles.
46. Meaning of "infringing goods, material, publications or articles".
47. Remedy for unjustified threats of infringement proceedings.
48. Restrictions on recovery of damages for infringement.
49. Assessment of damages.
50. Right to continue use begun before registration.

Registered personality and image rights as object of property

51. Nature of registered personality and image rights.
52. Assignment, etc of registered personality and rights therein.
53. Co-ownership by two or more persons jointly.
54. Co-ownership by a group.

- 55. Co-ownership: supplementary provisions.
- 56. Fictional characters.
- 57. Prospective ownership of registered personality.
- 58. Registration of transactions affecting a registered personality or rights therein.
- 59. Trusts and rights.
- 60. Application for registration of personality or image as an object of property.

Licensing

- 61. Licensing of registered personality's image rights.
- 62. Exclusive licences.
- 63. General provisions as to rights of licensees in case of infringement.
- 64. Exclusive licensee having rights and remedies of assignee.

PART II
MORAL RIGHTS

Right to be identified

- 65. Right to be identified.
- 66. Requirement that right be asserted.
- 67. Exceptions to right.

Right not to be subjected to derogatory treatment

- 68. Right not to be subjected to derogatory treatment.
- 69. Exceptions to right.
- 70. Infringement of right by possessing or dealing with infringing image.

Supplementary

- 71. Duration of rights.
- 72. Consent and waiver of rights.
- 73. Application of provisions to a joint personality or group.
- 74. Moral rights not assignable.
- 75. Moral rights apply to natural persons only.
- 76. Transmission of moral rights on death.

Remedies for infringement of moral rights.

- 77. Remedies for infringement of moral rights.

PART III
ADMINISTRATIVE AND OTHER SUPPLEMENTARY PROVISIONS

The Register of Personalities and Images

- 78. The Register.
- 79. Rectification of Register.

Powers and duties of Registrar

- 80. Power to require use of forms.
- 81. Statements of practice.
- 82. Information about applications and registered personalities.
- 83. Costs and security for costs.
- 84. Evidence before Registrar.
- 85. Exclusion of liability in respect of official acts.
- 86. Registrar's annual report.

Legal proceedings and appeals

- 87. Registration to be prima facie evidence of validity.
- 88. Certificate of validity of contested registration.
- 89. Registrar's appearance in proceedings involving the Register.
- 90. The Ordinary Court.
- 91. Appeals from Registrar.
- 92. Power of Department to make regulations.
- 93. Fees.
- 94. Publication.
- 95. Power to release Registrar from proceedings.

Image rights agents

- 96. Recognition of agents.
- 97. Register of image rights agents.
- 98. Unregistered persons not to be described as registered image rights agents.
- 99. Power to prescribe conditions, etc, for mixed partnerships and bodies corporate.
- 100. Privilege for communications with registered image rights agents.
- 101. Power of Registrar to refuse to deal with certain agents.

Importation of infringing goods, material, publications or articles

- 102. Importation of infringing goods, material, publications or articles.

Offences

103. Falsification of Register, etc.
104. Falsely representing a personality or an image as registered.
105. Criminal liability of directors, etc, of bodies corporate.
106. Criminal liability of partners, etc, of unincorporated bodies.
107. Defence of due diligence.

PART IV
MISCELLANEOUS AND GENERAL PROVISIONS

Miscellaneous

108. Burden of proving use of registered personality's image.
109. Interpretation.
110. Construction of references to proprietor.
111. General provisions as to subordinate legislation.
112. Rights and privileges under other enactments, agreements or the general law.
113. Territorial waters.
114. Guernsey ships.
115. Citation.
116. Extent.
117. Commencement.

The Image Rights (Bailiwick of Guernsey) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 30th September, 2011^a, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004^b and all other powers enabling them in that behalf, hereby order:-

PART I

REGISTERED PERSONALITY AND IMAGE RIGHTS

Introductory

Personnage and personality.

1. (1) In this Ordinance, a "*personnage*" means -
 - (a) a natural person,
 - (b) a legal person,
 - (c) two or more natural persons or legal persons who are or who are publicly perceived to be intrinsically linked and who together have a joint personality ("**joint personality**"),
 - (d) two or more natural persons or legal persons who are or who are publicly perceived to be linked in a

^a Article XV of Billet d'État No. XV of 2011.

^b Order in Council No. XIV of 2004; as amended by Recueil d'Ordonnances Tome XXIX, p. 406.

common purpose and who together form a collective group or team ("**group**"), or

- (e) a fictional character of a human or non human ("**fictional character**"),

whose personality –

- (i) is registered under this Ordinance (and is accordingly a "**registered personality**" for the purposes of this Ordinance), or
- (ii) is the subject of an application to be so registered.

(2) In this Ordinance, a "**personality**" means the personality of the person, two or more persons or character referred to in subsections (1)(a) to (e).

(3) A person who forms part of a -

- (a) joint personality, cannot be replaced by another person,
- (b) group, can be replaced by another person.

(4) The persons forming a -

- (a) joint personality, may not change from time to time,

- (b) group, may change from time to time.
- (5) The expression "**natural person**" means a human being who -
- (a) is alive, or
 - (b) has died within the period of 100 years preceding the date of filing the application for the registration of the personality.
- (6) The expression "**legal person**" means a body corporate or other body having legal personality that -
- (a) is currently in existence, registered or incorporated, or
 - (b) has ceased to be in existence, registered or incorporated, for example by reason of having been liquidated, dissolved, wound up or struck off, within the period of 100 years preceding the date of filing the application for the registration of the personality.
- (7) The name of a personality does not have to be the same as the name of the *personnage*.

Registered personality and rights that subsist in the personality.

2. (1) A registered personality is a property right obtained by the registration of a personality in the Register in accordance with the provisions of this Ordinance (and see section 51 (nature of registered personality and image rights)).

Section 110 (construction of references to proprietor) has effect in relation to the proprietorship of the registered personality.

(2) Subject to section 52 (assignment, etc of registered personality and rights therein), the proprietor of a registered personality has the image rights and other rights and remedies provided by this Ordinance.

(3) Subject to section 52, the person registered as the proprietor of a registered personality, or that person's personal representative as the case may be, is, by reason of the fact of registration alone, and without prejudice to any right, title or interest that that person may have otherwise than by virtue of being registered as proprietor, the legal owner (*nue propriétaire*) of the registered personality and the image rights and other rights therein.

(4) Subject to section 75 (moral rights apply to natural persons only), the rights conferred by the following provisions of Part II (moral rights) subsist in favour of a *personnage*, whether or not the *personnage* is the proprietor of the registered personality, or the proprietor of the image rights -

(a) section 65 (right to be identified), and

(b) section 68 (right not to be subjected to derogatory treatment).

(5) Subject to section 112 (rights and privileges under other enactments, agreements or the general law), no proceedings lie to prevent or recover damages for the infringement of an unregistered personality as such.

Image.

3. (1) In this Ordinance, "image" means -

- (a) the name of a *personnage* or any other name by which a *personnage* is known,
- (b) the voice, signature, likeness, appearance, silhouette, feature, face, expressions (verbal or facial), gestures, mannerisms, and any other distinctive characteristic or personal attribute of a *personnage*, or
- (c) any photograph, illustration, image, picture, moving image or electronic or other representation ("**picture**") of a *personnage* and of no other person, except to the extent that the other person is not identified or singled out in or in connection with the use of the picture.

(2) A registered personality's images are protected to the extent specified in this Ordinance.

Registered image.

4. A registered personality's image may be registered in the Register in accordance with the provisions of this Ordinance ("**registered image**").

Image rights.

5. (1) Subject to section 52 (assignment etc, of registered personality and rights therein), the proprietor of a registered personality has exclusive rights in the images associated with or registered against that registered personality ("**image rights**").

(2) In this Ordinance, "**the proprietor of the image rights**" shall be –

- (a) in the first instance, the proprietor of the registered personality,
- (b) upon the assignment or other transmission of the image rights attributable to that registered personality under section 52, the assignee of those image rights or the person to whom those image rights were transmitted.

(3) Image rights are infringed by the use of an image in the manner specified in section 27 (infringement of image rights) without the consent of the proprietor of the image rights.

(4) Image rights have effect from the date of registration of the personality (which in accordance with section 17(2) (registration) is the date of filing of the application for registration), but no infringement proceedings may be begun before the date on which the personality is in fact registered.

Grounds for refusal of registration

Grounds for refusal of registration.

6. A personality or image shall not be registered if -
- (a) it does not satisfy the requirements of section 1 or 3(1) respectively,
 - (b) it is contrary to public policy or to accepted principles of morality,
 - (c) it is of such a nature as to deceive the public,

- (d) it is one of the cases specified, or referred to, in -
 - (i) section 7 (specially protected emblems), or
 - (ii) section 8 (existing personalities, existing images and existing rights),
- (e) its use is prohibited in the Bailiwick by any enactment or rule of law or by any provision of Community law having effect in the Bailiwick (whether by virtue of the European Communities (Bailiwick of Guernsey) Law, 1973^c or otherwise),
- (f) the application is made in bad faith,
- (g) the application includes any statement, information or document which constitutes an offence under section 7 of the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005^d ("**the Office of the Registrar Ordinance**"),
- (h) the image has, or in the case of a personality, the images which are associated with the personality have, become customary or established in current

^c Ordres en Conseil Vol. XXIV, p. 87; as amended by Ordres en Conseil Vol. XXVII, p. 242; Vol. XXIX, p. 127, p. 419; Vol. XXXI, p. 278; Vol. XLII(2), p. 1320; Recueil d'Ordonnances Tome XXVI, p. 316; Tome XXVIII, p. 79, p. 541; Tome XXIX, p. 362, p. 406; Tome XXXII, p. 6.

^d Recueil d'Ordonnances Tome XXX, p. 581.

language, culture or cognizance, or in the bona fide and established practices of any trade, or

- (i) it does not satisfy any other requirement that may be determined by the Registrar after consultation with the Department or that may be prescribed.

Specially protected emblems.

- 7. (1) A personality or image which consists of or contains -
 - (a) the Royal arms, or any of the principal armorial bearings of the Royal arms, or any insignia or device so nearly resembling the Royal arms or any such armorial bearing as to be likely to be mistaken for them or it,
 - (b) a representation of the Royal crown or any of the Royal flags,
 - (c) a representation of Her Majesty or any member of the Royal family, or any colourable imitation thereof, or
 - (d) words, letters or devices likely to lead persons to think that the applicant has or has recently had Royal patronage or authorisation,

shall not be registered unless it appears to the Registrar of Intellectual Property ("**the Registrar**") that consent has been given by or on behalf of Her Majesty or, as the case may be, the relevant member of the Royal family.

(2) A personality or image which consists of or contains a representation of -

- (a) the national union flag of the United Kingdom (commonly known as the Union Jack) or any official sign, hallmark or emblem of the United Kingdom, or
- (b) the flag, official sign, hallmark or emblem of England, Wales, Scotland, Northern Ireland, the Isle of Man, any of the islands of the Bailiwick or the Island of Jersey,

shall not be registered if it appears to the Registrar that the use of the image or, as the case may be, images associated with the personality would be misleading or grossly offensive, and provision may be made by regulations of the States of Guernsey Commerce and Employment Department ("**the Department**") identifying the flags, official signs, hallmarks and emblems to which paragraphs (a) and (b) apply.

(3) Provision may be made by regulations of the Department prohibiting, in such cases as may be prescribed, the registration of a personality or an image which consists of or contains -

- (a) arms to which a person is entitled by virtue of a grant of arms by the Crown, or
- (b) insignia so nearly resembling such arms as to be likely to be mistaken for them,

unless it appears to the Registrar that consent has been given by or on behalf of that

person; and, where such a personality or image is registered, nothing in this Ordinance shall be construed as authorising its use in any way contrary to the laws of arms.

- (4) A personality or image which consists of or contains -
- (a) the flag, armorial bearing, official sign, hallmark or emblem of a country or an international intergovernmental organisation, or
 - (b) abbreviations or names of a country or an international intergovernmental organisation,

shall not be registered without the authorisation of the competent authorities of that country or the international organisation concerned unless it appears to the Registrar that the use of the flag, armorial bearing, official sign, hallmark, emblem, abbreviation or name-

- (i) is not such as to suggest to the public that a connection exists between the country or the organisation and the personality or image, or
- (ii) is not likely to mislead the public as to the existence of a connection between the personality or image and the country or the organisation.

(5) A personality or image which consists of or contains a controlled representation within the meaning of the Olympic Symbol etc

(Protection) Act 1995^e shall not be registered unless it appears to the Registrar -

- (a) that the application is made by the person for the time being appointed under section 1(2) of that Act (power of Secretary of State to appoint a person as the proprietor of the Olympics association right), or
- (b) that consent has been given by or on behalf of the person mentioned in paragraph (a).

(6) The provisions of this section as to flags and other emblems, armorial bearings, and official signs or hallmarks, apply equally to anything which from a heraldic point of view imitates any such flag or other emblem, armorial bearing, sign or hallmark.

(7) Nothing in this section prevents the registration of a personality or image on the application of a national of a country who is authorised to make use of a flag, an emblem, armorial bearing, or official sign or hallmark, of that country, notwithstanding that it is similar to that of another country.

(8) Where by virtue of this section the authorisation of the competent authorities of a country or an international organisation or a person is or would be required for the registration of a personality or image, those authorities are or that organisation or person is entitled to restrain by injunction any use of the image or, as the case may be, images associated with or registered against the personality without their authorisation.

^e An Act of Parliament (1995 c. 32).

Existing personalities, existing images and existing rights.

8. (1) A personality shall not be registered if it is identical to an existing personality.

(2) For the purposes of subsection (1), a personality is identical to an existing personality if the images associated with it are identical to those images associated with or registered against the existing personality.

However -

- (a) a personality which shares the same name as an existing personality,
- (b) the personality of a natural person who has an identical sibling (who is an existing personality), or
- (c) a personality, that is the subject of an application for partial registration, which is identical to an existing personality, that has been the subject of a partial registration in respect of images, rights or uses different to those that are subject of the personality's application for partial registration,

is not by that fact alone identical to that existing personality.

(3) An image shall not be registered if it is identical to an existing image.

However -

- (a) an image which consists of the same name as an existing image, or
- (b) the image of a natural person who has an identical sibling (who is an existing personality and who has an existing image),

is not by that fact alone identical to the existing image.

(4) A personality shall not be registered if it is similar to an existing personality and -

- (a) because of that similarity, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the existing personality, or
- (b) the use of images associated with or registered against that personality without due cause would -
 - (i) take unfair advantage of the distinctive character or repute of the *personnage* attributed to the existing personality, or
 - (ii) be detrimental to the distinctive character or repute of the *personnage* attributed to the existing personality, or the value of the existing personality or the existing personality's images.

(5) An image in respect of a personality shall not be registered if it is similar to an existing image in respect of an existing personality and –

(a) because of that similarity, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the existing personality, or

(b) the use of the image without due cause would –

(i) take unfair advantage of the distinctive character or repute of the *personnage* attributed to the existing personality, or

(ii) be detrimental to the distinctive character or repute of the *personnage* attributed to the existing personality, or the value of the existing personality or the existing personality's images.

(6) A personality shall not be registered if, or to the extent that, the use of an image or images associated with or registered against that personality is liable to be prevented in the Bailiwick by virtue of the laws of passing off or registered trade marks.

(7) A personality of a fictional character or image shall not be registered if, or to the extent that, the use of an image or images associated with or registered against that personality or the use of that particular image is liable to be prevented in the Bailiwick -

- (a) by virtue of any rule of law (in particular, the laws of passing off, registered trade marks, copyright, unregistered design rights or registered designs), or
- (b) by virtue of an existing right other than those referred to in subsections (1) to (6) or paragraph (a).

(8) A person thus entitled to prevent the use of an image under subsection (6) or (7) is referred to in this Ordinance as the proprietor of an "**existing right**" in relation to the personality or image.

(9) Nothing in this section prevents the registration of –

- (a) a personality which is identical to or similar to an existing personality, where the proprietor, or as the case may be, personal representative of the proprietor, of the existing personality consents to the registration,
- (b) an image –
 - (i) which is identical to an existing image, or
 - (ii) in respect of a personality which is similar to an existing image in respect of an existing personality,

where the proprietor, or as the case may be, personal representative of the proprietor, of the image rights attributable to the existing image, consents to the

registration,

- (c) a personality where the use of an image or images associated with or registered against that personality is liable to be prevented by virtue of subsection (6) or (7), where the proprietor, or as the case may be, personal representative of the proprietor, of the existing right, consents to the registration, or
- (d) an image where the use of that particular image is liable to be prevented under subsection (7), where the proprietor of, or as the case may be, personal representative of, the existing right, consents to the registration.

(10) In determining whether or not the registration of a personality or image is prohibited by this section, the Registrar may rely on the declaration made by the applicant under section 11(4)(e) in all respects and, accordingly, need not enquire further as to whether the registration of the personality or image is prohibited by this section and, in particular, need not carry out any search of existing personalities, existing images or other existing rights in the Register, the Bailiwick's Register of Trade Marks or in any other register, database or material.

Meaning of "existing personality" and "existing image".

9. (1) In this Ordinance an "**existing personality**" means -

- (a) a registered personality which has a date of application for registration earlier than that of the personality in question, or

(b) a personality in respect of which an application for registration has been made and which, if registered, would be an existing personality by virtue of paragraph (a), subject to it being so registered.

(2) In this Ordinance an "**existing image**" means -

(a) a registered image which has a date of application for registration earlier than that of the image in question, or

(b) an image in respect of which an application for registration has been made and which, if registered, would be an existing image by virtue of paragraph (a), subject to it being so registered.

(3) A personality or image within subsection (1)(a) or (2)(a) whose registration expires shall continue to be taken into account in determining the registrability of the later personality or image for a period of six months after the expiry.

Power to require that grounds be raised in opposition proceedings.

10. (1) The Department may by regulations provide that in any case a personality or image shall not be refused registration on a ground mentioned in section 8 (existing personalities, existing images and existing rights) unless objection on that ground is raised in opposition proceedings by an interested party who claims to be affected by the proposed registration.

(2) The regulations may make such consequential provision as appears to the Department appropriate (including provision amending or modifying

this Ordinance) -

- (a) with respect to the carrying out by the Registrar of searches of existing personalities, existing images or other existing rights, and
- (b) as to the persons by whom an application for a declaration of invalidity or revocation may be made on the grounds specified in section 23 (grounds for invalidity of registration) or 24 (revocation of registration) respectively.

(3) Regulations making such provision as is mentioned in subsection (2)(a) may direct that so much of section 14 (examination of application) as authorises a search to be carried out shall cease to have effect.

(4) Regulations making such provision as is mentioned in subsection (2)(b) may provide that so much of section 23(2) (grounds for invalidity of registration) or 24(2) (revocation of registration) as provides that any person may make an application for a declaration of invalidity or revocation shall have effect subject to the provisions of the regulations.

Application for registration

Application for registration.

11. (1) An application for registration of a personality or an image shall be made to the Registrar in such form and manner as the Registrar thinks fit or as may be prescribed.

(2) An application for registration of a personality shall be made

by –

- (a) the *personnage*, or the personal representative of the *personnage*, unless paragraph (b) applies,
 - (b) the prospective proprietor, where the person referred to in paragraph (a) is not the prospective proprietor, or
 - (c) any person authorised by the person able to make an application in accordance with the preceding paragraphs.
- (3) An application for registration of an image shall be made by –
- (a) the *personnage*, or the personal representative of the *personnage*, unless paragraph (b), (c), or (d) applies,
 - (b) the prospective proprietor, where the person referred to in paragraph (a) is not the prospective proprietor, unless paragraph (c) or (d) applies,
 - (c) the proprietor, or personal representative of the proprietor, of the registered personality, where the personality is registered and the proprietor thereof is not the person referred to in paragraph (a), unless paragraph (d) applies,
 - (d) subject to any agreement to the contrary, the proprietor, or personal representative of the

proprietor, of the image rights, where the personality is registered and the proprietor of the image rights is not the person referred to in paragraph (a) or (c), or

- (e) any person authorised by the person able to make an application in accordance with the preceding paragraphs.
- (4) The application shall be accompanied by -
- (a) a request for registration of the personality or the image, as the case may be,
 - (b) the name and (where appropriate) address of the applicant, personality and *personnage* (if different),
 - (c) evidence that demonstrates that the personality or image satisfies the requirements of section 1 or 3(1) respectively,
 - (d) the appropriate fee,
 - (e) a declaration by the applicant that the registration of the personality or the image is not, to the best of its knowledge, prohibited by section 8 (existing personalities, existing images and existing rights),
 - (f) in relation to an application for registration of a personality, the information or documents required under subsection (5),

- (g) in relation to an application for registration of an image, the information or documents required under subsection (6), and
- (h) any other information or document as the Registrar may reasonably require for the purpose of determining the application or as may be prescribed.

(5) In addition to the information and documents set out in subsection (4), an application for registration of a personality shall also be accompanied by -

- (a) the name and address of the prospective proprietor,
- (b) a photograph of the *personnage*, or in the case of fictional character, a photograph, illustration or graphic representation of the *personnage*,
- (c) the date of inception of the *personnage*,
- (d) verification of the *personnage*,
- (e) a declaration by the applicant that –
 - (i) it, or in the case of an application made under subsection (2)(c), the person who has authorised the making of the application, is the prospective proprietor, and

(ii) in the case of an application made under subsection (2)(c), the application is made with the prospective proprietor's consent, and

(f) if appropriate, a separate application for registration of an image to be registered against the personality.

(6) In addition to the information and documents set out in subsection (4), an application for registration of an image shall also be accompanied by -

(a) the name of the personality associated with the image, and if the personality is registered under this Ordinance, the registration number of the personality,

(b) a picture or recording of the image, and

(c) a declaration by the applicant that -

(i) it, or in the case of an application made under subsection (3)(e), the person who has authorised the making of the application, is -

(A) the prospective proprietor, or

(B) where the personality is registered, the person referred to in subsection (3)(c), or as the case may be, subsection (3)(d), and

(ii) in the case of an application made under subsection (3)(e), the application is made with the consent of –

(A) the prospective proprietor, or

(B) where the personality is registered, the person referred to in subsection (3)(c), or as the case may be, subsection (3)(d).

(7) The Registrar -

(a) shall refuse an application for registration which is not accompanied by –

(i) the appropriate fee referred to in subsection (4)(d), or

(ii) the declaration, or as the case may be, declarations referred to in subsections (5)(e) and/or (6)(c), and

(b) may refuse an application for registration which is otherwise not made in accordance with the provisions of this Ordinance.

(8) For the purposes of subsection (5)(c) the "**date of inception of the *personnage***" means –

- (a) in respect of a natural person –
 - (i) who is alive, that person's date of birth,
 - (ii) who has died, that person's date of birth and date of death,
 - (b) in respect of a legal person –
 - (i) that is currently in existence, registered or incorporated for the purposes of section 1(6)(a), that person's date of formation, registration or incorporation,
 - (ii) that has ceased to be in existence, registered or incorporated for the purposes of section 1(6)(b), the date on which that person ceased to be in existence, registered or incorporated together with that person's date of formation, registration or incorporation,
 - (c) in respect of a joint personality or group which comprises of two or more natural persons or legal persons, the date of formation of that joint personality or group,
 - (d) in respect of a fictional character, the date of creation of that character.
- (9) For the purposes of subsection (5)(d) "**verification of the**

personnage" means such information or documents which verify the identity of the *personnage* as may be determined by the Registrar or as may be prescribed.

(10) For the purposes of subsection (6)(a) references to a "personality" are to either a registered personality or a personality which has a current application for registration made in relation to it.

Application for registration: supplementary provisions.

12. (1) An application for registration of a personality may be partial, that is, limited so as to apply –

- (a) in relation to some, but not all, of the images associated with that personality,
- (b) in relation to some, but not all, of the rights in that personality's images, or
- (c) in relation to the use of that personality's image or images -
 - (i) in a particular manner or a particular locality or for a particular purpose, or
 - (ii) in association with certain goods, services, activities or events,

and such an application shall be referred to in this Ordinance as an "**application for partial registration**".

(2) An application for registration of an image may be made at

the same time as, or at any time after, an application is made for registration of the personality in respect of which that image is to be registered.

(3) Every application under this Ordinance shall be made in the English language.

(4) The contents of any document accompanying an application made to the Registrar under this Ordinance -

(a) shall be in the English language, or

(b) where the language used is not the English language, shall be translated into English by a translator approved by the Registrar.

(5) A translation made under subsection (4)(b) shall be certified by the translator in such manner as the Registrar may determine and shall accompany the original document to which it relates.

(6) In the case of a joint personality or group, references in sections 11(2)(a) and 11(3)(a) to an application for registration being made by the *personnage* or by the personal representative of the *personnage* is to an application being made -

(a) jointly by all of the persons (or as the case may be, the personal representative of any or all of those persons) who form part of that joint personality or group, or

(b) independently by one person, or as the case may be,

the personal representative of one person, who forms part of that joint personality or group provided that consent has been obtained from each other person (or as the case may be, the personal representative of each other person) who forms part of that joint personality or group.

(7) The Registrar, when performing its functions under this Ordinance, may rely upon the declaration made under section 11(5)(e) or 11(6)(c) in all respects, and accordingly need not enquire further as to whether, in relation to any application for registration of a personality or image, the contents of such a declaration are true and that the provisions of this Ordinance have been complied with.

Date of filing.

13. (1) The date of filing of an application for registration of a personality or an image is the date on which documents containing everything required by or under section 11 (application for registration) are furnished to the Registrar by the applicant.

If the documents are furnished on different days, the date of filing is the last of those days or such other date as may be determined by the Registrar.

(2) References in this Ordinance to the date of application for registration are to the date of filing of the application.

Registration procedure

Examination of application.

14. (1) The Registrar shall examine whether an application for

registration of a personality or an image satisfies the requirements of this Ordinance (including any requirements determined by the Registrar or imposed by regulations of the Department).

(2) For that purpose the Registrar may, without prejudice to the provisions of section 8(10) or 12(7) (right of Registrar to rely on declaration made by applicant), carry out a search of existing personalities or existing images or other existing rights in the Register, the Bailiwick's Register of Trade Marks or in any other register, database or material determined by the Registrar.

(3) The Registrar may by notice in writing require the applicant to provide such additional information and documents as the Registrar may reasonably require for the purpose of determining the application.

(4) If it appears to the Registrar that the requirements for registration are not met, the Registrar shall inform the applicant, and give the applicant an opportunity, within such period as the Registrar may specify, to make representations or to amend the application.

(5) If the applicant fails to provide any additional information or document or satisfy the Registrar that the requirements for registration are met, or to amend the application so as to meet them, or fails to respond before the end of the period specified by the Registrar, the Registrar shall refuse to accept the application.

(6) If it appears to the Registrar that the requirements for registration are met, the Registrar shall accept the application.

Publication, opposition proceedings and observations.

15. (1) When an application for registration of a personality or an

image has been accepted, the Registrar shall cause the application to be published in such manner as the Registrar thinks fit or as may be prescribed.

(2) An interested party who claims to be affected by the proposed registration may, within such time from the date of the publication of the application as may be specified by the Registrar in the publication or as may be prescribed, give notice to the Registrar of opposition to the registration.

The notice shall be given in writing in such manner as the Registrar thinks fit or as may be prescribed, and shall include a statement of the grounds of opposition.

(3) Where an application has been published, any person may, at any time before the registration of the personality or image, make observations in writing to the Registrar as to whether the personality or image should be registered, and the Registrar shall inform the applicant of any such observations.

A person who makes observations does not thereby become a party to the proceedings on the application.

(4) Provision may be prescribed, or in the absence of regulations, determined by the Registrar, as to the procedures to be followed in relation to opposition proceedings or the making of observations as set out in subsections (2) and (3) respectively.

Withdrawal or amendment of application.

16. (1) The applicant may at any time withdraw its application for registration of a personality or image.

If the application has been published, the withdrawal shall also be

published by the Registrar in such manner as the Registrar thinks fit or as may be prescribed.

(2) In other respects, an application may be amended, at the request of the applicant, only by correcting -

- (a) the name or address of the applicant or the prospective proprietor,
- (b) the address of the *personnage*,
- (c) errors of wording or of copying,
- (d) in the case of a group, the persons who form part of the group, or
- (e) obvious mistakes,

and then only where the correction does not substantially affect the identity of the personality or the distinctiveness of the image covered by the application.

Registration.

17. (1) Where an application has been accepted and -

- (a) no notice of opposition is given within the period referred to in section 15(2) (publication, opposition proceedings and observations), or
- (b) all opposition proceedings are withdrawn or decided in favour of the applicant,

the Registrar shall register the personality or image, as the case may be, in the Register unless it appears to the Registrar having regard to matters coming to its notice since the application was accepted that the registration requirements were not met at that time.

(2) A personality or, as the case may be, an image when registered shall be registered as of the date of filing of the application for registration, and that date shall be deemed for the purposes of this Ordinance to be the date of registration.

(3) On the registration of a personality or image the Registrar shall -

- (a) publish the registration in such manner as the Registrar thinks fit or as may be prescribed, and
- (b) issue to the applicant a certificate of registration.

(4) Where an application for partial registration of a personality has been accepted -

- (a) the registration of the personality shall apply only to those images, rights or uses which formed the subject of the application ("**partial registration**"),
- (b) the Registrar shall -
 - (i) specify in the Register and the certificate of registration issued under subsection (3) that

the registration is a partial registration, and

- (ii) enter in the Register the images, rights or uses which apply to the registration pursuant to paragraph (a),
- (c) the rights conferred by section 5 (image rights) in relation to the personality shall be restricted accordingly, and
- (d) the references in this Ordinance to the "registered personality", "the registered personality's images" and the "registered personality's image rights" in relation to the personality shall be construed accordingly.

(5) Personalities and images may be classified for the purposes of registration according to a system of classification determined by the Registrar.

Duration of registration.

18. (1) A personality shall be registered for a period of ten years from the date of registration.

(2) The registration of a personality under subsection (1) may be renewed in accordance with section 19 (renewal of registration) for further periods of ten years.

(3) An image shall be registered for a period of three years from the date of registration.

(4) The registration of an image under subsection (3) may be renewed in accordance with section 19 for further periods of three years.

(5) Provision may be prescribed as to –

- (a) the introduction of an annual fee for the duration of the registration of a personality or image, and regulations may include provision as to the consequences of a failure to pay the annual fee, such as the removal of the relevant personality or image from the Register,
- (b) the amendment of the duration of the period of registration and/or renewal of a personality or an image referred to in subsections (1) to (4), and regulations may include savings and transitional provisions in relation to personalities and images which have been registered or renewed under this Ordinance prior to the date of commencement of any such regulations.

For the avoidance of doubt, any regulations made under this subsection shall have no effect upon the duration of the period of registration or renewal of any personality or image which has been registered or renewed under this Ordinance prior to the date of any such regulations, until the date of expiry of that registered personality or registered image.

Renewal of registration.

19. (1) The registration of a personality or an image may, subject to payment of the appropriate fee, be renewed at the request of –

- (a) in the case of a personality, the proprietor of the registered personality,
- (b) in the case of an image, the proprietor of the image rights.

(2) The Registrar may, in such manner as the Registrar may determine or as may be prescribed, inform the –

- (a) proprietor of a registered personality before the expiry of the registration of the registered personality, or
- (b) proprietor of the image rights before the expiry of the registration of the registered image,

of the date of expiry and the manner in which the registration may be renewed.

(3) A request for renewal must be made, and the appropriate fee for renewal paid, before the expiry of the registration.

Failing this, the request may be made and the fee paid within an additional period of one month from the date of expiry or such longer period as may be determined by the Registrar or as may be prescribed, in which case the appropriate additional renewal fee must also be paid within that period.

(4) Renewal shall take effect from the expiry of the previous registration.

(5) If the registration is not renewed in accordance with the above provisions, the Registrar shall remove the personality or image, as the case may be, from the Register.

(6) Where a personality is removed from the Register in accordance with subsection (5), the removal shall relate to the registered personality and each image registered against that registered personality.

(7) The renewal of the registration of a personality or an image shall be published in such manner as the Registrar thinks fit or as may be prescribed.

Restoration of a personality or an image.

20. (1) An application may be made for the restoration of a personality or an image which has been removed from the Register.

(2) The application shall -

(a) be made to the Registrar in such form and manner as the Registrar thinks fit or as may be prescribed,

(b) in relation to -

(i) a personality, be made by -

(A) the *personnage*,

(B) the person who was the proprietor of the registered personality (before the personality was removed from the

Register), or

- (C) a personal representative of the person referred to in item (A) or (B),
- (ii) an image, be made by the proprietor of the image rights (before the image was removed from the Register) or, as the case may be, personal representative of the proprietor,

within six months from the date of expiry of the previous registration,

- (c) contain the reasons for the failure to renew the registration,
- (d) be accompanied by the appropriate fee, and
- (e) be accompanied by such other information or document as the Registrar may reasonably require for the purpose of determining the application or as may be prescribed.

(3) In the case of a joint personality or group, the reference in subsection (2)(b)(i)(A) or (C), to an application being made by the *personnage* or by the personal representative of the *personnage*, is to an application being made –

- (a) jointly by all of the persons (or as the case may be, the personal representative of any or all of those persons) who form part of that joint personality or

group, or

- (b) independently by one person, or as the case may be, the personal representative of one person, who forms part of that joint personality or group provided that consent has been obtained from each other person (or as the case may be, the personal representative of each other person) who forms part of that joint personality or group.

(4) The Registrar shall upon receipt of an application for restoration under this section examine whether the personality or image continues to satisfy the registration requirements and satisfies the requirements of this Ordinance (including any requirements determined by the Registrar or imposed by regulations of the Department).

(5) Any such application for restoration shall be published by the Registrar in such manner as the Registrar thinks fit.

(6) An interested party who claims to be affected by the proposed restoration may, within one month from the date of publication, give notice to the Registrar of their opposition to the restoration.

The notice shall be given in writing in such manner as the Registrar thinks fit or as may be prescribed, and shall include a statement of the grounds of opposition.

(7) Any person may, within one month from the date of publication, make observations in writing to the Registrar as to whether the personality or image should be restored, and the Registrar shall inform the applicant

of any such observations.

A person who makes observations does not thereby become a party to the proceedings on the application.

(8) The Registrar may accept, reject or refer to the Ordinary Court any application for restoration under this section.

(9) If it appears to the Registrar that the requirements for registration are met and the requirements of this Ordinance are satisfied, the Registrar shall accept the application and restore the personality or the image, as the case may be, to the Register.

(10) The Registrar shall refuse an application for restoration which is not accompanied by the appropriate fee.

(11) The restoration of a personality to the Register shall include the restoration of all, or if the applicant so requests some only, of the images that had been registered against that personality at the date of its removal from the Register.

(12) The restoration of the registration of a personality or image shall be published in such manner as the Registrar thinks fit or as may be prescribed.

(13) Provision may be prescribed, or in the absence of regulations, determined by the Registrar, as to the procedures to be followed in relation to opposition proceedings or the making of observations as set out in subsections (6) and (7) respectively.

Alteration of registered personality or registered image.

21. (1) Subject to subsection (2), a registered personality or registered image shall not be altered in the Register during the period of registration or upon renewal or restoration.

(2) The Registrar may, at the request of the proprietor of the registered personality, permit the alteration of a registered personality to allow –

- (a) a lawful change of name by the *personnage*, or
- (b) in the case of a group, a variation to the persons who form part of the group,

provided that this does not substantially affect the identity of the personality.

For the avoidance of doubt, and pursuant to sections 1(3) and 1(4) –

- (i) in the case of a group, the variation of the persons who form part of the group does not necessitate an alteration of a registered personality under this section, and
- (ii) in the case of a joint personality, a registered personality may not be altered to allow a variation to the persons who form part of the joint personality.

(3) Any such request for an alteration shall be published by the Registrar in such manner as the Registrar thinks fit.

(4) Any person who claims to be affected by the proposed alteration may, within one month from the date of publication, give notice to the Registrar of their opposition to the alteration.

The notice shall be given in writing in such form and manner as the Registrar thinks fit or as may be prescribed, and shall include a statement of the grounds of opposition.

(5) The Registrar may accept, reject or refer to the Ordinary Court any request in relation to an alteration under this section.

(6) Provision may be prescribed, or in the absence of regulations, determined by the Registrar, as to the procedures to be followed in relation to opposition proceedings as set out in subsection (4).

Surrender of registered personality or registered image.

22. (1) A registered personality or registered image may be surrendered –

- (a) in the case of a registered personality, by the proprietor thereof, or as the case may be, the personal representative of the proprietor thereof, or
- (b) in the case of a registered image, by the proprietor of the image rights, or as the case may be, the personal representative of the proprietor of the image rights,

by sending a notice to the Registrar in such form and manner as the Registrar shall determine.

- (2) A notice under subsection (1) shall be of no effect unless –
- (a) the notice includes a declaration by the proprietor which –
- (i) gives the name and address of any person having a right or interest in the registered personality or registered image,
- (ii) certifies that any such person –
- (A) has been sent not less than three months' notice of the proprietor's intention to surrender the registered personality or registered image, or
- (B) is not affected, or if affected consents to the surrender or has had their interests protected, and
- (b) the Registrar accepts the surrender in accordance with this section.

(3) The Registrar, when performing its functions under this section, may rely upon the declaration made under subsection (2)(a) in all respects, and accordingly need not enquire further as to whether the contents of such a declaration are true or that the provisions of this section have been complied with.

(4) Without prejudice to subsection (3), the Registrar may by notice in writing require the proprietor of the registered personality, or as the case

may be, the proprietor of the image rights, to provide such additional information and documents as the Registrar may reasonably require for the purpose of satisfying the Registrar that other persons having a right or interest in the registered personality, or as the case may be, registered image, are not affected, or if affected have consented to the surrender or have had their interests protected, in the event that they have not had the requisite notice under subsection (2)(a)(ii)(A).

(5) If the Registrar is not satisfied that other persons having a right or interest in the registered personality, or as the case may be, registered image, have consented to the surrender or have had their interests protected in the event that they have not had the requisite notice under subsection (2)(a)(ii)(A), the Registrar shall inform the proprietor of the registered personality, or as the case may be, the proprietor of the image rights, and give the proprietor an opportunity, within such period as the Registrar may specify, to make representations.

(6) If the proprietor of the registered personality, or as the case may be, the proprietor of the image rights, fails to provide any additional information or document or satisfy the Registrar that consents have been obtained or interests protected, or fails to respond before the end of the specified period, the Registrar shall refuse to accept the surrender.

(7) If it appears to the Registrar that the requirements for surrender are met, the Registrar shall accept the surrender.

(8) Where the Registrar accepts the surrender of a registered personality or registered image, the rights of the proprietor of the registered personality, or as the case may be, the proprietor of the image rights conferred by this Ordinance (and any other persons having a right or interest in the registered personality, or as the case may be, registered image) shall be deemed to have ceased as from the date of the notification of the surrender to the Registrar.

(9) The Registrar may publish the surrender in such manner as the Registrar thinks fit or as may be prescribed.

(10) Where a surrender occurs in respect of some only of the images registered against the registered personality, the surrender shall relate only to those registered images.

(11) Where a surrender occurs in respect of the registered personality, the surrender shall relate to the registered personality and each image registered against the registered personality.

(12) Further provision may be made by regulations of the Department -

- (a) as to the manner and effect of a surrender, and
- (b) for protecting the interests of other persons having a right or interest in the registered personality or registered image.

Grounds for invalidity of registration.

23. (1) The registration of a personality or image may be declared invalid on the ground that the personality or image was registered in breach of section 6 or any of the provisions referred to in that section (grounds for refusal of registration) unless, in the case of a ground referred to in section 8 (existing personalities, existing images and existing rights), consent to the registration has been obtained in accordance with the requirements set out in that section.

(2) An application for a declaration of invalidity may be made by

any person, and may be made either to the Registrar or to the Ordinary Court, except that -

- (a) if proceedings concerning the intellectual property rights relating to the registered personality (and any images associated with or registered against that personality) or the registered image in question are pending in a court in the Bailiwick, the application must be made to the Ordinary Court, and
- (b) if in any other case the application is made to the Registrar, the application may at any stage be referred to the Ordinary Court by the Registrar.

(3) In the case of bad faith in the registration of a personality or image, the Registrar may also apply to the Ordinary Court for a declaration of the invalidity of the registration.

(4) Where grounds of invalidity exist in respect of some only of the images registered against the registered personality, the declaration of invalidity shall relate only to those registered images.

(5) Where grounds of invalidity exist in respect of the registered personality, the declaration of invalidity shall relate to the registered personality and each image registered against the registered personality.

(6) Where the registration of a personality or image is declared invalid to any extent, the registration shall to that extent be deemed never to have been made, but this shall not affect transactions past and closed.

Revocation of registration.

24. (1) The registration of a personality or image may be revoked on any of the following grounds -

- (a) that, its use has become prohibited in the Bailiwick by any enactment or rule of law or by any provision of Community law having effect in the Bailiwick (whether by virtue of the European Communities (Bailiwick of Guernsey) Law, 1973 or otherwise),
- (b) that, it has become contrary to public policy or to accepted principles of morality,
- (c) that, the image has, or in the case of a personality, the images which are associated with or registered against the personality have, become customary or established in current language, culture or cognizance, or in the bona fide and established practices of any trade,
- (d) that, in consequence of the use made of the image, or in the case of a personality, the images associated with or registered against the personality, by the proprietor of the registered personality, or the proprietor of the image rights, as the case may be, it is liable to mislead the public, or
- (e) that, it does not satisfy any other prescribed requirement.

(2) An application for revocation may be made by any person, and may be made either to the Registrar or to the Ordinary Court, except that -

- (a) if proceedings concerning the intellectual property rights relating to the registered personality (and any images associated with or registered against that personality) or the registered image in question are pending in a court in the Bailiwick, the application must be made to the Ordinary Court, and
- (b) if in any other case the application is made to the Registrar, he may at any stage refer the application to the Ordinary Court.

(3) Where grounds of revocation exist in respect of some only of the images registered against the registered personality, revocation shall relate only to those registered images.

(4) Where grounds of revocation exist in respect of the registered personality, the revocation shall relate to the registered personality and each image registered against the registered personality.

(5) Where the registration of a personality or image is revoked to any extent, the rights of the proprietor of the registered personality, or as the case may be, the proprietor of the image rights shall be deemed to have ceased to that extent as from -

- (a) the date of the application for revocation, or
- (b) if the Registrar or Ordinary Court is satisfied that the

grounds for revocation existed at an earlier date, that date.

Effect of acquiescence.

25. (1) Where the proprietor of an existing personality, the proprietor of the image rights attributable to an existing image or the proprietor of an existing right has acquiesced for a continuous period of five years in the use in the Bailiwick of images associated with or registered against a registered personality, or as the case may be, a registered image, being aware of that use, there shall cease to be any entitlement on the basis of that existing personality, existing image or other existing right -

- (a) to apply for a declaration that the registration of the later registered personality or registered image, as the case may be, is invalid, or
- (b) to oppose the use of -
 - (i) the images associated with, or registered against, a later registered personality, or
 - (ii) a later registered image,

unless the registration of the later registered personality or later registered image, as the case may be, was applied for in bad faith.

(2) Where subsection (1) applies, the proprietor of the later registered personality or the proprietor of the image rights attributable to the later registered image is not entitled to oppose -

- (a) the use of the images associated with, or registered against, the existing personality, or the existing image, as the case may be, or
- (b) the exploitation of the existing right,

notwithstanding that the existing personality, existing image or existing right, as the case may be, may no longer be invoked against the later registered personality or later registered image.

Registration: supplementary provisions.

26. (1) Provision may be prescribed or, in the absence of regulations, determined by the Registrar, as to -

- (a) the division of an application for the registration of a personality or an image into several applications,
- (b) the merging of separate applications or registrations,
- (c) the registration of a series of images, and
- (d) the registration of a complex image.

(2) The provisions referred to in subsection (1) may include provision as to -

- (a) the circumstances in which, and conditions subject to which, division, merger or registration of a series of images or a complex image is permitted, and

- (b) the circumstances in which an application is to be treated as a single application and those for which it is to be treated as a number of separate applications.

(3) Provision may be made by regulations of the Department which prescribe the conditions and circumstances in which an overseas registered personality and images associated with or registered against that overseas registered personality may be registered in the Register.

(4) In this Ordinance –

- (a) "**complex image**" means a number of images which are associated with a personality which together form an expression of that personality,
- (b) "**designated country**" means a country designated for the purposes of this Ordinance by regulations of the Department,
- (c) "**oversea registered personality**" means a personality registered in a designated country in accordance with the laws relating to the registration of personalities and images in force there, and
- (d) "**series of images**" means a number of images which resemble each other as to their material particulars and differ only as to matters of a non-distinctive character.

(5) Regulations under subsection (1) or (3) may make provision

amending or modifying this Ordinance.

Infringement of image rights

Infringement of image rights.

27. (1) The image rights attributable to a registered personality ("**registered personality's image rights**") are infringed by the use of an image for a commercial purpose or a financial or economic benefit –

- (a) where, because the image is identical or similar to a protected image of that registered personality, there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with that registered personality, or
- (b) which is identical or similar to a protected image of that registered personality and the use of the image, without due cause -
 - (i) takes unfair advantage of the distinctive character or repute of the *personnage*, or
 - (ii) is detrimental to the distinctive character or repute of the *personnage*, or the value of that registered personality or that registered personality's images,

without the consent of the proprietor of the image rights.

- (2) In this Ordinance, "**protected image**" means an image which -

- (a) is distinctive (see section 28),
- (b) has actual or potential value (see section 29), and
- (c) satisfies the requirements for registration of an image under this Ordinance (whether or not it is registered).

For the avoidance of doubt, an image which is declared invalid or the registration of which is revoked under this Ordinance, is not a protected image.

(3) For the purposes of this section a person uses an image if, in particular (but without limitation), the person-

- (a) uses the image in a communication to the public,
- (b) uses the image in connection with sponsorship,
- (c) uses the image for the purposes of marketing or endorsing goods, services, activities or events,
- (d) affixes the image to goods or to the packaging thereof,
- (e) offers or exposes goods for sale, puts them on the market or stocks them for those purposes under the image, or offers or supplies services under the image,
- (f) imports or exports goods under the image,

- (g) uses the image on business papers,
- (h) incorporates the image in a flag, banner, poster or any other similar article, or
- (i) uses a registered image as an internet domain name or as a company name.

(4) A person who applies an image to material intended to be used for labelling or packaging goods, as a business paper, or for the purposes of sponsorship or marketing or endorsing goods, services, activities or events, shall be treated as a party to any use of the material (including electronic material) which infringes the registered personality's image rights if the person knew or had reason to believe that such use of the image was not duly authorised by the proprietor of the image rights or a licensee.

(5) References in this Ordinance to the infringement of a registered personality's image rights are to any such infringement of the image rights of the proprietor of such rights.

(6) The use of an image includes the use of part of an image.

Distinctive image.

28. (1) An image must be distinctive at the time of infringement in order for it to be enforceable under this Ordinance.

(2) An image is distinctive if it is recognised as being associated with the registered personality by a wide or relevant sector of the public in any part of the world.

(3) A registered image is presumed to be distinctive for the purposes of subsection (2), but this presumption can be rebutted.

(4) In determining whether an image is distinctive under subsection (2) the court shall consider all relevant factors including –

- (a) the level of distinctiveness of the image,
- (b) the publicity associated with the image (including the extent, duration and geographic reach of such publicity),
- (c) the use of the image and any communication of the image (including the extent, duration and geographic reach of such use or communication),
- (d) the extent to which there is actual recognition of the image,
- (e) the actual or potential value associated with the image, and
- (f) whether the image is a registered image.

(5) An image shall not be distinctive under subsection (2) if it is customary in current language, culture or cognizance, or in the bona fide and established practices of a relevant trade.

Actual or potential value.

- 29.** (1) An image must have actual or potential value at the time of

infringement in order for it to be enforceable under this Ordinance.

(2) An image has actual or potential value if it can or has the potential to be exploited for valuable consideration.

(3) A registered image is presumed to have actual or potential value for the purposes of subsection (2), but this presumption can be rebutted.

Registration subject to disclaimer or limitation.

30. (1) An applicant for registration of a personality, or the proprietor of the registered personality or rights therein, may -

- (a) disclaim any right to the exclusive use of any images associated with or registered against that personality, or
- (b) agree that the rights conferred by the registration shall be subject to a specified territorial or other limitation,

and where the registration of a personality is subject to a disclaimer or limitation, the rights conferred by section 5 (image rights) are restricted accordingly.

(2) Provision may be made by regulations of the Department as to the publication and entry in the Register of a disclaimer or limitation.

However, if regulations are not so made, the Registrar may make such publication and entries as the Registrar thinks fit.

*Limitations to image rights***Matters which do not constitute an infringement of image rights.**

31. (1) A registered personality's image rights are not infringed by –
- (a) the use of an image for comparative advertising provided that the use is in accordance with honest practices in trade, industrial, commercial or not for profit matters,
 - (b) the use of a picture of a *personnage* solely as a member of the public where the *personnage* is not identified or singled out in or in connection with the use of the picture,
 - (c) the use of a registered personality's image that is merely descriptive and used fairly and in good faith only to identify or describe something other than the *personnage* attributed to the image (including, without limitation, to describe or identify a place, a legacy, or a style),
 - (d) fair dealing for the purposes of research,
 - (e) fair dealing for the purposes of news reporting, commentary and satire (see section 32),
 - (f) fair dealing for the purposes of the arts (see section 33),

- (g) fair dealing for any other purpose (see section 34),
- (h) the incidental inclusion of an image (see section 35),
- (i) things done for the purposes of education (see section 36),
- (j) acts of public administration and law enforcement, or done under statutory authority (see section 37),
- (k) the making of temporary copies (see section 38),
- (l) subject to any agreement to the contrary, the use of an image by the *personnage*, or a person's use of their own image (see section 39), or
- (m) goods or services put on the market (see section 40).

(2) The provisions of this section set out the specific acts which may be done and uses which are permitted in relation to a registered personality's images notwithstanding the subsistence of image rights.

They relate only to the question of infringement of image rights and do not affect any other right or obligation restricting the doing of any of the specified acts or uses.

- (3) For the avoidance of doubt –
- (a) the use of an image which is not a protected image does not infringe a registered personality's image

rights, and

- (b) a registered personality's image rights are not infringed by the use of an image –
 - (i) by the proprietor of the image rights, or
 - (ii) with the consent of the proprietor of the image rights.

Fair dealing for the purpose of news reporting, commentary and satire.

32. (1) Fair dealing with a registered personality's image for the purpose of parody or satire does not infringe that registered personality's image rights.

(2) Fair dealing with a registered personality's image for the purposes of –

- (a) reporting current events or news commentary (including criticism or review), or
- (b) publishing or broadcasting any other bona fide journalistic material which is a subject of general or public interest,

does not infringe that registered personality's image rights.

Fair dealing for the purpose of the arts.

33. Fair dealing with a registered personality's image for the purpose of its inclusion in –

- (a) a literary work, theatrical work, musical composition, film, radio or television programme, or original work of fine art,
- (b) an advertisement for a form of art described in paragraph (a), or
- (c) material which identifies the *personnage* as the author of, or performer in or of, or subject of, a form of art described in paragraph (a),

does not infringe that registered personality's image rights provided that the work, composition, film, programme, advertisement or material is not in itself marketing or endorsing goods, services, activities or events except to the extent mentioned in paragraph (b).

Fair dealing for any other purpose.

34. (1) Fair dealing with a registered personality's image for any other purpose which does not unreasonably affect the legitimate interests of the proprietor of the image rights and does not conflict with the normal exploitation of the image, does not constitute an infringement of that registered personality's image rights.

(2) In determining for the purposes of subsection (1) whether the use of an image unreasonably affects the legitimate interests of the proprietor of the image rights and whether there has been any conflict with the normal exploitation of the image, there shall be taken into account, without limitation, the following factors -

- (a) the purpose and character of the use of the image, including whether such use is of a commercial nature or is for not for profit matters or educational purposes,
- (b) the nature of the use of the image,
- (c) if only part of the image has been used, the amount and substantiality of the part of the image used in relation to the whole image,
- (d) the effect of the use upon the potential market for or value of the image,
- (e) the effect of the use upon the potential market for or the value of the registered personality, or the reputation of the *personnage* associated with the image,
- (f) the possibility of obtaining the image within a reasonable time at an ordinary commercial price,
- (g) the impact of the use upon any interested party, and
- (h) whether the image has been made available to the public.

(3) For the purposes of this Ordinance and subject to subsection (4) an image has been "**made available to the public**" if it has been made available by any means, including -

- (a) the issue of copies to the public,
- (b) making the image available by means of an electronic retrieval system,
- (c) the rental or lending of copies of the image to the public,
- (d) the performance, exhibition, playing or showing of the image in public, or
- (e) the communication to the public of the image,

but in determining generally for the purposes of subsection (2) whether an image has been made available to the public no account shall be taken of any unauthorised infringing act.

(4) The registration of an image is not in itself sufficient, for the purposes of subsection (3), for that image to have been made available to the public.

Incidental inclusion of an image.

35. (1) A registered personality's image rights are not infringed by the incidental inclusion of that registered personality's image in any material or communication.

(2) A registered personality's image rights are not infringed by the issue to the public of copies, or the playing, showing, or communication to the public, of anything the making of which was, by virtue of subsection (1), not an infringement of the registered personality's image rights.

Things done for the purposes of education.

36. (1) The use of a registered personality's image for the purposes of education does not infringe that registered personality's image rights.

(2) In this section, "**education**" includes, without limitation, -

- (a) instructing or teaching (including the preparation of such instructing or teaching),
- (b) examining (including the setting of examination questions, the communication of such questions to the candidates or the answering of such questions), and
- (c) private studying (including the preparation for instructing or teaching).

Acts of public administration and law enforcement, or done under statutory authority.

37. (1) The use of a registered personality's image in anything done for the purposes of proceedings of -

- (a) the States of Deliberation, the States of Alderney or the Chief Pleas of Sark,
- (b) a tribunal of inquiry under the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949^f or a statutory

^f Ordres en Conseil Vol. XIV, p. 45; as amended by Ordres en Conseil Vol. XXIV, p. 185; Order in Council (No. X of 2010).

inquiry, or

(c) any court or tribunal,

does not infringe that registered personality's image rights.

(2) The use of a registered personality's image for the purposes of acts of public administration or law enforcement does not infringe that registered personality's image rights.

(3) In this section -

(a) "**statutory inquiry**" means an inquiry held or investigation conducted in pursuance of a duty imposed or power conferred by or under an enactment, and

(b) "**law enforcement**" includes, without limitation, the prevention, detection or investigation of crime, the apprehension or prosecution of offenders, and any other thing done with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings.

(4) Where the doing of a particular act is specifically required or authorised by a statutory provision under any enactment or by any other rule of law, whenever made, then, unless the provision or rule provides otherwise, the doing of that act does not infringe any image rights.

(5) The use of a registered personality's image for the purposes of

the operation of the Registry or the performance of any of the Registrar's functions under this Ordinance does not infringe that registered personality's image rights.

(6) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

Making of temporary copies.

38. (1) A registered personality's image rights are not infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable -

- (a) a transmission of the image in a network between third parties by an intermediary, or
- (b) a lawful use of the image,

and which has no independent economic significance.

(2) For the avoidance of doubt, subsection (1) includes the making of a temporary copy by an internet service provider.

Use of image by personage or a person's use of their own image.

39. (1) Subject to any agreement to the contrary, a registered personality's image rights are not infringed by the use of an image by the *personage* provided that -

- (a) in the case where that *personage* is registered as the proprietor of the registered personality, that

personnage has not assigned, transmitted or surrendered or exclusively licensed the right to such use, or

- (b) in any other case, that *personnage* has obtained the consent of the proprietor of the image rights to such use.

(2) Subject to any agreement to the contrary, a registered personality's image rights are not infringed by the use by a person (who is not a *personnage*) of that person's own name or of any other image attributed to that person provided that the use is in accordance with honest practices in trade, industrial, commercial or not for profit matters.

Goods or services put on the market.

40. (1) A registered personality's image rights are not infringed by -

- (a) the use of an image associated with or registered against a registered personality in relation to goods or services which have been put on the market by the proprietor of the image rights or with the proprietor's consent, or
- (b) any lawful dealings relating to such goods or services.

(2) Subsection (1) does not apply where there exist legitimate reasons for the proprietor of the image rights to oppose further dealings in the goods or services (in particular, where the condition of the goods has been changed or impaired, or the nature of the services has been varied after they have been put

on the market).

Infringement proceedings

Action for infringement.

41. (1) An infringement of a registered personality's image rights is actionable by the proprietor of the image rights.

(2) In an action for infringement all such relief by way of damages, injunctions, accounts or otherwise is available to the proprietor of the image rights as is available in respect of the infringement of any other property right.

(3) This section has effect subject to section 48 (restrictions on recovery of damages for infringement).

Order to cease production etc, of offending image.

42. (1) Where a person is found to have infringed a registered personality's image rights, the court may make an order requiring the person -

- (a) to cease any production, transmission, communication, use or circulation of any infringing goods, material, publications or articles,
- (b) to cause the offending image to be erased, removed or obliterated from any infringing goods, material, publications or articles in the person's possession, custody or control,
- (c) if it is not reasonably practicable for an order under

paragraphs (a) or (b) to be made, to secure the destruction of the infringing goods, material, publications or articles in question.

(2) If an order under subsection (1) is not complied with, or if it appears to the court likely that such an order would not be complied with, the court may order that the infringing goods, material, publications or articles be delivered to such person as the court may direct for erasure, removal or obliteration of the image, or for destruction, as the case may be.

Order for delivery up of infringing goods, material, publications or articles.

43. (1) The proprietor of the image rights may apply to the court for an order for the delivery up to it, or such other person as the court may direct, of any infringing goods, material, publications or articles which a person has in their possession, custody or control in the course of a business.

(2) An application shall not be made after the end of the period specified in section 44 (period after which remedy of delivery up not available), and no order shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order under section 45 (order as to disposal of infringing goods, etc).

(3) A person to whom any infringing goods, material, publications or articles are delivered up in pursuance of an order under this section shall, if an order under section 45 is not made, retain them pending the making of an order, or the decision not to make an order, under that section.

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

Period after which remedy of delivery up not available.

44. (1) An application for an order under section 43 (order for delivery up of infringing goods, etc) may not be made after the end of the period of six years beginning on -

- (a) in the case of infringing goods, the date on which the image was applied to the goods or their packaging,
- (b) in the case of infringing material, the date on which the image was applied to the material,
- (c) in the case of an infringing publication, the date on which the image was included in the publication, or
- (d) in the case of infringing articles, the date on which they were made,

except as mentioned in the following provisions.

(2) If during the whole or part of that period the proprietor of the image rights -

- (a) is a minor, or a person under legal disability, without representation (whether by a guardian, attorney, other legal representative or otherwise), or
- (b) is prevented by fraud, concealment or by the fact that the infringing goods, material, publications or articles have not been made available to the public, from discovering the facts entitling the proprietor to apply

for an order,

an application may be made at any time before the end of the period of six years beginning on the date on which the proprietor ceased to be a minor or under legal disability without representation or, as the case may be, could with reasonable diligence have discovered those facts.

Order as to disposal of infringing goods, material, publications or articles.

45. (1) Where infringing goods, material, publications or articles have been delivered up in pursuance of an order under section 43 (order for delivery up of infringing goods, etc), an application may be made to the court -

- (a) for an order that they be destroyed or forfeited to such person as the court may think fit, or
- (b) for a decision that no such order should be made.

(2) In considering what order (if any) should be made, the court shall consider whether other remedies available in an action for infringement of the registered personality's image rights would be adequate to compensate the proprietor of the image rights and any licensee and protect their interests.

(3) The court may make such order as it thinks just as to the service of notice on persons having an interest in the goods, material, publications or articles, and any such person is entitled -

- (a) to appear in proceedings for an order under this section, whether or not the person was served with notice, and

- (b) to appeal against any order made, whether or not the person appeared,

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

(4) Where there is more than one person interested in the goods, material, publications or articles, the court shall make such order as it thinks just and may (in particular) direct that the thing be sold, or otherwise dealt with, and the proceeds divided.

(5) If the court decides that no order should be made under this section, the person in whose possession, custody or control the goods, material, publications or articles were before being delivered up is entitled to their return.

(6) References in this section to a person having an interest in goods, material, publications or articles include any person in whose favour an order could be made under this section or under section 141 of the Copyright (Bailiwick of Guernsey) Ordinance, 2005^g, section 44 of the Performers' Rights (Bailiwick of Guernsey) Ordinance, 2005^h, section 20 of the Unregistered Design Rights (Bailiwick of Guernsey) Ordinance, 2005ⁱ, paragraph 6 of Schedule 1 of the Registered Designs (Bailiwick of Guernsey) Ordinance, 2005^j, or section 20 of the

^f Recueil d'Ordonnances Tome XXX, p.186.

^g Recueil d'Ordonnances Tome XXX, p. 89.

^h Recueil d'Ordonnances Tome XXX, p. 527.

ⁱ Recueil d'Ordonnances Tome XXX, p. 724.

Trade Marks (Bailiwick of Guernsey) Ordinance, 2006^k (which make similar provision in relation to infringement of copyright, rights in performances, unregistered and registered design rights or trade marks).

(7) In this section the "**court**" means the court which made the order under section 43 or, if that court is no longer seised of the matter -

- (a) the Court of Alderney, where the application is to be made in Alderney,
- (b) the Court of the Seneschal, where the application is to be made in Sark, or
- (c) the Magistrate's Court in Guernsey, in any other case.

Meaning of "infringing goods, material, publications or articles".

46. (1) In this Ordinance the expressions "**infringing goods**", "**infringing material**", "**infringing publication**" and "**infringing articles**" shall be construed as follows.

(2) Goods are "**infringing goods**", in relation to a registered personality's image rights, if they or their packaging bear an image identical or similar to a protected image of that registered personality and -

- (a) the application of the image to the goods or their packaging was an infringement of the registered personality's image rights,

^j Recueil d'Ordonnances Tome XXI, p.1; as amended by Recueil d'Ordonnances Tome XXI, p. 622.

- (b) the goods are proposed to be imported and the application of the image to them or their packaging would be an infringement of the registered personality's image rights, or
- (c) the image has otherwise been used in relation to the goods in such a way as to infringe the registered personality's image rights.

(3) Nothing in subsection (2) shall be construed as affecting the importation of goods which may lawfully be imported into the Bailiwick by virtue of an enforceable Community right.

(4) Material is "**infringing material**" in relation to a registered personality's image rights if it bears an image identical or similar to a protected image of that registered personality and either -

- (a) it is used -
 - (i) for labelling or packaging goods,
 - (ii) as a business paper,
 - (iii) in connection with sponsorship, or
 - (iv) for marketing or endorsing goods, services, activities or events,

in such a way as to infringe the registered

personality's image rights, or

- (b) it is intended to be so used and such use would infringe the registered personality's image rights.

(5) A publication is an "**infringing publication**", in relation to a registered personality's image rights, if it includes an image identical or similar to a protected image of that registered personality and either -

- (a) the use of the image in the publication is an infringement of the registered personality's image rights, or
- (b) the image is intended to be so used and such use would infringe the registered personality's image rights.

(6) For the purposes of subsection (5), a "**publication**" means a communication which has been, or is intended to be, made available to the public.

(7) "**Infringing articles**", in relation to a registered personality's image rights, means articles -

- (a) which are specifically designed or adapted for making copies of an image identical or similar to a protected image of that registered personality, and
- (b) which a person has in their possession, custody or control, knowing or having reason to believe that they have been or are to be used to produce

infringing goods, material or publications.

(8) For the purposes of this Ordinance, infringing goods, material, publications, and articles includes any goods, material, publications or articles in an electronic form.

Remedy for unjustified threats of infringement proceedings.

47. (1) Where a person threatens another with proceedings for infringement of a registered personality's image rights without justification, any person aggrieved may bring proceedings for relief under this section.

(2) The relief which may be applied for is any of the following -

- (a) a declaration that the threats are unjustifiable,
- (b) an injunction against the continuance of the threats,
and
- (c) damages in respect of any loss the person has sustained by the threats,

and the plaintiff is entitled to such relief unless the defendant shows that the acts in respect of which proceedings were threatened constitute (or if done would constitute) an infringement of the registered personality's image rights.

(3) If that is shown by the defendant, the plaintiff is nevertheless entitled to relief if the plaintiff shows that the registration of the personality or the relevant image is invalid or otherwise unenforceable or liable to be revoked in a relevant respect.

(4) The mere notification that a personality or image is registered, or that an application for registration has been made, does not constitute a threat of proceedings for the purposes of this section.

Restrictions on recovery of damages for infringement.

48. (1) Subject to subsection (3), in proceedings for infringement of a registered personality's image rights, damages shall not be awarded and no order shall be made for an account of profits against a defendant who proves that at the date of the infringement the defendant did not know, and had no reasonable grounds for knowing, that the image was a registered personality's image, but without prejudice to any other remedy.

(2) Nothing in this section affects the power of the court to grant an injunction in any proceedings for infringement of a registered personality's image rights.

(3) This section shall not apply to an infringement of a registered personality's rights where the infringement relates to a registered image.

Assessment of damages.

49. (1) Subject to subsection (3), in proceedings for infringement of a registered personality's image rights, where a defendant -

(a) knew, or

(b) had reasonable grounds to know,

that at the date of the infringement the image was a registered personality's image, any damages awarded to the plaintiff shall be appropriate to the actual prejudice the plaintiff suffered as a result of the infringement.

- (2) When awarding such damages -
- (a) all relevant factors shall be taken into account, including in particular -
 - (i) the negative economic consequences, including any lost profits, which the plaintiff has suffered, and any unfair profits made by the defendant, and
 - (ii) elements other than economic factors, including the moral prejudice caused to the plaintiff by the infringement, and
 - (b) where appropriate, damages may be awarded on the basis of the royalties or fees which would have been due had the defendant obtained a licence.
- (3) The court may, in an action for infringement, having regard to all circumstances and in particular to -
- (a) the flagrancy of the infringement, and
 - (b) any benefit accruing to the defendant by reason of the infringement,
- award such additional damages as the justice of the case may require.

(4) This section does not affect the operation of any enactment or rule of law relating to remedies for the infringement of intellectual property rights except to the extent that it is inconsistent with the provisions of this section.

Right to continue use begun before registration.

50. (1) A person who lawfully, before the date of the registration of the personality -

- (a) does in good faith an act which would constitute an infringement of a registered personality's image rights, or
- (b) makes in good faith effective and serious preparations to do such an act,

has the right, notwithstanding registration, to continue to do the act for or, as the case may be, to do the act within and continue to do so for, a period of twelve months commencing from the date of registration of the personality; but this right does not extend to granting a licence to another person to do the act.

(2) If the act was done, or the preparations were made, in the course of a business, the person entitled to the right conferred under subsection (1) may -

- (a) authorise the doing of that act by any of the person's partners for the time being in that business, and
- (b) assign that right, or transmit it on death (or in the case of a body corporate on its dissolution), to any person who acquires that part of the business in the

course of which the act was done or the preparations were made.

(3) Where an image is used by a person in exercise of the rights conferred under subsection (1) or (2), any party -

- (a) acting on behalf or under the instructions of that person may deal with the image in the same way as if it had been used by the person registered as proprietor of the registered personality or rights therein and accordingly does not infringe any image rights, or
- (b) who deals with that person (for example, a bona fide purchaser with value) does not infringe any image rights,

provided in each case that any such dealing is carried out in good faith.

Registered personality and image rights as object of property

Nature of registered personality and image rights.

51. (1) A registered personality is personal or movable property, legal ownership (*nue propriété*) of which is vested in the person registered as the proprietor of the registered personality (and see section 2(3)).

(2) A registered personality's image rights are personal or movable property, legal ownership (*nue propriété*) of which is vested in the proprietor of the image rights.

Assignment, etc of registered personality and rights therein.

52. (1) A registered personality is, and a registered personality's image rights are, transmissible by assignment, testamentary disposition or operation of law in the same way as other personal or movable property.

(2) An assignment or other transmission of a registered personality or a registered personality's image rights may be partial, that is, limited so as to apply -

- (a) in relation to some, but not all, of the images associated with or registered against that registered personality,
- (b) in relation to some, but not all, of the registered personality's image rights,
- (c) in relation to the use of a registered personality's image or images -
 - (i) in a particular manner or a particular locality or for a particular purpose, or
 - (ii) in association with certain goods, services, activities or events,
- (d) in relation to part only, but not the whole, of the period for which the registered personality is to subsist on the Register,
- (e) in the case of an assignment or other transmission of

a registered personality only, in relation to one or more, but not all, of the things that the proprietor of the registered personality has the exclusive right to do, or

(f) in the case of an assignment or other transmission of a registered personality's image rights only, in relation to one or more, but not all, of the things that the proprietor of the image rights has the exclusive right to do.

(3) An assignment, or an assent, of –

(a) a registered personality is not effective unless it is in writing signed by or on behalf of the proprietor, or as the case may be, personal representative of the proprietor, of the registered personality, and

(b) a registered personality's image rights is not effective unless it is in writing signed by or on behalf of the proprietor, or as the case may be, personal representative of the proprietor, of the image rights.

(4) The above provisions apply to an assignment by way of security as in relation to any other assignment.

(5) A registered personality, and a registered personality's image rights, may be the subject of a charge in the same way as other personal property.

Co-ownership by two or more persons jointly.

53. (1) Where a registered personality is granted to two or more persons jointly and each person is registered as a proprietor of the registered personality (including, without limitation, cases where a registered personality is a joint personality but excluding cases where a registered personality is a group), each person is entitled, subject to any agreement to the contrary or to any assignment pursuant to section 52 (assignment, etc of registered personality and rights therein), to an equal undivided share in the registered personality.

(2) Subject to section 55(2) (co-ownership: supplementary provisions), any agreement to the contrary or to any assignment pursuant to section 52, each co-proprietor is entitled, by itself or its agents, to do for its own benefit and without the consent of or the need to account to the other or others, any act which would otherwise amount to an infringement of the registered personality's image rights.

Co-ownership by a group.

54. (1) Where a registered personality is in respect of a group, each person who for the time being forms part of the group and who is registered as a proprietor of the registered personality is entitled, subject to any agreement to the contrary or to any assignment pursuant to section 52 (assignment, etc of registered personality and rights therein), to an equal interest in the entire registered personality, subject to a right of survivorship.

(2) Subject to any agreement to the contrary, no co-proprietor is entitled, by itself or its agents, to do for its own benefit and without the consent of or the need to account to the other or others, any act which would amount to an infringement of the registered personality's image rights.

Co-ownership: supplementary provisions.

55. (1) The following provisions apply where two or more persons are co-proprietors of a registered personality, by virtue of section 53 (co-ownership by two or more persons jointly) or section 54 (co-ownership by a group) or otherwise.

(2) Subject to any agreement to the contrary, one co-proprietor may not without the consent of the other or others -

- (a) grant a licence to use an image associated with or registered against the registered personality,
- (b) assign or charge its share in the registered personality or rights therein, or
- (c) use an image which –
 - (i) takes unfair advantage of the distinctive character or repute of the *personnage*, or
 - (ii) is detrimental to the distinctive character or repute of the *personnage*, or the value of the registered personality or the registered personality's images.

(3) Subject to any agreement to the contrary, infringement proceedings may be brought by any co-proprietor, but such proceedings may not, without the leave of the court, proceed unless the other, or each of the others, is either joined as a plaintiff or added as a defendant.

A co-proprietor who is thus added as a defendant shall not be made liable for any costs in the action unless that co-proprietor takes part in the proceedings.

Nothing in this subsection affects the granting of interlocutory relief on the application of a single co-proprietor.

(4) Nothing in this section or section 53 or 54 affects the mutual rights and obligations of trustees or personal representatives, or their rights and obligations as such.

Fictional characters.

56. (1) Subject to any assignment or other transmission, the creator of a fictional character is the prospective proprietor of, and of any future image rights in, the personality of that fictional character, provided that the fictional character is not created in pursuance of a commission or by an employee in the course of employment.

(2) Where a fictional character is created in pursuance of a commission, the person commissioning the fictional character is the prospective proprietor of, and of any future image rights in, the personality of that fictional character.

(3) Where, in a case not falling within subsection (2), a fictional character is created by an employee in the course of his employment, the employee's employer is the prospective proprietor of, and of any future image rights in, the personality of that fictional character.

(4) The provisions of this section have effect subject to any agreement to the contrary.

Prospective ownership of registered personality.

57. (1) Where, by an agreement made in relation to future image rights, and signed by or on behalf of the prospective proprietor of the registered personality, the prospective proprietor purports to assign the future image rights (wholly or partially) to another person, then if, upon registration of the registered personality, the assignee or another person claiming under it would be entitled as against all other persons to require the image rights to be vested in it, the image rights shall vest in the assignee or its successor in title by virtue of this subsection.

(2) A licence granted by a prospective proprietor of a registered personality is binding on every successor in title to the prospective proprietor's image rights, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from that purchaser.

Registration of transactions affecting a registered personality or rights therein.

58. (1) On an application being made to the Registrar by -

- (a) a person claiming to be entitled to a right or interest in or under a registered personality or a registered personality's image rights by virtue of a registrable transaction, or
- (b) any other person claiming to be affected by such a transaction,

the Registrar shall enter such particulars of the transaction in the Register as the Registrar thinks necessary or as may be prescribed.

(2) The following are registrable transactions -

- (a) an assignment of a registered personality or any right in it,
- (b) the grant of a licence under a registered personality or any right in it,
- (c) the making by personal representatives of an assent in relation to a registered personality or any right in or under it,
- (d) an order of a court or other competent authority transferring a registered personality or any right in or under it, and
- (e) any other transaction as may be prescribed.

(3) Until an application has been made for registration of the particulars of a registrable transaction -

- (a) the transaction is ineffective as against a person acquiring a conflicting right or interest in or under the registered personality or the registered personality's image rights where that person did not know, and had no reasonable grounds for knowing, of the registrable transaction, and
- (b) a person claiming to be a licensee by virtue of the transaction does not have the protection of section 63

(general provisions as to rights of licensees in cases of infringement) or section 64 (exclusive licensee having rights and remedies of assignee).

(4) Where a person becomes the proprietor or a licensee of a registered personality or any right in it by virtue of a registrable transaction, then unless -

- (a) an application for registration of the particulars of the transaction is made before the end of the period of six months beginning with its date, or
- (b) the court is satisfied that it was not practicable for such an application to be made before the end of that period and that an application was made as soon as practicable thereafter,

the person is not entitled to damages or an account of profits in respect of any infringement of the registered personality's image rights occurring after the date of the transaction and before the particulars of the transaction are registered.

(5) Provision may be made by regulations of the Department as to-

- (a) the amendment of registered particulars relating to a licence so as to reflect any alteration of the terms of the licence, and
- (b) the removal of such particulars from the Register -

- (i) where it appears from the registered particulars that the licence was granted for a fixed period and that period has expired, or
- (ii) where no such period is indicated and, after such period as the Registrar may think fit or as may be prescribed, the Registrar has notified the parties of his intention to remove the particulars from the Register.

However, if regulations are not so made, the Registrar may make such amendments to the Register as the Registrar thinks fit.

(6) For the avoidance of doubt, references in this section to "a registered personality or any right in it" or to "a registered personality or any right in or under it" include a registered personality's image rights.

Trusts and rights.

59. (1) No notice of any trust (express, implied or constructive) may be entered in the Register, and the Registrar is not affected by any such notice.

(2) Subject to the provisions of this Ordinance, the image rights and other rights in respect of a registered personality may be enforced in a like manner as in respect of other personal or movable property.

Application for registration of personality or image as an object of property.

60. (1) Subject to subsections (4) and (5), the provisions of sections 51 to 59 (which relate to a registered personality or a registered personality's image rights as an object of property) apply, where relevant and with the necessary modifications, in relation to –

- (a) an application for the registration of a personality as in relation to a registered personality, or
- (b) an application for the registration of an image as in relation to a registered personality's image rights.

(2) In section 53 (co-ownership by two or more persons jointly) as it applies in relation to an application for registration of a personality, the reference in subsection (1) to the granting of the registration shall be construed as a reference to the making of the application.

(3) In section 58 (registration of transactions affecting a registered personality or rights therein) as it applies in relation to a transaction affecting an application for the registration of a personality, the references to the entry of particulars in the Register, and to the making of an application to register particulars, shall be construed as references to the giving of notice to the Registrar of those particulars.

(4) In relation to an application for the registration of a personality, the person named in the application for registration of a personality as the prospective proprietor, or that person's personal representative as the case may be, is the legal owner (*nue propriétaire*) of the application (and the provisions of sections 2(3) and 51(1) apply accordingly with the necessary modifications).

(5) In relation to an application for the registration of an image, the person who makes the application for registration of an image, or in the case of a person who is authorised to make the application, the person who authorises the making of such an application, or that person's personal representative, as the case may be, is the legal owner (*nue propriétaire*) of the application (and the provisions

of section 51(2) apply accordingly with the necessary modifications).

Licensing

Licensing of registered personality's image rights.

61. (1) A licence of a registered personality's image rights or any other rights therein may be general or limited.

A limited licence may, in particular, apply -

- (a) in relation to some, but not all, of the images associated with or registered against that registered personality,
- (b) in relation to some, but not all, of the registered personality's image rights,
- (c) in relation to the use of a registered personality's image or images -
 - (i) in a particular manner or a particular locality or for a particular purpose, or
 - (ii) in association with certain goods, services, activities or events,
- (d) in relation to part only, but not the whole, of the period for which the registered personality is to subsist on the Register, or

- (e) in relation to one or more, but not all, of the things that the proprietor of the registered personality, or as the case may be, the proprietor of the image rights, has the exclusive right to do.

(2) A licence of a registered personality's image rights or any other rights therein is not effective unless it is in writing signed by or on behalf of –

- (a) the proprietor, or as the case may be, personal representative of the proprietor, of the image rights, or
- (b) the proprietor, or as the case may be, personal representative of the proprietor, of the registered personality,

respectively.

(3) Unless the licence provides otherwise, it is binding on a successor in title to the grantor's interest.

(4) Where the licence so provides, a sub-licence may be granted by the licensee, and references in this Ordinance to a licence or licensee include a sub-licence or sub-licensee.

Exclusive licences.

62. (1) Subject always to sections 31 to 40 (limitations to image rights), in this Ordinance an "**exclusive licence**" means a licence (whether general or limited) authorising the licensee to the exclusion of all other persons, including the persons granting the licence, to use the images associated with or registered

against a registered personality in the manner authorised by the licence.

The expression "**exclusive licensee**" shall be construed accordingly.

(2) An exclusive licensee has the same rights against a successor in title who is bound by the licence as those against the person granting the licence.

General provisions as to rights of licensees in case of infringement.

63. (1) Subject to any agreement to the contrary, this section has effect with respect to the rights of a licensee in relation to the infringement of a registered personality's image rights.

However, subject to subsection (7), the provisions of this section do not apply where or to the extent that, by virtue of section 64(1) (exclusive licensee having rights and remedies of assignee), the licensee has a right to bring proceedings in its own name.

(2) A licensee is entitled, unless its licence, or any licence through which its interest is derived, provides otherwise, to call on the proprietor of the image rights to take infringement proceedings in respect of any matter which affects its interests.

(3) If the proprietor -

(a) refuses to do so, or

(b) fails to do so within two months after being called upon,

the licensee may bring the proceedings in its own name as if the licensee were the

proprietor.

(4) Where infringement proceedings are brought by a licensee by virtue of this section, the licensee may not, without the leave of the court, proceed with the action unless the proprietor of the image rights is either joined as a plaintiff or added as a defendant.

This does not affect the granting of interlocutory relief on an application by a licensee alone.

(5) A proprietor who is added as a defendant as mentioned in subsection (4) shall not be made liable for any costs in the action unless the proprietor takes part in the proceedings.

(6) In infringement proceedings brought by the proprietor of the image rights any loss suffered or likely to be suffered by licensees shall be taken into account, and the court may give such directions as it thinks fit as to the extent to which the plaintiff is to hold the proceeds of any pecuniary remedy on behalf of licensees.

(7) The provisions of this section apply in relation to an exclusive licensee, if or to the extent that it has, by virtue of section 64(1), the rights and remedies of an assignee, as if it were the proprietor of the image rights.

(8) The provisions of subsections (2) to (5) have effect subject to any agreement to the contrary between the licensee and the proprietor of the image rights.

Exclusive licensee having rights and remedies of assignee.

64. (1) An exclusive licence may provide that the licensee shall have,

to such extent as may be provided by the licence, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment of the registered personality and the rights therein.

Where or to the extent that such provision is made, the licensee is entitled, subject to the provisions of the licence and to the following provisions of this section, to bring infringement proceedings against any person in the licensee's own name.

(2) Any such rights and remedies of an exclusive licensee are concurrent with those of the proprietor of the registered personality and the rights therein, and relevant references to the proprietor of a registered personality or the proprietor of the image rights in the provisions of this Ordinance shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail itself of any defence which would have been available to it if the action had been brought by the proprietor of the image rights.

(4) Where proceedings for infringement of a registered personality's image rights brought by the proprietor of the image rights or an exclusive licensee relate wholly or partly to an infringement in respect of which they have concurrent rights of action, the proprietor or, as the case may be, the exclusive licensee may not, without the leave of the court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

This does not affect the granting of interlocutory relief on an application by a proprietor or exclusive licensee alone.

(5) A person who is added as a defendant as mentioned in

subsection (4) shall not be made liable for any costs in the action unless that person takes part in the proceedings.

(6) Where an action for infringement of a registered personality's image rights is brought which relates wholly or partly to an infringement in respect of which the proprietor of the image rights and an exclusive licensee have or had concurrent rights of action -

- (a) the court shall in assessing damages take into account-
 - (i) the terms of the licence, and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement,
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has previously been directed, in favour of the other of them in respect of the infringement, and
- (c) the court shall, if an account of profits is directed, apportion the profits between them as the court considers just, subject to any agreement between them.

The provisions of this subsection apply whether or not the proprietor and the exclusive licensee are both parties to the action; and, if they are not both parties, the court may give such directions as it thinks fit as to the extent to which

the party to the proceedings is to hold the proceeds of any pecuniary remedy on behalf of the other.

(7) The proprietor of the image rights shall notify any exclusive licensee who has a concurrent right of action before applying for an order under section 43 (order for delivery up of infringing goods, etc), and the court may on the application of the licensee make such order under that section as it thinks fit having regard to the terms of the licence.

(8) The provisions of subsections (4) to (7) have effect subject to any agreement to the contrary between the exclusive licensee and the proprietor of the image rights.

PART II MORAL RIGHTS

Right to be identified

Right to be identified.

65. (1) Subject to section 75 (moral rights apply to natural persons only), a *personnage* whose personality is registered pursuant to section 17 (registration) has the right to be identified whenever a person uses a protected image associated with or registered against that registered personality and makes such an image available to the public.

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

(a) a *personnage* has been identified if the *personnage* has been identified in such a manner likely to bring

its identity to the notice of a person seeing or hearing the image and the identification is clear,

- (b) a person uses a protected image if, in particular, the person uses the image in any of the circumstances set out in section 27(3), and
- (c) an image has been made available to the public if it has been made available to the public in the manner described in section 34(3).

(3) The right to be identified is not infringed unless it has been asserted in accordance with section 66 (requirement that right be asserted).

(4) If the assertion under section 66 specifies a pseudonym, initials or some other particular form of identification, that form shall be used, but otherwise any reasonable form of identification may be used.

(5) This section has effect subject to section 67 (exceptions to right).

Requirement that right be asserted.

66. (1) A person does not infringe the right conferred by section 65 (right to be identified) by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind the person in relation to that act.

(2) The right may be asserted generally, or in relation to any specified act or description of acts -

- (a) by instrument in writing signed by the *personnage*, or
- (b) on an assignment of a registered personality or a registered personality's image rights, by including in the instrument effecting the assignment a statement that the *personnage* asserts, in relation to his or her images, their right to be identified.

(3) The persons bound by an assertion of the right under subsection (2) are -

- (a) in the case of an assertion under subsection (2)(a), anyone to whose notice the assertion is brought,
- (b) in the case of an assertion under subsection (2)(b), the assignee and anyone claiming through the assignee, whether or not that person has notice of the assertion.

(4) In an action for infringement of the right the court shall, in considering remedies, take into account any delay in asserting the right.

(5) Provision may be prescribed as to -

- (a) the circumstances in which, and conditions subject to which, the right to be identified may be asserted,
- (b) the manner in which the right to be identified is asserted,

- (c) the persons bound by an assertion of the right to be identified,
- (d) the introduction of a requirement to notify the Registrar of an assertion of the right to be identified, and the consequences of failing to comply with such a requirement, and
- (e) the consequences of an entry in the Register of particulars relating to an assertion of the right to be identified.

(6) Regulations under subsection (5) may make provision amending or modifying this Ordinance.

Exceptions to right.

67. (1) The right conferred by section 65 (right to be identified) is subject to the following exceptions.

(2) The right does not apply where it is not reasonably practicable to identify the *personnage*.

(3) The right is not infringed by an act which by virtue of any of the following provisions would not infringe the registered personality's image rights-

- (a) section 31(1)(b) (the use of a picture of a *personnage* solely as a member of the public),
- (b) section 31(1)(c) (the use of a registered personality's

image that is merely descriptive),

- (c) section 31(1)(d) (fair dealing for the purposes of research),
- (d) section 32 (fair dealing for the purposes of news reporting, commentary and satire),
- (e) section 33 (fair dealing for the purpose of the arts),
- (f) section 35 (incidental inclusion of an image),
- (g) section 36 (things done for the purpose of education),
- (h) section 37 (acts of public administration and law enforcement, or done under statutory authority), and
- (i) section 38 (making of temporary copies).

(4) The right is not infringed by an act which has no commercial purpose or derives no financial or economic benefit.

Right not to be subjected to derogatory treatment

Right not to be subjected to derogatory treatment.

68. (1) Subject to section 75 (moral rights apply to natural persons only), a *personnage* whose personality is registered pursuant to section 17 (registration) has the right not to have the protected images associated with or registered against that registered personality subjected to derogatory treatment.

(2) The right is infringed by a person who makes available to the public a derogatory treatment of a protected image without the prior consent of the *personnage*.

(3) For the purposes of this section -

(a) the treatment of a protected image is "**derogatory treatment**" if it amounts to a distortion, mutilation or other modification of the image that is prejudicial to the reputation of the *personnage*,

(b) an image has been made available to the public if it has been made available to the public in the manner described in section 34(3).

(4) This section has effect subject to section 69 (exceptions to right).

Exceptions to right.

69. (1) The right conferred by section 68 (right not to be subjected to derogatory treatment) is subject to the following exceptions.

(2) The right is not infringed by an act which by virtue of any of the following provisions would not infringe the registered personality's image rights

-

(a) section 31(1)(b) (the use of a picture of a *personnage* solely as a member of the public),

(b) section 31(1)(d) (fair dealing for the purposes of

research),

- (c) section 32 (fair dealing for the purposes of news reporting, commentary and satire),
- (d) section 33 (fair dealing for the purpose of the arts),
- (e) section 36 (things done for the purposes of education),
- (f) section 37 (acts of public administration and law enforcement, or done under statutory authority),
- (g) section 38 (making of temporary copies), and
- (h) section 39(2) (a person's use of their own image).

(3) The right is not infringed by an act which has no commercial purpose or derives no financial or economic benefit.

(4) The right does not apply where it is not reasonably practicable to identify the personality.

(5) The right is not infringed by anything done for the purpose of-

- (a) avoiding the commission of an offence, or
- (b) in the case of any broadcaster, avoiding the inclusion in a programme broadcast by them of anything which offends against good taste or decency or which is

likely to encourage or incite crime, lead to disorder or be offensive to public feeling.

Infringement of right by possessing or dealing with infringing image.

70. (1) The right conferred by section 68 (right not to be subjected to derogatory treatment) is also infringed by a person who -

- (a) sells or lets for hire, or offers or exposes for sale or hire,
- (b) in the course of a business, exhibits in public or distributes, or
- (c) distributes otherwise than in the course of a business so as to affect prejudicially the reputation of the *personnage*,

an image which is, and which that person knows or has reason to believe is, an infringing image.

(2) An "**infringing image**" means a protected image which has been subjected to derogatory treatment within the meaning of section 68 in circumstances infringing the right conferred in that section.

Supplementary

Duration of rights.

71. The rights conferred by section 65 (right to be identified) and section 68 (right not to be subjected to derogatory treatment) -

- (a) continue to subsist so long as the personality remains registered, and
- (b) may be exercised by the personal representative of the *personnage*.

Consent and waiver of rights.

72. (1) It is not an infringement of the rights conferred by this Part to do any act to which the person entitled to the right has consented.

(2) Any of the rights conferred by this Part may be waived by instrument in writing signed by the person giving up the right.

(3) A waiver -

- (a) may relate to a specific image, to images of a specific description or to images generally, and may relate to existing or future images, and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation,

and, if made in favour of the proprietor of the registered personality, the proprietor of the image rights or the prospective proprietor associated with the image or images to which it relates, it shall be presumed to extend to its licensees and successors in title unless a contrary intention is expressed.

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

Application of provisions to a joint personality or group.

73. (1) The right conferred by section 65 (right to be identified) -

(a) is, in the case of a joint personality or group, a right of the joint personality or group to be identified, and not a right of each person who forms part of the joint personality or group to be independently identified,

(b) shall, in the case of a joint personality or group, be asserted in accordance with section 66 (requirement that right be asserted) -

(i) jointly by all of the persons (or as the case may be, the personal representative of any or all of those persons) who form part of that joint personality or group, or

(ii) independently by one person, or as the case may be, the personal representative of one person, who forms part of that joint personality or group provided that consent has been obtained from each other person (or as the case may be, the personal representative of each other person) who forms part of that joint personality or group.

(2) The right conferred by section 68 (right not to be subjected to derogatory treatment) is -

- (a) in the case of a joint personality, a right of each person who forms part of that joint personality independently not to be subjected to derogatory treatment, and
 - (b) in the case of a group, a right of the group collectively not to be subjected to derogatory treatment, and not a right of each person who forms part of the group not to be subjected to derogatory treatment.
- (3) A consent or waiver under section 72 (consent and waiver of right) of a right by -
- (a) one person who forms part of a joint personality, does not affect the right of the other person or persons who form part of the joint personality, or
 - (b) one person who forms part of a group, has no effect unless the consent of the other person or persons who form part of the group has been obtained.

Moral rights not assignable.

74. Subject to section 76 (transmission of moral rights on death), the rights conferred by this Part are not assignable.

Moral rights apply to natural persons only.

75. The rights conferred by this Part relate only to a *personnage* who is -

- (a) a natural person, or

- (b) a joint personality or group that consists uniquely of natural persons.

Transmission of moral rights on death.

76. (1) On the death of a person entitled to a right conferred by this Part -

- (a) the right passes to whom the deceased, by testamentary disposition, specifically directs,
- (b) if there is no direction but the proprietorship of the registered personality in question forms part of that person's estate, the right passes to whom the property rights in the estate pass, or
- (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by that person's personal representatives.

(2) Where the proprietorship of a registered personality forming part of a person's estate passes in part to one person and in part to another (as for example where a bequest is limited so as to apply to one or more, but not all, of the images associated with or registered against the registered personality) any right which passes with the proprietorship by virtue of subsection (1) is correspondingly divided.

(3) Subject always to section 73 (application of provisions to a joint personality or group), where by virtue of subsection (1) a right becomes exercisable by more than one person -

- (a) it may, in the case of the right conferred by section 65 (right to be identified), be asserted by any of them,
- (b) it may, in the case of the right conferred by section 68 (right not to be subjected to derogatory treatment), be exercised by any of them, and
- (c) any consent given or waiver of the right in accordance with section 72 (consent and waiver of rights) by one of them does not affect the rights of the others.

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

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

Remedies for infringement of moral rights

Remedies for infringement of moral rights.

77. (1) An infringement of a right conferred by this Part is actionable as a breach of statutory duty owed to the person entitled to the right.

(2) Without prejudice to subsection (1), in proceedings for the infringement of any right conferred by this Part the court may, if it thinks it an

adequate remedy in the circumstances, grant an injunction prohibiting the doing of any act, unless a disclaimer is made, in the terms and in the manner approved by the court, for the purposes of dissociating the *personnage* whose personality is registered in accordance with the provisions of this Ordinance from the treatment of the images (associated with or registered against that registered personality) which constitute an infringement of a right under this Part.

PART III

ADMINISTRATIVE AND OTHER SUPPLEMENTARY PROVISIONS

The Register of Personalities and Images

The Register.

78. (1) The Registrar shall establish and maintain the Register of Personalities and Images (the "**Register**").

References in this Ordinance to registration (in particular, in the expressions "**registered personality**" and "**registered image**") are, unless the context otherwise requires, to registration in the Register, and related expressions shall be construed accordingly.

(2) There shall be entered in the Register in accordance with this Ordinance -

- (a) registered personalities,
- (b) registered images,
- (c) the name and address of the proprietor of the registered personality, and where different, the

proprietor of the image rights,

- (d) the date on which such personalities or images were so registered,
- (e) such particulars as are necessary pursuant to section 17(4) (registration),
- (f) such particulars as the Registrar may think fit or as may be prescribed pursuant to section 58 (registration of transactions affecting a registered personality or rights therein), and
- (g) such other matters as the Registrar may think fit or as may be prescribed.

(3) The Register shall be kept in such manner as the Registrar may determine or as may be prescribed, and need not be kept in documentary form.

(4) In particular, arrangements shall be made by the Registrar or prescribed in relation to -

- (a) the public inspection of the Register, and
- (b) subject to payment of the appropriate fee, the supply of certified or uncertified copies or extracts of entries in the Register.

Rectification of Register.

79. (1) Any person having a sufficient interest may apply for the

rectification of an error or omission in the Register, but an application for rectification may not be made in respect of a matter affecting the validity of the registration of a personality or image.

(2) An application for rectification may be made either to the Registrar or to the Ordinary Court, except that -

- (a) if proceedings concerning intellectual property rights relating to the registered personality (or any images associated with or registered against that personality), or the registered image in question, are pending in a court in the Bailiwick, the application must be made to the Ordinary Court, and
- (b) if in any other case the application is made to the Registrar, the application may at any stage be referred to the Ordinary Court by the Registrar.

(3) Except where the Registrar or the Ordinary Court directs otherwise, the effect of rectification of the Register is that the error or omission in question shall be deemed never to have been made.

(4) The Registrar may, on the application of -

- (a) the proprietor of a registered personality,
- (b) the proprietor of the image rights, or
- (c) a licensee,

made in such manner and in such circumstances as the Registrar may require or as may be prescribed, enter any change in the applicant's name or address as recorded in the Register or to such other particulars as may be prescribed.

(5) The Registrar may remove from the Register any matter appearing to the Registrar to have ceased to have effect.

(6) Notwithstanding subsections (1) and (4), the Registrar may independently correct any error or omission in the Register.

(7) Where the Registrar proposes to make a correction under subsection (6), the Registrar shall –

- (a) give notice of the proposal to the person registered as proprietor of the registered personality (or to any other person registered with a sufficient interest), and
- (b) give them the opportunity to be heard before making the correction.

(8) No change referred to in subsections (1) or (4) or correction referred to in subsection (6) can have the effect of altering a registered personality or registered image in contravention of section 21 (alteration of registered personality or registered image).

Powers and duties of Registrar

Power to require use of forms.

80. (1) The Registrar may require the use of such forms as the Registrar may direct for any purpose relating to the registration of a personality or

image or any other proceedings before the Registrar under this Ordinance.

(2) The forms, and any directions of the Registrar as to their use, shall be published in such manner as the Registrar thinks fit or as may be prescribed.

Statements of practice.

81. (1) The Registrar may issue statements of practice for the purpose of providing practical guidance in respect of any provision made by or under this Ordinance and in connection with the administration of this Ordinance.

(2) Statements of practice shall come into force on such date as the Registrar may appoint.

(3) The Registrar may revoke or vary any statement of practice, and a statement of practice may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(4) The Registrar shall publish statements of practice and any revision thereof in such manner as the Registrar considers appropriate.

(5) Statements of practice must be taken into account by the Registrar in exercising his functions under this Ordinance.

(6) In any proceedings before a court a relevant provision of a statement of practice may be relied on as tending to support or, as the case may be, defeat the Registrar's decision.

(7) The powers conferred by subsection (1) are without prejudice

to any other power conferred by this Ordinance to issue statements of practice.

(8) Section 111(2) (general provisions as to subordinate legislation) applies to statements of practice as it applies to regulations.

Information about applications and registered personalities.

82. (1) After publication of an application for registration or restoration of a personality or image, or for the alteration of a registered personality, the Registrar shall on request provide a person with such information and permit that person to inspect such documents relating to the application, or to any registered personality or registered image resulting from it, as may be specified in the request, subject however to such restrictions as the Registrar thinks fit or as may be prescribed.

Any request must be made in such manner as the Registrar may require or as may be prescribed and must be accompanied by the appropriate fee.

(2) Subject to subsection (3), before publication of an application for registration or restoration of a personality or image, or for the alteration of a registered personality, documents or information constituting or relating to the application shall not be published or communicated by the Registrar to any person except -

- (a) in such cases and to such extent as may be prescribed, or
- (b) with the consent of the applicant.

(3) Where a person has been notified that an application for registration or restoration of a personality or image, or for the alteration of a

registered personality, has been made, and that the applicant will if the application is granted bring proceedings against that person in respect of acts done after publication of the application, that person may make a request under subsection (1) notwithstanding that the application has not been published, and that subsection shall apply accordingly.

Costs and security for costs.

83. Provision may be made by regulations of the Department empowering the Registrar, in such cases as may be prescribed, to require a party -

- (a) to proceedings before the Registrar under this Ordinance, or
- (b) to proceedings on an appeal from any decision of the Registrar,

to pay the Registrar's reasonable costs or to give security for costs in relation to such proceedings, and as to the consequences if the costs are not paid or security is not given.

Evidence before Registrar.

84. Provision may be made by regulations of the Department -

- (a) as to the giving of evidence in proceedings before the Registrar under this Ordinance by affidavit, and
- (b) conferring on the Registrar for the purposes of such proceedings powers as regards the administration of the oath, the examination of witnesses on oath, the discovery and production of documents and the

summoning and attendance of witnesses.

Exclusion of liability in respect of official acts.

85. (1) The Registrar shall not be taken to warrant the validity of the registration of a personality or image under this Ordinance or under any treaty, convention, arrangement or engagement extending to the Bailiwick.

(2) The Registrar is not subject to any liability by reason of, or in connection with, any examination required or authorised by this Ordinance, or any such treaty, convention, arrangement or engagement, or any report or other proceedings consequent on such examination.

(3) No proceedings lie against an officer of the Registrar in respect of any matter for which, by virtue of this section, the Registrar is not liable.

(4) The provisions of this section are in addition to and not in derogation from the provisions of the Office of the Registrar Ordinance excluding the liability of the States, the Registrar and other persons in respect of anything done or omitted to be done in the discharge or purported discharge of their respective functions.

Registrar's annual report.

86. The Registrar shall, in the Registrar's annual report under the Office of the Registrar Ordinance, if so required by the Department, include a report on the execution of this Ordinance.

Legal proceedings and appeals

Registration to be prima facie evidence of validity.

87. In all legal proceedings (including proceedings for the rectification of

the Register) relating to a registered personality or registered image –

- (a) the issue of a certificate of registration in accordance with section 17 (registration), or any other relevant entry in the Register, is prima facie evidence of the validity of the original registration, and
- (b) the registration of the particulars of a registrable transaction in respect of a registered personality or a registered personality's image rights in accordance with section 58 (registration of transactions affecting a registered personality or rights therein), or any other relevant entry, in the Register, is prima facie evidence of the validity of any subsequent assignment or other transmission of it.

Certificate of validity of contested registration.

88. (1) If in proceedings before a court in the Bailiwick the validity of the registration of a personality or image is contested and it is found by the court that the personality or image is validly registered, the court may give a certificate to that effect.

(2) If the court gives such a certificate and in subsequent proceedings before a court in the Bailiwick –

- (a) the validity of the registration is again questioned, and
- (b) the proprietor of the registered personality, or as the case may be, the proprietor of the image rights,

obtains a final order or judgment in its favour,

the proprietor is entitled to its costs on an indemnity basis unless the court directs otherwise.

This subsection does not extend to the costs of an appeal in any such proceedings unless the court orders otherwise.

Registrar's appearance in proceedings involving the Register.

- 89.** (1) In proceedings before the Ordinary Court involving –
- (a) an application for –
 - (i) the restoration of a personality or image (section 20),
 - (ii) the alteration of a registered personality (section 21),
 - (iii) a declaration of the invalidity of the registration of a personality or image (section 23),
 - (iv) the revocation of the registration of a personality or image (section 24), or
 - (v) the rectification of the Register (section 79),
or
 - (b) an action for infringement (sections 41 and 77),

the Registrar is entitled to appear and to be heard, and shall appear if so directed by the Ordinary Court.

(2) Unless otherwise directed by the Ordinary Court, the Registrar may instead of appearing submit to the Ordinary Court a statement in writing signed by the Registrar, giving particulars of -

- (a) any proceedings before the Registrar in relation to the matter in issue,
- (b) the grounds of any decision given by the Registrar affecting it,
- (c) the practice of the office of Registrar in like cases, and
- (d) such matters relevant to the issues and within the Registrar's knowledge as the Registrar thinks fit,

and the statement shall be deemed to form part of the evidence in the proceedings.

(3) Anything which the Registrar is or may be authorised or required to do under this section may be done on the Registrar's behalf by a duly authorised officer.

The Ordinary Court.

90. In this Ordinance, unless the context requires otherwise, "**the Ordinary Court**" means the Royal Court sitting as an Ordinary Court; and, for the purposes of this Ordinance, the Ordinary Court -

- (a) has, in relation to functions conferred on it by this Ordinance, jurisdiction throughout the Bailiwick,
- (b) is properly constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (c) may appoint one or more assessors to assist it in the determination of the matter before it.

Appeals from Registrar.

91. (1) An appeal to the Ordinary Court lies from any decision of the Registrar under this Ordinance, except as otherwise expressly provided by regulations of the Department.

For this purpose "**decision**" includes any acts or omissions of the Registrar in exercise of a discretion vested in the Registrar by or under this Ordinance.

- (2) The grounds of an appeal under this section are that -
 - (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this section shall be instituted -

(a) within a period of 28 days immediately following the date of the Registrar's decision (or such other period as the Ordinary Court may in any particular case direct), and

(b) by summons served on the Registrar stating the grounds and material facts on which the appellant relies.

(4) The Registrar may, where an appeal under this section has been instituted, apply to the Ordinary Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and, on hearing the application, the Ordinary Court may -

(a) dismiss the appeal or dismiss the Registrar's application (in either case on such terms and conditions as the Ordinary Court may direct), or

(b) make such other order as the Ordinary Court considers just,

and the provisions of this subsection are without prejudice to the inherent powers of the Ordinary Court or to the provisions of rule 52(3) of the Royal Court Civil

Rules, 2007^l.

- (5) On an appeal under this section the Ordinary Court may -
- (a) set the decision of the Registrar aside and, if the Ordinary Court considers it appropriate to do so, remit the matter to the Registrar with such directions as the Ordinary Court thinks fit, or
 - (b) confirm the decision of the Registrar, in whole or in part.

(6) An appeal from a decision of the Ordinary Court made on an appeal under this section lies, with leave of the Ordinary Court or Court of Appeal, to the Court of Appeal on a question of law.

(7) Section 21 of the Court of Appeal (Guernsey) Law, 1961^m ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (6) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(8) This section does not confer a right of appeal on a question which has been determined by the Ordinary Court on an application by the Registrar for directions, or for a determination of a question of fact, law or procedure, under section 6 of the Office of the Registrar Ordinance.

^l Orders of the Royal Court No. IV of 2007; as amended by Order of the Royal Court No. II of 2008.

^m Ordres en Conseil Vol. XVIII, p. 315; as amended by Order in Council No. III of 2012; Recueil d'Ordonnances Tome XXIX, p. 406.

Power of Department to make regulations.

92. (1) The Department may make regulations -

- (a) for the purposes of any provision of this Ordinance authorising the making of regulations with respect to any matter, and
- (b) for prescribing anything authorised or required by any provision of this Ordinance to be prescribed,

and generally for regulating practice and procedure under, and the implementation and administration of, this Ordinance.

(2) Provision may, in particular, be made -

- (a) as to the manner of filing of applications and other documents,
- (b) requiring and regulating the translation of documents and the filing and authentication of any translation,
- (c) as to the service of documents,
- (d) authorising the rectification of irregularities of procedure,
- (e) prescribing time limits for anything required to be done in connection with any proceeding under this Ordinance,

- (f) providing for the extension of any time limit so prescribed, or specified by the Registrar, whether or not it has already expired, and
- (g) authorising and regulating the use of any prescribed word, symbol or abbreviation which expresses or implies that an image is associated with or registered against a registered personality.

However, if regulations are not so made, the Registrar may adopt such practice and procedure as the Registrar thinks fit as to the matters in respect of which regulations may be made.

Fees.

93. (1) There shall be paid in respect of applications and registration and other matters under this Ordinance such fee as may be determined by the Registrar after consultation with the Department.

- (2) The Registrar may make provision under subsection (1) as to -
 - (a) the payment of a single fee in respect of two or more matters, and
 - (b) the circumstances (if any) in which a fee or fees may be repaid or remitted.

Publication.

94. Provision may be prescribed or, in the absence of regulations, determined by the Registrar, for -

- (a) the publication of the particulars of any application for the registration of a personality or an image or any other application made in relation to a personality or image, or
- (b) the publication for the purposes of this Ordinance of any other document or information relating to a personality or an image

and such publication shall be in such form and made in such manner as may be prescribed or as the Registrar thinks fit.

Power to release Registrar from proceedings.

95. (1) If the Registrar is a party to any proceedings before the Ordinary Court in which there is in issue any question in relation to this Ordinance which falls to be determined as between persons other than the Registrar (for example, as between the proprietor of an existing right and an applicant for the registration of a personality), the Registrar may apply to the Ordinary Court to be released from the proceedings so far as they relate to the determination of that question.

(2) On an application under this section by the Registrar the Ordinary Court may -

- (a) subject to such terms and conditions and to such extent as it thinks fit, order that the Registrar be released, and
- (b) make such order as to the costs of the determination

of the application and of the question in issue as it thinks fit in consequence of the Registrar's release (including, without limitation, an order that the Registrar's costs shall be awarded and that the Registrar shall not be liable for the costs of any other party).

(3) The reference in subsection (1) to proceedings before the Ordinary Court includes, without limitation -

- (a) proceedings on an application under section 20 for the restoration of a personality or image,
- (b) proceedings on an application under section 21 for the alteration of a registered personality,
- (c) proceedings on an application under section 23 for a declaration that the registration of a personality or image is invalid,
- (d) proceedings on an application under section 24 for the revocation of the registration of a personality or image,
- (e) proceedings on an application under section 79 for the rectification of the Register,
- (f) proceedings on an appeal under section 91, and
- (g) proceedings on an action for infringement under

sections 41 or 77.

(4) The powers conferred on the Ordinary Court by this section are without prejudice to its powers otherwise arising.

Image rights agents

Recognition of agents.

96. Any act required or authorised by this Ordinance to be done by or in relation to a person in connection with the registration of a personality or image, or any procedure relating to a registered personality, the images associated with or registered against a registered personality, or a registered personality's image rights

–

- (a) may, except as otherwise provided by regulations of the Department, and
- (b) must, where regulations of the Department so provide,

be done by or in relation to an agent authorised by that person orally or in writing.

Register of image rights agents.

97. (1) The Department may make regulations requiring the keeping of a register of persons who act as agent for others for the purpose of applying for or obtaining the registration of a personality or image or any procedure relating to a registered personality, the images associated with or registered against a registered personality, or a registered personality's image rights, and in this Ordinance a "**registered image rights agent**" means a person whose name is entered in the register kept pursuant to regulations under this section.

The register shall be known as "**the register of image rights agents**".

(2) Regulations under subsection (1) may contain such provision as the Department thinks fit regulating the registration of persons, and may in particular -

(a) require the payment of such fees as may be prescribed,

(b) specify qualifications and standards of competence which must be held, or observed, by persons -

(i) wishing to have their names, or

(ii) whose names are,

entered in the register, and

(c) authorise in prescribed cases the erasure from the register of the name of any person registered in it, or the suspension of a person's registration.

(3) Regulations under subsection (1) may delegate the keeping of the register to another person, and may confer on that person -

(a) power to make rules -

(i) in respect of the payment of fees, in the cases

and subject to the limits prescribed by the regulations, and

(ii) in respect of any other matter which could be provided for by the regulations, and

(b) such other functions, including disciplinary functions, as may be prescribed by the regulations.

(4) Regulations under subsection (1) may make provision amending or modifying this Ordinance.

Unregistered persons not to be described as registered image rights agents.

98. (1) An individual who is not a registered image rights agent shall not -

(a) carry on a business (otherwise than in partnership) under any name or other description which contains the words "registered image rights agent", or

(b) in the course of a business otherwise describe or hold himself out, or cause or permit himself to be described or held out, as a registered image rights agent.

(2) A partnership shall not -

(a) carry on a business under any name or other description which contains the words "registered image rights agent", or

- (b) in the course of a business otherwise describe or hold itself out, or cause or permit itself to be described or held out, as a firm of registered image rights agents,

unless all the partners are registered image rights agents or the partnership satisfies such conditions as may be prescribed for the purposes of this section.

- (3) A body corporate shall not -

- (a) carry on a business (otherwise than in partnership) under any name or other description which contains the words "registered image rights agent", or

- (b) in the course of a business otherwise describe or hold itself out, or cause or permit itself to be described or held out, as a registered image rights agent,

unless all the directors of the body corporate are registered image rights agents or the body satisfies such conditions as may be prescribed for the purposes of this section.

(4) A person who contravenes this section is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(5) The provisions of this section have effect only if regulations have been made under section 97(1) (register of image rights agents) requiring the keeping of the register of image rights agents.

Power to prescribe conditions, etc, for mixed partnerships and bodies corporate.

99. (1) The Department may make regulations prescribing the conditions to be satisfied for the purposes of section 98 (unregistered persons not to be described as registered image rights agents)-

- (a) in relation to a partnership where not all the partners are qualified persons, or
- (b) in relation to a body corporate where not all the directors are qualified persons,

and imposing requirements to be complied with by such partnerships or bodies corporate.

(2) Regulations under subsection (1) may, in particular -

- (a) prescribe conditions as to the number or proportion of partners or directors who must be qualified persons,
- (b) impose requirements as to -
 - (i) the identification of qualified and unqualified persons in professional advertisements, circulars or letters issued by or with the consent of the partnership or body corporate and which relate to its business, and
 - (ii) the manner in which a partnership or body

corporate is to organise its affairs so as to secure that qualified persons exercise a sufficient degree of control over the activities of unqualified persons.

(3) Contravention of a requirement imposed by the regulations is an offence for which a person is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(4) In this section "**qualified person**" means a registered image rights agent and an "**unqualified person**" shall be construed accordingly.

Privilege for communications with registered image rights agents.

100. (1) This section applies to communications as to any matter relating to the protection of a registered personality, a registered personality's image rights or a registered image.

(2) Any such communication -

(a) between a person and their image rights agent, or

(b) for the purpose of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing their image rights agent,

is privileged from disclosure in legal proceedings in the same way as a communication between a person and their Advocate or, as the case may be, a communication for the purpose of obtaining, or in response to a request for, information which a person is seeking for the purpose of instructing their Advocate.

- (3) In subsection (2) an "**image rights agent**" means -
- (a) a registered image rights agent who is a privileged person,
 - (b) a partnership entitled to describe itself as a firm of registered image rights agents where all the partners are privileged persons or the partnership satisfies such conditions as may be prescribed for the purposes of this section, or
 - (c) a body corporate entitled to describe itself as a registered image rights agent where all the directors are privileged persons or the body satisfies such conditions as may be prescribed for the purposes of this section.
- (4) For the purposes of this section a "**privileged person**" means-
- (a) a legal practitioner,
 - (b) a Trade Mark Attorney, or
 - (c) a Patent Attorney.
- (5) The Department may make regulations prescribing the conditions to be satisfied for the purposes of subsection (3) -
- (a) in relation to a partnership where not all the partners are privileged persons, or

- (b) in relation to a body corporate where not all the directors are privileged persons,

and imposing requirements to be complied with by such partnerships or bodies corporate.

(6) Regulations under subsection (5) may, in particular prescribe conditions as to the number or proportion of partners or directors who must be privileged persons.

(7) Contravention of a requirement imposed by regulations under subsection (5) is an offence for which a person is liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

Power of Registrar to refuse to deal with certain agents.

101. (1) The Department may make regulations authorising the Registrar to refuse to recognise as agent in respect of any business under this Ordinance -

- (a) a person who has been convicted of an offence under section 98 (unregistered persons not to be described as registered image rights agents) or section 100 (privilege for communications with registered image rights agents),
- (b) an individual whose name has been erased from and not restored to, or who is suspended from, the register of image rights agents on the ground of misconduct, incompetence or other good cause,

- (c) a person who is found by the Registrar to have been guilty of such conduct as would, in the case of an individual registered in the register of image rights agents, render that individual liable to have their name erased from the register on the ground of misconduct, or
- (d) a partnership or body corporate of which one of the partners or directors is a person whom the Registrar could refuse to recognise under paragraph (a), (b) or (c).

(2) Regulations under subsection (1) may contain such incidental and supplementary provision as appears to the Department to be appropriate and may, in particular, prescribe circumstances in which a person is or is not to be taken to have been guilty of misconduct.

Importation of infringing goods, material, publications or articles

Importation of infringing goods, material, publications or articles.

102. (1) The importation of any infringing goods, material, publications or articles may be treated as prohibited goods by the Chief Officer of Customs and Excise for the purposes of the laws relating to customs and excise, and in such cases, the importation of the infringing goods, material, publications or articles shall be prohibited, but a person is not by reason of the prohibition liable to any penalty or proceedings other than in respect of the forfeiture of the infringing goods, material, publications or articles.

(2) Where information relating to infringing goods, material,

publications or articles has been obtained by the Chief Officer of Customs and Excise for the purposes of, or in connection with, his functions in relation to imported goods, the Chief Officer of Customs and Excise may authorise the disclosure of that information for the purpose of facilitating the exercise by any person of any function in connection with the investigation or prosecution of an offence.

Offences

Falsification of Register, etc.

103. (1) It is an offence for a person to make, or cause or permit to be made, a false entry in the Register, knowing or having reason to believe that it is false.

(2) It is an offence for a person -

- (a) to make or cause to be made anything falsely purporting to be a copy of an entry in the Register, or
- (b) to produce or tender or cause to be produced or tendered in evidence any such thing,

knowing or having reason to believe that it is false.

(3) A person guilty of an offence under this section is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both,
- (b) on summary conviction, to imprisonment for a term

not exceeding six months, or a fine not exceeding level 5 on the uniform scale, or both.

Falsely representing a personality or an image as registered.

104. (1) It is an offence for a person falsely to represent that -

- (a) a personality is a registered personality, or
- (b) an image is a registered image,

knowing or having reason to believe that the representation is false.

(2) For the purposes of this section, the use in relation to a personality or image -

- (a) of the word "registered", or
- (b) of any other word or symbol importing a reference (express or implied) to registration,

shall be deemed to be a representation as to registration under this Ordinance unless it is shown that the reference is to registration elsewhere than in the Bailiwick and that the personality or image is in fact so registered.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

Criminal liability of directors, etc, of bodies corporate.

105. (1) Where an offence under this Ordinance is committed by a body corporate and is proved to have been committed with the consent or

connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, that person as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with its functions of management as if the member were a director.

Criminal liability of partners, etc, of unincorporated bodies.

106. (1) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership, any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought

in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction of an offence under this Ordinance shall be paid from the funds of the body.

Defence of due diligence.

107. In any proceedings for an offence under this Ordinance it is a defence for the accused to prove that it took all reasonable precautions and exercised all due diligence in order to avoid the commission of such an offence by itself and by any person under its control.

PART IV

MISCELLANEOUS AND GENERAL PROVISIONS

Miscellaneous

Burden of proving use of registered personality's image.

108. If in any civil proceedings under this Ordinance a question arises as to the use to which a registered personality's image has been put, it is for the party who is asserting the use to show what use has been made of it.

Interpretation.

109. (1) In this Ordinance, unless the context requires otherwise –

"application for partial registration" : see section 12(1),

"appropriate fee" and **"appropriate additional renewal fee"** mean the fee, or additional renewal fee, as the case may be, determined by the Registrar after consultation with the Department,

"Bailiff" means the Bailiff, Deputy Bailiff, Lieutenant-Bailiff, Judge of the Royal Court or Juge Délégué,

"Bailiwick" means the Bailiwick of Guernsey, and includes the territorial waters adjacent thereto, **"business"** includes a trade or profession,

"business paper" includes a business paper, business material, or business communication,

"commencement" (of this Ordinance) : see section 117,

"communication" means any form of communication including, without limitation, personal appearances, exhibitions, artistic works, drawings, documents, photographs, pictures, recordings, motion pictures, films, broadcasts, publications, websites, and electronic communications,

"communications provider" means a person who provides an electronic communications network or an electronic communications service,

"comparative advertising" means advertising which in any way, either explicitly or implicitly, identifies a competitor or a product or service offered by a competitor,

"complex image" : see section 26(4),

"content service" means so much of any service as consists in one or both of the following –

- (a) the provision of material with a view to its being comprised in signals conveyed by means of an electronic communications network,
- (b) the exercise of editorial control over the contents of signals conveyed by means of a such a network,

"contravention" includes failure to comply,

"copy" or **"extract"**, in relation to an entry in the Register which is not in documentary form, means a copy or extract in a visible and legible form in which it can be taken away,

"country" includes a territory,

"date of application" : see section 13(2),

"date of filing" : see section 13(1),

"date of inception of the *personnage*" : see section 11(8),

"date of registration" : see sections 5(4) and 17(2),

"Department" : see section 7(2),

"derogatory treatment" : see section 68(3),

"designated country" : see section 26(4),

"director", in relation to a body corporate whose affairs are managed

by its members, means any member of the body,

"distinctive" : see section 28,

"electronic" means actuated by one or more of the following types of energy: electric, magnetic, electro-magnetic (including optical), electro-chemical, electro-mechanical, renewable or any other prescribed form of energy,

"electronic communications network" means a transmission system for the conveyance, by the use of electrical, magnetic or electro-magnetic energy, of signals of any description,

"electronic communications service" means a service consisting in, or having as its principal feature, the conveyance by means of an electronic communications network of signals, except in so far as it is a content service,

"electronic form" means a form usable only by electronic means,

"electronic or other representation" includes an avatar,

"enactment" means a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"enforceable Community right" means a right to which section 2(1) of the European Communities (Bailiwick of Guernsey) Law, 1973 applies,

"exclusive" licence and licensee : see section 62(1),

"**existing image**" : see section 9(2),

"**existing personality**" : see section 9(1),

"**existing right**" : see section 8(8),

"**fictional character**" : see section 1(1)(e),

"**future image rights**" means the image rights, and other rights and remedies provided by this Ordinance, which will come into existence upon the registration of the personality and thereafter,

"**group**" : see section 1(1)(d),

"**guardian**", in relation to a minor, includes a parent,

"**Her Majesty's Receiver-General**" includes Her Majesty's Deputy Receiver-General,

"**image**" : see section 3,

"**image rights**" : see section 5(1),

"**infringement**" (**of registered personality's image rights**) : see section 27,

"**infringement proceedings**", in relation to a registered personality's image rights, includes proceedings under section 43 (order for delivery up of infringing goods, etc),

"**infringing articles**" : see section 46(7),

"**infringing goods**" : see section 46(2),

"**infringing image**" : see section 70(2),

"**infringing material**" : see section 46(4),

"**infringing publication**" : see section 46(5),

"**interested party**" means –

- (a) the *personnage*, or as the case may be, personal representative of the *personnage*, -
 - (i) who is the subject of the application, or
 - (ii) whose personality is the subject of an existing personality,

- (b) the proprietor, or as the case may be, personal representative of the proprietor, of –
 - (i) an existing personality,
 - (ii) the images rights attributable to an existing personality, or
 - (iii) an existing right, or

- (c) a prospective proprietor,

"internet access service" means an electronic communications service that –

- (a) is provided to a subscriber,
- (b) consists entirely or mainly of the provision of access to the internet, and
- (c) includes the allocation of an internet protocol address or internet protocol addresses to the subscriber to enable that access,

"internet service provider" means a person who provides an internet access service,

"joint personality" : see section 1(1)(c),

"law enforcement" : see section 37(3),

"laws relating to customs and excise" means those provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law,

1972ⁿ, and any other enactment for the time being in force, relating to customs or, as the case may be, excise,

"legal person" : see section 1(6),

"legal practitioner" means a person who is –

(a) registered, and

(b) entitled to practise, and practises, law,

as a member of a legal professional body in any jurisdiction,

"made available to the public" : see section 34(3),

"marketing" includes advertising, branding and merchandising,

"modify", in relation to any power to modify this Ordinance by regulation, includes the making of adaptations and exceptions,

"natural person" : see section 1(5),

"non profit organisation" means any organisation established solely

ⁿ Order in Council Vol. XXIII, p. 573; as amended by Ordres en Conseil Vol. XXIV, p. 87; Vol. XXXI, p.278; Vol. XXXIII, p. 217; Vol. XLIII(2), p. 617; Order in Council No. X of 2004; No. XIV of 2007; No. II of 2010; Recueil d'Ordonnances Tome XIX, p. 62; Tome XXIX, p. 406; Tome XXXII, p. 607, p. 668; Tome XXXIII, p. 38, p. 329, p. 671; Ordinance No. LII of 2010; Ordinance No. XLVII of 2011; G.S.I. No. 56 of 2008; G.S.I. No. 76 of 2009; G.S.I. No. 37 of 2010; G.S.I. No. 97 of 2010; G.S.I. No. 42 of 2011.

or principally either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, and includes a charity,

"not for profit matters" means any matter undertaken by a non profit organisation,

"the Office of the Registrar Ordinance" means the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005,

"opposition proceedings" : see sections 15, 20 and 21,

"Ordinary Court" : see section 90,

"oversea registered personality" : see section 26(4),

"partial registration" : see section 17(4),

"Patent Attorney" means a person who is –

- (a) registered, and
- (b) entitled to practise, and practises,

as a patent attorney in any jurisdiction,

"personality" : see section 1(2),

"personal representative" in relation to a person means a person's personal representative, or in the absence of a personal representative, that person's successor,

"personnage" : see section 1(1),

"picture" : see section 3(1),

"prescribed" means prescribed by regulations of the Department,

"privileged person" : see section 100(4),

"proceedings" before the Registrar means the consideration and determination by the Registrar of any question or issue falling to be considered and determined by the Registrar in the course of carrying out any function or exercising any discretion conferred on the Registrar by or under this Ordinance,

"proprietor of a/the registered personality" : see sections 2 and 110,

"proprietor of the image rights" : see sections 5(2) and 110,

"prospective proprietor" means a person who is, otherwise than by virtue of the provisions of this Ordinance, the proprietor of the exclusive rights in the personality's images (including the assignee of or successor in title to the exclusive rights in a personality's images), and who is therefore prospectively entitled to be registered as proprietor of that personality when it is registered in accordance with the provisions of this Ordinance,

"protected image" : see section 27(2),

"publish" means make available to the public, and references to "publication" -

- (a) in relation to an application for registration, are to publication under section 15(1),
- (b) in relation to registration, are to publication under section 17(3),
- (c) in relation to an application for restoration, are to publication under section 20(5),
- (d) in relation to an application for alteration, are to publication under section 21(3), and
- (e) in relation to an infringing publication, are to publication within the meaning of section 46(6),

"Register" means the Register of Personalities and Images established under section 78,

"registered image" means an image entered in the Register in accordance with the provisions of this Ordinance,

"registered image rights agent" means a person whose name is entered in the register of image rights agents,

"register of image rights agents" means the register kept pursuant to

regulations under section 97,

"registered personality" means a personality entered in the Register in accordance with the provisions of this Ordinance,

"registered personality's image rights" : see section 27(1),

"registered personality's images" means the images associated with or registered against that registered personality,

"registrable transaction" : see section 58(2),

"Registrar" means the Registrar of Intellectual Property appointed under section 1 of the Office of the Registrar Ordinance,

"registration" (and related expressions) : see section 78(1),

"regulations" means regulations made by the Department under this Ordinance,

"rights therein" includes image rights,

"series of images" : see section 26(4),

"subscriber", in relation to an internet access service, means a person who –

- (a) receives the service under an agreement between the person and the provider of the service, and

(b) does not receive it as a communications provider,

"**States**" means the States of Guernsey,

"**statutory inquiry**" : see section 37(3),

"**trade**" includes any business, industry or profession,

"**Trade Mark Attorney**" means a person who is –

(a) registered, and

(b) entitled to practise, and practises,

as a trade mark attorney in any jurisdiction,

"**uniform scale**" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^o,

"**use**" (**of image**) : see section 27(3),

"**verification of the *personnage***" : see section 11(9),

and other words or expressions which are defined in the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004 have the same meanings as in that Law.

^o Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009; Recueil d'Ordonnances Tome XXV, p. 334; Tome XXVIII, p. 89; Tome XXXI, p. 542.

(2) References in this Ordinance to an enactment or Community instrument are references thereto as from time to time amended, repealed and re-enacted (with or without modification), extended or applied.

(3) The Interpretation (Guernsey) Law, 1948^P applies to the interpretation of this Ordinance throughout the Bailiwick.

(4) Unless the context requires otherwise words and expressions importing the neuter gender include the masculine and the feminine.

Construction of references to proprietor.

110. (1) Upon the registration of a personality pursuant to section 17 (registration), the proprietor of the registered personality for the purposes of this Ordinance shall be the person registered as the proprietor in the Register (and for these purposes the provisions of sections 2(3) and 51(1) shall apply accordingly).

(2) Where different persons are (whether in consequence of a partial registration, partial assignment, or otherwise) entitled to different images or image rights associated with a registered personality, references in this Ordinance to the proprietor of a registered personality, or the proprietor of the image rights, for any purpose of this Ordinance, are references to the person who is entitled to the image, or as the case may be, image right relevant for that purpose.

(3) Where more than one person is a proprietor of –

(a) a registered personality (for instance, in the case of a joint personality or a group), or

^P Ordres en Conseil Vol. XIII, p. 355.

- (b) the image rights,

references in this Ordinance to the proprietor of a registered personality, or as the case may be, to the proprietor of the image rights are to all of the proprietors.

General provisions as to subordinate legislation.

111. (1) Regulations under this Ordinance -

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such transitional, consequential, incidental, supplementary and savings provisions as may appear to be necessary or expedient, and
- (c) may contain provision making consequential amendments to this Ordinance.

(2) Any power to make regulations conferred by this Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Regulations under this Ordinance shall be laid before a meeting of the States of Deliberation as soon as possible after being made; and, if at that or the next meeting the States of Deliberation resolve to annul the regulations, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(4) In this section, except in subsections (1)(c) and (3), references to regulations under this Ordinance include references to rules hereunder.

Rights and privileges under other enactments, agreements or the general law.

- 112.** (1) Nothing in this Ordinance affects -
- (a) any right or privilege of any person under any enactment (except where the enactment is expressly repealed, amended or modified by this Ordinance),
 - (b) any right or privilege of the Crown subsisting otherwise than under an enactment,

- (c) any right or privilege of the States, the States of Alderney or the Chief Pleas of Sark,
- (d) the functions under any enactment or rule of law of any guardian, attorney or personal representative,
- (e) the right of the States or any person deriving title from the States to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise,
- (f) any right of a minor to repudiate a transaction on attaining full age,
- (g) the operation of any rule of law relating to breaches of trust or confidence, or
- (h) any agreement made by or on behalf of a prospective proprietor before the date of commencement of this Ordinance.

(2) Subject to those savings, no image rights shall subsist otherwise than by virtue of this Ordinance or some other enactment in that behalf.

(3) Nothing in this Ordinance affects any rule of law preventing or restricting the enforcement of image rights on grounds of public interest or otherwise.

(4) Nothing in this Ordinance affects any right of action or other

remedy, whether civil or criminal, available otherwise than under this Ordinance in respect of acts infringing any of the rights conferred by Part I or Part II.

Territorial waters.

113. For the purposes of this Ordinance the territorial waters adjacent to the Bailiwick shall be treated as part of the Bailiwick.

Guernsey ships.

114. (1) This Ordinance applies to things done on a Guernsey ship as it applies to things done in the Bailiwick.

(2) In this section "**Guernsey ship**" means a ship registered in Guernsey under the Merchant Shipping (Bailiwick of Guernsey) Law, 2002^q.

Citation.

115. This Ordinance may be cited as the Image Rights (Bailiwick of Guernsey) Ordinance, 2012.

Extent.

116. This Ordinance has effect throughout the Bailiwick.

Commencement.

117. This Ordinance shall come into force on the 3rd December, 2012.

^q Order in Council No. VIII of 2004; as amended by Ordres en Conseil Vol. XL, p. 15; Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXIX, p. 406.

The Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2012

THE STATES, on the representations of the Policy Council and in exercise of the powers conferred on them by sections 1, 2 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^a and all other powers enabling them in that behalf, hereby order:-

Transfer of functions.

1. The remaining functions, rights and liabilities of the States Public Sector Remuneration Committee are transferred to and vested in the Policy Council.

Amendment of statutory references.

2. For any reference in an enactment to the States Public Sector Remuneration Committee, however expressed, there is substituted a reference to the Policy Council.

Savings and transitional provisions.

3. Anything done before the date of commencement of this Ordinance, or in the process of being done on that date, by or in relation to the States Public Sector Remuneration Committee, shall have effect as if done or (as the case may be) may be continued by or in relation to the Policy Council.

Interpretation.

4. In this Ordinance –

"enactment" means any Law, Ordinance or subordinate legislation,

^a Order in Council No. XXI of 1991.

and

"subordinate legislation" means any statutory instrument, regulation, rule, order, byelaw, scheme, code and other subordinate instrument of a legislative nature.

Citation.

5. This Ordinance may be cited as the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2012.

Commencement.

6. This Ordinance shall come into force on 3rd December, 2012.

The Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2012

THE STATES, in pursuance of their Resolution of the 29th June, 2011^a, and in exercise of the powers conferred on them by sections 66 and 69 of the Data Protection (Bailiwick of Guernsey) Law, 2001^b, hereby order:-

Amendment of the 2001 Law.

1. In section 56 of the Data Protection (Bailiwick of Guernsey) Law, 2001 -

(a) in the Table in subsection (5), immediately after the entry numbered 3 insert the following entry -

"4.	Guernsey Vetting Bureau	(a)	Convictions
		(b)	Cautions
		(c)	Its functions under the Police Act 1997 as extended to the Bailiwick.",

(b) in subsection (6), immediately after the definition of "conviction" insert -

"**Guernsey Vetting Bureau**" means that part or branch of the States of Guernsey Home Department responsible for the provision of information

^a Article IV of Billet d'État No. XI of 2010.

^b Order in Council No. V of 2002 as amended by Ordinance No. II of 2010 and No. XXXIV of 2011.

relating to the background of individuals in connection with their employment, appointment to office and involvement in certain activities and other related matters;" .

Interpretation.

2. (1) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of this Ordinance throughout the Bailiwick.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Extent.

3. This Ordinance has effect throughout the Bailiwick of Guernsey.

Citation.

4. This Ordinance may be cited as the Data Protection (Bailiwick of Guernsey) (Amendment) Ordinance, 2012.

Commencement.

5. This Ordinance shall come into force on the 28th November, 2012.

^c Ordres en Conseil Vol. XIII, p. 355.