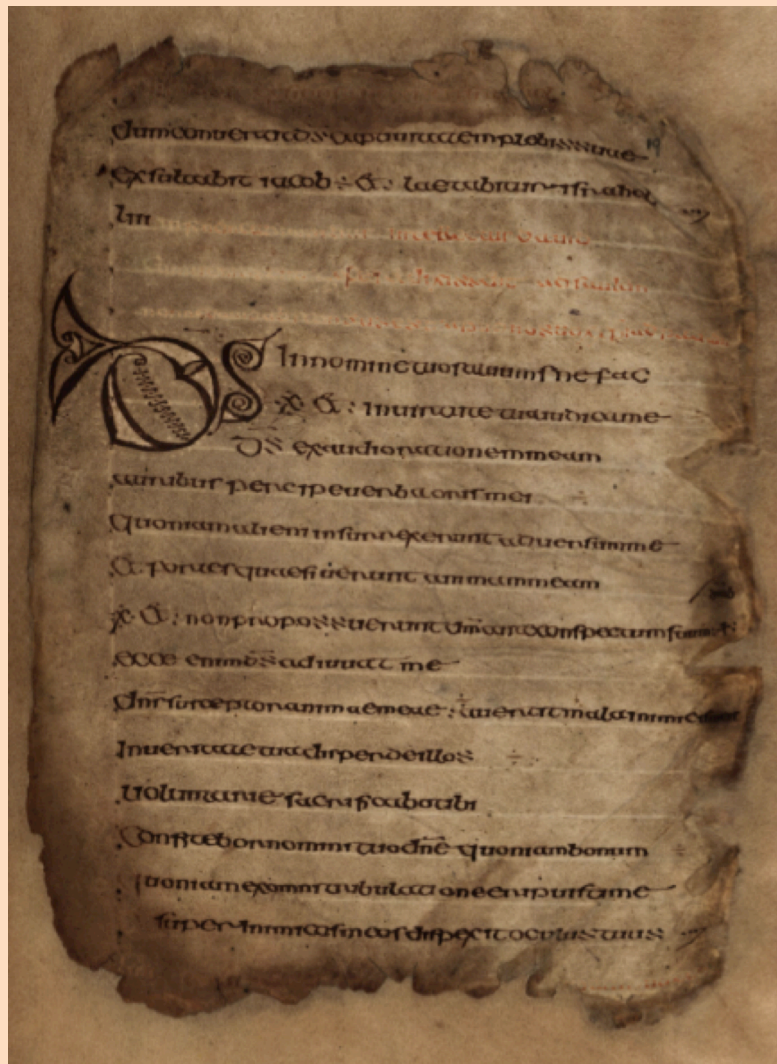


Modernising Copyright



The Report of the
Copyright Review Committee

Dublin, 2013

The aim of section 198A is to extend this to our digital heritage. Indeed, the government has recognised that “digital preservation of our social and cultural heritage is imperative”.⁹⁸ A significant part of the Heritage chapter in the *Paper* therefore concerned the possible extension of the copyright deposit provisions relating to books in section 198 CRRA to digital publications.

We proposed a draft section 198A modelled on the existing section 198 CRRA, revised to apply to digital works, with some additional provisions based on the UK’s Legal Deposit Libraries Act 2003.⁹⁹ However, in the course of considering the submissions it became clear that, whilst there was a great deal of support for the principle of digital deposit, there were many problems with the draft section 198A. We received significant help in this respect in the submissions, for which we are grateful. At the same time, in the UK, the Secretary of State for Culture, Media and Sport made the Legal Deposit Libraries (Non-print works) Regulations 2013 (SI No 777 of 2013)¹⁰⁰ applying the 2003 Act to digital publications. As a consequence, we have revised section 198A fairly heavily. Our aim is still to draft on this topic with a light touch, in so far as possible, because it is a moving target, and too much detail will certainly date very rapidly. In particular, technological developments will inevitably render references to specific current technologies, if not obsolete, then at least obsolescent.

By way of background to the revised section 198A, section 2(1) CRRA, as provided for in section 2(2) of the Bill, supplies a new definition of “digital publication”, and inserts it in the existing definition of “work”. This is the key definition on which the new section 198A is constructed. It also relies upon the definition of “publisher” in section 2(1) CRRA as provided for in section 2(2) of the Bill. This definition of “publisher” has already been relied upon in the Users chapter above, in the context of exceptions for persons with a disability. Moreover, this in turn requires that the definition of “publisher” in 65(5) of the National Cultural

material is preserved for the use of future generations”; (see <http://www.tcd.ie/Library/collection-man/legal-deposit.php>).

⁹⁸ See <http://www.djei.ie/press/2012/20121023.htm> (23 October 2012).

⁹⁹ Available at <http://www.legislation.gov.uk/ukpga/2003/28/contents>

¹⁰⁰ Available at <http://www.legislation.gov.uk/uksi/2013/777/contents/made>

Institutions Act, 1997 (as inserted by section 199 CRRA) be amended to come into line.

Section 2(5) CRRA, as provided for in section 2(2)(b) of the Bill, supplies a new definition of “intellectual property claim”, which has already been relied upon in the Copyright Council chapter, above.¹⁰¹ This new definition also plays an important role here in limiting the possible liability of publishers in complying with their digital copyright deposit obligations.

Against that background, we recommend the new section 198A CRRA on digital copyright deposit that is provided by section 26 of the Bill. Section 198A(1) provides that this section applies to the existing copyright deposit institutions and to any other institutions which the Minister might specify. This ties section 198A into the existing provisions relating to copyright deposit in section 198, and in particular ensures that the existing copyright deposit institutions will be able to claim digital publications in the same way as they can claim print publications at present. Moreover, the addition of the power on the part of the Minister to specify other Boards or authorities is to ensure that digital conservation can keep pace with the exponential rate of increase in digital data, and to spread the increasing load that will therefore inevitably arise.

Section 198A(2) sets up the basic right of copyright deposit institutions to have a copy of digital publications. However, it differs from the existing section 198 CRRA in an important respect. To give effect to the copyright deposit institutions’ entitlement to print publications, section 198(1) CRRA imposes an obligation upon publishers to deliver the print publication to the copyright deposit institution. It was submitted to us that if a similar obligation to deliver were to be imposed upon publishers of digital publications, the copyright deposit institutions would be swamped with digital ephemera. We agree. Hence, although section 198A(2) states an entitlement on the part of copyright deposit institutions, the details of that entitlement are set out in considerable detail in section 198A(3). This provides

¹⁰¹ See the new sections 16a-16C CRRA, provided by section 4 of the Bill (on the proposed jurisdiction of the District and Circuit Courts in intellectual property matters).

that the copyright deposit institutions can decide which digital publications they wish to claim and how they wish to claim them, and it ensures that the process is as similar as possible to that which obtains in respect of books pursuant to section 198 CRRA.

Section 198A(4) relates to the right of UK copyright deposit institutions to demand digital publications; it is a reciprocal right for the right of Irish institutions to demand UK digital publications.¹⁰² This is supplemented by section 198A(15), which is the reciprocal of section 13 of the UK's 2003 Act.

Section 198A(5) deals with a possible overlap between the existing section 198 CRRA and the new section 198A. Sections 198A(6)-(9) set out some criteria for digital material that must be delivered. In particular subsection (9) deals with publishers' obligations relating to technological protection measures applied to digital publication delivered pursuant to section 198A, and reflects section 104F(4) in the Users chapter (relating to technological protection measures in specified electronic versions prepared by publishers for persons with a disability).

Section 198A(10) provides for sanctions on publishers who fail to comply with their obligations under the section, including a fine not exceeding €1,000 (or any greater sum prescribed by the Minister). There was some discussion in the submissions about the appropriate level of this fine. The main part of this subsection is based on the existing section 198(9) CRRA, which sets the fine at Ir£500, which is €634.87; adjusted for inflation, that is in the order of €850. We had suggested a fine of €750 in the *Paper*, but it was submitted to us that the fine should be substantially greater. However, we note that no similar fine is mentioned in section 3 of the UK's 2003 Act, which is the enforcement section of the Act. As a consequence, we are content to recommend only a modestly increased fine of €1,000, with the addition of a power on the part of the Minister to increase the fine, either to keep pace with inflation or to ensure greater compliance should that prove necessary.

¹⁰² See section 14(e) of the UK's 2003 Act (note 99 above).

Section 198A(11) allows sections 104E, 198 and 198A to inter-operate. In appropriate cases, it effectively allows one demand and delivery to satisfy a publisher's obligations under all three such sections.

Section 198A(12) provides that copyright deposit institutions must give receipts for all digital publications received; and section 198A(13) provides that demands, notices or receipts made or given pursuant to the section may be either in writing or electronic.

Sections 198A(14), 198A(16) and 198A(17) allow the Minister to impose some conditions on certain uses by copyright deposit institutions of digital publications received pursuant to the section. Section 198A(14) is entirely new since the *Paper*. A significant proportion of the UK regulations relates to the uses specified in subsection 17. Although we did not receive any submissions from publishers in respect of these uses, we consider that have potential merit, and we recommend that the Minister may make regulations dealing with them, should the need arise.

Sections 198A(18) to 198A(20) permit the copyright deposit institution to make copies of our online digital heritage whilst it is available. Sections 198A(21) to 198A(22) provide some limitations on the possible liability of publishers in complying with their digital copyright deposit obligations. Finally, section 198A(23) permits the Minister to make regulations for the purposes of the section. Of course, the Minister already has a general power to make regulations in respect of the CRRA in general and of our proposed amendments in particular; and there are other specific contexts in this section in which it is specifically provided for the Minister to provide additional detail. However, given that digital matters are moving very quickly, a general power in respect of the section as a whole will probably prove necessary. The consultation provision in section 198A(24) is modelled on our proposed section 104D(4) (above).

We therefore recommend this new section 198A CRRA, as provided by section 26 of the Bill.



An Bille Cóipchirt agus Ceart Gaolmhar (Nuálaíocht) (Leasú) 2013

Copyright and Related Rights (Innovation) (Amendment) Bill 2013

Mar a tionscnaíodh

As initiated

ARRANGEMENT OF SECTIONS

Section

1. Short title, collective citation and commencement.
2. Definitions.
3. Copyright Council.
4. Jurisdiction of Courts.
5. The Controller of Intellectual Property.
6. Sound track accompanying a film.
7. Unpublished works.
8. Remedies.
9. Metadata.
10. Technological protection measures and rights management information.
11. Broadcasting.
12. Computer programs.
13. Temporary copies.
14. Linking.
15. News.

16. Fair dealing.
17. Education.
18. Persons with a disability.
19. Consumer protection.
20. Public administration.
21. Innovation.
22. Heritage.
23. Catalogues.
24. Donations.
25. Copyright deposit.
26. Digital copyright deposit.
27. Content-mining.
28. Digital research and computer security.
29. Fair Use.
30. Review of operation of Act.

SCHEDULE

The Copyright Council of Ireland

Acts Referred to

Broadcasting Act 2009	2009, No 18
Courts of Justice Act, 1924	1924, No 10
Courts (Supplemental Provisions) Act, 1961	1961, No 39
Copyright and Related Rights Acts, 2000	2000, No 28
Industrial and Commercial Property (Protection) Act, 1927	1927, No 16
National Cultural Institutions Act, 1997	1997, No 11
National Lottery Act 2013	2013, No 13
Patents Act, 1964	1964, No 12
Qualifications and Quality Assurance (Education and Training) Act 2012	2012, No 28
Statute Law (Restatement) Act, 2002	2002, No 33
Universities Act, 1997	1997, No 24

the prescribed conditions are complied with, reproduce or cause to be reproduced either a still image or a very short clip from that recording

(a) for the purposes of compiling or preparing a catalogue; or

(b) for the purposes of publishing such an image or clip in a catalogue relating to an exhibition, without infringing any copyright in that recording or performance.

- (4) Subsection (3) shall apply to reproduction conducted for the curatorial purposes specified in subsection (3), and to an extent reasonably justified by the non-commercial purpose to be achieved, provided that any reproduction is accompanied by a sufficient acknowledgement.”.

24. Donations.

The Principal Act is amended by substituting the following section for section 123:

“123. Copyright to pass in transfers.

Where, after the commencement of this section, a person is entitled, beneficially or otherwise, to any material thing containing an original fixation of a work, any transfer by that person of that thing shall be construed as including the copyright in the work in so far as the transferor is the owner of the copyright at the time of the transfer, unless

- (a) a contrary intention is patently indicated in a document effecting that transfer,
- (b) a contrary intention otherwise patently appears, or
- (c) the circumstances of the transfer otherwise patently require.”.

25. Copyright deposit.

- (1) The Principal Act is amended, in section 198, by substituting the following subsections for subsection (9)-(12):

“(9) A publisher who fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,000 or such greater sum as the Minister may from time to time determine, and in addition the publisher shall be liable to be ordered to comply with this section, either by the delivery of the book in question or by the payment to the relevant Board or authority of an amount which is not more than the cost of making good the failure to comply.

- (10) For the purposes of this section, “book” includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in the maps, plans, prints or other engravings belonging thereto.

- (11) Where a copy of a book requested under subsection (1) is delivered in a form other than an electronic form, the Board or other authorities referred to in subsection (1) may request, in addition to that copy, a copy in an electronic form readable by means of an electronic retrieval system and on such request being made a copy in electronic form shall be delivered by the publisher to the Board or authority concerned.
- (12) Subsection (11) is without prejudice
 - (a) to section 198A(7), or
 - (b) to the right of the Board or other authorities referred to in subsection (1) to make a demand pursuant to section 104E; and, if such a demand is made, then section 198A(11) shall apply.
- (13) Before delivery of a copy of a book in electronic form is made pursuant to subsection (11), the Boards or authorities referred to in subsection (1) or subsection (5) may
 - (a) require that the copy of the book in electronic form be delivered in a particular format, being one of the formats in which the copy of the book in electronic form is made available, and the publisher shall deliver it in the format required; and
 - (b) require the person delivering the copy of the book in electronic form to deliver, with that copy, a copy of any computer program and any information necessary in order to access the copy of the book in electronic form, and a copy of any manual and other material that accompanies the copy of the book in electronic form and is made available to the public, and the publisher shall deliver the items so required.
- (14) A publisher shall not apply technological protection measures to any copy of a book in electronic form delivered pursuant to subsection (11) to a Board or authority referred to in subsection (1) or subsection (5), unless the publisher
 - (a) also delivers an appropriate means of circumvention to the Board or authority in question at the same as and in the same manner as the delivery of the digital publication is effected, or
 - (b) has already delivered an appropriate means of circumvention to the Board or authority in question.
- (15) Subject to subsection (17), the delivery pursuant to this section of a copy of a book shall not amount to
 - (a) a breach of contract,
 - (b) an infringement of any intellectual property right in relation to the work or any part thereof, or
 - (c) an infringement of section 6 or section 36 of the Defamation Act, 2009.
- (16) Subject to subsection (17), the doing by a Board or authority referred to in subsection (1) or subsection (5) of an act permitted by this

section shall not amount to an infringement of section 6 or section 36 of the Defamation Act 2009.

- (17) The Minister may, by order, make regulations to provide for circumstances in which subsections (15) and (16) shall not apply.
- (18) Any demand, notice or receipt made or given by a Board or authority pursuant to this section may be either in writing pursuant to section 14 or in any appropriate digital or electronic or other similar or related technological form or format.”.

26. Digital copyright deposit.

- (1) The Principal Act is amended by inserting after section 198 the following section:

“198A. Digital copyright deposit.

- (1) The Boards and authorities to which this section applies are the Boards and authorities specified in section 198(1) and such other Boards or authorities as the Minister may from time to time determine.
- (2) The Boards and authorities to which this section applies are entitled to delivery of a copy of every digital publication made available in the State.
- (3)
 - (a) In particular, where a demand referred to in paragraph (b) is made, then the publisher shall, within the deadline referred to in paragraph (c), discharge the obligation referred to in paragraph (d).
 - (b) For the purposes of paragraph (a), the relevant demand is either a demand by a Board or authority to which this section applies made to the publisher of any digital publication first made available in the State after the commencement of this section or, in the case of the authority having control of the National Library of Ireland, a demand made to the publisher of any digital publication made available in the State.
 - (c) For the purposes of paragraph (a), the relevant time limit is one month from the date on which the demand is made, or, where the demand was so made before the digital publication was first made available, one month from the date on which the digital publication is first made available.
 - (d) For the purposes of paragraph (a), the relevant obligation on the publisher is, at his or her own expense, to
 - (i) deliver to the said Boards and authorities to an address named in the demand the number of storage media, each containing a copy of the digital publication, as specified pursuant to paragraph (f),
 - (ii) deliver to the said Boards and authorities in such digital or electronic or other similar or related technological

- form or format as may be specified in the demand the number of copies of the digital publication specified pursuant to paragraph (f), or
- (iii) effect delivery by permitting the said Boards and authorities, through means (including computer programs, online search, and other automated means) specified in the demand, to harvest, download or otherwise acquire as many copies of the digital publication as may be specified pursuant to paragraph (f).
 - (e) For the purposes of paragraph (d), it shall be for the Board or authority in question to specify in the demand which of the three alternative means of discharging the obligation shall apply.
 - (f) For the purposes of paragraph (d), the relevant number shall be the number of copies as would be required pursuant to section 198(1) if the digital publication were a book, or such fewer number as may be specified in the demand, or such other number as the Minister may from time to time determine.
- (4) Subject to subsection (14), the publisher of any digital publication first made available in the State after the commencement of this section shall, where a demand is made by the authority having control of each of the libraries referred to in section 198(5), within one month after receipt of that demand or, where the demand was so made before the digital publication was made available, within one month after publication, deliver either to an address in Dublin named in the demand or in such digital or electronic or other similar or related technological form or format as may be specified in the demand a copy of that digital publication for, or in accordance with the directions of, that authority.
 - (5) Subject to subsection (11), where substantially the same work is published in a form or format to which both this section and section 198 apply, then
 - (a) delivery of a book pursuant to section 198 (including, where relevant, an additional copy in electronic form requested pursuant to section 198(11)) shall discharge the obligation to deliver a digital publication pursuant to this section,
 - (b) delivery of a digital publication pursuant to this section shall discharge the obligation to deliver a book pursuant to section 198, and
 - (c) it shall be for the Board or authority which is entitled to take delivery of the book or digital publication, as the case may be, to decide which form or format of delivery to require and to provide notice thereof to the publisher.
 - (6) In the case of a digital publication made available in a series of numbers, parts or iterations, the demand referred to in subsection (3)

or subsection (4) may include all numbers, parts or iterations of the digital publication which may subsequently be made available.

- (7) A copy of a digital publication delivered pursuant to this section
 - (a) shall be a copy of the whole digital publication, including all relevant associated metadata, and
 - (b) in the opinion of the Boards and authorities taking delivery of the digital publication, shall be of a quality suitable for its preservation.
- (8) Before delivery of a digital publication is made pursuant to this section, the Boards or authorities to which this section applies or the authorities referred to in section 198(5) may
 - (a) require that a digital publication be delivered in a particular format, being one of the formats in which the digital publication is made available, and the publisher shall deliver it in the format required; and
 - (b) require the person delivering the digital publication to deliver, with the copy of the digital publication, a copy of any computer program and any information necessary in order to access the digital publication, and a copy of any manual and other material that accompanies the digital publication and is made available to the public, and the publisher shall deliver the items so required.
- (9) The publisher shall not apply technological protection measures to any digital publication delivered pursuant to this section to a Board or authority to which this section applies or to an authority which is referred to in section 198(5), unless the publisher
 - (a) also delivers an appropriate means of circumvention to the Board or authority in question at the same time as and in the same manner as the delivery of the digital publication is effected, or
 - (b) has already delivered an appropriate means of circumvention to the Board or authority in question.
- (10) A publisher who fails to comply with this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,000 or such greater sum as the Minister may from time to time determine, and in addition the publisher shall be liable to be ordered to comply with this section, either by the delivery of the digital publication in question or by the payment to the relevant Board or authority of an amount which is not more than the cost of making good the failure to comply.
- (11) Subsection (3) is without prejudice to the right of the Boards and authorities to which this section applies to make a demand pursuant to section 104E; and a Board or authority which makes a demand pursuant to section 104E may decide that
 - (a) compliance with section 104E is sufficient to comply with any or all of subsection (3), subsection (7) or section 198(11), or

- (b) compliance with any or all of subsection (3), subsection (7) or section 198(11) is sufficient to comply with section 104E; and where it so decides, it shall notify the publisher accordingly in the demand made under the relevant subsection or subsections.
- (12) Boards and authorities taking delivery of a digital publication pursuant to this section shall give a receipt for every digital publication so delivered to them.
- (13) Any demand, notice or receipt made or given by a Board or authority pursuant to this section may be either in writing pursuant to section 14 or in any appropriate digital or electronic or other similar or related technological form or format.
- (14) Without prejudice to any of the permitted acts specified in subsection (16), the Minister may prescribe conditions under which a Board or authority to which this section applies may, in respect of a digital publication which has been delivered to it pursuant to this section, also do any of the additional acts specified in subsection (17).
- (15) If the Minister has made an order pursuant to subsection (14), then without prejudice to any of the permitted acts specified in subsection (16), the Minister may also prescribe conditions under which an authority having control of a library referred to in section 198(5), in respect of a digital publication which has been delivered to it pursuant to this section, also do any of the additional acts specified in subsection (17), provided that the Minister shall not make such regulations unless the Minister is satisfied that
 - (a) as regards the additional acts specified in subsection (17), the restriction of those activities pursuant to the laws of the United Kingdom is not substantially less,
 - (b) as regards the protection of intellectual property rights in the relevant digital publication pursuant to the laws of Ireland, the protection pursuant to the laws of the United Kingdom of corresponding rights is not substantially less, and
 - (c) as regards the protection from liability pursuant to subsections (21) to (23), the protection pursuant to the laws of the United Kingdom in relation to corresponding liability is not substantially less.
- (16) For the purposes of subsections (14) and (15), the permitted acts are those acts permitted
 - (a) in relation to works protected by copyright under Chapter 6 of Part II,
 - (b) in relation to performances, by Chapter 4 of Part III,
 - (c) in relation to databases, by Chapter 8 of Part V, and
 - (d) in relation to any act of circumvention under section 374.
- (17) For the purposes of subsections (14) and (15), the additional acts are, in respect of a digital publication, the ability to
 - (a) transfer or lend it to any other person or body,
 - (b) provide or withhold access to it to any other person or body,

- (c) supply a copy or a part thereof to any other person or body for the purposes of education, research or private study, or for other non-commercial purposes,
 - (d) in the case of a digital publication comprising or containing a computer program or database, adapt it, or
 - (e) dispose of it.
- (18) It is not an infringement of the rights conferred by this Act if a Board or authority to which this section applies reproduces any work that is made available in the State through the internet.
- (19) Where any work has been made available in the State through the internet without a restriction as to its access or use, then it is not an infringement of the rights conferred by this Act if a Board or authority to which this section applies reproduces that work and makes it available through the internet without a restriction as to its access or use, whether or not that work continues to be available elsewhere through the internet.
- (20) For the purposes of this section, a work shall have been made available in the State through the internet where
 - (a) it is made available to the public either from a website with a domain name which relates to the State or to a place within the State, or by similar or related means, or
 - (b) it is made available to the public either by a person any of whose activities relating to the creation or the publication of the digital publication takes place within the State, or by a person with similar or related connections to the State.
- (21) Subject to subsection (23), the delivery pursuant to this section of a copy of a digital publication shall not amount to
 - (a) a breach of contract,
 - (b) an infringement of any intellectual property right in relation to the work or any part thereof, or
 - (c) an infringement of section 6 or section 36 of the Defamation Act 2009.
- (22) Subject to subsection (23), the doing by a Board or authority to which this section applies or by an authority referred to in section 198(5) of an act permitted by this section shall not amount to an infringement of section 6 or section 36 of the Defamation Act 2009.
- (23) The Minister may, by order, make regulations to provide for circumstances in which subsections (21) and (22) shall not apply.
- (24) The Minister may make regulations to implement and administer this section; provided that, if the Minister proposes to make regulations pursuant to this section, he or she shall, before making them, consult
 - (a) the Boards and authorities to which this section applies;
 - (b) the authorities referred to in section 198(5), if their interests would be affected by the proposed regulations; and
 - (c) such publishers or copyright owners or bodies representing publishers or other copyright owners as he or she thinks fit.”.

- (2) The Heritage Fund Act, 2001 is amended, in section 2, by inserting in paragraph (b) of the definition of “heritage object”, after “the Act of 2000),” and before “or any manuscript,” the following: “any digital publication (within the meaning of section 2 of the Act of 2000 and for the purposes of section 198A of that Act),”.

27. Content-mining.

- (1) The Principal Act is amended by inserting the following section after section 50:

“50A. Content-mining.

- (1) For the purposes of section 50, fair dealing for the purposes of education, research or private study shall include an act of content-mining.
- (2) For the purposes of this section,
- (a) “content-mining” means an algorithmic or technological process of analysis of a work or works, for the purposes of seeking to establish new facts, relationships, patterns, trends or anomalies, or for other similar or related purposes, in the work or works so analysed; and
- (b) “an act of content-mining” includes
- (i) access to, use of, extraction from, or adaptation of a work, in whole or in part, for the purposes of content-mining; and
- (ii) the publication of the results of the content-mining.
- (3) Subsection (1) applies only where an act of content-mining is undertaken in respect to
- (a) a work to which that person undertaking the act of content-mining already has a right to access or use (whether under a licence or otherwise), or
- (b) a work which, at the time when the act of content-mining was undertaken, was available through the internet without a restriction as to its access or use, whether or not that work continues to be available through the internet without such a restriction.
- (4) For the purposes of publication pursuant to subsection 2(b)(ii), the reproduction of extracts from a work which are necessary to explain the results of the content-mining shall constitute inclusion in an incidental manner for the purposes of section 52.
- (5) For the purposes of section 87, any reproduction of a work that is necessary for the purposes of an act of content-mining shall constitute a reproduction that is
- (a) temporary for the purposes of section 87(1)(a), and
- (b) either transient or incidental, for the purposes of section 87(1)(b);
- provided that, once the process of content-mining is complete, the reproduction is deleted, erased or otherwise destroyed.

