

ORDER IN COUNCIL

**XIV
2004**

ratifying a Projet de Loi

ENTITLED

The Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004

(Registered on the Records of the Island of Guernsey
on the 4th October, 2004.)



2004

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of October, 2004 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:— David Charles Lowe, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, and Susan Mowbray, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 27th day of July, 2004, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004”, THE COURT, after the reading of the said Order in Council and having heard Her Majesty’s Procureur thereon, ORDERED:-

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands respectively.

At the Court at Buckingham Palace

The 27th day of July, 2004

PRESENT,

The Queen's Most Excellent Majesty in Council

THE FOLLOWING, report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“IN ACCORDANCE WITH YOUR MAJESTY’S General Order of Reference of the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of the 27th of November, 2002, the States of Deliberation at a meeting on the 25th February, 2004, approved a Projet de Loi entitled “The Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.” and request the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 21st of April, 2004 considered the Projet de Loi when a Resolution was passed agreeing to its application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 14th of April, 2004 considered the Projet de Loi when a Resolution was passed agreeing to its application to Sark. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction “The Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004” and to order that it shall have force of law in the Bailiwick of Guernsey.

“THE COMMITTEE have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”

HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004

THE STATES, in pursuance of their resolution of the 27th day of November, 2002^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.

Power to enact intellectual property law by Ordinance.

1. The States may by Ordinance make such provision as they think fit in relation to the law concerning intellectual property; and any such Ordinance may, without limitation, make provision in respect of the following matters and the following intellectual property rights -

(a) the implementation of -

(i) any international instrument relating to intellectual property or any aspect thereof (including, without limitation, the Agreement on Trade-related Aspects of Intellectual Property Rights, including Trade in Counterfeit

^a Article XIX of Billet d'État No. XXIII of 2002.

Goods^b),

- (ii) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,
- (b) copyright,
- (c) patents and utility models,
- (d) trade marks and service marks (registered and unregistered),
- (e) design rights (registered and unregistered),
- (f) database rights,
- (g) biotechnological rights,
- (h) plant variety rights,
- (i) semi-conductor, and integrated circuit topography, rights,
- (j) intellectual property rights in respect of the information society,

^b The agreement was signed at Marrakesh in April 1994 as an annex to the agreement establishing the World Trade Organisation and is known as TRIPS.

- (k) geographical indications,
- (l) domain names,
- (m) image rights,
- (n) the registration of intellectual property rights (whether by way of first registration, re-registration, filing, recognition of rights granted in any other jurisdiction, or otherwise),
- (o) the administration, protection, assessment and enforcement of intellectual property rights, including (without limitation) provision as to -
 - (i) the examination of, and searching in respect of, applications,
 - (ii) appeals in relation to registration decisions,
 - (iii) modes of civil enforcement,
 - (iv) modes of criminal enforcement,
 - (v) remedies in respect of contraventions of intellectual property rights, and
 - (vi) the establishment of a tribunal and a panel of persons from whom the members of the

tribunal are to be drawn,

and otherwise as to the administration of justice in relation to intellectual property rights,

- (p) the jurisdiction and powers of the courts of the Bailiwick (including, without limitation, provision that the Royal Court shall have jurisdiction and powers throughout the Bailiwick), and the constitution and procedure of those courts, in relation to intellectual property rights and matters set out in paragraph (n),
- (q) exceptions and derogations from the enforcement and applicability of intellectual property rights on social, community, ethical and other grounds,
- (r) the establishment of an Intellectual Property Office (by whatever name called, and whether as a department of the States or of any committee thereof or as a separate legal entity) with responsibility for the registration of intellectual property rights and the administration of this Law and any Ordinance under it, and with such rights, liabilities, powers, functions and capacity as may be specified by Ordinance, and
- (s) the vesting of any right, liability, power and property in the Intellectual Property Office.

Interpretation.

2. (1) In this Law, unless the context requires otherwise -

"biotechnological rights" includes rights conferring protection in relation to gene and protein sequences, plant patents, biological materials and biological and genetic engineering processes, for the purpose of (for example) supporting biotechnology industries;

"Board of Industry" means the States of Guernsey Board of Industry;

"copyright" includes -

- (a) the right of reproduction and related rights in literary, artistic, dramatic, musical and other works (being the rights of the owner of the copyright to prevent others from making copies of his works);
- (b) performers' rights (being the rights protecting, for example, public readings and dramatic and musical performances before an audience);
- (c) recording rights (being the rights relating to the act of making sound recordings of a work protected by copyright);
- (d) motion picture rights (being the rights protecting a visual recording given to viewers through a motion picture);

- (e) broadcasting rights (being rights covering public communication through radio, television or cable or satellite communication systems);
- (f) translation and adaptation rights (being the rights requiring authorisation of the copyright owner for the act of translating or adapting a work protected by copyright);
- (g) personal rights or moral rights, being the rights -
 - (i) to be identified as the author of a copyright work,
 - (ii) to object to any derogatory treatment of a copyright work,
 - (iii) to prevent false attribution of a copyright work, and
 - (iv) to privacy of certain photographs and films,
- (h) distribution rights;

"database rights" means property rights in a database;

"design", in the expression **"design rights (registered and unregistered)"**, means the design or shape of the whole or part of an article resulting from the features of the shape and/or configuration of the article itself, but not its surface decoration; and for the purposes of this Law -

- (a) an "unregistered" design right provides a period of protection without the requirement for any registration, and
- (b) a "registered" design right requires a prior registration process before becoming effective;

"enactment" includes any Law, Ordinance, Act of Parliament and Order in Council;

"geographical indication" is the name of a country or region or other geographical location which is associated with a particular product or process or a particular quality of a product or process and which is used for the protection of the country, region or location or of the product or process itself;

"image rights" means rights which relate to a person's name, voice, signature, photograph, characteristics or likeness;

"implementation", in relation to -

- (a) any international instrument relating to intellectual property or any aspect thereof,
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under any such international instrument,

includes the enforcement or enactment thereof, and the securing of the administration, execution, recognition, exercise or enjoyment thereof, in or under domestic law;

"intellectual property rights in respect of the information society" refers to particular intellectual property rights associated with the internet, including adaptations of existing rights, such as copyright, and new rights specifically related to the development and commercial exploitation of the Internet and associated technologies, including (for example) -

- (a) rights of distribution (which give authors of literary and artistic works the exclusive right of authorising and making available to the public the original and copies of their works through sale or through the transfer of ownership),
- (b) rights of rental (which give the authors of computer programs, cinematographic works and works of written or recorded music the exclusive right of authorising commercial rental to the public of the originals or copies of their works),
- (c) rights of communication to the public (which give the authors of literary and artistic works the exclusive right of authorising any communication to the public of their works by wire or wireless means, including the making available to the public of their works in such a way that members of the public may access these works from a place and at a time individually chosen by them),

- (d) rights of reproduction for performers (which give performers the exclusive right of authorising the direct or indirect reproduction of their performances fixed in phonograms in any manner or form),
- (e) economic rights of performers in their unfixed performances (which give performers the exclusive right of authorising the broadcasting and communication of their performances to the public),
- (f) rights of remuneration for broadcasting and communication to the public (which give producers and reproducers of phonograms the right to an equitable remuneration for the direct or indirect use of their published work), and
- (g) intellectual property protection for technological measures and encryption rights (which gives protection for the technological measures and encryption systems used to protect recordings or software programs, particularly in relation to the telecommunications and Internet industries);

"international instrument" means -

- (a) any convention, treaty, protocol or other international instrument, or any provision thereof, and
- (b) any Community provision within the meaning of

section 3(1) of the European Communities
(Implementation) (Bailiwick of Guernsey) Law,
1994^c,

whether or not binding upon the Bailiwick or any part thereof;

"invention" includes a solution to a specific problem in the field of technology, being a product or a process;

"liability" includes a duty and an obligation of any description (whether present or future, actual, contingent or prospective);

"patent" means a right arising from a document, issued upon application by a government office or other authority, which describes an invention and creates a right in which the patented invention can normally only be exploited (whether by being manufactured, used, sold or imported or otherwise) with the authorisation of the owner of the patent, generally for a limited period (for example, 20 years);

"plant variety rights" are rights in respect of new varieties of plants which are tested at recognised national offices (to determine, for example, whether they are distinct, uniform and stable across the climatic range of the registration jurisdiction) and registered as a distinct variety by the plant breeder;

"property" means property and assets of every description and includes rights, benefits and powers of every description;

^c Order in Council No. III of 1994.

"semi-conductor, and integrated circuit topography, rights" are particular rights associated, respectively, with the technology and design of semi-conductor chips and integrated circuits;

"States" means the States of Guernsey;

"service marks" correspond to trade marks, but in respect of services;

"trade marks" are any signs capable of being represented graphically which are capable of distinguishing the goods of a given enterprise from the goods of competitors, the sign usually being distinguishable by words (including personal names), letters, designs, numerals, drawings, colours, three-dimensional signs, audible signs and smells, being signs employed in the creation, identification and protection of brands, including collective marks and certification marks;

"utility model" means a limited form of patent.

(2) In subsection (1) the definitions of the expressions "biotechnological rights", "copyright", "database rights", "design", "geographical indication", "image rights", "intellectual property rights in respect of the information society", "invention", "patent", "plant variety rights", "semi-conductor, and integrated circuit topography, rights", "service marks", "trade marks" and "utility model" are by way of general description, illustration or example, and are without limitation to the generality of those expressions and accordingly not exhaustive.

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

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

General provisions as to subordinate legislation.

3. (1) An Ordinance under this Law -

(a) may be amended or repealed by a subsequent Ordinance hereunder, and

(b) may contain such transitional, consequential, incidental, supplementary and savings provisions as the States think fit, including (without limitation) provision repealing, amending or disapplying any enactment (including any provision of this Law).

(2) Any power conferred by this Law to make an 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 -

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

- (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 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 Magistrate's Court, the Court of Alderney or the Court of the Seneschal which exceed the limits of jurisdiction for the time being imposed upon those Courts by, respectively, section 10 of the Magistrate's Court (Guernsey) Law 1954^e, section 13 of the Government

^e Ordres en Conseil Vol. XVI, p. 103; Vol. XXVII, p. 170; Vol. XXVIII, p. 5; and No. V of 1989.

of Alderney Law, 1987^f and section 23 of the Reform (Sark) Law, 1951^g,

- (b) may empower the Board of Industry or any other body (including, without limitation, the Royal Court and any other court of the Bailiwick) to make orders, rules or regulations, or to issue licences or other descriptions of authorisation,
- (c) may provide for the levying of fees,
- (d) may direct that any provision of -
 - (i) any international instrument relating to intellectual property or any aspect thereof, or
 - (ii) any enactment or any order, rule, regulation, scheme, warrant, byelaw or other instrument made under any enactment, or any other national provision in force in any place outside the Bailiwick,

shall have effect in the Bailiwick or any part thereof with such exceptions, adaptations and modifications as may be specified in the Ordinance,

^f Ordres en Conseil Vol. XXX, p. 37; and No. VI of 1989.

^g Ordres en Conseil Vol. XV, p. 215; Vol. XXIII, p. 200; Vol. XXIX, p. 27; No. VII of 1989; and No. XII of 1991.

- (e) without prejudice to the provisions of paragraph (d), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision described in paragraph (d), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,
- (f) may make provision for the purpose of dealing with matters arising out of or related to any provision described in paragraph (d),
- (g) 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,
- (h) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (i) may apply to the whole of the Bailiwick or to any part thereof, and
- (j) 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 other than any

provision which imposes or increases taxation (but without prejudice to paragraph (c) of this subsection) or which takes effect from a date earlier than that of the making of the Ordinance.

(4) The Board of Industry (and any other committee of the States) shall, before recommending the States to agree to make an Ordinance under this Law (other than an Ordinance under section 5), consult the General Purposes and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate the Ordinance.

(5) The requirement imposed by subsection (4) to consult the General Purposes and Finance Committee of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney shall include a requirement to inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon.

Citation.

4. This Law may be cited as the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004.

Commencement.

5. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions and different purposes.