

## BERMUDA

### SUPREME COURT

***PERFORMING RIGHT SOCIETY LIMITED -v-  
BERMUDA BROADCASTING COMPANY  
LIMITED -and- THE ATTORNEY GENERAL  
(2017) SC (Bda) 56 CIV (21 July 2017)***

**TRIAL OF PRELIMINARY ISSUES - VALIDITY OF  
COPYRIGHT AND DESIGNS ACT 2004 - WHETHER  
VOID FOR REPUGNANCY WITH COPYRIGHT,  
DESIGNS AND PATENTS ACTS 1988 (UK) AS  
EXTENDED TO BERMUDA WHETHER BERMUDIAN  
LEGISLATURE COMPETENT TO AFFORD  
PROTECTION TO FOREIGN COPYRIGHT**

On 11 May 2017, the Plaintiff filed a Claim for damages for breach of copyright under the *Copyright and Designs Act, 2004* ("CDA"). The Court ordered the trial of two preliminary issues arising from BBC's Defence to the Plaintiff's claim. Because the preliminary issues ordered to be tried sought a determination of the validity of a Public Act, the Attorney General was joined to the action for the purposes of the trial.

The BBC contended that the CDA was, by virtue of Section 2 of the *Colonial Laws Validity Act, 1865*, entirely void from inception for repugnancy with the *Copyright, Designs and Patents Act, 1988* ("1988 UK Act"), which extended to Bermuda when the CDA became operative in 2008 – the application of the 1988 UK Act to Bermuda was revoked in late 2009.

The BBC submitted that Bermuda's Legislature was not constitutionally competent to legislate in its own right in relation to foreign copyright protection, as the rights conferred lacked a substantial connection to Bermuda.

The Plaintiff sought to enforce a 1991 license agreement between the parties and, in part, to recover royalties due for a period which spans the period when both the CDA and the 1988 UK Act were in force in Bermuda.

The Court determined that it was immediately clear from the legislative timeline submitted by the Plaintiff that when the CDA was actually enacted by Bermuda's Parliament and received the Royal assent from the Governor (17 June 2004), the 1988 UK Act did not, at that juncture, extend to Bermuda because the 2003 Order was not operative until the CDA was brought into force on 8 February 2008. The 1988 UK Act provided a broad, yet similar, domestic copyright protection under Bermuda law as the CDA did, but there was never any competing UK and Bermuda international protection.

The Supreme Court ruled that the CDA was clearly within the competence of Bermuda Legislature to enact and the argument that it was invalid because it has impermissible extra territorial effect was firmly rejected. The validity issue was resolved in favour of the Plaintiff.

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