



REPUBLIC OF NAURU  
**COPYRIGHT BILL 2019**

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No.      of 2019

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A Bill for an Act to make provision for copyright in literary, musical and artistic works, audio-visual works, sound recordings and broadcasts and related purposes

Certified: [   ]

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Enacted by the Parliament of Nauru as follows:

## **PART 1 – PRELIMINARY**

### **1 Short Title**

This Act may be cited as the *Copyright Act 2019*.

### **2 Commencement**

This Act commences on certification by the Speaker.

### **3 Act binds the Republic**

This Act binds the Republic.

### **4 Objective of the Act**

The objective of the Act is to:

- (a) encourage authors, music composers, singers, artists to create original piece of works by granting them exclusive rights;
- (b) stop the misuse of copyrights;
- (c) protect the rights of the person who holds the copyright;
- (d) provide methods of acquiring copyright;
- (e) provide for economic rights and use of copyright; and
- (f) provide civil and criminal remedies when there is copyright infringement.

### **5 Scope of application**

- (1) The provisions of this Act concerning the protection of literary and artistic works apply to:
  - (a) works of authors who are nationals of or have their permanent place of residence in the Republic; or
  - (b) works first published in the Republic.
- (2) This Act also applies to works that are protected in the Republic under any international convention or other international agreement to which the Republic is a party to.

### **6 Copyright not to subsist except by this Act**

Subject to the provisions of this Act, no copyright shall subsist otherwise than by virtue of this Act.

## Interpretation

In this Act:

**'artistic, literary or scientific work'** includes the production of artistic, literary or scientific domain of:

- (a) a book, pamphlet or other writing;
- (b) an illustration, a map, plan or sketch;
- (c) a lecture, sermon or any other address of a similar nature;
- (d) a dramatic or dramatico-musical work;
- (e) a musical work;
- (f) a choreographic work or pantomime;
- (g) an audio-visual work;
- (h) a sound recording;
- (i) a work of fine art, such as a drawing or painting;
- (j) a work of architecture or sculpture, an engraving or lithography or applied art including a multi-dimensional work;
- (k) a painting, drawing, illustration, sketch, lithograph, tapestry, woodcut, print, collage and model;
- (l) a photographic work;
- (m) a computer programme; and
- (n) any other work of artistic craftsmanship;

**'audio-visual work'** means a work consisting of a series of related images and accompanying sounds which are intended to be shown by any appropriate device includes a cinematograph or other film, and cinematographic elements of computer games;

**'author'** means the natural person who has created the work:

**'broadcast'** means a transmission by any means including by satellite or other wireless transmission and *'broadcasting'* as defined in the **Communications and Broadcasting Act 2018**;

**'computer'** means a digital or smart phone, tablet computer, smart watch or other electronic or similar device having information processing capabilities;

**'computer program'** means a set of instructions, expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a machine-

readable medium, of causing a computer to perform or achieve a particular task or result;

**'copy'** includes a reproduction of a work in:

- (a) written form;
- (b) the form of a recording; or
- (c) any other form;

**'copyright'** means the economic and moral rights subsisting in a work;

**'copyright owner'** means where:

- (a) the economic rights are vested in the author;
- (b) the economic rights are originally vested in a natural person other than the author or in a legal entity, that person or entity;
- (c) the ownership of the economic rights has been transferred to a natural person or a legal entity, that person or entity;

**'copying'** in relation to a work, means reproducing, recording or storing the work or sound recording in digital or electronic format or in any other form which includes:

- (a) reproducing, recording or storing a substantial part of the work or sound recording;
- (b) in relation to an artistic work the making of a copy in 3 dimensions of a 2 dimensional work or a copy in 2 dimensions of a 3 dimensional work; and
- (c) in relation to a film the making of a photograph of the whole or any substantial part of any image forming part of the film;

**'derivative work'** means any translations, adaptations, arrangements and other transformations or modifications of a pre-existing artistic, literary or scientific work and which work includes:

- (a) a collection, compilation or arrangement or other transformation of pre-existing works of mere facts or data whether in machine readable or other form;
- (b) an anthology, an encyclopedia or a database; or
- (c) any other work, which, by reason of selection and arrangement of its contents, is original;

**'display'** means to show:

- (a) a copy of a work directly or by means of a film, slide, television image or otherwise on screen or by means of any other device or process; or

(b) a copy of audio-visual work, individual images in a non-sequential order;

**'distribution to the public'** means placing copyright work in such a manner making accessible for public circulation of the original or a copy of a work, fixation of a performance or a phonogram, in tangible form through:

- (a) sale or other transfer of ownership; and
- (b) importing for the purpose of such public circulation;

**'dramatic work'** includes:

- (a) a work of dance or mime;
- (b) a musical or pantomime;
- (c) a scenario or script of a film;
- (d) a work of improvisation; and
- (e) any work created for a stage production;

**'equitable remuneration'** means:

- (a) such remuneration as may be prescribed; or
- (b) where no such remuneration has been prescribed, such remuneration as may, in default of agreement between the relevant parties, be determined by a recognised dispute settlement mechanism or a court of law;

**'exclusive licence'** means a licence to the exclusion of all other persons;

**'film'**:

- (a) means a recording in any medium from which a moving image and any accompanying sounds may be produced by any means; and
- (b) includes a still picture extracted from a film;

**'first published'** means:

- (a) first published in the Republic;
- (b) first published outside the Republic and published in the Republic not later than 30 days thereafter;

**'fixation'** means the embodiment of sounds, images or both or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

**'infringing copy'** in relation to the copyright in a work has the meaning given by section 27;

**'licence'** means a written authorisation granted by a copyright owner to another person to exploit the copyright wholly or in part;

**'literary work':**

- (a) means any work other than a dramatic or musical work that is written, spoken or sung; and
- (b) includes a computer program;

**'musical work'** includes any accompanying words or actions;

**'owner':**

- (a) in relation to the copyright in a work means the owner of the economic rights in the work being:
  - (i) the original owner of the copyright in the work concerned;
  - (ii) the person to whom the rights have been transmitted; or
  - (iii) the person who has an exclusive licence to deal with the rights;
- (b) in relation to the economic rights of a performer, producer of a sound recording or broadcaster means as the case may be:
  - (i) the performer, producer or broadcaster concerned;
  - (ii) the person to whom the rights have been transmitted; or
  - (iii) the person who has exclusive licence to deal with the rights.

**'original work'** does not apply:

- (a) where it is a copy of another work;
- (b) to the extent that it is a copy of another work;
- (c) where it infringes the copyright of another work;

**'perform'** means to present a work or expressions of folklore by a personal rendition;

**'performer'** means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary or artistic works;

**'phonogram'** means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

**'photographic work'** means a recording of light or other radiation on any medium on which an image is produced or from which an image may be



produced, irrespective of the technique (chemical, electronic or other) by which such recording is made;

**'producer of an audio-visual work or a phonogram'** means the natural person or legal entity who undertakes the initiative and responsibility for the making of the audio-visual work or phonogram;

**'public performance'** means:

- (a) in work the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process other than audio-visual work;
- (b) in audio-visual work, the showing of images in sequence and the making of accompanying sounds audible; or
- (c) in phonogram, making the recorded sounds audible and, where such performances can be at a place or places where persons outside the normal circle of the family and its closest acquaintances can be present;

**'publication or published works'** means:

- (a) works published with the consent of their authors;
- (b) by means of manufacture of the copies;
- (c) for rent, possession, sale or other transfer of ownership; and
- (d) in a reasonable quantity to satisfy the reasonable requirements of the public;

**'related rights'** means those rights conferred upon a performer, a producer of phonograms and a broadcasting organisation by this Act;

**'rental'** means the transfer of the possession of the original or a copy of a work or phonogram for a limited period of time for profit;

**'reproduction'** means the making of one or more copies of a work or phonogram in any manner or form, including any permanent or temporary storage of the work or phonogram in electronic form;

**'reprographic reproduction'** means the making of screenshots, facsimile copies of the original or a copy of a work by means other than printing, such as photocopying, whether or not they are reduced or enlarged in scale;

**'rights management information'** means:

- (a) any information that identifies the author, work, performer, performance of the performer, the phonogram, the producer of the phonogram, the broadcaster, the broadcast, the owner of any right under this Act; or
- (b) information about the terms and conditions of use of the work, the performance, the phonogram or the broadcast; and

- (c) any number or code that represents such information, when any of these items of information is attached to a copy of a work, a fixed performance, a phonogram or a fixed broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a phonogram or a broadcast;

**'performer'** means an actor, singer, musician, dancer or other individual who performs a dramatic, literary, artistic or musical work;

**'publish'** in relation to a work or sound recording means making available to the public tangible copies of the work or sound recording:

- (a) in a reasonable quantity;
- (b) for rent, possession, sale or other transfer of ownership; and
- (c) with the consent of the owner of the economic rights in the work or sound recording;

**'public display'** means:

- (a) the direct showing or the showing by any means to the public of an original work or a copy of the work irrespective of whether the public is or may be present at the same time or at different places or times; and
- (b) in the case of a film, includes a non-sequential showing of individual images from the film;

**'public performance'** -

- (a) for a work other than a film, means the recitation, playing, dancing, singing, acting or other performance of the work directly or by means of any device or process at one or more places where and at one or more times when the public are or may be present;
- (b) for a film, means the showing of the film at one or more places where and at one or more times when the public are or may be present;
- (c) for a sound recording, means making the recording audible at one or more places where and at one or more times when the public are or may be present;

**'sound recording'** means:

- (a) the fixation of a sequence of sounds capable of being perceived aurally and of being reproduced by any appropriate device; and
- (b) does not include the sound track associated with an audio-visual work;

**'technological protection measures'** means any technology, device or component that, in the normal course of operation, is designed to prevent or restrict acts, in respect of works or objects of related rights, which are not authorised by the right holder;

**'work'** means:

- (a) an original work of any of the following:
  - (i) an artistic work;
  - (ii) a dramatic work if recorded;
  - (iii) a literary work if recorded;
  - (iv) a musical or sound work if recorded;
  - (v) a film;
  - (vi) a derivative work;
  - (vii) a collective work;
  - (viii) a typographical arrangement of published edition; and
- (b) includes a part of any work described in any of the sub paragraphs (a) (i) to (viii);

**'work of joint authorship'** means a work created by the contribution of two or more authors.

## **PART 2 – COPYRIGHT AND RELATED RIGHTS IN WORKS**

### **8 Copyright**

- (1) Copyright is a property right that:
  - (a) exists in original work; and
  - (b) confers exclusive rights on the owner of the copyright in the work.
- (2) Copyright exists in an original work by the sole fact of its creation and irrespective of its mode or form of expression or its content, quality or purpose.
- (3) Copyright does not exist in any idea, procedure, system, method of operation, concept, principle, mere data, discovery or data expressed, described, explained, illustrated or otherwise embodied in the work;
- (4) The copyright in a derivative work does not limit or affect the copyright existing in any work incorporated into or used in the creation of the derivative work.

### **9 Original owner of copyright**

- (1) Subject to subsections (2), (3) and (4), the author of a work is the original owner of the copyright in the work.

- (2) Where an author creates a work in the course of employment, the employer is the original owner of the copyright in the work unless the employment contract provides otherwise.
- (3) Where the work is a collective work, the person who initiates and directs the creation of the work is the original owner of the copyright in the work.
- (4) Where the work is a film, the producer of the film is the original owner of the copyright, unless a contract provides otherwise.

**10 Presumptions regarding authorship, producer of audio-visual works and publisher**

- (1) A natural person whose name is indicated as the author on a work shall be presumed to be the author of the work, even where the name is a pseudonym and the pseudonym leaves no doubt as to the identity of the author.
- (2) The person whose name appears on an audio-visual work in the usual manner shall be presumed to be the producer of the work.
- (3) Subject to subsection (1), in the case of an anonymous or pseudonymous work:
  - (a) the publisher, whose name appears on the work, shall be presumed to represent the author and shall be entitled to exercise and enforce the moral and economic rights of the author; and
  - (b) where the author reveals his or her identity, the presumption shall cease to apply.

**11 Economic rights**

- (1) An owner of a copyright shall have the exclusive right to carry out or to authorise in relation to the copyright work, its:
  - (a) reproduction;
  - (b) translation;
  - (c) publication;
  - (d) adaptation, arrangement or other transformation including cinematographic adaptation;
  - (e) distribution to the public of the original or a fixed copy;
  - (f) rental of the original or a fixed copy;
  - (g) public performance;
  - (h) broadcasting; and

- (i) communication to the public in other forms.
- (2) Subject to subsection (3), the right of distribution under subsection (1) (e) shall not apply to the original or a copy of a work that has already been subject of a sale or other transfer of ownership in any country.
- (3) The exhaustion of the right of distribution referred to in subsection (1) (e) shall not extend to a copy of a work that has been obtained in breach of the legal provisions protecting the copyright ownership in that country.
- (4) The right of rental under subsection (1)(f) shall not apply to rental of computer program where the program itself is not the essential object of the rental.

## **12 Original ownership of economic rights**

- (1) Subject to subsections (2), (3) and (4) the original owner of economic rights in respect of a work shall be the author who has created the work.
- (2) Where the economic right arises from the work of joint authorship, the co-authors shall be the original owners of the economic rights.
- (3) Where a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in the part that he or she has created.
- (4) In respect of a work created by an author employed by a natural person or legal entity, in the course of his or her employment, the original owner of the economic rights shall be the employer unless provided otherwise in an employment contract.
- (5) Subject to the contract between the performer and producer of the performance of an audio-visual work, the original owner of the economic rights shall be the producer.
- (6) The co-authors of the audio-visual work and the authors of the pre-existing works included in or adapted for the making of the audio-visual work shall, maintain their economic rights in their contributions or pre-existing works respectively.

## **13 Moral right**

- (1) The author shall have the moral right to:
  - (a) claim authorship of the work; or
  - (b) object to any distortion, mutilation, adaptation, modification of or pejorative action in relation to, the said work, which shall be prejudicial to his or her dignity or reputation.
- (2) The rights referred to in subsection (1) shall:

- (a) after the death of the author, be maintained until the expiry of the economic rights; and
  - (b) shall be exercisable by the heirs of the deceased author or such institution as may be prescribed.
- (3) The moral rights of an author are not capable of being assigned.

**14 Contracts for commissioned works**

- (1) A work which has been commissioned to be created shall be deemed to have been accepted by the person commissioning the work, unless he or she has rejected it by a written declaration within 3 months from the date the work is delivered to him or her or within such time as may be agreed between the parties.
- (2) A person who has commissioned a work may, within the time specified in subsection (1), return the work to the author with a written request for such corrections or amendments as may be necessary.
- (3) Where:
- (a) an author refuses to comply with a request for correction or amendment in subsection (2); or
  - (b) the corrected or amended work does not satisfy the author, -
- the person who commissioned the work may terminate the commission but shall pay to the author an equitable remuneration in return for the work done by the author.

**15 Republic's copyright**

- (1) Subject to subsection (4), where a work is made by a person employed or engaged by the Republic under a contract of service, a contract of apprenticeship or a contract for services:
- (a) the work qualifies for copyright; and
  - (b) the Republic is the first owner of any copyright in the work.
- (2) Copyright of a work referred to in subsection (1) shall be the copyright of the Republic whether or not the work is assigned or licensed to another person.
- (3) The Republic's copyright shall expire:
- (a) in the case of a typographical arrangement of a published edition, at the end of the period of 25 years from the end of the calendar year in which the work is made; or
  - (b) in the case of any other work, at the end of the period of 100 years from the end of the calendar year in which the work is made.

- (4) The Republic has no copyright over nor there exists any copyright in the following works:
- (a) any Bill introduced into the Parliament;
  - (b) any Act as defined in the Interpretation Act 2011;
  - (c) any regulations;
  - (d) any bylaw;
  - (e) the Hansard reports; and
  - (f) judgments of any court or tribunal.

### **PART 3 – PROTECTION OF COPYRIGHT AND OTHER RELATED RIGHTS**

#### **16 Protection of works**

- (1) Every artistic, literary or scientific work shall be an original intellectual creation in the artistic, literary or scientific domain.
- (2) Every work shall be protected where it is fixed in some material form and irrespective of its mode or form of expression.

#### **17 Derivative works**

The protection of any derivative work shall be without prejudice to any protection of a pre-existing work incorporated in or utilised for the making of such a work.

#### **18 Duration of copyright**

- (1) Copyright in a work exists:
  - (a) for the life of the author; and
  - (b) for 50 years from the end of the calendar year in which the author dies.
- (2) Where two or more individuals are authors of a work, copyright in the work exists:
  - (a) for the life of the longest surviving author; and
  - (b) for 50 years from the end of the calendar year in which that author dies.
- (3) Copyright in a collective work or film exists for 50 years from the end of the calendar year in which the latest of the following events occurred:
  - (a) the work was made;
  - (b) the work was first made available to the public; or
  - (c) the work was first published.

- (4) Copyright in a work of applied art including a collective work exists for 25 years from the end of the calendar year in which the work was made.
- (5) Copyright in a typographical arrangement of a published edition of the whole or any part of a literary work, dramatic work or musical work including a collective work exists for 25 years from the end of the calendar year in which this edition is first published.

**19 Subject matter not protected**

The matters contained in this section are not protected under this Part:

- (a) any idea, procedure, system, method of operation, concept, principle, mere data, discovery or date expressed, described, explained, illustrated or otherwise embodied in the work;
- (b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof;
- (c) news of the day or miscellaneous facts having the character of mere items of press information;
- (d) political speeches and speeches delivered in the course of legal proceedings;  
or
- (e) judgments of a court of law or tribunal.

**PART 4 - ECONOMIC RIGHTS**

**20 Assignment and licensing of rights of author**

- (1) Economic rights may be assignable in whole or in part.
- (2) Subject to authorisation by the author or other owner of copyright, an economic right may be assigned or licensed provided such authorisation shall not include or be deemed to include the assignment or licence of any other rights.
- (3) The scope of an assignment shall be limited to the specific use of the economic right assigned.
- (4) An assignment of an economic right or exclusive licence to do an act shall be in writing and signed by:
  - (a) the assignor and the assignee; or
  - (b) the licensor and the licensee.
- (5) Where the ownership of a copy of a work is assigned, the economic rights relating to the work shall not be deemed to have also been assigned.
- (6) Where an agreement for the assignment of an economic right or licence fails to specify:



- (a) the duration of the assignment or licence, the assignment or licence shall terminate 5 years from the date of assignment or licence;
  - (b) any country in which the assignment or licence may have effect, the assignment or licence shall only operate in the Republic; or
  - (c) the means of exploitation of the right, the assignee shall be entitled to exploit the right by such ways and means as are necessary for the purpose envisaged by the parties.
- (7) Nothing in this section shall prevent the copyright owner of a work from granting an assignment or licence, whether exclusive or not, to another person.

**21 Agreement regarding future works**

- (1) Where an author undertakes in writing to grant a licence or to assign the economic rights concerning future works which are not specified in detail, either party may, on giving not less than one month's notice, terminate the agreement not earlier than 3 years after it was signed or such shorter period as may have been agreed.
- (2) The right of termination referred to in subsection (1) may not be waived in advance.

**22 Assignee or exclusive licensee fails to use economic rights**

- (1) Where a person to whom an economic right in a work has been assigned or an exclusive licensee does not exercise his or her right or does so only inadequately and the author's legitimate interests are prejudiced by such failure, the author may revoke the assignment or exclusive licence.
- (2) The right to revoke an assignment or a licence in accordance with subsection (1) shall not be exercised earlier than 2 years from the date of assignment or licence or where the work is supplied subsequently, from the date of delivery of the work.
- (3) The right of revocation referred to in subsection (1) may not be waived in advance.

**23 Rights and remedies of exclusive licensee**

- (1) An exclusive licensee has the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence were an assignment except against the copyright owner.
- (2) The rights and remedies of the exclusive licensee are concurrent with those of the copyright owner.
- (3) In proceedings brought by an exclusive licensee pursuant to this section, a defendant may avail himself or herself of any defence that would have been available if the proceedings had been brought by the copyright owner.

## **24 Transfer and licensing of copyright**

- (1) The copyright in a work:
  - (a) is transmissible as personal or moveable property by assignment, testamentary disposition or operation of law; and
  - (b) may be subject to a licensing regime whereby the owner of the copyright authorises another person to exercise one or more of the owners' economic rights in relation to the work.
- (2) A transmission or licensing of the copyright in a work may be partial or limited and apply:
  - (a) to one or more but not all of the economic rights of the owner of the copyright; or
  - (b) to part but not whole of the period for which copyright in the work exists.
- (3) An assignment of copyright in a work has no lawful effect unless signed by or on behalf of the assignor and assignee.
- (4) A licence to deal with a work has no lawful effect unless signed by or on behalf of the licensor and licensee.
- (5) Any contractual provision contained in an agreement for the assignment or licensing of a work that is contrary to any of the exceptions to copyright infringement set out in Part 6 has no lawful effect.
- (6) For the avoidance of doubt, an assignment in whole or in part of the copyright in a work or a licence to do an act in respect of the copyright in a work does not include and shall not be treated for any purpose as including the assignment or licence of any economic right not expressly specified in the assignment or licensing agreement.

## **PART 5- INFRINGEMENT**

### **25 Meaning of infringing copy**

- (1) In this Act, the term infringing copy, in relation to a copyright work, shall be construed in accordance with this section.
- (2) An object is an infringing copy where its making constitutes an infringement of the copyright in the work.
- (3) An object that a person imports or proposes to import into the Republic is an infringing copy where:
  - (a) the making of the object constituted an infringement of the copyright in the work in the country in which the object was made; or
  - (b) the importer would infringe the copyright in the work in the Republic had the importer made the object in the Republic.

- (4) Where in any proceedings the question arises whether an object is an infringing copy and it is shown:
- (a) that the object is a copy of the work; and
  - (b) that copyright exists in the work or has existed at any time, —
- it shall be presumed until the contrary is proved that the object was made at a time when copyright existed in the work.
- (5) An object that a person imports or proposes to import into the Republic is not an infringing copy under subsection (3)(b) where:
- (a) it was made by or with the consent of the owner of the copyright, in the work in the country in which the object was made; or
  - (b) where no person owned the copyright in the work in the country in which the object was made.

## **26 Infringement of copyright work**

- (1) A person infringes copyright in a work by acting in a way described under section 25 in relation to the work in the circumstances where the person:
- (a) does not own the copyright;
  - (b) does not have the permission of the owner of the copyright to use the work; and
  - (c) is acting in a way not permitted under Part 6.
- (2) This Act does not limit or affect the requirement to keep one or more copies of the published work in accordance with this Act or any other written law that requires copies to be deposited for the purposes of preserving the documents for heritage purposes.

## **PART 6 - EXCEPTION TO COPYRIGHT INFRINGEMENT AND LIMITATION OF ECONOMIC RIGHTS**

### **27 Copying for research or private study**

- (1) An individual does not infringe copyright in a work by:
- (a) copying the work for research, private study or other private and non-commercial activity; and
  - (b) the research, private study or other activity is carried out by the individual or his or her family or friends.
- (2) Subsection (1) does not apply where the individual copies:

- (a) the whole or a substantial part of a book or musical work without fairly compensating the owner of the copyright for doing so;
  - (b) a building or other construction;
  - (c) the whole or a substantial part of a database in digital or electronic form;
  - (d) a computer program, except where the program itself is not the essential object of the copyright; or
  - (e) any other work, where the copying would unreasonably prejudice the legitimate interest of the owner of the copyright in the work.
- (3) The right to private use includes the right to the importation of a copy of a work, by a person, for his or her personal purposes, shall be permitted without the authorisation of the author or other owner of the copyright, in the work.

## **28 Temporary production**

A person does not infringe copyright in a work by copying the work where:

- (a) the reproduction is made in the process of a digital transmission of the work or an act of making the work noticeable by storing it digitally or electronically; and
- (b) it is caused by a person, who with the authorisation of the owner of the copyright, is entitled to make the transmission or making noticeable of the work;
- (c) it is an accessory to the transmission or making it noticeable, that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those referred to in paragraphs (a) and (b);
- (d) the copy is an essential part of a technological process of:
  - (i) making or receiving a communication that does not infringe copyright in the work; or
  - (ii) enabling the lawful use of the work; and
- (e) the copy has no independent economic worth.

## **29 Quoting from work**

- (1) A person does not infringe copyright in a work by quoting from the work without authorisation of the author or the owner of the copyright, where the quotation from a work has lawfully been made available to the public and the quotation:
- (a) is compatible with fair practice;

- (b) does not exceed the extent justified by the purpose which unreasonably prejudices the legitimate interest of the owner of the copyright; and
  - (c) is used for the purpose of caricature, parody or imitation.
- (2) The quotation shall be accompanied by a reference to the source and the name of the author from which the quotation is taken.

**30 Copying for educational purposes**

- (1) A person does not infringe copyright in a work by copying the work or recordings of the work broadcasted on radio or television, for the purpose of teaching or receiving instruction at an educational institution.
- (2) Subsection (1) applies only where:
- (a) a collective licence to copy the work is not available to the educational institution;
  - (b) subject to subsection (3), the amount of the work copied is justifiable given the purpose of the teaching or instruction; and
  - (c) the person acknowledges the source of the work and the author's name where it appears in the work.
- (3) A person may copy an entire textbook where any of the following circumstances applies:
- (a) a textbook is out of print;
  - (b) the owner of the copyright cannot be found; or
  - (c) an authorised copy of the same edition of the textbook is not for sale in the Republic or cannot be purchased at a price reasonably related to that normally charged in the Republic for a comparable work.
- (4) An educational institution may incorporate a copy of a work to which subsection (1) applies in printed or electronic course materials, study materials, resource lists or other material for use in the course of instruction given by or at the institution.
- (5) Subject to subsection (6), an individual enrolled at an educational institution may copy and incorporate a work to which subsection (1) applies in assignments, portfolios, thesis, dissertations or other course work produced by the individual, even if the course work or a copy of it is required to be deposited in the institution.
- (6) An individual shall:
- (a) ensure that the amount of the work copied is justifiable given the purpose of the course work; and
  - (b) in the course work and in any copies made of it, acknowledge the source of the work and the author's name.

- (7) An educational institution may communicate to individuals enrolled at that institution, that a work is permitted to be copied or translated for private, educational or research purposes under any of the other exceptions of this Act, so long as the institution uses a secure network that is accessible only by those individuals who are teaching or receiving instruction or who are responsible for the running of the network.
- (8) The exception under this section does not apply where the copying of the work is for commercial purposes.

**31 Translation of works**

- (1) A person giving or receiving instruction does not infringe copyright in a work where the person translates the work.
- (2) Subsection (1) applies only where the instruction is for private educational, teaching or research purposes.
- (3) A person or body corporate does not infringe copyright in a work where the person or body corporate translates the work from or into a minority language and communicates the translation to the public for non-commercial public information purposes.
- (4) The exceptions under this section do not apply where the translation of the work is for commercial purposes.

**32 Copying for legal purposes**

- (1) A person does not infringe copyright in a work where:
  - (a) the person copies the work for the purpose of giving legal advice;
  - (b) the amount of the work copied is justifiable given the purpose of the legal advice; and
  - (c) the person acknowledges the source of the work and the author's name.
- (2) A person does not infringe copyright in a work where the work is dealt with in any way including copying, for the purpose of a judicial proceeding or the reporting of a judicial proceeding.

**33 Reproduction by libraries and archives**

- (1) Any library or archive, whose activities do not serve direct or indirect commercial gain, may, without the authorisation of the author or other owner of copyright, make a copy of a work:
  - (a) by reprographic reproduction:
    - (i) where the work reproduced is a published article, other short work or short extract of a work; and
    - (ii) the purpose of the reproduction is to satisfy the request of a person;

- (b) to preserve and where necessary, replace a copy which has been lost, destroyed or rendered unusable in its own permanent collection or the permanent collection of another similar library or archive, where it is impossible to obtain such a copy under reasonable conditions.
- (2) For the purpose of subsection (1) (b), the library or archive shall be satisfied that:
- (a) the copy shall be used solely for the purposes of study, scholarship or private research; and
  - (b) the reproduction of any particular work is an isolated act occurring, where repeated, on separate and unrelated occasions.

### **34 Copying for museums and galleries**

- (1) A cultural institution does not infringe copyright in a work by copying a work held in its collection for the purposes of back up or preservation.
- (2) A cultural institution does not infringe copyright in a work by copying an incomplete work held in its collection where:
- (a) the institution cannot reasonably acquire the work through general trade or from the publisher concerned; and
  - (b) the copy is obtained from another cultural institution.
- (3) The exceptions under this section do not apply where the copying of the work is for commercial purposes.
- (4) In this section, '*cultural institution*' means a library, archive, museum or gallery that is publicly funded in whole or in part.

### **35 Copying to report current events to the public**

- (1) A person does not infringe copyright in a work:
- (a) by copying or communicating to the public:
    - (i) a newspaper article, periodical, communication to the public, lecture, speech or other work of a similar nature for the purpose of reporting current events to the public; or
    - (ii) excerpts of a work seen or heard in the course of reporting of a current event; and
  - (b) the copy or communication is made without the authorisation of the owner of the copyright.
- (2) However, the person shall:

- (a) ensure that the amount of the work copied or communicated is no more than is justifiable for the purposes of reporting; and
  - (b) acknowledge the source of the work and the author's name.
- (3) Subsection (1)(a)(i) does not apply where the owner of the copyright in the work has expressly prohibited copying or communicating of the work for the purpose described in that subsection.

### **36 Copying and adaptation of computer programs**

- (1) The lawful owner of a copy of a computer program does not infringe copyright in the computer program where:
- (a) the person makes a single copy of the program or makes an adaptation of the program; and
  - (b) the copy or adaptation is necessary:
    - (i) to use the program for the purpose and to the extent for which it was obtained;
    - (ii) for archival purposes; or
  - (c) to replace the lawfully owned copy of the program where that copy is lost or destroyed; and
  - (d) the copy is made without the authorisation of the owner of the copyright.
- (2) For the avoidance of doubt, a copy or an adaptation of a computer program shall not be used for the purpose other than that under subsection (1)(b).
- (3) A copy or adaptation shall be destroyed where its continued possession does not satisfy the requirements of this section or otherwise is no longer lawful.

### **37 Display of works**

- (1) A person does not infringe copyright in a work where the person publicly displays a work or copies of the work:
- (a) for the purpose of promoting the work, testing the work or training users of the work; and
  - (b) without the authorisation of the owner of the copyright in the work.
- (2) A person does not infringe copyright in a work by publicly displaying or publicly performing part of the work, without the authorisation of the copyright owner, where the display or performance is part of a presentation at a conference, seminar, workshop or similar activity.
- (3) The public display of originals or copies of works shall be permitted without the authorisation of the author, where:
- (a) the display is not made by means of:



- (i) a film, slide, television image or otherwise on screen; or
  - (ii) any other device or process; and
- (b) the work has been published; or
- (c) the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author.

**38 Ephemeral recordings**

- (1) Any broadcasting organisation may, without the authorisation of the author or the owner of the copyright, make for the purpose of its own broadcast and by means of its own facilities, an ephemeral recording of any work which it is authorised to broadcast.
- (2) A copy made under subsection (1) shall be destroyed within 6 months of its making or such longer term as may be agreed to by the author or the owner of the copyright.
- (3) Subject to subsection (2), where such recording has an exceptional documentary character, one copy of it may be preserved in the archives.

**39 Copying for persons with disability**

- (1) A person does not infringe copyright in a work where the person, without the authorisation of the owner of the copyright in the work:
  - (a) makes an accessible format of the work for a person with a disability; or
  - (b) supplies an accessible format of the work or copies of it to one or more persons with disabilities by any means, including by way of lending or electronic communication.
- (2) Subsection (1) applies only where the person making the accessible format of the work or copies of it:
  - (a) has lawful access to the work or copy from which the accessible format of the work is made;
  - (b) does not make any changes to the work other than those necessary to make the work or copy in accessible format;
  - (c) acknowledges the source of the work and the author's name; and
  - (d) the copying is not for commercial purposes.
- (3) Where a person with a disability receives a work or a copy in digital or electronic form, the person may make a copy of the work for personal use without the authorisation of the author or the owner of the copyright.

- (4) A person or an organisation does not infringe copyright in a work by exporting or importing copies of an accessible format of a work without the authorisation of the author or owner of the copyright in the work where:
- (a) the person is a person with a disability or the organisation is an organisation that serves people with disabilities;
  - (b) the copies acknowledge the source of the work and the author's name; and
  - (c) the exporting or importing is not for commercial purposes.
- (5) In this section:

**'accessible format'**, in relation to a work or a copy of a work, means a format which will allow a person with a disability to access and use the work to substantially the same degree as a person without a disability; and

**'person with a disability'** means a person who requires a work or a copy of a work to be adapted in some way to enable the person to access and use the work to substantially the same degree as a person without the same disability.

#### **40 Public lending**

A library or archive whose activities do not directly or indirectly serve commercial gain, may without the authorisation of the author lend to a member of the public a copy of a work, other than a computer programme, which is part of the permanent collection of the library or archive.

### **PART 7- CIRCUMVENTION OF LIMITATIONS ON ECONOMIC RIGHT PROHIBITED**

#### **41 Technological protection measures**

- (1) It is prohibited to:
- (a) circumvent effective technological protection measures;
  - (b) produce, import, distribute, sell, rent, advertise for sale or rental; or
  - (c) possess devices, products, components or services for commercial purposes that:
    - (i) are promoted, advertised or marketed for the purpose of circumventing effective technological protection measures;
    - (ii) have only a limited commercially significant purpose or use other than to circumvent effective technological protection measures; or
    - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological protection measures.

- (2) In this section, a technological protection measure shall be considered effective where the use of a work or related right is controlled by the right holder through application of an access control or protection process such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism which, in the normal course of its operation, achieves the protection objective.
- (3) Despite subsection (1), upon the request by a person to whom Part 6 of this Act applies, the right holder shall have the technological protection measures lifted, to the extent necessary, for the beneficiary to fully benefit from the exception or limitation, as applicable.
- (4) Subsection (2) shall not apply to works or other subject matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

#### **42 Protection of rights management information**

- (1) No person shall:
  - (a) remove or alter any electronic rights management information without the consent of the right holder; or
  - (b) distribute, import for distribution, broadcast or communicate to the public of works or other subject matter protected under this Act from which electronic copyright management information has been removed or altered without the authorisation of the right's owner when such act will induce, enable, facilitate or conceal an infringement of any right covered by this Act.
- (2) Subsection (1) shall not prohibit any governmental activities for public policy or security authorised by any written law.

### **PART 8 – RIGHTS OF PERFORMERS, PRODUCERS AND BROADCASTERS**

#### **43 Exclusive rights of performers**

- (1) Subject to subsection (3), a performer has the exclusive right to carry out or authorise the carrying out of the following actions in relation to a performance by him or her:
  - (a) a communication to the public of the performance;
  - (b) fixation of a performance;
  - (c) a communication to the public of a fixation of a performance;
  - (d) copying whether directly or indirectly the performance in any way or form;

- (e) making available to the public for the first time a fixation of the performance or copies of the fixation by sale or otherwise; or
  - (f) renting to the public a fixation of the performance or copies of the fixation irrespective of the ownership of the copies.
- (2) A performer does not have the exclusive right described under subsection (1)(a) where the communication is a re-broadcast made or authorised by the broadcaster that initially communicated the performance.
  - (3) Subsection (1) does not apply where the performer authorises the incorporation of the performance in a fixation that is a film.
  - (4) A performer is the owner of the rights described under subsection (1) in respect of the performance.

**44 Performers rights in relation to live aural performances and those fixed in sound recording**

- (1) A performer has the rights under subsection (5) in respect of a live aural performance by him or her or a performance by him or her fixed in a sound recording.
- (2) The rights are not transferrable by the performer during his or her lifetime but may be transferred on the death of the performer and exercised by the transferee on the performer's behalf.
- (3) The rights under this section exist independently of the rights that the performer has under other parts or provisions of this Act except to the extent that the rights are extinguished at the same time as the period of protection in the performance expires.
- (4) For the avoidance of doubt, the rights exist even where the performer transfers or assigns the rights to another person.
- (5) The rights are:
  - (a) the right to be identified as the performer, unless the manner of use of the performance is of such a nature that this is not possible; and
  - (b) the right to object to any distortion, mutilation or other modification of the performance that would be prejudicial to his or her reputation.

**45 Performers may waive certain rights**

- (1) A performer may waive the rights conferred on him or her under this Act.
- (2) A waiver shall:
  - (a) be in writing;
  - (b) specify the right or rights waived;
  - (c) specify the circumstances in which the waiver applies; and

- (d) where the waiver relates to a right described in section 44(5)(b) specify the nature and extent of the modification or action in respect of which the right is waived.
- (3) On the death of the performer, the person who inherits the right may exercise the power to waive the rights of the performer and this section applies with any necessary modifications, as if the person were the performer.
- (4) For the avoidance of doubt, a person may rely on a waiver under this section only to the extent that the waiver complies with subsection (2).

#### **46 Duration of rights of a performer**

The rights of the performer shall exist:

- (a) in the case of a performance fixed in a sound recording, until the end of the calendar year, that is, 50 years after the year in which the performance was fixed as a sound recording; or
- (b) in any other case, until the end of the calendar year, that is, 50 years after the year in which the performance took place.

#### **47 Exclusive rights of producers of sound recordings**

- (1) A producer of a sound recording has the exclusive right to carry out or authorise the carrying out of the following activities:
  - (a) copying the recording in any way or form;
  - (b) importing copies of the recording into the Republic;
  - (c) issuing or distributing to the public the original or copies of the recording, other than copies that have already been subject to a sale or other transfer of ownership authorised by the producer;
  - (d) renting to the public a copy of the recording irrespective of the ownership of the copy rented; or
  - (e) communicating the recording to the public.
- (2) A producer is the owner of the rights described in subsection (1) in respect of the sound recording.

#### **48 Duration of rights of a producer**

The rights conferred on a producer under section 47 exist:

- (a) until the end of the calendar year, that is, 50 years after the year in which the sound recording is first published; or
- (b) where the recording has not been published until the end of the calendar year, that is, 50 years from the making of the recording.

**49 Equitable payment of use of sound recording**

- (1) This section applies where a sound recording published for commercial purposes or a copy of a sound recording published for commercial purposes is used in a communication to the public or is publicly performed.
- (2) The person using the sound recording shall make a single equitable payment to the producer of the recording.
- (3) The producer of the recording shall pay half of the amount received to the performers concerned, unless an agreement between the performers and the producer expressly provides otherwise.
- (4) The right of the producer and performers to be paid under this section exists:
  - (a) until the end of the calendar year, that is, 50 years after the year in which the recording is first published; or
  - (b) where the recording has not been published, until the end of the calendar year, that is, 50 years from the making of the recording.

**50 Exclusive rights of broadcasters**

- (1) A broadcaster has in respect of a communication to the public by the broadcaster the exclusive right to:
  - (a) re-broadcast or otherwise communicate it to the public;
  - (b) fixation of the broadcast;
  - (c) reproduce a fixation of the broadcast; or
  - (d) authorise another person to do any act referred to in any of the paragraphs (a) to (c).
- (2) The broadcaster is the owner of the rights under subsection (1) in respect of the broadcast.

**51 Duration of rights of a broadcaster**

The rights conferred on a broadcaster under section 50 exist to the end of the calendar year, that is, 50 years from the making of broadcast.

**52 Limitation on protection**

Despite sections 43, 47 and 50, it is not a breach of the rights conferred on a performer, producer of a sound recording or broadcaster under any of those sections where:

- (a) an individual copies the performance, sound recording or communication to the public by the broadcaster exclusively for personal purposes;

- (b) a person uses or copies short excerpts of the performance, sound recording or communication for the purpose of reporting current events and the use is justifiable for that purpose;
- (c) a person copies the performance, sound recording or communication solely for:
  - (i) scientific research; or
  - (ii) teaching but only where the performance, sound recording or communication has not been published in any teaching materials; and
- (d) a person acts in relation to some aspect of a performance, sound recording or communication to the public that is a work and the actions do not infringe the copyright in the work.

**53 Transmission and licensing of rights of performer, producer, broadcaster**

- (1) The rights conferred on a performer, producer of a sound recording and broadcaster under sections 43, 47 and 50:
  - (a) are transmissible as personal or moveable property by assignment, testamentary disposition or operation of law; and
  - (b) may be subject to a licensing regime whereby the owner of the rights authorises another person to exercise one or more of the owners' rights in relation to the performance, sound recording or communication to the public.
- (2) A transmission or licensing of a right may be partial or limited so as to apply:
  - (a) to one or more but not all of the economic rights conferred on the owner of the rights; or
  - (b) to part but not the whole of the period for which the right exists.
- (3) An assignment of a right has no lawful effect unless signed by or on behalf of the assignor and assignee.
- (4) A licence to deal with a right has no lawful effect unless signed by or on behalf of the licensor and licensee.
- (5) For the avoidance of doubt, an assignment in whole or in part of the rights or a licence to do an act in respect of rights does not include and shall not be treated for any purpose as including, the assignment or licensing of any economic right not expressly specified in the assignment or licensing agreement.

**PART 9 – ENFORCEMENT OF RIGHTS**

**54 Special remedies**

In addition to the powers and the jurisdiction of the Supreme Court under any other written law, the Supreme Court shall have the power and jurisdiction to grant the following reliefs or remedies:

- (a) injunctions to prohibit the committing or continuation of committing, of infringement of any protected right;
- (b) mandatory or restraining injunctions including *Anton Piller* orders for search and seizure, freezing orders and *writ ne exeat Republica*;
- (c) damages;
- (d) orders against third parties including a class of people or distributors of infringing orders for entry and seizure of such infringing material or object;
- (e) forfeiture of any infringing copy and of any apparatus, article or thing used for the making of the infringing copy or otherwise, as the Court thinks fit;
- (f) where infringing copies exist, the Court may order the destruction or other reasonable disposition of those copies and their packaging in such manner as to avoid harm to the right holder, unless the owner of the right requests otherwise;
- (g) where there is reasonable cause to believe that implements may be used to commit or continue to commit acts of infringement, the Court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such manner as to minimise the risks of further infringements, including the surrender to the owner of the right;
- (h) legal and any other incidental costs; or
- (i) complementary orders to enforce the order or orders of the Court.

## **55 Presumptions**

In any action for an alleged infringement of copyright:

- (a) it shall be presumed, unless the defendant puts it in issue, that:
  - (i) copyright or a related right subsists in the work to which the action relates;
  - (ii) the plaintiff is the lawful holder of the asserted right;
  - (iii) the person whose name is indicated on an audio-visual work in the usual manner as being the producer is the producer of the work;
- (b) it shall be presumed that the person named as the author of a published work is the lawful author, unless the contrary is proven;



- (c) where it is proved or admitted that the author of a work is dead or a work was published anonymously or under a pseudonym, it shall be presumed, unless the contrary is proved, that:
- (i) the work is an original work;
  - (ii) any allegation by the plaintiff that the publication was a first publication and occurred in a specified country on a specific date is true; or
  - (iii) in the case of a work which was published anonymously or under a pseudonym, the publisher of the work is the copyright owner.

**56 Unmeritorious threats**

- (1) Subject to subsection (2), where a person who claims to be a right holder or an exclusive licensee threatens any other person with legal proceedings in respect of an alleged infringement of his or her copyright or related right, the person threatened may:
- (a) bring an action against the claimant and obtain an injunction restraining the continuation of the threat; and
  - (b) recover damages for such threat and interference of the person's rights.
- (2) Subsection (1) shall not apply where the claimant commences and prosecutes an action with due diligence for infringement of his or her copyright or related rights.

**57 Seizure under Customs Act**

The provisions of the Customs Act 2014 dealing with suspension of the release of suspected illegal goods applies to articles and implements protected under this Act.

**58 Offences**

Where a person infringes any rights or related rights of an author or owner of any copyright or related rights, such person commits an offence and upon conviction shall be liable to a penalty under section 59.

**59 Criminal sanctions**

- (1) An infringement of a right protected under this Act, where committed wilfully or by gross negligence and for profit making purposes, shall be punished by a maximum fine not exceeding \$50,000 for each offence.
- (2) The Court may increase the penalty specified under subsection (1) where the defendant has been convicted for a second or further act of infringement within 5 years of a previous conviction for infringement.
- (3) The Court shall apply the remedies under section 54 in criminal proceedings where no decision has yet been taken on such remedies in a civil proceeding.

## **PART 10 - MISCELLANEOUS**

### **60 Application of international treaties and conventions**

Where an inconsistency arises between a provision of this Act and any international treaty or convention to which the Republic is a party in respect of copyright or other rights protected under this Act, the international treaty prevails to the extent of the inconsistency.

### **61 Management rights**

(1) Copyright and related rights may be managed by:

- (a) an individual right holder or his or her lawfully authorised agent; or
- (b) the rights management society.

(2) The Cabinet may make regulations for establishing one or more rights management societies.

### **62 Regulations**

The Cabinet may make regulations prescribing all matters necessary or convenient to give effect to this Act.