

REPUBLIC OF NAURU
COPYRIGHT BILL 2019
EXPLANATORY MEMORANDUM

The *Copyright Bill 2019* is a Bill for the *Copyright Act 2019*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 – PRELIMINARY

Clause 1 provides that, once enacted, the short title of the Act will be the *Copyright Act 2019*.

Clause 2 sets out when the Bill's provisions will commence which is on certification by the Speaker.

Clause 3 provides that this Act binds the Republic.

Clause 4 provides the objective of the Act which is to:

- (a) encourage authors, music composers, singers, artists to create original piece of works by granting them exclusive rights;
- (b) prevent the misuse of the property rights of the copyright owners;
- (c) protect the rights of the person who holds the copyright;
- (d) provide methods of acquiring commercial use and benefits of inventions;
- (e) provide for economic rights and use of copyright;
- (f) provide for the free access to copyright material without infringing the copyright or economic rights;
- (g) provide for the establishment of collective rights management society; and
- (h) provide civil and criminal remedies for the infringement of copyright.

Clause 5 provides the scope of application of the Bill which is concerning the protection of literary and artistic work. The Bill applies to:

- (a) works of authors who are nationals of or have their permanent place of residence in the Republic; and
- (b) works first published in the Republic.

This Bill also applies to works that are protected in the Republic under any international convention or other international agreement to which the Republic is party to.

Clause 6 provides that copyright shall not exist otherwise than by virtue of this Act.

Clause 7 is the definitional clause which provides for the interpretation of certain words and phrases used the Bill.

PART 2 – COPYRIGHT AND RELATED RIGHTS IN WORKS

Clause 8 provides what copyright is about. 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.

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.

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.

Clause 9 provides that the author of the work is the original owner of the copyright of the work.

Unless an employment contract provides otherwise, the copyright in a work created by an author in the course of employment belongs to the employer.

A person who initiates and directs the creation of the work where the work is a collective work is the original owner of the copyright of that work.

Unless a contract provides otherwise, the producer of a film is the original owner of the copyright in that film.

The work is of the joint authorship or ownership where there are 2 or more persons who created the work.

Clause 10 provides for the presumption of authorship, producer of audio visual work and publisher.

An individual whose name is indicated as the author of a work is presumed to be the author even when the name is a pseudonym and the pseudonym leaves no doubt as to the identity of the author.

Where the work is anonymous or pseudonymous, the publisher whose name appears on a work is presumed to represent the author and is entitled to exercise and enforce any rights of the author unless and until the author publicly reveals his or her identity.

Clause 11 provides for the economic rights an author or owner of a copyright in a work has exclusive right to carry out or authorise the carrying out of the following in relation to the work:

- (a) reproducing the work;
- (b) translating the work;
- (c) publishing the work;

- (d) adapting, arranging or other transformation including cinematographic adaptation;
- (e) distributing to the public of the original or a fixed copy;
- (f) renting the original or a fixed copy;
- (g) public performance;
- (h) broadcasting; and
- (i) communicating to the public in other forms.

The right of distribution shall not apply to the original or a copy of a work which was subject of a sale or other transfer of ownership in any country. Further, such rights shall not extend to a copy of a work which was obtained in breach of a legal provision protecting the copyright ownership in that country.

The right of rental shall not apply to rental of a computer program where the program itself is not an essential object of the rental.

Clause 12 provides that the original owner of economic rights in respect of a work shall be the author who created the work. In case of co-authors who worked together, the co-authors shall be the original owners of the economic rights.

If the co-authors worked separately on each part they will be original owners of the economic rights of each part.

Clause 13 provides that the author shall have moral rights to claim authorship of the work or, object to any distortion, mutilation, adaptation, modification of or pejorative action in relation to the work which shall be prejudicial to his or her reputation.

The moral rights shall be maintained after the death of the author until the expiry of the economic rights and shall be exercisable by the heirs of the deceased author or such institution as may be prescribed.

Moral rights of an author cannot be assigned, transferred or transmitted.

Clause 14 provides that 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 written declaration within 3 months from the date the work is delivered to him or her or within such times as may be agreed between the parties.

A person who commissioned the work may within a time specified in subclause (1) return the work to the author for such corrections or amendments as may be necessary.

If the author refuses to comply with the request for correction or amendment or does not satisfy the author, the person commissioning the work may terminate the contract but shall pay to the author an equitable remuneration in return for the work done by the author.

Clause 15 provides that where a work made by a person employed or engaged by the Republic under a contract of service, apprenticeship or a contract for services, the work qualifies for copyright and the Republic is the original owner of the copyright in the work as well as the economic right. Such copyright belongs to the Republic whether or not the work is assigned or licensed to the person.

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; and
- (b) in the case of any other work, at the end of the period of 50 years from the end of the calendar year in which the work is made.

The Republic does not have copyright to 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

Clause 16 protects every artistic, literary or scientific work which shall be an original intellectual creation in the artistic, literary or scientific domain.

Clause 17 provides for protection of derivative work.

Clause 18 provides for the duration of copyright. Copyright in a work exists for the life of the author and for 50 years at the end of the calendar year in which the author dies.

If two or more individuals are the authors of the work, copyright in the work exists for the life of the longest surviving author and for 50 years from the end of the calendar year in which that author dies.

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: the work was made, the work was first made available to the public and the work was first published.

Where the work is 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, copyright exists for 25 years from the end of the calendar year in which this edition is first published.

Clause 19 provides for certain subject matters that are not protected under this Part such as:

- (a) any idea, procedure, system, method of operation, concept, principle, mere data discovery or data expressed, described, explained, illustrated or otherwise embodied in the work;
- (b) matters contained in section 15(4);

- (c) news of the day or miscellaneous facts having the character of mere items of press information; or
- (d) political speeches and speeches delivered in the course of legal proceedings.

PART 4 – ECONOMIC RIGHTS

Clause 20 provides that economic rights are assignable in whole or in part. Subject to the authorisation by an author or other owner of copyright, an economic right may be assigned or licensed provided such authorisation shall not be included or deemed to include the assignment or licence of any other rights. The extent of an assignment shall be limited to the specific use of the economic right assigned.

Any assignment of an economic right and any 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.

The economic rights relating to the work shall not be deemed to have been assigned where the ownership of a copy of the work is assigned.

Where an agreement for the assignment of an economic right or licence fails to specify:

- (a) the time for the assignment or licence, such 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 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.

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.

Clause 21 provides that 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 unless a shorter period may have been agreed to. The right of termination may not be waived in advance.

Clause 22 provides that where a person who is assigned an economic right or is an exclusive assignee or licensee fails to use the economic rights or does so inadequately and the author's legitimate interests are prejudiced by such failure, the author may revoke the assignment or exclusive licence.

The right to revoke an assignment or a licence in accordance with subclause (1) shall not be exercised earlier than 2 years from the date of assignment or licence or if the work is supplied subsequently, from the date of delivery of the work. The right of revocation may not be waived in advance.

Clause 23 provides that the 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. The rights and remedies of the exclusive assignee or licensee are concurrent with those of the copyright owner.

Clause 24 provides that a copyright in a work is transmissible as personal or movable property by assignment, testamentary disposition or operation of law and may be subject to a licensing regime to be used by another person. A transmission or licensing in a work may be partial or limited and apply to one or more but not all economic rights of the owner or part but not whole of the period of the copyright in the work exists. An assignment of copyright in a work has no lawful effect unless signed by or on behalf of the assignor and assignee.

PART 5 - INFRINGEMENT

Clause 25 provides for the meaning of infringing copy.

An infringing copy is where its making constitutes an infringement of the copyright in the work in question or a person imports or proposes to import into the Republic an infringing copy where:

- (a) the making of the object constituted an infringement of the copyright in the work in question in the country in which the object was made; or
- (b) the importer would have infringed the copyright in the work in question in the Republic had the importer made the object in Republic.

Where a question arises in any proceedings whether an object is an infringing copy and it is shown that the object is a copy of the work and that copyright exists in the work or has existed at any time shall be presumed that the object was made at a time when copyright existed in the work.

An object that a person imports or proposes to import into the Republic is not an infringing copy under subclause (3)(b) where:

- (a) it was made by or with the consent of the owner of the copyright, in the work in question in the country in which the object was made; or
- (b) where no person owned the copyright in the work in question in the country in which the object was made.

Clause 26 provides that a person infringes copyright work by acting in a way described in clause 25 in relation to the work 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.

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

Clause 27 provides that 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.

An infringement occurs if the individual copies:

- (a) the whole or a substantial part of a work without fairly compensating the owner of the copyright for doing so;
- (b) the architecture of 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, if the copying would unreasonably prejudice the legitimate interest of the owner of the copyright in the work.

The right to private use includes the right to import a copy of a work without authorisation of the author or owner of the copyright in the work.

Clause 28 provides for temporary production which is not an infringement if the copying of the work:

- (a) is made in the process of a digital transmission or an act making the work noticeable by storing it digitally or electronically;
- (b) caused by a person who with the authorisation of the owner of the copyright is entitled to make the transmission or making the work noticeable;
- (c) is an accessory to the transmission or making it noticeable that occurs during the normal operation of the equipment used; and
- (d) has no independent economic worth.

Clause 29 provides that quoting from work is not an infringement if the work has already been lawfully 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 copyright owner;
- (c) is used for the purpose of caricature, parody or imitation.

The quotation shall be accompanied by a reference of the name of the author and to the source from which the quotation is taken.

Clause 30 provides a person does not infringe copyright in a work if the copying or recording is for the purpose of teaching or receiving instruction from an educational institution but only if:

- (a) a collective licence to copy the work is not available to the educational institution;
- (b) 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 if it appears in the work.

A person may copy an entire textbook if any of the following 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.

An educational institution may:

- incorporate a copy of a work 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;
- 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 accessible only to individuals who teach or receive instructions or who are responsible for the running of the network.

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 name of the author and to the source from which the quotation is taken.

The exception under this section does not apply if copying of the work is carried out for commercial purposes.

Clause 31 provides that a person translating a work does not infringe a copyright in a work if it is an instruction for private educational, teaching or research purposes.

Copyright in a work is not infringed where a person translates the work from or into a minority language and communicates the translation to the public for non-commercial public information purposes.

The exceptions under this section do not apply where the translation is for commercial purposes.

Clause 32 provides that copying for legal purposes is not an infringement of copyright in a work if:

- (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 name of the author and the source of the work.

A person does not infringe copyright in a work if the work is dealt with in any way including copying, for the purpose of a judicial proceeding or the reporting of a judicial proceeding.

Clause 33 provides that 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 the 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; or
- (ii) the purpose of the reproduction is to satisfy the request of a person;

(b) to preserve and if 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.

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, if repeated, on separate and unrelated occasions.

Clause 34 provides that a cultural institution does not infringe copyright in a work by copying a work held in collection for the purposes of preserving such work.

A cultural institution does not infringe copyright in a work by copying an incomplete work held in its collection if:

- (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.

If copying is for commercial purpose then this clause does not apply.

Clause 35 provides that a person does not infringe a copyright in a work by copying or communicating to the public a newspaper article, periodical, communications to the public, lecture, speech or other work of similar nature for the purpose of reporting of current events; or, excerpts of a work seen or heard in the course of recording of a current event; and the copying is made without the authorisation of the owner of the copyright.

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.

Clause 36 provides that a lawful copy of a computer program does not infringe copyright in the computer program if:

- (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 if that copy is lost or destroyed.

Clause 37 provides that a person does not infringe copyright in a work if 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.

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, if the display or performance is part of a presentation at a conference, seminar, workshop or similar activity.

Public display of original or copies of works shall be permitted without the author's authorisation where the display is not made by means of a film, slide, television image otherwise on screen; or any other device or process; and the work has been published; or the original or the copy displayed has been sold, given away or otherwise transferred by the author to another person.

Clause 38 provides that any broadcasting organisation may, without the authorisation of the author or other owner of copyright, make for the purpose of its own broadcasts and by means of its own facilities, an ephemeral recording of any work which it is authorised to broadcast. Such copy made shall be destroyed within 6 months of its making or such longer terms as may be agreed to by the author or the owner of the copyright. Where such a recording has an exceptional documentary character, one copy of it may be preserved in the archives.

Clause 39 provides that a person does not infringe a copyright in a work if 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.

A person does not infringe a copyright if such 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 if it appears in the work; and
- (d) the copying is not for commercial purposes.

A person with a disability may, on receipt of a work or a copy in digital or electronic form, make a copy of the work for personal use without the authorisation of the author or the owner of the copyright.

Copyright in a work is not infringed by a person or an organisation where copies of an accessible format of a work is exported or imported by such person or organisation without the authorisation of the author or the owner of the copyright work.

Clause 40 provides that a library or archive whose activities do not directly or indirectly serve commercial gain may without the authority of the author lend to the public a copy of the work apart from a computer program which is part of the collection of the library or archive.

PART 7 – CIRCUMVENTION OF LIMITATIONS ON ECONOMIC RIGHTS PROHIBITED

Clause 41 provides for technological protection measures. 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.

The right holder, upon the request by a person to whom Part 6 applies, shall have the technological protection measures lifted to the extent necessary for the beneficiary to fully benefit from the exception or limitation as applicable.

Clause 42 provides for the protection of rights management information. No person shall alter or remove any electronic rights management information without the consent of the rightful owner; or distribute, import, broadcast or communicate to the

public the works from which the electronic copyright management information has been removed or altered without the proper authorisation by the rightful owner.

This provision does not apply to any governmental activities for public policy or security authorised by any written law.

PART 8 – RIGHTS OF PERFORMERS, PRODUCERS AND BROADCASTERS

Clause 43 provides that a performer has exclusive rights to carry out or authorise the carrying out of 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 a 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.

However the performer does not have exclusive right if the communication is a re-broadcast or if the performer authorises the incorporation of the performance in a fixation that is a film.

Clause 44 provides that a performer's rights in relation to a live aural performance by him or her in a sound recording 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.

Such rights are not transferrable by the performer during his or her lifetime but may be transferred on his or her death and exercised by the transferee on the performer's behalf. The performer's rights under this clause exist independently of the rights the performer has under other parts or provisions of this Bill.

Clause 45 provides the performer may waive the rights conferred under the Bill. Such waiver shall be in writing; specify the right or rights waived; specify the circumstances in which the waiver applies; and where the waiver relates to the rights described in clause 44(5)(b) specified the nature and extent of the modification or action in respect of which the right is waived.

The person who inherits the right on the death of a performer may exercise the power to waive the right of the performer as if the person were the performer. This provision applies with any necessary modifications.

Clause 46 provides for the duration of rights of a performer which exists:

- (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.

Clause 47 provides that 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.

Clause 48 provides the duration of the rights under clause 47(1) 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) if the recording has not been published until the end of the calendar year, that is, 50 years from the making of the recording.

Clause 49 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 performed in public. A person using such sound recording shall make a single equitable payment to the producer of the recording. 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.

The right of the producer and performers to be paid under this clause 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) if the recording has not been published, until the end of the calendar year, that is, 50 years from the making of the recording.

Clause 50 provides for the exclusive rights of broadcasters which are 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).

Clause 51 provides for the duration of rights of the broadcaster which exist to the end of the calendar year, that is, 50 years from the making of broadcast.

Clause 52 provides for the limitation of protection where it is not considered a breach of rights on a performer, producer of a sound recording or broadcaster under clauses 43,47 and 50 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 if 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.

Clause 53 provides that the rights of a performer, producer of a sound recording and broadcaster under clauses 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.

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.

An assignment of a right has no lawful effect unless signed by or on behalf of the assignor and assignee.

A licence to deal with a right has no lawful effect unless signed by or on behalf of the licensor and licensee.

PART 9 – ENFORCEMENT OF RIGHTS

Clause 54 provides that in addition to the powers and jurisdiction of the Supreme Court under the Constitution and 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 the 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; or
- (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 owner of the right, 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.

Clause 55 provides for presumptions in any action for an alleged infringement of copyright.

It shall be presumed, unless the defendant puts it in issue or proves to the contrary, that: copyright or related rights subsist in the work to which the action relates; the plaintiff is the lawful holder of the asserted right; and the person whose name is indicated on an audio visual work in the usual manner as being the producer of the work.

It shall be presumed that the person named as the author of a published work, is the author of the work unless the contrary is proven.

It shall be presumed that where it is proven or admitted that the author is dead or a work was published anonymously or under a pseudonym, the work is an original work; 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 in the case of a work which was published anonymously or under a pseudonym, the publisher of the work is the copyright owner.

Clause 56 provides that where a person who claims to be a right holder or exclusive licensee threatens any person with legal proceedings in respect of an alleged infringement of copyright, the person threatened may:

- (a) bring an action against the claimant and obtain an injunction against the continuance of the threat;
- (b) recover damages for such threat and interference of the person's rights.

This provision shall not apply where the claimant commences and prosecutes an action with due diligence for infringement of his or her copyright or related rights.

Clause 57 provides that Customs may seize any suspected illegal goods at the ports of entry under the *Customs Act 2014*.

Clause 58 is an offence provision where a person infringes any rights or related rights of an author or owner of a copyright or related rights, such person commits an offence and upon conviction shall be liable to a penalty under clause 59.

Clause 59 provides for criminal sanctions for infringement of a right protected under this Bill, if a person commits a willful or by gross negligence and for profit making shall be punished with a fine of not more than \$50,000. The Court may increase the penalty where the defendant has been convicted for a second or further act of infringement within 5 years of the previous conviction for copyright infringement.

The Court shall apply the remedies under clause 54 in criminal proceedings if no decision has yet been taken on such remedies in a civil proceeding.

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.

PART 10 - MISCELLANEOUS

Clause 60 vests jurisdiction in the District Court to hear matters relating to any offence committed under the Act.

Clause 61 provides that copyright and related rights may be managed by an individual right holder or his or her lawfully authorised agent or the rights management society.

Clause 62 provides for the regulation making power of the Cabinet to make regulations prescribing all matters necessary or convenient to give effect to this Act.