

DRAFT COPYRIGHT ACT

THE REPUBLIC OF SEYCHELLES

The Copyright Act, [date]

36. Miscellaneous provisions

DRAFT COPYRIGHT BILL

Short title, Entry into Force

1. (a) This Law may be cited as the Copyright Act of [date].
(b) This Law shall enter into force on [date to be determined]. The provisions of this Law shall apply also to works, performances, phonograms and broadcasts dating back to before the date of the entry into force of this Law, provided that the term of protection had not expired under the former legislation or under the legislation of the country of origin of such works, performances, phonograms or broadcasts that are protected under an international treaty to which the Republic of Seychelles is party. The Law shall not affect contracts on works, performances, phonograms and broadcasts concluded before the entry into force of this Law.
(c) Copies that were lawfully made without the authorization of the right owner before the entry into force of this Law may be distributed to the public without the permission of the right owner for a period of two years from the date of entry into force of this Law.

Interpretation

2. For the purpose of this Law, the following terms have the following meaning:
 - (i) an “audiovisual work” is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds, susceptible of being made audible;
 - (ii) “author” is the natural person who has created the work;
 - (iii) “broadcasting” is the communication of a work, a performance or a phonogram to the public by wireless transmission, including transmission by satellite;
 - (iv) “communication to the public” is the transmission by wire or by wireless means of a work, a performance, a phonogram or a broadcast in such a way that it can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the work, performance, phonogram or broadcast would not be perceivable, including the making available of the work or other protected subject matter in such a way that members of the public may access it from a place and at a time individually chosen by them;
 - (v) “computer” is an electronic or similar device having information-processing capabilities; and a “computer program” is a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

(vi) “distribution [to the public]” is putting into public circulation the original or a

broadcast, or appears in connection with broadcasting, communication to the public or making available to the public of a work, ~~and~~ performance, a phonogram or a broadcast;

(xx) “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 authorized by the right holder.

(xxi) “circumvent technological protection measures” means to avoid, bypass, remove, deactivate, or impair these measures, including scrambling a scrambled work or object of related right or decrypting an encrypted work or object of related right.

(xxii) “work” is any literary or artistic work under Sections 3(1) and 4(1);

(xxiii) “work of applied art” is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

(xxiv) “work of joint authorship” is a work to the creation of which two or more authors have contributed.

PART I

COPYRIGHT

Works Protected

3. (1) Literary and artistic works (hereinafter referred to as “works”) are original intellectual creations in the literary and artistic domain, including in particular:

(a) books, pamphlets, ~~titles~~ and other writings;

(b) speeches, lectures, addresses, sermons and other oral works;

(c) dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;

(d) musical works, with or without accompanying words;

(e) audiovisual works;

(f) works of architecture;

(g) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;

(h) photographic works;

(i) works of applied art;

(j) computer programs;

(k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) Works shall be protected [by the sole fact of their creation] [when they are fixed in some material form] and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Derivative Works

4. (1) The following shall also be protected as works:

(a) translations, adaptations, arrangements and other transformations or modifications of works or traditional cultural expressions/expressions of folklore; and

(b) collections of works, collections of ~~data~~ (databases), whether in machine readable or other form, and collections of traditional cultural expressions/expressions of folklore, provided that such collections are original by reason of the selection or arrangement of their contents.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work or traditional cultural expression/expression of folklore incorporated in or utilized for the making of such a work.

Subject Matter Not Protected

5. Notwithstanding the provisions of Sections 3 and 4, no protection shall extend under this Law to:

(a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a 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.

Economic Rights

6. (1) The author or other owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the work:

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement ~~or~~ transformation of the work;
- (d) distribution of the original or a copy of the work to the public;
- (e) rental of the original or a copy of an audiovisual work, a work embodied in a phonogram or a computer program;
- (f) public performance of the work;
- (g) broadcasting of the work;
- (h) other communication to the public of the work.

(2) The right of distribution under item (d) of subsection (1) does not apply to the original or a copy of the work that has already been subject to a sale or other transfer or ownership in [any country] [the national territory] authorized by the owner of copyright.

(3) The right of rental under item (e) of subsection (1) does not apply to rental of computer programs where the program itself is not the essential object of the rental.

Moral Rights

7. (1) Independently of his economic rights, and even where he is no longer the owner of the said rights, the author of a work shall have the following moral rights:

- (a) to have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;
- (b) to not have his name indicated on the copies and in connection with any public use of his work[,and the right];
- (c) to use a pseudonym;
- (d) to object to any distortion, mutilation ~~or~~ other modification of, or other derogatory action in relation to his work which would be prejudicial to his honor or reputation.

(2) The rights mentioned in subsection (1) shall not be transmissible during the life of the author, but the right to exercise any of those rights may be transferred by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under item (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived. Following the death of the author, the natural person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

Private Reproduction for Personal Purposes

8. (1) Subject to the provisions of subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorization of the author or owner of copyright, where the reproduction is made by a natural person exclusively for his own personal purposes.

(2) The permission under subsection (1) shall not extend to reproduction:

(a) of a work of architecture in the form of building or other construction;

(b) in the form of reprography of the whole or of a substantial part of a book or of a musical work in the form of notation;

(c) of the whole or of a substantial part of a database in digital form;

(d) of a computer program, except as provided in Section 14; and

(e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

Temporary Reproduction

9. The temporary reproduction of a work shall be permitted if all the following conditions are met:

(a) the reproduction is made in the process of a digital transmission of the work or an act of making a digitally stored work perceptible;

(b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose;

(c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a lecture, address, sermon or other work of a similar nature delivered in public, to the extent justified by the purpose of providing current information.

Reproduction and Adaptation of Computer Programs

Ephemeral recordings

16. Any broadcasting organization may make, without the authorization of the author or other owner of copyright, for the purpose of its own broadcasts and by means of its own

(3) An assignment in whole or in part of any economic right, or a license to do an act subject to authorization by the author or other owner of copyright, shall not include or be deemed to include the assignment or license of any other rights not explicitly referred to therein.

PART II

PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS

(3) The right of distribution under item (d) of subsection (1) shall not apply to a copy of a fixation of his performance that has already been subject to a sale or other transfer of ownership in [any country] [the national territory] authorized by the performer.

(4) Independently of the performer's economic rights, and even after the transfer of

Limitations on Protection

26. Sections 22, 23, 24 and 25 shall not apply where the acts referred to in those Sections are related to:

(a) using short excerpts for reporting ~~current~~ events to the extent justified by the purpose of providing current information;

(b) reproduction solely for scientific research;

(c) reproduction solely for the purpose of [face-to-face] [distance teaching] teaching activities, except for performances and phonograms which have been published as teaching or instructional materials;

(d) cases where, under Part I, a work can be used without the authorization of the author or other owner of copyright.

PART III

ENFORCEMENT OF RIGHTS

Provisional Measures

27. (1) Upon the request of the right owner, the court having jurisdiction of a civil action arising under this Law may, in accordance with [the relevant provision-1.(n)-covi-1.(n)-covi

Civil Remedies

28. (1) Where an act has been found to be an infringement of any right protected under this Law, the court may, upon the request of the right owner, order the infringer to desist from such act.

(3) The court may apply the measures and remedies referred to in Section 27(1)(b) and (2) and Section 28(3) and (4) also in criminal proceedings.

Technological Protection Measures

30. (1) It is prohibited to:

(a) circumvent effective technological protection measures; or

(b) produce, import, distribute, sell, rent, advertise for sale or rental, or possess devices, products, components or ~~uses~~ 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.

Technological protection measures are “effective” where the use of a work or object of related right protected under this Law 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.

(2) Notwithstanding subsection (1), upon the ~~request~~ by the beneficiary of an exception or limitation in accordance with Sections 11, 12, 13, 15, 16 or 17, a [competent administrative authority] [court] may order that the necessary means be made available to the extent required to benefit from it.

[(3) The provisions of paragraph.9(ic)d.6(f)cT* 0 Tc purposes t2Ns pos mepos miohe tfrom it.

(b) distribute, import for distribution, broadcast or communicate to the public of works or other subject-matter protected under this Law from which electronic copyright management information has been removed or altered without the authorization of the right owner when such act will induce, enable, facilitate or conceal an infringement of any right covered by this Law.

(2) Subsection (1) does not prohibit any gover

Miscellaneous Provisions

36. (1) Existing provisions on the protection of literary and artistic works, performers, producers of phonograms and broadcasting organizations cease to have effect.

(2) The Minister of shall be authorized to regulate by decree questions whose regulation may be necessary for the implementation of this Law, including the setting up of one or more organizations to manage rights on behalf of the owners of such rights and determining the conditions under which such organizations shall work.