

A BILL

for

**AN ACT TO PROVIDE COMPREHENSIVE PROVISIONS WITH RESPECT TO
COPYRIGHT**

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

Short

Title 1. (1) This Act may be cited as the Copyright Act 2001.

(2) This Act shall come into force on a day proclaimed by His Majesty in Council.

Interpr

etation 2. In this Act unless the contrary intention appears -

“audiovisual work” means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds,

of being made audible;

“author” means a natural person who has created the work;

“broadcasting”

“computer” means an electronic or similar device having information processing capabilities;

“computer programme” means 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;

“Court” means the Supreme Court of Tonga;

“economic rights” means the rights mentioned in section 6;

“expression of folklore” means a group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including:

- (a) folktales, folk poetry and folk riddles;
- (b) folk songs and instrumental folk music;
- (c) folk dances and folk plays;
- (d) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terra-cotta, mosaic, woodwork, metalware, jewelry, handicrafts, costumes, and indigenous textiles;

“fixation”

places and times, and where the performance can be perceived without the need for communication to the public;

“published” refers to a work or a phonogram, tangible copies of which have been

PART I

COPYRIGHT

- Works 3.
protected
- (1) Literary and artistic works are original intellectual creations including:-
 - (a) books, pamphlets, articles, computer programmes 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) 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 and irrespective of their mode or form of expression, or of their content, quality and purpose.

Subject 5.
matter
not protected.

Notwithstanding the provisions of sections 3 and 4, no protection under this Act shall extend 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, or any official translation thereof.

Economic 6.
rights

(1) Subject to the provisions of sections 9 to 16 **bis**, the author or other owner of copyright shall have the exclusive right to carry out or to authorise the following acts in relation to the work:-

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement or other transformation of the work;
- (d) the distribution to the public by sale, rental, public lending or otherwise of the original or a copy of the work that has not already been subject to a **sale or other transfer of ownership** authorised by the owner of copyright;
- (e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a phonogram, a computer program, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;
- (f) importation of copies of the work;
- (g) public display of the original or a copy of the work;
- (h) public performance of the work;
- (i) broadcasting of the work;
- (j) other communication to the public of the work.

(2) The rights of rental and lending under subsection (1) (e) do not apply to rental or lending of computer programs where the program itself is not the essential object of the rental or lending.

Moral 7.

(1) Independently of his economic rights, and even where he is no

rights

- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notation;
- (c) of the whole or a substantial part of a database in digital form;
- (d) of a computer program, except as provided in section 14; or
- (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. Notwithstanding the provisions of section 6 (1) (a), 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) it is caused by a person or entity that, by way of authorisation by the owner of copyright or by operation of law, is entitled to make that digital transmission or making a digitally stored work perceptible; and
- (c) it is ancillary to that digital transmission or the making perceptible of digitally stored work, 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).

Quotation

10. Notwithstanding the provisions of section 6 (1)(a), the reproduction, in the form of quotation, of a short part of a

- (i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research;
 - (ii) the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; and
 - (iii) there is no collective licence available (that is, offered by a collective administration organization of which the library or archive is or should be aware) under which such copies can be made; or
- (b) where the copy is made in order to preserve and, if necessary, replace a copy or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive provided that it is impossible to obtain such a copy under reasonable conditions and provided further that the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

Reproduction,
broadcasting
and other
communication
to the public
for information purposes.

13. Notwithstanding the provisions of section 6 (1) (a), (i) and (j), the following acts shall be permitted in respect of a work without the authorisation of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:-

- (a) the reproduction in a newspaper or periodical or the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character, provided that this permission shall not apply where the right to authorise reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or is acknowledged in connection with broadcasting or other communication to the public of the work;

(b)

Display
of works

16. Notwithstanding the provisions of section 6 (1) (g), the public

subsection (1) or subsection (2) shall apply, as the case may be.

- (5) In the case of a work of applied art, the economic and moral rights shall be protected for twenty five years from the making of the work.
- (6) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would

- Presumption of authorship and of representation of the author
19. (1) The person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.
- (2) In the case of an anonymous or pseudonymous work, subject to the provision of subsection (1), the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author. This presumption shall cease to apply when the author reveals his identity.
- Assignment and licence of authors' rights.
20. (1) Economic rights shall be assignable in whole or in part.
- (2) Any assignment of an economic right, and any licence to do an act subject to authorisation by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.
- (3) An assignment in whole or in part of any economic right, or a licence to do an act subject to authorisation by the author or other owner of copyright, shall not include or be deemed to include the assignment or licence of any other rights not explicitly referred to therein.

- (3) Independently of the performer's economic rights, also after the transfer of those rights, the performer shall, as regards his live aural performances and performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that he considers prejudicial to his reputation. The provisions of subsections (2) and (3) of section 7 apply *mutatis mutandis* to the rights granted under this subsection.
- (4) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favourable for them in respect of their performances.
- (5) The right under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed in a phonogram, or in the absence of such a fixation, from the end of the year in which the performance took place.

Acts requiring
authorisation of
producers of
phonograms.

- 22. (1) Subject to the provisions of section 25 a producer of a phonogram shall have the exclusive right to carry out or to authorise any of the following acts:-
 - (a) direct or indirect reproduction of the phonogram, in any manner or form;
 - (b) importation of copies of the phonogram;
 - (c) the distribution to the public by sale or other transfer of ownership, of the original or copies of the phonogram that have not already been subject to a distribution authorised by the producer;
 - (d) rental to the public or public lending of the original or copies of the phonogram, irrespective of the ownership of the copy rented or lent;
 - (e) the making available to the public of the phonogram, by wire or wireless, in such a way that members of the public may access it from a place or at a time individually chosen by them.

- (2) The rights under subsection (1) shall be protected from the publication of the phonogram until the end of the fiftieth calendar year following the year of publication or, if the phonogram has not been published from the fixation of the phonogram until the end of the fiftieth calendar year, following the year of fixation.
- Equitable remuneration for use of phonograms 23. (1) If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the phonogram shall be paid by the user to the producer.
- (2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.
- (3) The right to an equitable remuneration under this section shall subsist from the date of publication of the phonogram until the end of the fiftieth calendar year following the year of publication or, if the phonogram has not been published, from the date of fixation of the phonogram until the end of the fiftieth calendar year following the year of fixation.
- (4) For the purposes of this section, phonograms that have been made available to the public by wire or wireless, in such a way that members of the public may access them from a place and at a time individually chosen by them shall be deemed to have been published for commercial purposes.
- Acts requiring authorisation of broadcasting organizations. 24. (1) Subject to the provisions of section 25 a broadcasting organization shall have the exclusive right to carry out or to authorise any of the following acts:-
- (a) the re-broadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast;
- (d) the reproduction of a fixation of its broadcast.
- (2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of

the fiftieth calendar year following the year in which the broadcast takes place.

- Limitations on protection
25. Sections 21, 22, 23, and 24 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 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 authorisation of the author or other owner of copyright.

PART III

ENFORCEMENT OF RIGHTS

- Conservatory
and provisional
measures
26. (1) The Court having jurisdiction of a civil action arising under this Act, shall have the authority :-
- (a) to grant injunctions to prohibit the committing, or continuation of committing, of infringement of any right protected under this Act;
 - (b)

manner as to avoid harm to the owner of the right unless he requests otherwise. This provision shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

- (3) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court shall order their destruction or other reasonable disposition in such a manner as to minimize the risks of further infringements or surrender to the owner of the right.
- (4) Where there is a danger that acts of infringement may continue, the Court shall order th

is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the programme;

PART IV
MISCELLANEOUS

Scope of

- (a) phonograms the producers of which are nationals of Tonga;
 - (b) phonograms first fixed in Tonga; or
 - (c) phonograms first published in Tonga.
- (3) The provisions of this Act on the protection of broadcasts shall apply to :-
- (a) broadcasts of broadcasting organizations the headquarters of which are situated in Tonga; and
 - (b) broadcasts transmitted from transmitters situated in Tonga.
- (4) The provisions in this Act shall also apply to performers, producers of phonograms and broadcasting organizations

