

A BILL FOR

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COPYRIGHT ACT 2002

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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 2002.

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

Interpretation

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, susceptible of being made visible and, where accompanied by sounds, susceptible of being made audible;

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

“*broadcasting*” means the communication of a work, a performance or a phonogram to the public by wireless transmission, including transmission by satellite;

“*collective work*” means a work created by two or more natural persons at the initiative and under the direction of a natural person or legal entity, with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing natural persons will not be indicated;

“*communication to the public*” means, the transmission by wire or without wire of the images or sounds, or both, of a work, a performance, a phonogram or a broadcast in such a way that the images or sounds 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 images or sounds would not be perceivable and, further irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places and times individually chosen by them;

“*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 but does not include a still picture extracted from an audiovisual work;

“*producer*” of an audiovisual work or a phonogram means the natural person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or phonogram;

“*public display*” means showing of the original or a copy of the work

- directly,
- by means of a film, slide, television image or otherwise on screen,
- by means of any other device or process, or,
- in the case of an audiovisual work, the showing of individual images non-sequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time or at different places and times, and where the work can be displayed without communication to

PART I

COPYRIGHT

Works 3.
protected

- (1) Literary and artistic works are original intellectual creations including:-
 - (a) books, pamphlets, articles, computer programs 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)

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. (1) Subject to the provisions of sections 9 to 17, the author or other

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 right :-
 - (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) not to have his name indicated on the copies and in connection with any public use of his work, and the right to use a pseudonym;
 - (c) 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 honour or reputation.
- (2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the author, but the right to exercise any of those rights shall be transmissible 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 subsection (1) (c) 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) Notwithstanding the provisions of section 6 (1) (a), and subject to the provisions of subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorisation of the author or owner of copyright, where the reproduction is made by a 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 of

- (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

- Reproduction for teaching
11. (1) Notwithstanding the provisions of section 6 (1) (a), the following acts shall be permitted without authorisation of the author, or other owner of copyright:-
- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings, provided that such reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;
 - (b) the reprographic reproduction, for face-to-face teaching in educational institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that -
 - (i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions, and
 - (ii) there is no collective licence available (that is, offered by a collective administration organization of which the educational institution is or should be aware) under which such reproduction can be made.
- (2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under paragraph (1).
- Reprographic reproduction by libraries and archives
12. Notwithstanding the provisions of section 6 (1) (a), 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 single copy of the work by reprographic reproduction :-

- (i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research;
- (ii)

- (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 political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information.

Reproduction
and adaptation
of computer
programs

14. (1) Notwithstanding section 6 (1) (a) and (c), the reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorisation of the author or other owner of copyright, provided that the copy or adaptation is necessary :-
- (a) for use of the computer program for the purpose and extent for which the computer program has been obtained;
 - (b) for archival purposes and for the replacement of the lawfully owned copy of the computer program where the said copy is lost, destroyed or rendered unusable.
- (2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (1) and any such copy or adaptation shall be destroyed when continued possession of the copy of the computer program ceases to be lawful.

Importation
for
personal
purposes

15. Notwithstanding the provisions of section 6 (1) (f), the importation of a copy of a work by a person for his own personal purposes shall be permitted without the authorisation of the author or other owner of copyright. r

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| Display
of works | 16. Notwithstanding the provisions of section 6 (1) (g), the public display of originals or copies of works shall be permitted without the authorisation of the author, provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other electronic device or process, and provided further that the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title. |
| Ephemeral
Recording | 17. Notwithstanding the provisions of Section 6(1)(a), any broadcasting organisation may make, for the purpose of its own broadcasts and by means of its own facilities, an ephemeral recording of any work which it is authorized to broadcast. All copies of it shall be destroyed within six months of the making or within any longer term agreed to by the author; however, where such recording has an exceptional documentary character, one copy of it may be preserved in official archives. |
| Duration of
Copyright | 18. (1) Subject to the provisions of subsections (2) to (5), the economic and moral rights shall be protected during the life of the author and for fifty years after his death.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights shall be protected for fifty years from the date on which the work was either made, first made available to the public, or first published, whichever date is the latest.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for fifty years from the date on which the work was either made, first made available to the public or first published, whichever date is the latest, provided that where the author's identity is revealed or is no longer in doubt |

before the expiration of the said period, the provisions of 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 otherwise expire.

Original
Ownership of
economic rights.

- 19. (1) Subject to the provisions of subsections (2) to (5), the original owner of economic rights is the author who has created the work.
- (2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights. If, however, 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

PART II

PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND
BROADCASTING ORGANISATIONS

- Acts requiring authorization of performers
22. (1) Subject to the provisions of section 25 a performer shall have the exclusive right to carry out or to authorise any of the following acts:-
- (a) the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication
 - (i) is made from a fixation of the performance, other than a fixation made under the terms of section 25 or otherwise made without the authorisation of the performer; or
 - (ii) is a rebroadcasting made or authorised by the organization initially broadcasting the performance;
 - (b) the fixation of his unfixed performance;
 - (c) the direct or indirect reproduction of a fixation of his performance in any manner or form;
 - (d) the distribution to the public by sale or other transfer of ownership of a fixation of his performance, or copies thereof, that has not already been subject to a distribution authorised by the performer;
 - (e) rental to the public or public lending of a fixation of his performance, or copies thereof, irrespective of

- (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

- (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 24. (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. 25. (1) Subject to the provisions of section 26 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

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;

PART III

ENFORCEMENT OF RIGHTS

- Conservatory and provisional measures
27. (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) to order the impounding of copies of works or phonograms suspected of being made or imported without the authorisation of the owner of any right protected under this Act where the making or importation of copies is subject to such authorisation, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to, such copies.
- (2) The provisions of the Police Act and the Magistrates' Courts Act relating to search and seize shall apply as if all references to an offence in those provisions include infringements of rights under this Act.
- (3) The provisions of the Customs and Excise Act dealing with suspension of the release of suspected illegal goods shall apply to articles and implements protected under this Act.
- Civil remedies
28. (1) The owner of any right protected under this Act whose right has been infringed shall be entitled to payment, by the infringer, of damages for the prejudice suffered as a consequence of the act of infringement and the payment of expenses caused by the infringement, including legal costs. In fixing the amount of damages the Court shall take into account the importance of the material and moral prejudice suffered by the owner of the right and the infringer's profits attributable to the infringement. Where the infringer did not know or had no reasonable cause to know that he was engaged in infringing activity, the Court may limit damages to the profits of the infringer attributable to the infringement.
- (2) Where infringing copies exist, the Court shall have the authority to order the destruction or other reasonable disposition of those copies and their packaging in such a

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

public, including by satellite, by those who are not entitled to receive the program;

- (c) The removal or alteration of any electronic rights management information without authority;
 - (d) The distributing, importing for distribution, broadcasting, communicating to the public or making available to the public, without authority, of works, performances, phonograms or broadcasts, knowing or having reason to know that rights management information has been removed or altered without authority.
- (2) In the application of sections 27 to 29, any illicit device and means mentioned in subsection (1) and any copy from which rights management information has been removed, or in which such

