

REPUBLIC OF VANUATU

COPYRIGHT AND RELATED RIGHTS ACT NO. 42 OF 2000~~1999~~

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“fixation” means the embodiment of:

- (a) sounds or visual images; or
- (b) the representations of sounds or visual images;

in such a manner that they can at a later time be perceived, reproduced or communicated with or without the aid of a device (for example, a recording of a live musical performance);

“indigenous knowledge” means any knowledge:

- (a) that is created, acquired or ~~in~~ used for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and
- (b) whose nature or use of which has been transmitted from generation to generation; and
- (c) that is regarded as pertaining to a particular indigenous person or people in Vanuatu;

“infringement” is any act that infringes copyright or any other right protected under this Act, and includes any act done in relation to an

“National Cultural Council” means the Vanuatu National Cultural Council established by the Vanuatu National Cultural Council Act [CAP 186];

[“owner” of a right protected under this Act has the meaning given by subsections](#)

“rights management information” has the meaning given by section 2;

“right protected under this Act” means:

(a) the copyright in a work; or

(a)(b) any other right protected under section 23, 24, 27 or 30;

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“sound recording” is any exclusively aural fixation of sounds or representation of sounds regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied, but does not include a fixation of sounds and images, such as the sound track of an

- (ii) a work;
 - (iii) a performer;
 - (iv) the performance of a performer;
 - (v) the producer of a sound recording;
 - (vi) a sound recording;
 - (vii) a broadcaster;
 - (viii) a broadcast;
 - (ix) the owner of any right protected under this Act; or
- (b) information about the terms and conditions of use of a work, a performance, a sound recording or a broadcast and any numbers or codes that represent such information;

and is information that:

- (c) is attached to a copy of a work, a fixed performance, a sound recording or a fixed broadcast; or
- (d) appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast.

APPLICATION

3. This Act applies to works, performances, sound recordings, broadcasts and expressions of indigenous culture that:
- (a) are created on or after the commencement of this Act; or
 - (b) were in existence before that commencement.

CONTRACTUAL RIGHTS NOT AFFECTED

4. This Act does not affect contracts or agreements made before the commencement of this Act relating to works, performances, sound recordings or broadcasts or expressions of indigenous culture.

WORKS PROTECTED

5. (1) A work is an original intellectual creation.
- (2) Without limiting subsection (1), each of the following is a work:
 - (a) an artistic work;
 - (b) a literary work;
 - (c) a dramatic work;
 - (d) a musical work;
 - (e) an audiovisual work;
 - (f) a collective work.
- (2) Works are protected by the sole fact of their creation and irrespective of their mode or form of expression, content, quality or purpose.

DERIVATIVE WORKS

6. The following are also to be protected as works:
 - (a) translations, adaptations, arrangements and other transformations or modifications of works;
 - (b) collections of works, collections of data sets (whether in machine readable or other form), and collections of expressions of indigenous culture if the collections are original by reason of the selection or arrangement of their contents.

CERTAIN SUBJECT MATTER NOT PROTECTED

7. Despite sections 5 and 6, any idea, procedure, system, method of operation, concept, principle, discovery or mere data, (even if expressed, described, explained, illustrated or embodied in a work) is not a work and is not protected under this Act.

PART 2

~~RIGHTS PROTECTED BY~~ COPYRIGHT

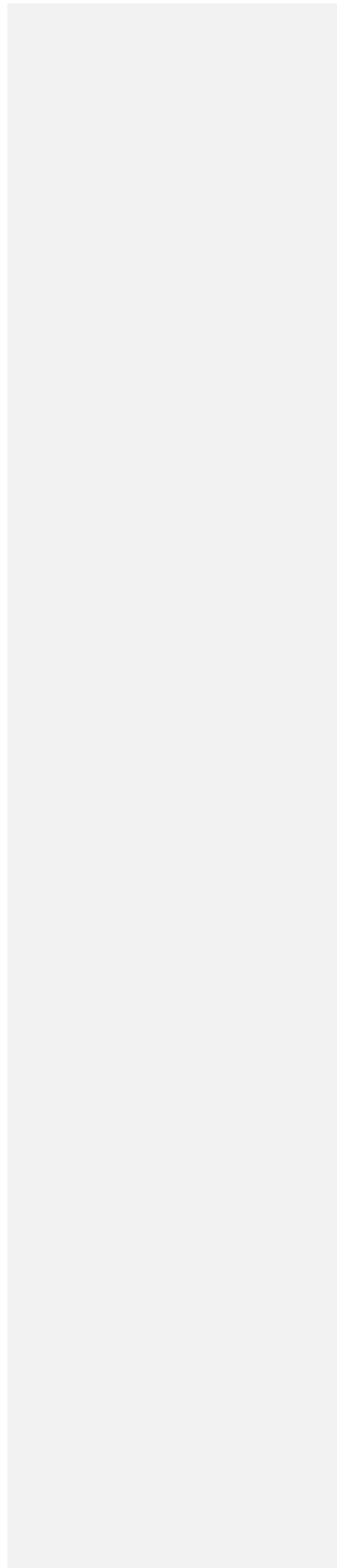
ECONOMIC RIGHTS

8. (1) The owner of the copyright in a work has the exclusive right to carry out or to authorize the following acts in relation to the work:
- (a) to reproduce the work ~~in any manner or form~~ ~~in a material form~~
 - (b) to publish the work;
 - (c) to perform or display the work in public;
 - (d) to broadcast the work;
 - (e) to make an adaptation, arrangement or other transformation of the work;
 - (f) to translate the work;
 - (g) to cause the work to be transmitted to subscribers to a communications service;
 - (h) to distribute the work to the public by sale, rental, public lending or otherwise;
 - (i) to enter into a commercial rental arrangement in respect of an audiovisual work, a work reproduced in a sound recording or a musical work in the form of a notation;
 - (j) in the case of a computer program - to enter into a commercial rental arrangement in

PART 3

QUOTATION

12. (1) The reproduction of a short part



DISPLAY OF WORKS

18. (1) A person may display in public the original or copies of a work if:
- (a) the display is made other than by means of an audiovisual work, slide, television image or otherwise on screen; and
 - (b) either:
 - (i) the work has been published; or
 - (ii) the original or the copy of the work displayed has been sold, given away or otherwise transferred to another person by the author or his or her successor in title.
- (2) The display of the work in accordance with subsection (1) is not an infringement of the copyright in the work.
- (3) The display in public of the original or copies of a work by means of an audiovisual work, slide, television image or otherwise on screen is not an infringement of copyright in the work if its inclusion in such is only incidental to the principal matters being represented.

PART 4

DURATION, NATURE AND ASSIGNMENT OF COPYRIGHT IN WORKS

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DURATION OF COPYRIGHT PROTECTION

19. (1) The ~~copyright-economic and moral rights~~ copyright in a work is ~~are~~ protected for the period set out in the Table.

COPYRIGHT PROTECTION PERIOD TABLE

Item	Kind of work	Period of protection of economic and moral rights
1.	Work of joint authorship	During the life of the last surviving author and for 50 years after his or her death
2.	Collective work (other than a work of applied art) and an audiovisual work	For 50 years on and after the date on which the work: (a) was made; or (b) first made available to the public; (c) first published; whichever date is the latest
3.	Work published anonymously or under a pseudonym	For 50 years on and after the date on which the work: (a) was made; or (b) first made available to the public; (c) first published; whichever date is the latest See also subsection (2)
4.	Work of applied art	25 years on and after the making of the work
5.	Any other work	During the lifetime of the author and for 50 years after his or her death.

- (2) If the author's identity is revealed or is no longer in doubt before the expiration of the 50 year period, item 5 of the Table applies, as the case requires.
- (3) A period provided for in the Table runs to the end of the calendar year in which it would otherwise expire.

ORIGINAL OWNERSHIP OF ECONOMIC RIGHTS

20. (1) Subject to this section, the author ~~of a work who has created~~ work is the original owner of the economic rights in the work.
- (2) The co-authors of a work of joint authorship are the original owners of the economic rights. However if:
 - (a) a work of joint authorship consists of parts that can be used separately; and
 - (b) the author of each part can be identified;

the author of each part is the original owner of the economic rights in the part that he or she has created.
- (3) The person who initiated and directed the creation of a collective work is the original owner of the economic rights.
- (4) If a person creates a work in the course of his or her employment, the employer of that person is the original owner of the economic rights unless provided otherwise in a contract.
- (5) Subject to subsections (6) and (7), the producer of an audiovisual work is the original owner of the economic rights unless provided otherwise in a contract.
- (6) However, the co-authors (if any) of the audiovisual work and the authors of the pre-existing works (if any) included in or adapted for the making of the audiovisual work maintain their economic rights in their contributions or pre-existing works.
- (7) Such rights are maintained to the extent that those contributions or pre-existing works can be the subject of rights covered by economic rights separately from the audiovisual work.

PRESUMPTION OF AUTHORSHIP AND OF REPRESENTATION OF THE AUTHOR

21. (1) An individual whose name is indicated as the author on a work in the usual manner is presumed to be the author of the work in the absence of proof to the contrary.
- (2) Subsection (1) applies even if the name is a pseudonym and the pseudonym leaves no doubt as to the identity of the author.
- (3) In the case of an anonymous or pseudonymous work, the publisher whose name appears on the work:
 - (a) is presumed to represent the author in the absence of proof to the contrary; and
 - (b) in this capacity, is entitled to exercise and enforce the moral and economic rights of the author.
- (4) The presumption in subsection (3) ceases to apply when the author reveals his or her identity.

ASSIGNMENT AND LICENSE OF AUTHORS' ECONOMIC RIGHTS

22. (1) Economic rights are assignable in whole or in part, and may also be subject to a licence.
- (2) An assignment of any economic right:
 - (a) must be in writing signed by the assignor and the assignee; and
 - (b) does not include the assignment of any rights not explicitly referred to in the assignment.
- (3) A licence to do an act in relation to a work subject to authorisation by the owner of the copyright in the work:
 - (a) must be in writing signed by the licensor and the licensee; and
 - (b) does not include any other act not explicitly referred to in the licence.

PART 5

PROTECTION OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND BROADCASTING ORGANIZATIONS

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Division 1 – Performers

ACTS REQUIRING AUTHORIZATION OF PERFORMERS

23. (1) A performer has the exclusive right to carry out or to authorize any of the following acts:
- (a) to broadcast or communicate in any way to the public:
 - (i) his or her live performance; or
 - (ii) a fixation of his or her performance if the fixation has been made under section 32 or has been made without the authorisation of the performer;
 - (b) to fixate his or her unfixed performance;
 - (c) to reproduce directly or indirectly a fixation of his or her performance in any manner or form;
 - (d) to make available to the public for the first time a fixation of his or her performance, or copies of it, through sale or other transfer of ownership;
 - (e) to rent to the public a fixation of his or her performance, or copies of it, irrespective of the ownership of the copy rented;
 - (f) to make available to the public his or her fixed performance, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them.
- and is the owner of the rights protected under this section.
- (2) A performer does not have the exclusive right referred to in paragraph (1)(a) if the broadcasting or other communication is a rebroadcasting made or authorised by the organization initially broadcasting the performance.
- (3) Subsection (1) does not apply if the performer has authorized the incorporation of his or her performance in an audiovisual fixation.

PERFORMERS' RIGHTS IN RELATION TO LIVE AURAL
PERFORMANCES AND PERFORMANCES FIXED IN PHONOGRAMS

24. (1) The rights provided for under this section apply independently of the performer's rights provided for under section 23 even after the transfer of those rights to another person.

(2) The performer has in respect of his or her live aural performances and performances fixed in phonograms the right:

(a) to claim to be identified as the performer

AGREEMENT FOR BETTER TERMS AND CONDITIONS

26. A performer has the right to enter into agreements relating to his or her performances on terms and conditions that are more favourable than those provided for in this Division.

Division 2 –Sound recordings

ACT REQUIRING AUTHORIZATION OF PRODUCERS OF SOUND RECORDING

27. A producer of a sound recording has the exclusive right to carry out or to authorize any of the following acts:
- (a) to reproduce a sound recording in any manner or form;
 - (b) to import copies of the sound recording;
 - (c) to make available to the public by sale or other transfer of ownership, the original or copies of the sound recording, being a sound recording that has not already been subject to a distribution authorized by the producer;
 - (d) to rent to the public a copy of the sound recording, irrespective of the ownership of the copy rented;
 - (e) the making available to the public the sound recording, by wire or wireless means, in such a way that members of the public may access it from a place and at a time individually chosen by them;
- and is the owner of the rights protected under this section.

PERIOD OF PROTECTION FOR PRODUCERS OF SOUND RECORDINGS

28. The rights under section 27 are protected from the publication of the sound recording until:
- (a) the end of the fiftieth calendar year following the year of publication; or
 - (b) if the sound recording has not been published - from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

EQUITABLE REMUNERATION FOR USE OF SOUND RECORDING

29. (1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is:

- (a) used directly for broadcasting or other communication to the public; or
- (b) is publicly performed;

the user of the sound recording must pay to the producer of the sound recording an amount for the performer or performers and the producer.

(2) The producer must pay half of the amount received under subsection (1) to the performer or performers unless otherwise agreed between the performers and the producer.

(3) The right to an equitable remuneration under this section subsists:

- (a) from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication; or
- (b) if the sound recording has not been published - from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

Division 3 – Broadcasting organisations

ACTS REQUIRING AUTHORIZATION OF BROADCASTING ORGANISATIONS

30. A broadcasting organisation has the exclusive right to carry out or to authorize the following acts:

- (a) to rebroadcast its broadcast;
- (b) to communicate to the public its broadcasts;
- (c) to fixate its broadcast;
- (d) to reproduce a fixation of its broadcasts;

and is the owner of the rights protected under this section.

PART 6

ENFORCEMENT OF RIGHTS AND PROTECTION REQUIREMENTS

CIVIL REMEDIES

- | ~~33.34~~ (1) The Supreme Court has jurisdiction in respect of civil matters arising under this Act.

- | (2) The owner of the copyright in a work the owner of any other right protected under this Act may bring an action for an infringement of the copyright or that other right and is entitled to payment by the infringer:
 - (a) of damages for the prejudice and loss suffered as a consequence of the infringement; and
 - (b) of expenses caused by the infringement, including reasonable legal costs.

- (3) The Court is to determine the amount of damages and may take into account:
 - (a)

- (5) The Court must not make an order under subsection (4) in relation to infringing copies and their packaging which were acquired by a person in good faith.
- (6) An exclusive licensee of a right protected under this Act may bring proceedings under this section for an infringement of that right as if the exclusive licence were an assignment of that right by the owner and the exclusive licensee were the assignee.
- (7) The author of a work or a performer may bring an action for damages under this section for infringement of his or her moral right rights in relation to his or her work or performance, as the case requires.
- (8) The Director of Customs may in accordance with the relevant provisions of the Customs Act No. 15 or 1999 seize infringing copies and implements mentioned in paragraph (4)(d) and deal with them in accordance with that Act.

OFFENCE

- 354. (1) The Supreme Court has jurisdiction in respect of criminal matters under this Act.
- (2) A person who intentionally and for profit making purposes infringes a right protected under this Act is ~~guilty~~ ^{liable} of an offence punishable on conviction by a fine not exceeding 2,000,000 Vatu or imprisonment for not more than 2 years, or both.

the person is guilty of an offence punishable on conviction by a fine not exceeding 1,000,000 Vatu or a term of imprisonment not exceeding one year, or both.

- | (2) Section [33](#) applies in relation to an act mentioned in subsection (1).
- | (3) For the purposes of section [43](#)
 - (a) an act mentioned in subsection (1) is taken to be an infringement of a right protected under this Act; and
 - (b) any work, performance, sound recording or broadcast from which rights management information has been removed, or in which such information has been altered, is taken to be an infringing copy.

AFFIDAVIT EVIDENCE

38. (1) This section applies at the trial of a proceeding if the proceeding is:

- (a) a civil action brought under this Act; or
- (b) a prosecution for an offence under this Act.

(2) Evidence in the proceeding may be given by affidavit if the evidence is that:

- (a) at a particular time, a right protected under this Act subsisted in the work or other subject-matter to which the proceeding relates; or Formatted
- (b) at a particular time, that right in that work or subject-matter was owned by, or exclusively licensed to, a particular person; or Formatted
- (c) at a particular time, that right in that work or subject-matter was not owned by, or exclusively licensed to, a particular person; or Formatted
- (d) a particular act was done without the authority of the owner of that right, or of the exclusive licensee of that right, in that work or subject-matter. Formatted
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(3) However, if a party to the proceeding wants in good faith to cross examine the person who made the affidavit with respect to the matters in the affidavit, the affidavit may not be used in the proceeding unless:

- (a) the person appears as a witness for cross-examination; or
- (b) the Supreme Court, in its discretion, permits the affidavit to be used without the person appearing.

PROTECTION REQUIREMENTS FOR WORKS

39. (1) This Act applies to:

- (a) works of authors who are citizens of, or have their habitual residence in, Vanuatu; and
- (b) works first published in Vanuatu irrespective of the nationality or residence of their authors; and
- (c) works first published in another country and also published in Vanuatu within 30 days, irrespective of the nationality or residence of their authors; and

(d) audiovisual works if the producer of such works has his or her headquarters or habitual residence in Vanuatu; and

(e) works of architecture erected in Vanuatu and other artistic works incorporated in a building or other structure located in Vanuatu.

(2) This Act also applies to works that are eligible for protection in Vanuatu by virtue of and in accordance with international conventions or other international agreements to which Vanuatu is a party.

PROTECTION REQUIREMENTS

PART 7

EXPRESSIONS OF INDIGENOUS CULTURE

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OFFENCE TO CONTRAVENE CUSTOM IN RELATION TO EXPRESSIONS OF INDIGENOUS CULTURE

~~37.41(1)~~ ~~(1)~~ ~~Subject to subsection (2),~~ if a person does an act of a kind mentioned in subsection 8(1) or 23(1) in relation to an expression of indigenous culture (for example, reproduces an indigenous carving ~~in material form~~) and the person:

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- (a) is not one of the custom owners of the expression; or
- (b) has not been sanctioned or authorised by the custom owners to do the act in relation to the expression; or
- (c) has not done the act in accordance with the rules of custom;

the person is guilty of an offence punishable on conviction by a fine not exceeding 1,000,000 Vatu or a term of imprisonment not exceeding one year, or both.

(2) ~~It is a defence to a prosecution of an offence against~~ Subsection (1) ~~if~~ ~~does not apply if~~ the act concerned:

- (a) related to use exclusively for personal purposes; or
- (b) related to using short excerpts for reporting current events to the extent justified by the purpose ~~of~~ providing current information; or
- (c) related to use solely for the purpose of face to face teaching; or
- (d) is an act that is not an infringement of copyright under Part 3 or of a right protected under Part ~~(See section 32)~~ or
- (e) is an act that has been authorised by the National Cultural Council or the National Council of Chiefs.

(3) ~~To avoid doubt, this~~ This section applies:

- (a) in relation to an act whether or not the person ~~did~~ ~~does~~ the act for profit making purposes; and
- (b) in relation to an expression of indigenous culture regardless of when that expression first came into existence ~~and~~

(e)

- |
- (3) The custom owners of the expression may request the National Cultural Council or the National Council of Chile to institute proceedings on their behalf.

- (b) [any other right protected under this Act](#).
- (9) The National Cultural Council may issue written guidelines for the purposes of this section and section 41.

AFFIDAVIT EVIDENCE

~~39. (1) This section applies at the trial of a proceeding if the proceeding is:~~

- ~~(e) a civil action brought under this Act; or~~
- ~~(d) a prosecution for an offence under this Act.~~

~~(4) Evidence in the proceeding may be given by affidavit if the evidence is that:~~

- ~~(e) at a particular time, copyright subsisted in the work or other subject-matter to which the proceeding relates; or~~
- ~~(f) at a particular time, copyright in that work or subject-matter was owned by, or exclusively licensed to, a particular person; or~~
- ~~(g) at a particular time, copyright in that work or subject-matter was not owned by, or exclusively licensed to, a particular person; or~~
- ~~(h) a particular act was done without the authority of the owner of the~~

|

