

**DRAFT AS AT 13 SEPTEMBER 1999**

**REPUBLIC OF VANUATU**

**BILL FOR THE**

**COPYRIGHT ACT NO. OF 1999**

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REPUBLIC OF VANUATU

BILL FOR THE

COPYRIGHT ACT NO. OF 1999

An Act to provide for copyright and related rights.

**BE IT ENACTED** by the President and the Parliament as follows:

PART 1

PRELIMINARY MATTERS

**INTERPRETATION**

1. (1) In this Act, unless the contrary intention appears:

"artistic work" means:

- (a) a painting, sculpture, drawing, engraving, lithography, tapestry, photograph and other works of fine art whether of artistic quality or not; or
- (b) a building or a model of a building, whether the building or model is of artistic quality or not; or
- (c) an illustration, map, plan, sketch and a three-dimensional work relating to geography, topography, architecture or science; or
- (d) a work of applied art;

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

- (d) productions of indigenous arts, in particular, drawings, paintings, carvings, sculptures, pottery, terra-cotta, mosaic, woodwork, metalware, jewellery, handicrafts, costumes, and indigenous textiles;

“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);

“infringement” is any act that violates any right protected under this Act, and includes any act done in relation to an expression of indigenous culture that is taken to be an infringement under section 6;

"infringing copy" means:

- (a) in relation to a work or sound recording - a reproduction of the work or sound recording; and
- (b) in relation to a broadcast or performance– a reproduction of a fixation of the broadcast or performance;

being an article the making or importing of which is an infringement of the a right protected under this Act;

“literary work” includes:

- (a) a book, pamphlet, article, computer program and other writings; and
- (b) a speech, lecture, address, sermon and other oral works;

“moral right” means a right mentioned in section 9;

“musical works” include musical works with or without accompanying words;

“owner of copyright”, in relation to a work, means:

- (a) the author if the economic rights are vested in the author; or
- (b) if the economic rights are not vested in the author, but are vested in another person – that other person; or

- (c) if the economic rights were originally vested in a person other than the author - that person; and

“performers” mean singers, musicians, and other persons who sing, deliver, play in or otherwise perform:

- (a) dramatic works (including an improvisation) or part of such a work; or
- (b) musical works or part of such a work; or
- (c) literary works or part of such a work; or
- (d) expressions of indigenous culture;

“person” means an individual or a statutory body, a company or any other body corporate or unincorporate;

“photograph” means a product of photography or of a process similar to photography, but does not include a still picture extracted from an audiovisual work;

“producer” of an audiovisual work or a sound recording is the person that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording;

“public lending” means the lending by a public institution, such as a public library or archive, of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes;

“published” means making available to the public in a reasonable quantity for sale, rental or public lending;

“reproduction” is the making of one or more copies of a work or sound recording in any manner or form, including any permanent or temporary storage of the work or sound recording in electronic form;

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

“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 audiovisual work;

“work” has the meaning given by sections 4 and 5;

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

“work of joint authorship” is a work created by 2 or more authors and in which the contribution of each author is not separate from the contribution of the other author or the contributions of the other authors, but does not include a collective work.

- (2) A reference in this Act:
  - (a) to the doing of an act in relation to a work or other subject matter is to be read as including a reference to the doing of that act in relation to a substantial part of the work or other subject matter; and
  - (b) to a reproduction, adaptation or copy of a work is to be read as including a reference to a reproduction, adaptation or copy of a substantial part of the work, as the case may be.

## **RIGHTS MANAGEMENT INFORMATION**

- 2. (1) Subject to subsection (2), information is rights management information if it is:
  - (a) information that identifies any of the following:
    - (i) the author of a work;
    - (ii) a work;
    - (iii) a performer;



(a)

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 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 4 and 5, 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**

## MORAL RIGHTS

9. (1) The author of a work has the moral rights set out in subsection (2) independently of his or her economic rights even if the author is not the owner of the economic rights.
- (2) The moral rights are:
  - (a) to have the author's name indicated prominently on copies of the work and in connection with any public use of the work, as far as practicable; and
  - (b) to not have the author's name indicated on copies of the work and in connection with any public use of the work; and
  - (c) to use a pseudonym; and
  - (d) to object to:
    - (i) any distortion, mutilation or other modification of the work; or
    - (ii) any other action in relation to the work;if it would be prejudicial to the author's honour or reputation.
- (3) Moral rights are not transmissible during the life of the author. However, after an author dies the right to exercise moral rights is transmissible by testamentary disposition or by operation of law.
- (4) An author may waive all or a

## PART 3

### ACTS NOT CONSTITUTING INFRINGEMENT OF COPYRIGHT IN WORKS

#### **PRIVATE REPRODUCTION FOR PERSONAL PURPOSES**

10. (1) Subject to subsection (2), an individual may reproduce a published work in a single copy exclusively for his or her own personal purposes and the reproduction is not an infringement of the copyright in the work.
- (2) An individual must not reproduce the following:
- (a) a work of architecture in the form of a building or other construction;
  - (b) the whole or a substantial part of a book or musical work in the form of notation;
  - (c) the whole or a substantial part of a database in digital form;
  - (d) a computer program, except as provided for in section 16;
  - (e) any work if the reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the copyright owner.

- (a) is compatible with fair practice; and
  - (b) does not exceed the extent justified by the purpose.
- (2) The quotation must be accompanied by:
- (a) an indication of its source; and
  - (b) the name of the author if his or her name appears in the work from which the quotation is taken.

### **REPRODUCTION FOR TEACHING**

13. (1) The reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, is not an infringement of the copyright in the work if:
- (a) the reproduction is compatible with fair practice; and
  - (b) the reproduction does not exceed the extent justified by the purpose; and
  - (c) a collective licence to reproduce the work is not available to the educational institution concerned.
- (2) The source of the work reproduced and the name of the author must be indicated as far as practicable on all copies made under subsection (1).

### **REPRODUCTION BY LIBRARIES AND ARCHIVES**

14. (1) This section applies to a library or archive that does not operate for commercial gain.
- (2) The reproduction of a work in a single copy by the library or archive is not an infringement of the copyright in the work if:
- (a) the work reproduced is a published article, a short extract of a work or an audiovisual work; and
  - (b) the purpose of the reproduction is to satisfy the request of an individual; and
  - (c) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research; and
  - (d) a collective licence to reproduce the work is not available to the library or archive.

(3) The reproduction of a work in a single copy by a library or archive is

- (b) a broadcast on a topic of current interest.
- (4) A person may reproduce:
  - (a) a political speech, a lecture, address, sermon or a work of a similar nature delivered in public; or
  - (b) a speech delivered during legal proceedings;to the extent justified by the purpose of providing current information.
- (5) A person may reproduce for the purpose of reporting current events short excerpts of a work seen or heard in the course of such events to the extent justified by the purpose.

### **REPRODUCTION AND ADAPTATION OF COMPUTER PROGRAMS**

- 16. (1) The lawful owner of a copy of a computer program may reproduce a single copy of the computer program, or make an adaptation of the computer program, if the copy or adaptation is necessary for:
  - (a) the use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or
  - (b) archival purposes; or
  - (c) replacement of the lawfully owned copy of the computer program if that copy is lost, destroyed or rendered unusable.
- (2) The reproduction or adaptation of a computer program in accordance with subsection (1) is not an infringement of the copyright in the computer program.
- (3) A copy or adaptation of a computer program must not be used for any purpose other than a purpose mentioned in subsection (1).
- (4) A copy or adaptation of a computer program must be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

### **IMPORTATION FOR PERSONAL PURPOSES**

- 17. An individual may import a copy of a work for his or her own personal purposes and the importation is not an infringement of the copyright in the work.





PART 4

DURATION NATURE AND ASSIGNMENT OF COPYRIGHT IN WORKS

**DURATION OF COPYRIGHT PROTECTION**

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

<b>TABLE</b>		
<b>Item</b>	<b>Kind of work</b>	<b>Period of protection of economic and moral rights</b>
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 an 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  See also subsection (2)	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 1 or 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 who has created a 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 acts 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**

PART 5

PROTECTION OF PERFORMERS, PERFORMERS OF SOUND RECORDINGS AND  
BROADCASTING ORGANIZATIONS

**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 other way to the public:
    - (i) his or her live performance; or
    - (ii) a fixation of his or her performance if the fixation has

## **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 of his or her performances, unless the manner of the use of the performance makes it impossible; and
  - (b) to object to any distortion, mutilation or other modification of his or her performances that would be prejudicial to his or her reputation.
- (3) The rights referred to in this section are not transmissible during the life of the performer. However, after a performer's death the right to exercise such rights is transmissible by testamentary disposition or by operation of law.
- (4) The performer may waive all or any such rights.
- (5) A waiver must:
- (a) be in writing; and
  - (b) specify the right or rights waived; and
  - (c) specify the circumstances in which the waiver applies.
- (6) Following the death of the performer, the person upon whom or which the performer's rights under this section have devolved has the right to waive the rights.

## **PERIOD OF PROTECTION OF PERFORMERS' RIGHTS**

25. The rights under section 23 and 24 are protected until the end of the fiftieth calendar year following:
- (a) the year in which the performance was fixed in a phonogram; or
  - (b) if this did not happen - the end of the year in which the performance took place.

## **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)

## **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 a single equitable remuneration 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



## **PERIOD OF PROTECTION FOR BROADCASTING ORGANISATIONS**

31. The rights under section 30 are 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.

### **Division 4 – Other matters**

## **LIMITATIONS ON PROTECTION**

32. Sections 23, 24, 27 and 30 do not apply if 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; or
  - (b) reproduction solely for scientific research; or
  - (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) a work that under Part 3 can be used without being an infringement of copyright in the work.

PART 6

ENFORCEMENT OF RIGHTS

## **OFFENCE**

34. (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 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.

## **ACTIONS IN RELATION TO RIGHTS MANAGEMENT INFORMATION**

35. (1) If:
- (a) a person without authority removes or alters any electronic rights management information from any work, performance, sound recording or broadcast; or
  - (b) the person:
    - (i) without authority distributes, imports for distribution, broadcasts, communicates to the public or makes available to the public any work, performance, sound recording or broadcast; and
    - (ii) knows that electronic rights management information has been removed or altered without authority in relation to the work, performance, sound recording or broadcast.

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

## **ABUSES OF TECHNICAL MEANS OF PROTECTION**

- (a) use exclusively for personal purposes; or
  - (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information; or
  - (c) use solely for the purpose of face to face teaching or scientific or other research; or
  - (d) was an act that is not an infringement of copyright under Part 3; or
  - (e) was an act that has been authorised by an organisation established under the regulations for the purposes of protecting expressions of indigenous culture.
- (3) To avoid doubt, subsection (1) applies whether or not the person does the act for profit making purposes.

### **CIVIL REMEDIES FOR CONTRAVENING CUSTOM**

38. (1) Section 33 applies in relation to a person who does an act mentioned in subsection 37(1) and, for the purposes of section 33, the person's act is taken to be an infringement of copyright in the expression of indigenous culture concerned, whether or not copyright exists in that expression.
- (2) For the purposes of section 33, the indigenous custom owners of the expression of indigenous culture concerned are taken to be the owner of the copyright in that expression.
- (3) However, if it is not possible to identify the indigenous custom owners, an organisation referred to paragraph 37(2)(e) may institute proceedings under section 33 as if it were the owner of the copyright.
- (4) The source of any identifiable expression of indigenous culture must be indicated in an appropriate manner and in conformity with fair practice:
- (a) in all printed publications of the expression; and
  - (b) in connection with any communication to the public of the expression;
- by mentioning the community or place from where the expression has been derived.
- (5) This section applies despite any other provision of this Act.

## PART 7

### REQUIREMENTS FOR PROTECTION

#### **LITERARY AND ARTISTIC WORKS**

39. (1) This Act applies to:
- (a) works of authors who are nationals 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 party.

#### **PERFORMERS, SOUND RECORDINGS AND BROADCASTERS**

40. (1) This Act applies to:
- (a) performers who are nationals of Vanuatu; and
  - (b) performers who are not nationals of Vanuatu but whose performances:
    - (i) take place in Vanuatu; or
    - (ii) are incorporated in sound recordings that are protected under this Act; or
    - (iii) have not been fixed in a sound recording, but are included in broadcasts eligible for protection under this Act.

(2) This Act applies to:

- (a) sound recordings if the producers of the recordings are nationals of Vanuatu; and
- (b) sound recordings first fixed in Vanuatu; and
- (c) sound recordings first published in Vanuatu.

(3) This Act applies to:

- (a) broadcasts of broadcasting organizations if the headquarters of the organisationcordir-13.7 -1.15 TD0 Tc0 Tw(the organisationcordir-13.7 -1.15 T

## PART 8

### MISCELLANEOUS

#### **APPLICATION OF INTERNATIONAL TREATIES**

41. The provisions of any international treaties in respect of copyright and related rights to which Vanuatu is a party apply to matters dealt with in this Act, and such provisions prevail in the case of conflict with provisions of this Act.

#### **REGULATIONS**

42. (1) The Minister may, by order in writing, make regulations prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), regulations may:
- (a) provide for the setting up of one or more organizations to administer rights protected under this Act on behalf of the owners of such rights; and
  - (b) determine the conditions under which such organizations are to work.

#### **COMMENCEMENT**

43. This Act commences on the day on which it is published in the Gazette.