

COPYRIGHT BILL 2011
(No. of 2011)

Explanatory Memorandum

The object of this Bill is to

M. CHOONEE

Minister of Arts and Culture

..... 2011

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(No. of 2011)

ARRANGEMENT OF CLAUSES

Clause

- | | |
|--|--|
| <p>PART I – PRELIMINARY</p> <p>1 Short title</p> <p>2 Interpretation</p> <p>PART II – PROTECTION OF WORKS</p> <p>3 Protection of works</p> <p>4 Derivative works</p> <p>5 Subject matter not protected</p> <p>6 Economic rights</p> <p>7 Moral rights</p> <p>8 Alienation of works</p> <p>9. Original ownership of economic rights</p> <p>10. Presumptions regarding authorship, producers of audiovisual works and publishers</p> <p>11. Contracts for commissioned works</p> <p>PART III – FEATURES OF ECONOMIC RIGHTS</p> <p>12. Assignment and licensing of authors' rights</p> | <p>13. Agreement regarding future works</p> <p>14. Non-use of economic rights</p> <p>15. Duration of copyright</p> <p>PART IV – LIMITATIONS ON ECONOMIC RIGHTS</p> <p>16. Private reproduction for personal purposes</p> <p>17. Temporary reproduction</p> <p>18. Quotation</p> <p>19. Reproduction and other utilization for teaching and scientific for non-commercial purposes</p> <p>20. Reproduction by libraries and archives</p> <p>21. Reproduction, broadcasting and other communication to the public for informatory purposes</p> <p>22. Reproduction and adaptation of computer programmes</p> <p>23 Visually impaired persons</p> <p>24 Ephemeral recordings</p> |
|--|--|

25	Importation for personal purposes	63	Commencement
26	Distribution of copies of works		
27.	Public lending		
28	Display of works		
	PARTV–BROADCASTING		
	ORGANISATIONS,PERFORMERS AND		
	PRODUCERS		
29	Rights of broadcasting organisations		
30	Rights of performers		
31	Grant of authorisation by performers		
32	Rights of phonogram producers		
33	Obligations of producers		
34	Notice of protection		
35	Equitable remuneration for use of phonograms		
36	Limitation on protection		
37	Technological protection measures		
38	Protection of rights management information		
39	Prohibited acts assimilated to infringement of rights		
	PART VI – APPLICATION OF ACT		
40	Scope of application –Copyright		
41	Scope of application –Related rights		
	PART VII – THE SOCIETY		
42	Management of rights		
43	The Society and its management		
44	Appointment of staff		
45	Functions of Society		
46	Membership of the Society		
47	General Fund		
48	Publication of accounts		
49	Execution of documents		
50	Exemptions		
51	Rules		
	PART VIII – ADVISORY COUNCIL		
52	Establishment of the Advisory Council		
53	Functions of the Advisory Council		
54	Constitution of the Advisory Council		
55	Meetings of the Advisory Council		
	PART IX – JUDICIAL PROCEEDINGS		
56	Civil remedies		
57	Presumptions		
58	Vain threats		
59	Offences		
	PART X – MISCELLANEOUS		
60	Regulations		
61	Transitional provision–		
62	Repeal		

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Copyright Act 2011.

2. Interpretation

(1) In this Act –

“acknowledgement”, in relation to a work, means the identification of the work –

- (a) by its title or other description; and
- (b) unless the work is anonymous or the author of the work has agreed not to be identified, by its author;

“artistic, literary or scientific work” –

(a) means a production in the artistic, literary or scientific domain;

(b) includes –

- (i) a book, pamphlet or other writing;
- (ii) an illustration or a map, plan or sketch;
- (iii) a lecture, sermon or any other address of a similar nature;
- (iv) a dramatic or dramatico-musical work;
- (v) a musical work;
- (vi) a choreographic work or pantomime;
- (vii) an audiovisual work;
- (viii) a sound recording;
- (ix) a work of –
 - (A) fine art, such as a drawing or painting;
 - (B) architecture or sculpture, an engraving or lithography;

(C) applied art, whether produced by handicraft or on an industrial scale;

(x) a photographic work;

(xi) a computer programme;

(c) does not include –

(i) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if it is or they are expressed, described, explained, illustrated or embodied in a work;

(ii) an official text of a legislative, administrative or legal nature or an official translation thereof;

(iii) news of the day or miscellaneous facts having character of new items of press information;

“audiovisual work” –

(a) means a work consisting of a series of related images and accompanying sounds, if any, which are intended to be shown by any appropriate device;

(b) includes a cinematograph or other film;

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

“Berne Convention” means the Convention for the Protection of Literary and Artistic Works signed in Berne;

“Board” means the Board referred to in section 44;

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

“broadcasting organisation” means the Mauritius Broadcasting Corporation or such other organisation as may be prescribed;

“Chairperson” means the Chairperson of the Board;

“circumvent technological protection measures” means to avoid, bypass, remove, deactivate, or impair these measures, including descrambling a scrambled work or object of related right or decrypting an encrypted work or object of related right;

“communication to the public” means 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;

“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 machine-readable medium, of causing a computer to perform or achieve a particular task or result;

“copy” includes a reproduction of a work in –

- (a) a written form;
- (b) the form of a recording; or
- (c) any other material form;

“copyright” means an economic and moral rights subsisting in a work;

“copyright owner” means where –

- (a) the economic rights are vested in the author;
- (b) the economic rights are originally vested in a natural person other than the author or in a legal entity, that person or entity;
- (c) the ownership of the economic rights has been transferred to a natural person or a legal entity, that person or entity;

“derivative work” –

- (a) means a translation, adaptation, arrangement or other alteration of a pre-existing artistic, literary or scientific work. For avoidance of doubt, the protection of a work under this paragraph shall be without prejudice to the protection of any pre-existing work;

- (b) includes –
- (i) a collection or compilation of pre-existing works, of expressions of folklore or of mere facts or data;
 - (ii) an anthology, an encyclopaedia or a data base; or
 - (iii) any other work, which, by reason of selection and arrangement of its contents, is original;

“display” means to show –

- (a) a copy of a work directly, or by means of a film, slide, television image or otherwise on screen, or by means of any other device or process;
- (b) in the case of audiovisual work, individual images nonsequentially;

“distribution to the public” means putting, into public circulation, the original or a copy of a work, fixation of a performance or a phonogram, in tangible form, through sale or other transfer of ownership, including importing for the purpose of such putting into circulation and public offering for sale and other transfer of ownership;

“economic right” means a right specified in section 6;

“equitable remuneration” means –

- (a) such remuneration as may be prescribed; or
- (b) where no such remuneration has been prescribed, such remuneration as may, in default of agreement between the relevant parties, be determined by the Court.

“exclusive licence” means a licence to the exclusion of all other persons, including the copyright owner;

“expressions of folklore” –

- (a) means production of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations of a community;
- (b) includes folk tales, folk poetry, folk songs, instrumental folk music, folk dances and plays, artistic forms or rituals and production of folk art;

“first published” means –

- (a) first published in Mauritius; or
- (b) first published outside Mauritius and published in Mauritius not later than 30 days thereafter;

“fixation” means the embodiment of sounds, images or both or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

“infringing copy” –

- (a) means a copy of a work which infringes copyright subsisting in the work;
- (b) includes a counterfeit copy;

“licence” means a written authorisation granted by a copyright owner to another person to exploit the copyright for a limited period;

“Minister” means the Minister to whom responsibility for the subject of copyright and related rights are assigned;

“moral right” means a right specified in section 7;

“original work” –

- (a) means a work which is the product of a person’s skill or labour;
- (b) does not include a work which is essentially a copy of another work;

“perform” means to present a work or expressions of folklore by a personal rendition;

“performers” are singers, musicians, and other natural persons who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or traditional cultural expressions or expressions of folklore;

“phonogram” is the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

“photographic work” is 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; for avoidance of doubt, a still picture extracted from an audiovisual work shall not be considered a “photographic work” but a part of the audiovisual work concerned;

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

“public performance” is –

- (a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- (b) in the case of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and
- (c) in the case of a phonogram, making the recorded sounds audible;

“publication or published” in respect of a work, or a phonogram, is the making of tangible copies available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies, provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a phonogram, a fixation of a performance with the consent of the producer of the phonogram or his successor in title;

“published work” means a work which, with the express authorisation of the copyright owner and, depending on the nature of the work, is reproduced and made available to the public in such copies as to satisfy its reasonable requirements;

“related rights”

“rental” means the transfer of the possession of the original or a copy of a work or phonogram for a limited period of time for profit-making purposes;

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

“reprographic reproduction” means the making of facsimile copies of the original or a copy of a work by means other than printing, such as photocopying, whether or not they are reduced or enlarged in scale;

“rights management information” means –

- (a) any information that identifies the author, work, performer, performance of the performer, the producer of the phonogram, the phonogram, the broadcaster, the broadcast, the owner of any right under this Act; or

- (b) information about the terms and conditions of use of the work, the performance, the phonogram or the broadcast; and
- (c) any number or code that represents such information, when any of these items of information is attached to a copy of a work, a fixed performance, a phonogram or a fixed broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a phonogram or a broadcast;

“sound recording” –

- (a) means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced by any appropriate device;
- (b) does not include the sound track associated with an audiovisual work;

“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;

“traditional cultural expressions” or “expressions of folklore” means any forms, whether tangible and intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof –

- (a) verbal expressions, such as stories, epics, legends, poetry, riddles and other narratives, words, signs, names, and symbols;
- (b) musical expressions, such as songs and instrumental music;
- (c) expressions by action, such as dances, plays, ceremonies, rituals and other performances, whether or not reduced to a material form; and,
- (d) tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, baskets, needlework, textiles, glassware, carpets, costumes, handicrafts, musical instruments, and architectural forms;

which are –

- (i) the products of creative intellectual activity, including individual and communal creativity;

- (ii) characteristic of a community's cultural and social identity and cultural heritage; and
- (iii) maintained, used or developed by such community, or by individuals having the right or responsibility to do so in accordance with the customary law and practices of that community.

“Universal Convention” means the Universal Copyright Convention;

“useful article” means an article having an intrinsic utilitarian function, that is not merely to portray the appearance of the article or to convey information;

“work” means any artistic or literary or scientific work under sections 3(1) and 4(1);

“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” means a work to the creation of which 2 or more authors have contributed;

(2) For the purposes of this Act, a reference to a display, performance, broadcast or communication to the public includes a display, performance, broadcast or communication –

- (a) at a place open to the public or when a substantial number of persons outside the normal circle of a family and its close social acquaintances is present; or
- (b) to a place referred to in paragraph (a) or to the public by means of any device or process, irrespective of the time or place at which any member of the public receives the display, performance, broadcast or communication.

PART II – PROTECTION OF WORKS

3 Protection of works

(1) Artistic or literary or scientific works (hereinafter referred to as “works”) are original intellectual creations in the artistic, literary and scientific domain, including, in particular –

- (a) books, pamphlets, articles 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 3-dimensional works relative to geography, topography, architecture or science.

(2) Works shall be protected 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.

(3) The protection of an author's work referred to in subsection (1) shall not be subject to any formality.

(4) The protection afforded by subsection (1) to the author of an artistic, literary or scientific work shall not be affected by any right accruing to a broadcaster or a performer under this Act.

4. Derivative works

(1) The following shall also be protected as works –

- (a) Translations, adaptations, arrangements and other transformations or modifications of works or traditional cultural expressions or 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 or 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 or expression of folklore incorporated in or utilized for the making of such a work.

5. Subject matter not protected

Notwithstanding the provisions of sections 3 and 4, no protection shall extend under this Act 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;
- (e) judgment of a court of law or tribunal.

6 Economic rights

(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 other 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) (a) 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.

(b) For avoidance of doubt, the right of distribution does not extend to a copy of a work that has been obtained in breach of the legal provisions protecting the copyright ownership in that country.

(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.

7 Moral rights

(1) Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation.

(2) (a) The rights of the author under subsection (1) shall, after his death, be maintained, until the expiry of the economic rights.

(b) The rights shall be exercisable by the heirs of the deceased author or such institution as may be prescribed.

8. Alienation of works

Where an author alienates the original or a copy of his work, he shall not, unless the contract of alienation otherwise provides, be deemed to have –

- (a) transferred any economic right;
- (b) granted a licence; or
- (c) waived the exercise of any moral right.

9. Original ownership of economic rights

(1) Subject to the provisions of subsections (2) to (4), the original owner of economic rights in respect of a work is the author who has created the work.

(2) (a) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights.

(b) Where 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 economic rights in the part that he has created.

(3) In respect of a work created by an author, employed by a natural person or legal entity, in the course of his employment, the original owner of the economic rights shall be, unless provided otherwise in a contract, the employer.

(4) (a) In respect of an audiovisual work, the original owner of the economic rights shall be the producer, unless provided otherwise in a contract.

(b) The co-authors of the audiovisual work and the authors of the pre-existing works included in or adapted for the making of the audiovisual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be subject of acts covered by their economic rights separately from the audiovisual work.

10. Presumptions regarding authorship, producers of audiovisual works and publishers

(1) The natural 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 the identity of the author.

(2) The person whose name appears on an audiovisual work in the usual manner, shall, in the absence of proof to the contrary, be presumed to be the producer of the work.

(3) (a) In the case of an anonymous or pseudonymous work, subject to the provision in the second sentence of subsection (1), the publisher whose name appears on the work shall –

- (i) in the absence of proof to the contrary, be presumed to represent the author and, in this capacity;
- (iii) shall be entitled to exercise and enforce the moral and economic rights of the author.

(b) The presumption shall cease to apply when the author reveals his identity.

11. Contracts for commissioned works

(1) Where a contract has been entered into on the commissioning of a work to be created, the person who has commissioned the work may, within 3 months from the date on which the work is delivered to him, make a written declaration indicating his acceptance of the work.

(2) Where no declaration is made within the time specified in subsection (1), the work shall be deemed to have been accepted by the person who has commissioned it.

(3) A person who has commissioned a work may, within the time specified in subsection (1), or such further time as may be agreed between the parties, return the work to the author with a written request for such corrections or amendments as may be felt necessary.

(4) Where an author refuses to comply with a request for a correction or amendment, or if the corrected or amended work does not satisfy the stipulated purpose, the person who commissioned the work may terminate the contract but shall pay to the author an equitable remuneration in return for the work done by the author.

PART III – FEATURES OF ECONOMIC RIGHTS

12. Assignment and licensing of authors' rights

(1) Economic rights shall be assignable in whole or in part.

(2) Any assignment of an economic right, and any exclusive license to do an act subject to authorization 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 license 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 license of any other rights not explicitly referred to therein.

(4) Where an assignment of an economic right is governed by a written agreement, the scope of the assignment shall be limited to the specific use of the economic right mentioned in the agreement.

(5) Where the ownership of a copy of a work is assigned, the economic rights relating to the work shall, unless the contrary is proved, not be deemed to be assigned.

(6) Where an agreement for the assignment of an economic right fails to mention the time for which the assignment shall operate, the assignment shall terminate after 10 years.

(7) Where an agreement for the assignment of an economic right fails to mention any country in which the assignment may have effect, the assignment shall only operate in Mauritius.

(8) Where an agreement for the assignment of an economic right fails to specify the ways and means of exploitation of the right, the assignee shall be entitled to exploit the right by such ways and means as are necessary for the purpose envisaged by the parties when the assignment was granted.

(9) Nothing in this section shall prevent the copyright owner of a work from granting a licence, whether exclusive or not, to another person.

13. Agreement regarding future works

(1) Where an author undertakes in writing to grant a licence, or to assign the economic rights concerning future works which are not specified in detail, either party may, on giving not less than one month's notice, terminate the agreement not

earlier than 3 years after it was signed or such shorter period as may have been agreed.

(2) The right of termination referred to in subsection (1) may not be waived in advance.

14. Non-use of economic rights

(1) Subject to subsection (2), where –

- (a) person to whom an economic right in a work has been assigned or an exclusive licensee does not exercise his right, or does so only inadequately and the author's legitimate interests are prejudiced by such failure, the author may revoke the assignment or exclusive licence.

(2) A revocation in accordance with subsection (1) shall not be effected where the non-exercise or inadequate exercise of a right is primarily due to circumstances which the author can be expected to remedy.

(3) The right to revoke an assignment or a licence in accordance with subsection (1) shall not be exercised earlier than 3 years from the date of assignment or licence, or, if the work is supplied subsequently, from the date of delivery of the work.

(4) The right of revocation referred to in subsection (1) may not be waived in advance.

15. Duration of copyright

(1) The economic and moral rights shall be protected during the life of the author and for 50 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 50 years after his death.

(3) In the case of an audiovisual work, the economic and moral rights shall be protected for 50 years from the date on which the work was made or first made available to the public by publication, or by any other means, 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 50 years from the date on which the work was made or first made available to the public, by publication or by any other means, 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 or photographic work, the economic and moral rights shall be protected for 25 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.

PART IV – LIMITATIONS ON ECONOMIC RIGHTS

16. Private reproduction for personal purposes

(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 for his own personal use.

- (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 22; 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.

17. Temporary reproduction

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 authorization by the owner of copyright or of operation of law, is entitled to make that transmission or making perceptible of the work; and
- (c) it is an accessory to that transmission or making it perceptible, 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 items (a) and (b).

18. Quotation

(1) (a) The quotation from a work that has lawfully been made available to the public shall be permitted without authorisation of the author or other owner of copyright, provided that the quotation –

- (i) is compatible with fair practice; and
- (ii) does not exceed the extent justified by the purpose.

(b) The quotation shall be accompanied by an indication of source and the name of the author, if the name appears in the source from which the quotation is taken.

19. Reproduction and other utilization for teaching and scientific for non-commercial purposes

(1) The following acts shall be permitted without authorisation of the author, or other owner of copyright –

(a) the utilization by way of illustration for teaching or scientific research purposes of a work that has lawfully been made available to the public, in publications, broadcasting or sound or visual recordings, provided that such utilization –

- (i) is compatible with fair practice;
- (ii) does not exceed the extent justified by the purpose; and
- (iv) can also include the making available of such works in computer networks, provided that access to the works is only available to enrolled pupils or students and their teachers;

(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 reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions,
- (ii) no more than a single copy for each pupil or student and the teacher is made, and
- (iii) there is no collective license 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.

(1) The source of the work and the name of the author shall be indicated, as far as practicable –

- (a) on all copies made under paragraph (1); or
- (b) in reasonable connection with the work.

20. Reproduction by libraries and archives

Any library, or archive, whose activities do not serve direct or indirect gain, may, without the authorisation of the author or other owner of copyright, make a copy of a work –

- (a) by reprographic reproduction where –
 - (i) the work reproduced is a published article, other short work or short extract of a work; and
 - (ii) the purpose of the reproduction is to satisfy the request of a person, provided that –
 - (A) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research,
 - (B) the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions, and
 - (C) there is no collective license available offered by a collective copyright management organization under which such copies can be made; or for part of a work.
- (b) to preserve, and, if necessary, replace a copy which has been lost, destroyed, or rendered unusable in the permanent collection of another similar library or archive, provided that –
 - (i) it is impossible to obtain such a copy under reasonable conditions; and
 - (ii) that the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions.

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

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, 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 except that this permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work;
- (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.

22. Reproduction and adaptation of computer programmes

(1) The reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer programme shall be permitted without the authorization of the author, or other owner of copyright provided that the copy or adaptation is necessary –

- (a) for use of the computer programme with a computer for the purpose and extent for which the computer programme has been obtained;
- (b) for archival purposes and for the replacement of the lawfully owned copy of the computer programme in the event that the said copy of the computer programme is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer programme shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer programme ceases to be lawful.

23. Visually impaired persons

(1) It shall be permitted, without the authorisation of the author or other owner of copyright, to reproduce a published work for visually impaired persons in an

alternative manner or form which enables their perception of the work, and to distribute the copies exclusively to those persons, provided that –

- (a) the work is not reasonably available in an identical or largely equivalent form enabling its perception by the visually impaired; and
- (b) the reproduction and distribution are made on a non-profit basis.

(2) The distribution is also permitted in case the copies have been made abroad and the conditions mentioned above have been fulfilled.

(3) The provisions in subsections (1) and (2) are subject to the obligation to indicate the source and the name of the author.

24. Ephemeral recordings

(1) 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 facilities, an ephemeral recording of any work which it is authorized to broadcast.

(2) All copies of it shall be destroyed –

- (a) within 6 months of the making; or
- (b) within any longer term agreed to by the author.

(2) Except that where such recording has an exceptional documentary character, one copy of it may be preserved in official archives.

25. Importation for personal purposes

The importation of a copy of a work, by a physical person, for his personal purposes, shall be permitted without the authorisation of the author of, or other owner of copyright in, the work.

26. Distribution of copies of works

(1) Where a work has been published by means of the sale of copies to the public, such copies may, without the author's authorization, and without payment of remuneration, be redistributed by means of sale.

(2) The right of rental shall not apply to rentals of computer programs, where the computer program is not the essential object of the rental.

27. Public lending

(1) A library or archive whose activities do not, directly or indirectly, serve commercial gain may, without the author's authorisation, lend to a member of the public a copy of a work, other than a computer programme, which is included in a book, periodical or other printed article which is part of the permanent collection of the library or archive.

28. Display of works

The public display of originals or copies of works shall be permitted without the authorisation of the author, where –

- (a) the display is not made by means of –
 - (i) a film, slide, television image, or otherwise, on screen ;or
 - (ii) any other device or process; and
- (b) the work has been published, or
- (c) the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author.

PART V – BROADCASTING ORGANISATIONS, PERFORMERS AND PRODUCERS

29. Rights of broadcasting organisations

(1) A broadcasting organisation shall have the exclusive right to carry out or to authorise any of the following acts –

- (a) the rebroadcasting 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 the broadcasting takes place until the end of the twentieth calendar year following the year in which the broadcast takes place.

(3) Programme-carrying signals, transmitted by satellite, which are not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable distribution by an authorised receiving organization, may not be broadcasted or communicated to the public by anyone else without authorisation of the person or legal entity that decided what programme the emitted signal would carry (originating organization).

30. Rights of performers

(1) A performer shall have the exclusive right to carry out or to authorize 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 which the performer has authorized to be made; or
 - (ii) is a rebroadcasting made or authorized 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 of a fixation of his performance, or of copies thereof, to the public;
- (e) the rental to the public of a fixation of his performance, or copies thereof;
- (f) the making available to the public of his fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

(2) (a) Once the performer has authorized the incorporation of his performance in an audiovisual fixation, the provisions of subsection (1) shall have no further application.

(b) The performer shall, in the absence of contractual provisions to the contrary, be deemed to have assigned his exclusive economic rights with respect to that fixation to its producer.

(3) The right of distribution under subsection (1)(d) 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 authorized by the performer in any country.

(4) (a) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall 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 would be prejudicial to his reputation.

(b) Modifications consistent with the normal exploitation of a performance in the course of a use authorized by the performer shall not be considered prejudicial to the performer's reputation.

(5) The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed.

31. Grant of authorisation by performers

(1) An authorisation under section 30 may be given by a performer or by a duly appointed representative to whom the performer has delegated his power in writing.

(2) An authorisation given by a performer claiming that he has retained any right specified in section 30, or by a person claiming to be the duly appointed representative of a performer, shall be valid unless the recipient knew, or had good reason to believe, that the claim or appointment, as the case may be, was not a valid one.

32. Rights of phonogram producers

(1) A producer of a phonogram shall have the exclusive right to carry out or to authorise any of the following acts –

- (a) the direct or indirect reproduction of the phonogram, in any manner or form;
- (b) the distribution of the original or copies of the phonogram to the public;
- (c) the rental of a copy of the phonogram to the public,
- (d) the making available to the public of the phonogram, by wire or wireless means, 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 right of distribution under item (c) of subsection (1) shall not apply to the original or the copy of the phonogram that has already been subject to a sale or other transfer of ownership authorized by the producer in any country.

(3) 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.

33. Obligations of producers

(1) Every producer of a sound recording shall state on the label of the recording or on its container –

- (a) the names of the author and of the main performer;
- (b) the title of the work;
- (c) the name or distinguishing mark of the producer; and
- (d) that the rights accruing to the producer under this Act are reserved.

(2) For the purposes of subsection (1)(a), a choir or an orchestra shall be referred to by its name and that of its leader, if any.

34. Notice of protection

(1) Where a copy of a sound recording is made for commercial purposes, there shall be printed, on the label or on its container, a notice consisting of –

- (a) the symbol “P”; and
- (b) the year in which the sound recording was first published,

placed in such manner as to give reasonable notice of a claim to protection of the rights of the producer.

(2) Where the label of a copy of a sound recording or its container do not identify the producer by its name, description or trade mark, the notice referred to in subsection (1) shall also include the name of the owner of the copyright in the recording.

(3) A notice referred to in subsection (1) shall be prima facie evidence of the facts stated thereon for the purposes of any proceedings brought under this Act with respect to the rights of the producer.

35. Equitable remuneration for use of phonograms

(1) Subject to subsection (5), where 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.

(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, provided that the phonogram is still protected under section 32(3)

(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 considered as if they have been published for commercial purposes.

(5) Subsection (1) d shall not apply to the extent that the use of the phonogram is covered by an exclusive right under section 30(1)(f) or section 32(1)(d).

36. Limitation on protection

Sections 29, 30, 31 and 32 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 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.

37. Technological protection measures

- (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 services for commercial purposes that –
 - (i) are promoted, advertised or marketed for the purpose of circumventing effective technological protection measures;
 - (iv) have only a limited commercially significant purpose or use other than to circumvent effective technological protection measures; or
 - (v) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological protection measures.

(2) In this section a technological protection measure shall be considered effective where the use of a work or object of related right protected under this Act 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.

(3) Notwithstanding subsection (1), upon the request by the beneficiary of an exception or limitation in accordance with sections 14, 15, 16, 19, 20 or 21 the right holder shall do the needful to have the technological protection measure lifted, to the extent necessary, for the beneficiary to fully benefit from the exception or limitation, as applicable..

(3) The provisions of paragraph (2) shall not apply to works or other subject matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.

38. Protection of rights management information

(1) It is prohibited to –

- (a) remove or alter any electronic rights management information without the consent of the right holder, or
- (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 authorisation of the right owner when such act will induce, enable, facilitate or conceal an infringement of any right covered by this Act.

(2) Subsection (1) does not prohibit any governmental activities for public policy or security authorized by law.

39. Prohibited acts assimilated to infringement of rights

The acts prohibited according to sections 29(3), 37 and 38 shall be deemed to be an infringement of a right protected under this Act, for the purposes of section 41.

PART VI – APPLICATION OF ACT

40. Scope of application - Copyright

(1) The provisions of this Act concerning the protection of artistic, literary and scientific works shall apply to –

- (a) works of authors who are nationals of, or have their habitual residence in the Republic of Mauritius ;

- (b) works first published –
 - (i) in the Republic of Mauritius; and
 - (ii) in another country and also published in the Republic of Mauritius, within 30 days, irrespective of the nationality or residence of their authors;
- (c) audiovisual works, the producer of which has his headquarters or habitual residence in the Republic of Mauritius; and
- (d) works of architecture erected in the Republic of Mauritius and other artistic works incorporated in a building or other structure located in the Republic of Mauritius .

(2)The provisions of this Act shall also apply to works that are eligible for protection in Mauritius by virtue of and in accordance with any international convention or other international agreement to which Mauritius is a party.

41. Scope of application - Related Rights

(1) The provisions of this Act concerning the protection of performers shall apply to –

- (a) performer who are nationals of the Republic of Mauritius ;
- (b) performers who are not nationals of the Republic of Mauritius but whose performances –
 - (i) take place on the territory of the Republic of Mauritius; or
 - (ii) are incorporated in phonograms that are protected under this Act; or
 - (iii) have not been fixed in a phonogram but are included in broadcasts qualifying for protection under this Act;

(2) The provisions of this Act concerning the protection of phonograms shall apply to –

- (a) phonograms produced by nationals of the Republic of Mauritius ;
- (b) phonograms first fixed in the Republic of Mauritius;
- (c) phonograms first published in the Republic of Mauritius.

(3) The provisions of this Act concerning the protection of broadcasts shall apply to –

- (a) broadcasts of broadcasting organization the headquarters of which are situated in the Republic of Mauritius ;
- (b) broadcasts transmitted from transmitters situated in the Republic of Mauritius;

(4) The provisions of this Act shall also apply to performers, producers of phonograms, broadcasting organizations and originating organizations which are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which the Republic of Mauritius is party.

PART VII – THE SOCIETY

42. Management of Rights

Copyright and related rights can be managed, by –

- (a) an individual right holder;
- (b) a legal practitioner acting as representative of the right holder; or
- (c) the Society.

43. The Society and its management

(1) There shall be established a Society which shall be known as the Mauritius Society of Authors, Broadcasters, Producers and Publishers.

(2) The Society shall be administered by a Board.

(3) The Board shall consist of –

- (a) a Chairperson;
- (b) a representative of the Ministry responsible for the subject of Arts and Culture;
- (c) a representative of the Ministry
- (d) members of Society who shall be the representatives of authors, performers, producers of phonograms, film producers and publishers; [from representatives nominated by the different associations representing the rights of the aforesaid and which are duly registered with the Ministry.

(4)The Chairperson shall be appointed by the Minister.

(5)The members of the Board specified in subsection (3)(.....) shall hold office for 3 years and shall be eligible for re-appointment.

(6)The Chairman and other members shall constitute a quorum.

(7)Every member of the Board shall be paid by the Society such remuneration or allowance as the Board may determine, subject to the approval of the Minister.

44. Appointment of staff

(1)The Board shall appoint on such terms and conditions as appropriate –

(a) a Director General who shall be the Chief Executive and be responsible for the execution of the policy of the Board and act in accordance with such directions as he may receive from the Board;

(b) such other staff as may be necessary for the proper discharge of the functions of the Society.

(2)The staff referred to in subsection (1)(b) shall be under the administrative control of the Director General.

45. Functions of Society

(1) The Society shall–

(a) collectively manage rights which may include the rights of the –

(i) author or owner of copyright under section 6 (1) namely –

(A) right of public performance, right of public transmission, right of public communication of a fixed work, right of broadcasting, right of rebroadcasting, right of public communication of a broadcasting and right of making available to the public non-stage musical and literary works;

(B) right of audio recording reproduction of musical work;

(C) right of distribution, including the right of rental and the right to a remuneration;

(D) right to a remuneration for public lending;

(E) resale right when the original works of art are being resold;

- (F) right to a remuneration for reproduction of a work for private or personal use;
 - (G) right to a remuneration to the public of folk literary and artistic creations.
- (ii) broadcasting organizations under section 29(1), namely –
- (A) right of rebroadcasting its broadcast;
 - (B) right of communication to the public for its broadcast;
 - (C) distribution of fixation of its broadcast;
 - (D) right of reproduction of a fixation of its broadcast;
- (iii) performers under section 30(1), namely –
- (A) right of public communication of a fixed performance and broadcastings;
 - (B) right of public presentation of a fixed performance;
 - (C) right of broadcasting and rebroadcasting of a fixed performance;
 - (D) right of making available to the public of a fixed performance;
 - (E) rental right of a fixed performance;
 - (F) right to a remuneration for public lending of a fixed performance;
 - (G) right to a remuneration for reproduction of a fixed performance for private or other personal use;
- (iv) producers of phonograms under section 32(1), namely –
- (A) right of making available to the public of a phonogram;
 - (B) right to a remuneration for broadcasting and public communication of a phonogram;
 - (C) right of rental of a phonogram;
 - (D) right to a remuneration for public lending of a phonogram;
 - (E) right to a remuneration for reproduction of a videogram for private or other personal use.
- (iv) film producers, namely –

- (A) right to a remuneration for public lending of a videogram;
 - (B) right to a remuneration for reproduction of a videogram for private or other personal use.
- (v) publishers
 - (A) the right to a remuneration for reproduction of their written editions for private or other personal use;]
- (b) determine the criteria for, and classes of, membership of the Society;
- (c) represent and defend the interests of its members in Mauritius and abroad;
- (d) administer within Mauritius on an exclusive basis such economic rights of its members on such terms and conditions set down in its rules];
- (e) negotiate with any user of a work –
 - (i) the conditions of, and the fees to be paid for, the authorisation to be given to do an act covered by any economic rights referred to in paragraph (d);
 - (ii) the amount of equitable remuneration where the right to such remuneration is administered by the Society;
- (f) collect fees from the users of a work on behalf of its members and distribute those fees among those members;
- (g) make reciprocal agreements with foreign societies for the issue of exclusive authorisation in respect of their members' works and for the collection and distribution of fees deriving from those works;
- (h) endeavour to obtain the transfer of membership of Mauritian authors, phonogram producers, performers and broadcasting organisations who are members of foreign societies and safeguard in their favour ,whose membership has been transferred, all the advantages which may have accrued to them before the transfer;
- (i) help in the preparation of standard forms of contracts for the benefit and use of its members;

- (l) foster such harmony and understanding between its members and the users of their works as are necessary for the protection of their economic rights;
- (m) provide its members with information or advice on all matters relating to copyright and related rights;
- (n) do any further activities which it has been authorised to do by its members whose economic rights or rights to equitable remuneration it administers;
- (o) establish and administer a Provident Fund and a Benevolent Fund for its members and their heirs.

46. Membership of the Society

(1) Any author, phonogram producer, performer and broadcasting organisation may apply for membership of the Society

(2) The Society may, on receipt of an application under subsection (1), request the applicant to furnish such particulars as it may require for the purpose of determining whether the application ought to be granted or not.

(3) The Board may refuse the application or grant it on such terms and conditions and on payment of such membership fee as are provided for in its rules.

47. General Fund

(1) The Society shall establish a General Fund –

- (a) into which any money received by the Society shall be paid;
- (b) out of which all payments required to be made by the Society shall be effected.

(2) The Society may, in the discharge of its functions and in accordance with the terms and conditions upon which its funds may have been obtained or derived, charge to the General Fund all remunerations, allowances, salaries, fees, gratuities, working expenses and other charges properly arising.

(3) The Board shall manage, utilise, or invest the assets and the funds of the Society in such manner as for such purposes as in its opinion will best promote the interests of the Society.

48. Publication of accounts

(1) The Society shall, not later than 30 June in every year, publish in the *Gazette* an audited statement of its accounts in respect of the preceding financial year.

(2)For the purposes of subsection (1) the Board shall appoint an auditor on such terms and conditions as it thinks fit.

49. Execution of documents

(1)Subject to subsection (2), every cheque or other document shall be deemed to be executed by or on behalf of the Society where it is signed by the Chairman and the Director.

(2)The Board may, where the Chairman or the Director is unable to do so, designate a member of the Board to sign a cheque or other document.

[50. Exemptions

(1)Article 910 of the Code Napoleon shall not apply to the Society.

(2)The Society shall not be liable to the payment of income tax.

(3)No registration duty shall be payable in respect of any document signed or executed by the Society or under which it is the sole beneficiary.]

51. Rules

(1)The Board may make such rules as it thinks fit in order to implement the objects of the Society.

(2) Any rules made under subsection (1) shall not be laid before the Assembly but shall be approved by a Minister.

PART VIII THE MANAGEMNET OF RIGHTS ADVISORY COUNCIL

52. Establishment of Advisory Council

There is established, for the purposes of this Act, an Advisory Council which shall be known under the name of.....

53. Functions of Advisory Council

The Advisory Council shall advise the Minister –

- (a) on any matter related to copyright and related rights generally;
- (b) in relation to the administration of this Act; and
- (c) on any matter referred to it by the Minister.

54. Constitution of Advisory Council

(1) The Advisory Council shall consist of –

- (a) a Chairperson appointed by the Minister;
- (b) the Permanent Secretary or his representative;
- (c) a representative of the Ministry [.....]
- (d) a representative of the Ministry...[.....]
- (e) a representative of the Ministry [.....]
- (f) [] members of the public with wide knowledge of the artistic, literary or scientific works.

(2) The members referred to in subsection (f) shall –

- (a) be appointed by the Minister;
- (b) hold office for a period of one year; and
- (c) be eligible for reappointment.

(3) No member shall take part in, or vote on, any matter before the Advisory Council in which the member, or an immediate relative of the member or a business associate of the member, has, directly or indirectly, a pecuniary interest.

55 Meetings of the Advisory Council

(1) The Advisory Council shall meet –

- (a) at least once every 3 months; and
- (b) at such time and place as the Chairman may appoint.

(2) [...] members shall constitute a quorum.

(3) Subject to this section, the Advisory Council shall regulate its meetings and proceedings in such manner as it deems fit.

PARTIX – JUDICIAL PROCEEDINGS

56. Civil remedies

(1) An action by a right holder [under this Act] or an exclusive licensee for an infringement of copyright or related right shall be commenced by plaint with summons before the Supreme Court.

(2) In an action under subsection (1), the Supreme Court may, notwithstanding any other enactment, grant such remedies, by way of damages, injunction, forfeiture

of any infringing copy and of any apparatus, article or thing used for the making the infringing copy or otherwise, as the Supreme Court thinks fit.

(3)Where a person –

- (a) has an infringing copy of a work in his possession, custody or control; or
- (b) has, in his possession, custody or control, an article specifically designed or adapted for making copies of a work entitled to protection under this Act,

the copyright owner may apply to a Judge in Chambers for an order that the infringing copy or article be delivered up to him or to such other person as the Judge in Chambers may direct or for such “measures conservatoires” as the Judge may deem appropriate.

57. Presumptions

In any action for an alleged infringement of copyright –

- (a) it shall be presumed, unless the defendant puts it in issue, that –
 - (i) copyright or related right subsists in the work to which the action relates;
 - (ii) the plaintiff is the right holder if he claims so to be;
 - (iii) the person whose name is indicated on an audiovisual work in the usual manner as producer is the producer of the work;
- (b) it shall be presumed, unless the contrary is proved, that the person named as author of a published work, if it was his true name or a name by which he was commonly known, is the author of the work;
- (c) where it is proved or admitted that the author of a work is dead or a work was published anonymously or under a pseudonym, it shall be presumed, unless the contrary is proved, that –
 - (i) the work is an original work;
 - (ii) any allegation by the plaintiff that the publication was a first publication and occurred in a specified country on a specific date is true;
 - (iii) in the case of a work which was published anonymously or under a pseudonym, the publisher of the work is the copyright owner.

- (iv) Need to add the other right holders – performs/producers/broadcasters ...

58. Vain threats

(1) Subject to subsection (2), where a person who claims to be a right holder or an exclusive licensee threatens any other person with legal proceedings in respect of an alleged infringement of his copyright or related right, the person threatened may –

- (a) bring an action against the claimant and obtain an injunction against the continuance of the threat;
- (b) recover damages for any injury which he has sustained where the alleged infringement to which the threat related was not in fact an infringement of any copyright or other intellectual property rights of the claimant.

(2) Subsection (1) shall not apply where the claimant commences and prosecutes an action with due diligence for infringement of his copyright or related rights.

59. Offences

(1) Any person who –

- (a) without the express authorisation of the copyright owner –
 - (i) publishes, distributes or reproduces a work for commercial purposes;
 - (ii) performs a work for the public for gain or against remuneration;
 - (iii) communicates a work to the public for gain or against remuneration;
 - (iv) broadcasts a work for gain or remuneration;
 - (vi) makes a derivative work for gain or against remuneration;
 - (vii) imports, otherwise than exclusively for his own private and personal use, sells, exposes or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute such an infringement if the copy of the work were made in Mauritius;

(b) manufactures or imports for sale or rental any device or means which is –

- (i) specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of any copy made thereof; or
- (ii) susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;

(c) has in his possession in the course of trade any apparatus, article or thing, knowing that it is to be used for making infringing copies of a work or for a purpose referred to in paragraph (b);

(d) act in such a manner as would intentionally or recklessly lead to the deprivation of his rights by the copyright owner or author.

(2) For the purposes of subsection (1)(a), where a work is communicated to the public on the premises of an occupier by the operation of any apparatus which is provided by or with the consent of the occupier of those premises, the occupier shall be deemed to be the person communicating the work to the public, whether he operates the apparatus or not.

(3)(a) Any person who commits an offence shall –

- (i) on a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years;
- (ii) on a second or subsequent offence, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.

(b) Notwithstanding any other enactment, an Intermediate Court Magistrate shall have exclusive jurisdiction to try any person at first instance charged with an offence under this Act.

(4) The Court before which a person is convicted of an offence may, in addition to any other penalty imposed –

- (a) order the forfeiture of any apparatus, article or thing which is the subject-matter of the offence or is used in connection with the commission of the offence;
- (b) order that such apparatus, article or thing shall be delivered up to any person lawfully entitled to it.

PART IX – MISCELLANEOUS

60. Regulations

(1) The Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for the amount of the equitable remuneration and the conditions of its payment.

61. Transitional provision

(1) In this section –

“former society” means the Mauritius Society of Authors established by the Copyright Act 1986.

(2) Every asset, right or liability of the former society shall vest in or attach to, the Society.

(3) Any act commenced or done by, or in relation to the former society shall be deemed to have been commenced or done by or in relation to, the society.

62. Repeal

(1) Subject to subsection (2), the Copyright Act 1997 is repealed.

(2) This Act shall –

- (a) apply to any work, performance, sound recording or broadcast which, at the commencement of this Act, enjoys protection under the Copyright Act 1997:
- (b) not affect any contracts relating to a work, performance, sound recording or broadcast entered into before the commencement of this Act.

63. Commencement

The Act shall come into operation on a day to be fixed by Proclamation.
