

**THE COPYRIGHT BILL (No. XXX of 2013)**

**Explanatory Memorandum**

The main object of this Bill is to –

- (a) be compliant with the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty;
- (b) address the issues related to the internet and piracy;
- (c) provide for the protection of performers, producers of phonograms and broadcasting organisations;
- (d) provide for limitations and exceptions in specific circumstances in relation to work;
- (e) review the role and functions of the Mauritius Society of Authors (MASA);
- (f) provide for quick remedies to authors, composers and other copyright holders in cases of infringement of rights.

**M. CHOONEE**

*Minister of Arts and Culture*

06 December 2013

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**THE COPYRIGHT BILL (No. XXX of 2013)**

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*Clause*

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## **A BILL**

**To provide for more effective protection of copyright and related rights**

ENACTED by the Parliament of Mauritius, as follows –

### **PART I – PRELIMINARY**

#### **1. Short title**

This Act may be cited as the Copyright Act 2013. 3

## **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, 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; or

(B) architecture or sculpture, an engraving or lithography;

(x) a photographic work;

(xi) a computer programme;

(c) does not include items specified in section 5;

“audiovisual work” –

(a) means a work consisting of a series of related images and accompanying sounds 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 43;

“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” in relation to 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; 5

“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 form;

“copyright” means the 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” means a translation, adaptation, arrangement or other alteration of a pre-existing artistic, literary or scientific work and which work includes –

(a) a collection, compilation or arrangement or other transformation of pre-existing works, of expressions of folklore or traditional cultural expression of mere facts or data whether in machine readable or other form;

(b) an anthology, an encyclopedia or a data base; or

(c) any other work, which, by reason of selection and arrangement of its contents, is original;

“display” means to show – 6

(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 non-sequentially;

“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 a recognized dispute settlement mechanism or a court of law;

“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;

“local production” means a work wholly or substantially produced in Mauritius;

“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, or individual creation or intellectual creation; but

(b) excludes a work which is essentially a copy of another work;

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

“performer” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret or otherwise perform literary or artistic works 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; 8



“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;

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

“public performance” is, in the case of –

(a) 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) an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible;

(c) a phonogram, making the recorded sounds audible and, where such performances can be at a place or places where persons outside the normal circle of the family and its closest acquaintances can be present;

“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 copies, where in the case of –

(a) a work, the making available to the public took place with the consent of the author or other owner of copyright; and

(b) 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” means those rights conferred upon a performer, a producer of phonograms and a broadcasting organisation by this Act; 9

“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;

“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;

“Society” means the Rights Management Society established under section 43;

“sound recording” –

(a) means the 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 authorised by the right holder; 10

“traditional cultural expressions” means any form of artistic and literary expression, tangible or intangible, or a combination of both –

(a) in which traditional culture and knowledge are embodied;

(b) which is intergenerational, including but not limited to phonetic, verbal and tangible expressions;

“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, literary or scientific work, or a derivative 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; and in the case of –

(a) 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) an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and

(c) a phonogram, making the recorded sounds audible,

and, where such display, performance, broadcast or communication shall be –

(i) 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

(ii) 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.

- (3) For the avoidance of doubt –
- (a) the protection of a work shall be without prejudice to the protection of any pre-existing work;
  - (b) a still picture extracted from an audiovisual work shall not be considered a photographic work but a part of the audiovisual work concerned;
  - (c) there shall not be copyright in any sound recording which is a copy of an authorised or unauthorised sound recording.

## **PART II – PROTECTION OF WORKS**

### **3. Protection of works**

(1) Every artistic, literary or scientific work shall be an original intellectual creation in the artistic, literary or 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 programmes;

(k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;

(l) sound recordings;

(m) broadcasts.

(2) Every work shall be protected when they are fixed in some material form and irrespective of their mode or form of expression.

(3) (a) Every author of a literary or an artistic work shall have the exclusive right of authorising –

(i) the cinematographic adaptation and reproduction of these works, and the distribution of the works thus adapted or reproduced;

(ii) the public performance and communication to the public by wire of the works thus adapted or reproduced.

(b) The adaptation into any other artistic form of a cinematographic production derived from literary or artistic works shall, without prejudice to the authorisation of the author of the cinematographic production, remain subject to the authorisation of the authors of the original works.

(4) The protection of a work referred to in subsection (1) shall not be subject to any formality.

(5) The protection afforded to the author of an artistic, a literary or scientific work or phonogram producer under subsection (1) 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 derivative 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, whether in machine readable or other form, and collections of traditional cultural expressions or expressions of folklore, where such collections are original by reason of the selection or arrangement of their contents.

(2) The protection of any derivative work shall be without prejudice to any protection of a pre-existing work or traditional cultural expression or expression of folklore incorporated in or utilised for the making of such a work.

#### **5. Subject matter not protected**

Notwithstanding sections 3 and 4, no protection under this Act shall extend to –

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

(b) any official text of a legislative, administrative or legal nature, 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) Every author or other owner of copyright shall have the exclusive right to carry out or to authorise –

(a) the reproduction of the work;

(b) the translation of a work;

(c) the adaptation, arrangement or other transformation of a work;

(d) the distribution to the public of the original or a fixed copy of –

(i) a work;

(ii) an audiovisual work;

(iii) a work embodied in a phonogram; or

(iv) a computer programme;

- (e) the rental of the original or a fixed copy of a work;
- (f) the public performance of a work;
- (g) the broadcasting of a work;
- (h) other forms of communication to the public of a work.

(2) (a) The right of distribution under paragraph (d) and the right of communication under paragraph (h) of subsection (1) shall not apply to the original or a copy of a work that has already been subject of a sale or other transfer of ownership in any country.

(b) For avoidance of doubt, the exhaustion of the right of distribution in accordance with subsection 2(a), the right of distribution shall 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 subsection (1)(e) shall not apply to rental of computer programmes where the program itself is not the essential object of the rental.

(4) For the purposes of this section –

“work” means the whole, or a substantial or distinctive part, of the work.

#### **7. Moral rights**

(1) Notwithstanding the economic rights of the author and even after the transfer of the said rights, the author shall have the right –

(a) to claim authorship of the work;

(b) 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) Notwithstanding the economic rights of the performer, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that shall be prejudicial to his reputation. 15

(3) (a) The rights referred to under subsections (1) and (2) shall, after the death of the author or performer, be maintained, until the expiry of the economic rights.

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

(4) A moral right shall be unassignable.

### **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 subsections (2) to (4), the original owner of economic rights in respect of a work shall be 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. 16



## **10. Presumptions regarding authorship, producer of audiovisual works and publisher**

(1) The natural person whose name is indicated as the author on a work in the usual manner shall be presumed to be the author of the work, even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

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

(3) (a) Subject to subsection (1), in the case of an anonymous or pseudonymous work, the publisher, whose name appears on the work shall be presumed to represent the author and shall be entitled to exercise and enforce the moral and economic rights of the author.

(b) Where the author reveals his identity, the presumption shall cease to apply.

## **11. Contracts for commissioned works**

(1) A work which has been commissioned to be created shall be deemed to have been accepted by the person commissioning the work, unless he has rejected it by a written declaration within 3 months from the date the work is delivered to him or within such time as may be agreed between the parties.

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

(3) Where –

(a) an author refuses to comply with a request for correction or amendment; or

(b) 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. 17

## **PART III – FEATURES OF ECONOMIC RIGHTS**

### **12. Assignment and licensing of rights of author**

- (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 authorisation by the author or other owner of copyright, shall be in writing, signed by –
  - (a) the assignor and the assignee; or
  - (b) the licensor and the licensee.
- (3) An assignment 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) The scope of an 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 not be deemed to have also been 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 10 years as from the date of assignment.
- (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 18

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 lifetime of the author and for 50 years after his death.

(2) For 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) For 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) For 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, where the author's identity is 19

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) For 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 subsection (2), the private reproduction of a legally obtained published work in a single copy shall be permitted, without the authorisation of the author or owner of copyright, where the reproduction is made by a 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 book which is published and copied;

(e) of a computer programme, except as provided in section 22; and

(f) of any work where the 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.

(3) (a) Where a reproduction made under subsection (1) concerns an audiovisual work or a work embodied in a sound recording, the author or other owner of copyright shall be entitled to equitable remuneration.

(b) The equitable remuneration shall be paid — 20

(i) by the manufacturer of the equipment or material supports normally used for the private reproduction for personal purposes, except where such equipment is, or such material supports are, exported; or

(ii) by the importer of such equipment or material supports, except where the importation is done by a person for his personal purposes.

(c) The equitable remuneration shall be paid to the author or copyright owner or to the Society as applicable.

### **17. Temporary reproduction**

The temporary reproduction of a work shall be permitted where –

(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, who with the authorisation of the owner of copyright or of operation of law, is entitled to make the transmission or making perceptible of the work; and

(c) it is an accessory to the 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 paragraphs (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, where 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 where the name appears in the source from which the quotation is taken. 21

## **19. Reproduction and other utilisation for teaching and scientific non-commercial purposes**

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

(i) the utilisation 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, where such utilisation;

(ii) is compatible with fair practice; and

(iii) does not exceed the extent justified by the purpose.

(b) The reprographic reproduction, for face-to-face teaching in educational institutions whose activities 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, where

–

(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 licence, offered or made available by a collective administration organisation of which the educational institution is or ought to be aware, under which such reproduction can be made.

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

(a) on all copies made under subsection (1); or

(b) in reasonable connection with the work.

(3) For the purposes of this section –

“utilisation” includes the making available of such works in computer networks, where access to the works is only available to enrolled pupils or students and their teachers. 22

## **20. Reproduction by libraries and archives**

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

(a) by reprographic reproduction –

(i) where 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, where –

(A) the library or archive is satisfied that the copy shall 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 licence available offered by a collective copyright management organisation under which such copies can be made;

(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, where it is impossible to obtain such a copy under reasonable conditions.

## **21. Reproduction, broadcasting and other communication to the public for informatory 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, where –

(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; 23

(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 programme by the lawful owner of a copy of that computer programme shall be permitted without the authorisation of the author, or other owner of copyright where the copy or adaptation is necessary for –

(a) use of the computer programme with a computer for the purpose and extent for which the computer programme has been obtained;

(b) archival purposes; or

(c) 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 person**

(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, where –

(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) Distribution shall also be permitted where copies for the visually impaired persons have been made abroad and the conditions referred to in subsection (1) are satisfied.

(3) A copy made under subsections (1) and (2) shall indicate the source and the name of the author.

#### **24. Ephemeral recordings**

(1) Any broadcasting organisation may, without the authorisation of the author or other owner of copyright, make for the purpose of its own broadcasts, and by means of its own facilities, an ephemeral recording of any work which it is authorised to broadcast.

(2) A copy made under subsection (1) shall be destroyed within 6 months of its making or such longer term as may be agreed to by the author.

(3) Notwithstanding subsection (2), 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 fixed copies to the public, such copies may, without the author's authorisation, and without payment of remuneration, be redistributed by means of sale.

(2) The right of rental shall not apply to rentals of computer programmes, where the computer programme 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 authorisation of the author, 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.

(2) Every library or archive referred to in subsection (1) shall pay such equitable remuneration as may be prescribed. 25

## **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) (i) the work has been published, or

(ii) 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 organisation**

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

(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 organisation, may not be broadcast or communicated to the public without the authorisation of the broadcasting organisation that decided what programme the emitted signal would carry. 26

### **30. Rights of performer**

- (1) Every performer shall have the exclusive right to carry out or to authorise –
- (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 authorised to be made; or
    - (ii) is a rebroadcasting made or authorised by the organisation 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 fixed copies thereof, to the public;
  - (e) the rental to the public of a fixation of his performance, or their fixed copies; or
  - (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) Subsection (1) shall not apply where the performer has authorised the incorporation of his performance in an audiovisual fixation.
- (b) Unless otherwise agreed in writing, the performer shall be deemed to have assigned his exclusive economic rights with respect to the fixation to its producer.
- (3) The right of distribution under subsection (1)(d) shall not apply to a fixed copy of a fixation of his performance that has already been subject to a sale or other transfer of ownership authorised by the performer in any country.
- (4) (a) Notwithstanding the economic rights of the performer, and even after the transfer of those rights, the performer shall have the right to – 27

(i) 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

(ii) 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 authorised 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 performer**

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.

### **32. Rights of phonogram producer**

(1) Every producer of a phonogram shall have the exclusive right to carry out or to authorise –

(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 subsection (1)(b) 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 authorised by the producer in any country.

(3) The rights under subsection (1) shall be protected from the publication of the phonogram – 28

(a) until the end of the fiftieth calendar year following the year of publication;

(b) 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 producer**

(1) Any sound recording bearing a label as set out under subsection (2) and fulfilling the requirements of section 34 shall be deemed to be a protected copyright work.

(2) 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.

(3) For the purposes of subsection (2)(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 or audiovisual work conspicuously bears on the label of the recording or on its container a notice bearing –

(a) the symbol “P”;

(b) the hologram of the Society; and

(c) the year in which the sound recording was first published,

the copy of a sound recording or audiovisual work shall be deemed to be a protected copyright work.

(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. 29

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

(4) No person shall deal in, or have in his possession for commercial purpose, a copy of a sound recording referred to in subsection (1) unless it bears the hologram of the Society.

### **35. Equitable remuneration for use of phonogram**

(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, as the case may be, be paid by the user to the producer or Society.

(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) Where the phonogram is protected under section 32(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.

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

### **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; 30

(c) reproduction solely for the purpose of teaching activities, except for performances and phonograms which have been published as teaching or instructional materials;

(d) instances where, under Part I, a work may be used without the authorisation of the author or other owner of copyright.

## **PART VI – ANTI-CIRCUMVENTION**

### **37. Technological protection measures**

(1) It is prohibited to –

(a) circumvent effective technological protection measures; or

(b) (i) produce, import, distribute, sell, rent, advertise for sale or rental, or

(ii) possess devices, products, components or services for commercial purposes that –  
(A) are promoted, advertised or marketed for the purpose of circumventing effective technological protection measures;

(B) have only a limited commercially significant purpose or use other than to circumvent effective technological protection measures; or

(C) 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 related right 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 have the technological protection measure lifted, to the extent necessary, for the beneficiary to fully benefit from the exception or limitation, as applicable. 31

(4) The provisions of subsection (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) No person shall –

(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 Act 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) shall not prohibit any governmental activities for public policy or security authorised by law.

### **39. Prohibited acts assimilated to infringement of rights**

Any action or prosecution under sections 29(3), 37 and 38 shall be without prejudice to any action or prosecution for infringement of copyright or related rights under this Act.

## **PART VII – APPLICATION OF ACT**

### **40. Scope of application of copyright**

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

(a) works of authors who are citizens of, or have their habitual residence in Mauritius;

(b) works first published –

(i) in Mauritius; or

(ii) in another country and published thereafter in Mauritius, within 30 days, irrespective of the citizenship or residence of their authors; 32



(c) audiovisual works, the producer of which has his headquarters or habitual residence in Mauritius; or

(d) works of architecture erected in Mauritius including other artistic works incorporated in a building or other structure located in 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 and as are prescribed.

#### **41. Scope of application of related rights**

(1) The provisions of this Act relating to the protection of performers shall apply to performers taking part in a performance –

(a) taking place in Mauritius;

(b) incorporated in phonograms that are protected under this Act; or

(c) which has been fixed in a phonogram but is included in broadcasts protected under this Act.

(2) This Act relating to the protection of phonograms shall apply to phonograms produced, first fixed or first published in Mauritius;

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

(a) broadcasts of a broadcasting organisation; or the headquarters of which are situated in Mauritius;

(b) broadcasts transmitted from transmitters situated in Mauritius.

(4) This Act shall also apply to performers, producers of phonograms, broadcasting organisations and originating organisations which are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which Mauritius is party and as are prescribed.

### **PART VIII – THE SOCIETY**

#### **42. Management of rights**

Copyright and related rights may be managed by – 33

(a) an individual right holder or his lawfully authorised agent under a written contract of agency or power of attorney; or

(b) the Society.

### **43. Establishment of Society**

(1) There shall be established for the purposes of this Act the Rights Management Society which shall be a body corporate.

(2) The Society shall comprise –

(a) of the Director or his representative; and

(b) such other division as may be set up by the Board.

(3) The Society shall be administered by a Board and shall have its own seal.

(4) The Board shall consist of –

(a) a Chairperson, appointed by the Minister;

(b) a representative of the Ministry responsible for the subject of arts and culture, not below the rank of Deputy Permanent Secretary;

(c) a representative of the Attorney-General's Office, not below the rank of Principal State Counsel;

(d) a representative of the Ministry responsible for the subject of industry and commerce, not below the rank of Deputy Permanent Secretary;

(e) a representative of the Customs Department, not below the rank of Principal Customs Officer;

(f) 4 other members having knowledge and experience in the field of copyright and related rights, appointed by the Minister after consultation with such person as the Minister may deem appropriate.

(5) Members of the Board shall hold office for 3 years and shall be eligible for re-appointment or re-election for one additional term. 34

(6) Five members shall constitute a quorum.

(7) Every member of the Board shall be paid such allowance or fees as the Board may determine after consultation with the Minister.

#### **44. Appointment of staff**

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

(a) a Director who shall –

(i) be responsible for the day-to-day management of the Society;

(ii) execute the policy of the Board; and

(iii) act in accordance with such directions, not inconsistent with this Act, 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.

#### **45. Objects and functions of Society**

(1) The Society, in relation to its members, shall –

(a) collectively manage rights which may include the rights of authors or owners of copyright under section 6(1) or related rights namely –

(i) 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;

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

(iii) right of distribution, the right of rental and the right to a remuneration; 35

- (iv) right to a remuneration for public lending;
- (v) resale right when the original works of art are being resold;
  
- (vi) right to a remuneration for reproduction of a work for private or personal use;
  
- (vii) right to a remuneration to the public of folk literary and artistic creations.
  
- (viii) 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;
  
- (ix) 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 phonogram for private or other personal use;

(x) 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;

(xi) the right to a remuneration of publishers 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) enter into 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 and performers who are 37

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

#### **46. Membership of Society**

(1) Any author, phonogram producer or performer may apply for membership in accordance with the rules 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 Society 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. 38

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

#### **48. Publication of accounts**

(1) The Director shall, not later than 3 months after the end of every financial year, submit to the Board for approval the annual report in respect of that year.

(2) After approval of the Board, the Director shall, not later than 30 April after the end of every financial year, submit the report to the auditor.

(3) The auditor shall, within 6 months of the date of receipt of the annual report pursuant to subsection (2), submit the annual report and his audit report to the Board.

(4) For the purposes of section 5 of the Statutory Bodies (Accounts and Audit) Act, the auditor shall be the Director of Audit.

#### **49. Execution of documents**

(1) Subject to subsection (2), any document shall be deemed to be properly executed by or on behalf of the Society, where it is signed by the Chairperson and the Director.

(2) Where the Chairperson or the Director is unable to sign any document, the Board may designate a member of the Board to sign the 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. 39

## **51. Rules**

- (1) The Board may make such rules as it thinks fit in order to implement the objects of the Society.
- (2) The rules made under subsection (1) shall be published in the *Gazette*.
- (3) Any rules made under subsection (1) shall be approved by the Minister.

## **52. Protection from Liability**

No action shall lie against the Society, the Board, any member of the Board or any employee of the Society, as the case may be, in respect of any act done or omission made by it or him in good faith, in the performance of its or his functions under this Act or any other enactment.

## **PART IX – JUDICIAL PROCEEDINGS**

### **53. Special remedies**

- (1) The Supreme Court may, notwithstanding any other enactment and without prejudice to such action as the author or right holder may have under such 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 Court thinks fit.
- (2) Without prejudice to any action or claim which he may have, a copyright owner or author may apply to a Judge in Chambers for an injunction or order for a *mesure conservatoire* as is appropriate in the circumstances, for the protection against infringement of his rights under this Act.
- (3) An order under subsection (1) may include –
  - (a) the forfeiture or seizure of any infringing copy or any apparatus, article or thing used for the making the infringing copy;
  - (b) handing over to the copyright owner or author any infringing copy.

### **54. Presumptions**

- (1) 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 being the 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 were 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.

#### **55. 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.

## **56. Offences**

(1) Unless otherwise provided under this Act, any person who –

(a) without the express authorisation of the author or owner of the copyright –

(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;

(v) makes a derivative work for gain or against remuneration;

(vi) 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) without the express authorisation of the owner of the related rights, infringes the exclusive rights of performers, producers of phonograms and broadcasting organisations for gain or against remuneration;

(c) manufactures, imports for sale or rental, or provides such services as offering for sale, rental or distribution 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 42

(ii) susceptible to enable or assist in the reception or further distribution of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;

(d) 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 subsection (b);

(e) intentionally or recklessly deprives the copyright owner or author of his rights, for gain or against remuneration, shall commit an offence.

(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, the Magistrate of the Intermediate Court 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. 43

## **PART X – MISCELLANEOUS**

### **57. Regulations**

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

(2) Regulations made under subsection (1) may provide for the levying of fees and charges.

### **58. Transitional provisions**

(1) In this section –

“former Society” means the Mauritius Society of Authors established under the Copyright Act.

(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.

(4) Any action or judicial proceedings entered by or against the former Society shall be deemed to have been validly entered by or against the Society.

(5) Any contract of employment as regards the staff of the former Society and which are still valid at the time of coming into force of this Act, shall be deemed to have been duly entered by the Society.

(6) Any reciprocal agreement made with foreign societies by the former Society shall be deemed to have been validly entered into by the Society.

(7) Any authorisation or licence issued by the former Society and which is still valid at the time of coming into force of this Act, shall be deemed to have been validly issued by the Society.

(8) Any rules made by the former Society shall be deemed to have been made by the Society under this Act.

### **59. Repeal and savings**

(1) The Copyright Act 1997 is repealed.

(2) Notwithstanding subsection (1), any protection granted to or enjoyed by a copyright owner or author under the Copyright Act, except in

respect of exhaustion of rights and parallel imports, and which is still subsisting at the time of coming into force of this Act, shall continue to apply as if granted under this Act.

(3) Any contract relating to a work, performance, phonogram or broadcast entered prior to the coming into force of this Act and which is still valid at the time of coming into force of this Act, shall be deemed to have been made under this Act.

(4) Where this Act does not make provision for any transition, the Minister may make such regulations as may be necessary for that purpose.

#### **60. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

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