

12/02/2018

SAINT VINCENT AND THE GRENADINES

Copyright Act, 1989

(No. 53 of December 27, 1989)

An Act to make provisions with respect to Copyrights and Neighbouring Rights and for purposes connected therewith

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Copyright Act, 1989

Act No. 53 of December 27, 1989

Short title

1. This Act may be cited as the Copyright Act, 1989.

Interpretation

2. In this Act, except where the context otherwise requires-
"adaptation" means

- (a) in relation to a literary work in a non-dramatic form, a version of the work in a dramatic-form in any language whatsoever;
- (b) in relation to a literary work in a dramatic form, a version of the work in a non-dramatic form in any language whatsoever;
- (c) in relation to a literary work (whether in a non-dramatic form or in a dramatic form)
 - (i) a translation of the work; or
 - (ii) a version of the work in which a story or action is conveyed solely or principally by means of pictures; and
- (d) in relation to a musical work, an arrangement or transcription of the work;

"audio-visual production" means the aggregate of a series of related visual images, together with accompanying sounds, if any, which is capable of being shown by means of a mechanical, electronic or other device and irrespective of the nature of the material support on which the visual images and sounds, if any, are carried, but does not include a broadcast; and "audiovisual work" has the same meaning;

"author" means:

- (a) in relation to a literary work, the author of the work;
- (b) in relation to a musical work, the composer thereof;
- (c) in relation to an artistic work other than a photograph, the artist thereof;
- (d) in relation to a photograph, the person taking the photograph; or
- (e) generally, the creator or maker of a work;

"a broadcast" means the aggregate of sounds, or of sounds and visual images, embodied in a programme as transmitted by radio or television broadcasting;

"building" includes a structure of any kind;

"communication by cable" in relation to a protected work, production or performance, means the transmission to the public over wires, or other paths provided by a material substance, of the work, production or performance;

"computer software" means a set of instructions whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine-readable medium, of causing an electronic or other device having information-processing capabilities to indicate, perform or achieve a particular function, task or result;

"distribution" means the distribution to the public, for commercial purposes, of copies of a work or production by way of rental, lease, hire, loan or similar means;

"drawing" includes a diagram, map, chart, or plan;

"engraving" includes an etching, lithograph, product of photogravure, woodcut, print or similar work, not being a photograph;

"fixation" means the embodiment of sounds, images or both in a material form sufficiently permanent or stable to enable the sounds, images or both, as the circumstances require, to be perceived, reproduced or otherwise communicated during a period of more than a transitory duration;

"folklore" means all literary and artistic works created in St. Vincent and the Grenadines

by various communities, passed on from generation to generation and constituting one of the basic elements of the traditional cultural heritage;

"manuscript" in relation to a work, means the original document embodying the work whether written by hand or not;

"Minister" means the Minister responsible for Justice;

"multimedia production" includes an audio-visual production, dance, song, theatrical production, cinematic projection, collages, projections of photographs and sketches, live or recorded music, and other sounds, or any combination of the foregoing;

"neighbouring rights" means rights subsisting under Part II of this Act;

"photograph" includes photolithograph and any work produced by a process analogous to photography but does not include any part of an audio-visual work; and

"photographic work" has a corresponding meaning;

"performance" means the communication or delivery of a work by whatsoever means to the public or any section thereof;

"performer" means any actor, singer, musician, dancer or other individual who acts, sings, depicts, delivers, declaims, plays in or otherwise performs a literary, musical or artistic work, or an identifiable group or variety performing together;

"publication" means work published in any manner whatsoever for supply to the public or any section thereof;

"recording" means a fixation of any sounds or images or both by means of any disc, tape, perforated roll or other device or other means from or by which the sounds, images or both are capable of being reproduced;

"sound recording" means the aggregate of the sounds embodied in, and capable of being reproduced by means of, a record of any description, other than a sound track associated with an audio-visual production;

"transfer" refers to transfer within the meaning of sub-section 3 of section 17;

"writing" includes any form of notation, whether by hand or by printing, typewriting or any other process.

Application of Act

3. This Act applies-
- (a) to a literary, artistic or scientific work first published, performed or broadcast in St. Vincent and the Grenadines;
 - (b) to a literary, artistic or scientific work of which a citizen of St. Vincent and the Grenadines or an individual who is a permanent resident of St. Vincent and the Grenadines, is the author, whether or not the work is published, performed or broadcast;
 - (c) to a literary, artistic or scientific work of a foreign author first published in a State that has acceded to the Berne Convention;
 - (d) to a literary, artistic or scientific work, whether or not it has been published, performed or broadcast, the author of which:
 - (i) is not a citizen or permanent resident of St. Vincent and the Grenadines, but
 - (ii) is a national or resident of a State whose laws, pursuant to treaty or otherwise, make provisions similar to this Act in respect of authors who are citizens or permanent residents of St. Vincent and the Grenadines; and
 - (e) to such other matters as are provided for by this Act.

Literary, artistic and scientific works

4. Literary, artistic and scientific works include-
- (a) books, pamphlets, and other writings;
 - (b) lectures, addresses, sermons and works of alike nature;
 - (c) dramatic and dramatico-musical works;
 - (d) musical works, whether or not they are in written form and whether or not they include accompanying works;
 - (e) choreographic works and pantomimes;
 - (f) cinematographic and other audio-visual works;

- (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry, irrespective of their artistic quality;
- (h) photographic works, including works expressed by processes analogous to photography;
- (i) works of applied art, whether handicraft or produced on an industrial scale;
- (j) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science;
- (k) written tables or compilations; and
- (1) computer software.

Protected work

- 5.- (1) Authors of original literary, artistic and scientific works shall be entitled to protection of their works under this Part.
- (2) Works shall be protected irrespective of their quality and the purpose for which they were created.
- (3) A work shall be lawfully made public if it is published, performed or broadcast with the consent of the author of the work or any other person lawfully entitled to grant such consent, or if it is otherwise published, performed or broadcast in accordance with the provisions of this Act.

Permitted use of work

- 6.- (1) Notwithstanding the provisions of section 5, protection shall not be afforded to any author or other person for the time being entitled thereto and the consent of such author or other person shall not be required in the following instances
- (a) for the publication, reproduction, translation or arrangement of any law, statutory instrument or decision of the courts and administrative bodies, as well as to official translations thereof;
 - (b) reports made by any body established in St. Vincent and the Grenadines to make a public inquiry into any matter and published by the Government of St. Vincent and the Grenadines;
 - (c) translations made at public expense of any works referred to in paragraphs (a) and (b);
 - (d) where the reproduction, or the translation, adaptation, arrangement or other transformation of the work is for the user's personal use only, provided that the work has already been lawfully made public;
 - (e) where quotations are taken from one work or article and produced as part of another work, provided that the work from which the quotations were taken has been lawfully made public and mention is made of this source and the author thereof;
 - (f) where the work is used for teaching by way of illustrations in publications, broadcasts or recordings or communicated for such purpose by way of a broadcast to schools, universities or for public education, provided that the work has been lawfully made public and the source of the work used and author thereof are mentioned in the relevant publication, broadcast or recording;
 - (g) news of the day published, broadcast or publicly communicated by any other means including photographic and audio-visual works;
 - (h) publications appearing in periodicals, magazines or journals on economic, political, sociological or religious topics or any broadcast of the same, unless the article or broadcast, when first published or made, was accompanied by an express condition prohibiting its use without consent;
 - (i) for the reproduction of works of art or of architecture in an audio-visual work for cinema or television or in a broadcast by television and the communication to the public of any of those works of art or architecture so produced, if those works-
 - (i) are permanently located in a place where they can be viewed by the public,

- or
- (ii) are included in an audio-visual work for cinema or television by way only of background or are incidental to the essential matters represented therein;
- (j) for the purpose of the reproduction in the news media or the communication to the public of
- (i) any political speech delivered in public;
 - (ii) any speech delivered in public during legal proceedings, or
 - (iii) any lecture, address, sermon or other works of a similar nature delivered in public, if the use by reproduction or communication to the public is exclusively for the purpose of reporting fresh events or new information, provided also that such production does not unreasonably affect the author's rights in the work.
- (2) The Crown is the trustee for the public of the works described in paragraphs (a) to (c) of subsection (1).
- (3) The Crown may, in respect of any of the works coming under paragraphs (a) to (c) of subsection (1), apply to the High Court for an injunction to restrain a person from any distortion, mutilation or other modification of or derogatory act committed in relation to any of those works, where such distortion, mutilation or other modification or derogatory act is likely to be a dishonest artifice amounting to a fraud on the public, and to restrain any publication, sale or distribution of the same.

News reports: saving

7. An author's rights in a work are not infringed by the accidental or incidental inclusion of the work in the reporting by a news broadcast of fresh events, new information or commentaries on the same.

Ephemeral recording

8.- (1) When a work is lawfully broadcast by a broadcaster, the broadcaster may, by means of his own facility, make for the purpose of his own broadcast, a recording of the broadcast and produce one or more copies of the recording for his own use.

(2) Any recording made in accordance with subsection (1) may be deposited with the official archives of St. Vincent and the Grenadines and where so deposited shall not affect the authors' rights in the work that was so broadcast.

Licence: non-contractual translation of work

First Schedule

9. A person may, without the consent of the author of a work, translate the work into the English language and publish the work of translation in St. Vincent and the Grenadines under a licence granted by the Minister in accordance with the rules for that purpose in the First Schedule.

Licence: non-contractual recording of work

Second Schedule

10. A person may, without the consent of the author of a work, reproduce the work and publish in St. Vincent and the Grenadines a particular edition of the work by reproduction under a licence granted by the Minister in accordance with the rules set out in the Second Schedule for that purpose.

Permissible recordings

11.- (1) Subject to subsection (2), where, in respect of a musical work, a sound recording has been made of the performance of the work with the consent of the author of the music and of the accompanying words, if any, and the sound recording has been made in St. Vincent and the Grenadines or a copy of it has been imported into St. Vincent and the Grenadines, a person may, without the consent of the author of either the music or of any accompanying words, make a new recording of a performance of the same musical work.

(2) Where, pursuant to subsection (1), a sound recording is made in St. Vincent and the Grenadines of the performance of a musical work the recorder thereof shall pay to the author of the music and of the accompanying words, if any, such remuneration as the Minister may, by order, prescribe.

(3) The making of a recording pursuant to this section does not otherwise affect the author's rights in the musical work or in the accompanying words, if any.

Ownership of copyrights

12.- (1) The rights protected under section 5 of this Act are owned in the first instance by the author who created the work, and the authors of a work of joint authorship are co-owners of the said rights.

(2) Until proved otherwise, the author of a work is the person under whose name the work is disclosed.

(3) Subject to any enactment relating to contracts of employment and to the terms of any employment contract, when a work is created by an author:

(a) in the course of his employment for the Crown, a body corporate or other individual; or

(b) under a contract for services with, or as a work commissioned by, the Crown, a body corporate or other individual,

then, in respect of that work the author's rights under sections 13 and 14 vest in the Crown, body corporate or other person who employed the author or commissioned the work.

Economic rights

13. The author of a protected work has the exclusive right, subject to sections 6 to 11, in relation to the whole work or any part thereof to do or to authorise another person to do any of the following acts, namely

(a) to reproduce the work;

(b) to translate, adapt, arrange or otherwise transform the work; and

(c) to communicate the work to the public by publication, performance, broadcast (including transmission by cable) or by any other means.

Moral rights

14. The author of a protected work has, in respect of his work, the exclusive right

(a) to claim authorship of his work;

(b) to demand that his authorship be indicated in connection with any of the acts mentioned in section 13, except where the work is incidentally or accidentally included in the reporting of current events by means of broadcasting or television; and

(c) to object to and to have relief in connection with, any distortion, mutilation or other modification of, or any derogatory act committed in relation to, his work, where the distortion, mutilation, modification or derogatory act has or is likely to have an adverse effect on his character or reputation.

Compiling of work

15.- (1) A person who compiles as a work, a collection of literary, artistic or scientific works that, because of the selection and arrangement of its contents, constitutes an intellectual creation such as (by way of example but without limiting the generality of this paragraph) encyclopaedias and anthologies, if his work is original, has, in relation to his work, the rights of an author under sections 13 and 14.

(2) Subsection (1) does not affect any author's rights that exist under this Act in respect of any work used in the making or compiling of a work described in that subsection.

Folklore

16.- (1) In the case of Vincentian folklore, the author's rights under this Act vest in the Crown to the same extent as if the Crown had been the original creator of the folklore.

(2) The rights of the Crown in respect of folklore are enforceable at the instance of the Attorney General.

(3) Works of Vincentian folklore shall be protected without limitation in time.

Transfer of rights

17.- (1) Subject to subsection (2), the rights vested in an author by this Act in respect of a work are transferable by the author.

(2) The moral rights vested in an author under section 14 are not transferable otherwise than by succession.

(3) For the purposes of this Act, "transfer" extends to every mode, whether direct or indirect, voluntary or involuntary, absolute or conditional, of disposing of or parting with any right vested under this Act or of any interest in any such right, including the retention of the title to the right or interest as security for any obligation.

Transfer formalities

18.- (1) To be valid, the transfer of the rights vested in an author by section 13 in respect of a work must be in writing and signed by the person who is transferring the rights or any part of the rights in respect of the work; but this subsection does not prevent a transfer of those rights by operation of law.

(2) The transfer of the ownership in an original work, or in one or more copies of a work, does not transfer to the new owner of the original or copy any of the author's rights in the work.

Duration: economic rights

19.- (1) Unless otherwise expressly provided in this Act, the author's rights vested under section 13 in respect of a work, exist for the life of the author and for the fifty calendar years immediately following the year of his death.

(2) When the author's rights under section 13 in a work are vested jointly in more than one author, the rights exist for the life of the last surviving author and for the fifty calendar years immediately following the year of his death.

(3) When, under section 12 the author's rights in a work under sections 13 and 14 are vested in the Crown, a body corporate or an individual, the rights exist for the life of the individual who made or created the work and for the fifty calendar years immediately following his death; or, if the work was made or created by two or more individuals, the rights exist for the life of the last survivor of those individuals and for the fifty calendar years immediately following his death.

Duration: moral rights

20. The author's rights vested under section 14 exist for the same period as that prescribed by sections 19, 21, 22, or 23 for the rights vested in the author under section 13, except that the rights of an author under section 14 are enforceable by the author or his successors in title whether or not the rights vested in the author by section 13 are still vested in the author or his successors.

Duration: anonymous authors

21. Where a work is published anonymously or under a pseudonym, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first published; but, if during that period, the identity of the author of the work is revealed or his identity is no longer in doubt, the rights exist for such period specified under section 19, as the circumstances require.

Duration: audio-visual works

22. When a work is an audio-visual work, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first made available to the public; but if the work is not made available to the public within the first fifteen calendar years after the work was completed, the author's rights to the work

cease at the end of that fifteenth calendar year.

Duration: photographic works

23. When a work is an audio-visual work, the author's rights in the work exist for the fifty calendar years immediately following the year in which the work was first made available to the public.

Duration: public benefit

24. The right of the Crown:

(a) in respect of laws, statutory instruments and decisions of courts or tribunals whether of a judicial or administrative nature, shall be for the period during which these laws, instruments or decisions are relevant to the administration of justice in St. Vincent and the Grenadines; and

(b) in respect of works mentioned in subsection 3 of section 12, shall be for a period of ten calendar years immediately following the year in which the work was first published.

Performer's rights

25.- (1) A performer has the exclusive right, subject to the exceptions provided for by sections 35, 37 and 38, to broadcast (including to communicate by cable), record and reproduce his performance or grant his consent for the same to be broadcast, recorded or reproduced and he may prevent any person from doing any of the same where his consent has not been so granted.

(2) For the purposes of this section, "performance" includes performance, communication or delivery of a literary or artistic work whether or not at the relevant time the work was being publicly performed, communicated or delivered.

Broadcast performances

26.- (1) Where a performer has given his consent to a broadcaster to broadcast his performance such consent shall not be construed as:

- (a) consent to other broadcasters to broadcast that performance;
- (b) consent for that broadcaster to make a recording of that performance;
- (c) consent for that broadcaster to make a reproduction of that performance; and
- (d) consent to that broadcaster to broadcast the performance from any recording or reproduction of a recording,

except where there is a written agreement to the contrary with such performer or where a contrary inference arises from a contract of service between the performer and the broadcaster.

(2) Where, in respect of a performance that is broadcast, the performer gives the broadcaster consent in writing to make an audio-visual work of the performance, paragraphs (c) and (d) of subsection (1) do not apply.

(3) Nothing in this section deprives a performer of the right to enter into a contract regarding any performance on terms and conditions more favourable to him in respect of any use of that performance than that provided by the performer's rights under this Act.

Consent of performer

27.- (1) Where the consent of the performer is required in respect of any performance, the consent may be given by the performer personally or by a person authorised by him in writing to give such consent.

(2) When the consent of the performer is given in respect of a performance by a person holding himself out:

- (a) to be the performer thereof, or
- (b) to be the person authorised by the performer thereof to give consent on his behalf,

the consent has effect unless, at the time the consent was given, the person receiving

the consent knew or ought reasonably to have known that the holding out was improper or unauthorised, as the case may be.

Duration of rights

28. The rights vested in a performer under section 25 in respect of a performance exist for the twenty calendar years after the end of the year in which the performance occurred.

Phonograms

29. A phonogram is a sound recording of the sounds of a performance of a literary or artistic work or of other sounds.

Producers' rights

30.- (1) The producer of a phonogram has the exclusive right to prevent any person, without the consent of the producer

- (a) from making a reproduction of a phonogram the original sound recording of which was lawfully made in St. Vincent and the Grenadines;
- (b) from importing, for the purpose of distribution to the public, a phonogram the original sound recording of which was lawfully made in St. Vincent and the Grenadines; or
- (c) from distributing to the public, whether by sale or otherwise, any reproduction of the phonogram the original sound recording of which was lawfully made in St. Vincent and the Grenadines.

(2) The consent of the producer of a phonogram must be given in writing by him personally or by some person authorised in writing by him to give consent on his behalf.

(3) A producer of a phonogram means the person who first lawfully makes in St. Vincent and the Grenadines a sound recording of the sounds of a performance or the other sounds constituting the aural effects of the phonogram.

(4) For the purpose of this section, a sound recording is lawfully made when it is made without infringing any other person's rights under this Act in respect of the performance or sounds constituting the aural effects of the phonogram.

(5) When, pursuant to a contract with the producer of a phonogram, a person makes in St. Vincent and the Grenadines a reproduction of the sounds recorded on a phonogram produced outside St. Vincent and the Grenadines and forwarded to him for reproduction in St. Vincent and the Grenadines pursuant to that contract, the sound recording so produced in St. Vincent and the Grenadines shall, for the purposes of subsection (1), be deemed to be an original sound recording made in St. Vincent and the Grenadines.

Duration: producers' rights

31. The rights vested in the producer of a phonogram under section 30 exist for a period of twenty calendar years immediately following the end of

- (a) the year in which the phonogram was first lawfully made available in St. Vincent and the Grenadines to the public, if it was made available to the public in St. Vincent and the Grenadines; or
- (b) if the phonogram is not made available to the public in St. Vincent and the Grenadines, the end of the year in which the original sound recording for the phonogram was first lawfully made in St. Vincent and the Grenadines, within the meaning of section 30.

Notice of rights

32.- (1) Each copy of, or container for a copy of, a phonogram made available to the public for commercial purposes, must have disclosed thereon a notice consisting of the letter C capitalised and placed within a circle and accompanied by an indication of the year the recording for the phonogram was first lawfully made in St. Vincent and the

Grenadines; all of which must be prominently displayed on the copy of, or on the container for the copy of, the phonogram, to give reasonable notice of the claim of all rights respecting the use of the phonogram.

(2) When a copy of the phonogram or the copy's container does not identify the producer of the phonogram by having his name, trade mark or other designation indicated on the copy or container, the notice referred to in subsection (1) must include the name of the person who owns the producers' rights under this Act in that phonogram.

(3) When a copy of the phonogram or the copy's container does not identify the performer whose performance constitutes any of the aural effects of the phonogram, the notice referred to in subsection (1) must include the name of the person who owns the performer's rights under this Act in that performance.

Remuneration

33.- (1) Where any phonogram the original sound recording of which was lawfully made in St. Vincent and the Grenadines is used

- (a) by way of being made available for commercial purposes to the public;
- (b) by way of a broadcast; or
- (c) by way of any other communication to the public (of a commercial nature),

the user of the phonogram shall pay to the producer of the phonogram remuneration for the producer and any performer whose performance constitutes any of the aural effects of the phonogram.

(2) When more than one performer is entitled to share the remuneration paid to the producer under subsection (1) for the performance, the amount paid by the producer shall be divided equally among those performers or in the manner and shares agreed among the performers.

Duration of remuneration

34. The obligation to pay remuneration to the producer of a phonogram and to any performer whose performance constitutes any of the aural effects of the phonogram exist for the same period that the producer's rights under section 31 in that phonogram exist.

Special licences

35.- (1) Where the consent of the producer of a phonogram is needed for the duplication of the same, that is to say, to produce any article that contains any sound taken directly or indirectly from any recording of sounds contained on that phonogram, any person may apply in writing to the Minister for a licence to produce such duplicate.

(2) The Minister may, upon an application for a licence under subsection (1), grant the licence authorising such person to produce that article.

(3) The production of a duplication of a phonogram pursuant to a licence under subsection (1) does not infringe the rights under this Act of either the producer of the phonogram from which the sounds for the article were taken or any performer whose performance is included in the aural effects of that phonogram, if

- (a) the duplication is for use exclusively for the purposes of education or scientific research;
- (b) the duplication is for distribution in St. Vincent and the Grenadines only; and
- (c) the person authorised by licence to produce the duplication gives an undertaking in writing to pay the producer of the phonogram such remuneration as the Minister determines with regard to the number of duplications distributed in St. Vincent and the Grenadines.

(4) Section 7 applies, with any necessary modifications, to any duplication authorised by licence under this section.

Broadcasters' rights

36.- (1) Where a broadcast has been lawfully made the broadcaster thereof has the

exclusive right to prevent any person, without the broadcaster's consent

- (a) from rebroadcasting the broadcast;
- (b) from making a recording of the broadcast; or
- (c) from reproducing a recording of the broadcast, except that such consent shall not be needed where the reproduction is made for any purpose described in section 6, provided also that such reproduction shall not be used for any other purpose.

(2) A rebroadcast occurs when one broadcaster broadcasts any part of the broadcast of another broadcaster.

(3) A broadcast is lawfully made when the broadcast is made without infringing the rights under this Act of any other person.

Ephemeral recording: no consent required

37.- (1) When a broadcaster, by means of his own facilities and for his own broadcast, makes a recording of a broadcast or performance, a reproduction of the recording of the broadcast or performance or makes a recording of a phonogram, no consent is required and there is no infringement of the rights under this Act of any person, if,

- (a) in respect of each broadcast of the recording of the broadcast, performance, reproduction or phonogram, the broadcaster had the right under this Act to make that particular broadcast; and
- (b) in respect of each recording, and reproduction or phonogram made pursuant to this section, the broadcaster had the right to make the broadcast on which the recording, performance, reproduction or phonogram is used.

(2) Subsection (2) of section 8 applies, with the necessary modifications in respect of a single copy of any recording made under the authority of this section.

Permissible recordings

38.- (1) A fixation described in this provision that would otherwise be an infringement of any rights, under this Act, of a performer, broadcaster, or producer of a phonogram, that is to say

- (a) a recording of a broadcast of any performance;
- (b) a reproduction of a recording of a broadcast of any performance; or
- (c) a duplication of a phonogram, may be made without the consent of the performer, broadcaster or producer, as the case requires, and is not an infringement of the rights under this Act of any of those persons, if the fixation is a permitted recording.

(2) A fixation described in subsection (1) is a permitted recording if

- (a) it is for the maker's personal use only;
- (b) it is made for and in the course of the reporting of fresh events and new information by any news medium, and no more than short excerpts of the broadcast, performance or phonogram are used in the reporting by the news medium;
- (c) it is done exclusively for teaching purposes or for scientific research;
- (d) it consists of quotations in the form of short excerpts of a broadcast, performance or phonogram and the quotations are compatible with fair practice and justified by the purpose of keeping the public informed; or
- (e) it is made for any other purpose for which a consent would not be required by virtue of section 6 in similar circumstances from an author of a literary, artistic or scientific work.

Civil remedies

39.- (1) Where a person's rights under this Act are being infringed or are in imminent danger of being infringed such person may institute proceedings in the High Court:

- (a) for an injunction to prevent the infringement or to prohibit the continuation of the infringement; and
- (b) for recovery of damages for the infringement.

(2) Where an injunction has been granted under subsection (1) the person granted such injunction shall not be deprived of any damages that may be awarded to him for loss sustained by him as a result of the infringement or imminent infringement of his rights under this Act.

(3) Where a person sustains damage by reason of an infringement of his rights under this Act, he may bring an action against the person who infringed his rights notwithstanding that such person has already been successfully prosecuted under this Act.

Criminal sanctions

40.- (1) Any person who knowingly infringes any right vested in any person under this Act is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of twelve months or to both such fine and imprisonment.

(2) If the offence under subsection (1) is a continuing offence, the offender is liable to an additional fine of two hundred dollars for each day or part thereof during which the offence continues.

Fraud on performer

41.- (1) A person is guilty of an offence who, not being the performer or person authorised by the performer to give consent on his behalf, purports to consent as or on behalf of the performer

- (a) to the making of a broadcast of the performance of that performer; or
- (b) to the making of a fixation of the broadcast of that performance of the performer.

(2) A person who is guilty of an offence under subsection (1) is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of twelve months or to both such fine and imprisonment.

Folklore offence

42. Any person who, without the written consent of the Minister, knowingly imports in St. Vincent and the Grenadines, sells, offers or exposes for sale or distributes in St. Vincent and the Grenadines any copies made outside St. Vincent and the Grenadines of any work of Vincentian folklore or any translation, adaptation, arrangement or other work of transformation of Vincentian folklore is guilty of an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for a term of twelve months, or to both such fine and imprisonment.

Compensation

43. In addition to any punishment imposed by a court in respect of a prosecution of an offence under section 40, 41 or 42, the court may order

- (a) that all amounts arising out of the offence and received by the accused be accounted for by him and paid to the persons entitled under this Act to those amounts; and
- (b) that all copies, recordings, reproductions, duplications and other infringing material obtained from and comprising the basis of the offence be seized and disposed of as the court may direct, having regard to all the circumstances of the case and to the persons whose rights were infringed and to the extent of that infringement.

Limitation

44. A prosecution for an offence under section 40, 41 or 42 may be brought at any time within five years from the date the offence was committed, or the last date on which the continuing offence was committed.

Reciprocity

45. The Minister may, by order, provide for reciprocal treatment in relation to those rights to which this Act relates, to be given to any country that provides protection for similar rights in respect of St. Vincent and the Grenadines as provided for by this Act.

Regulations

46. The Minister may make regulations with regards to

- (a) the administration of matters relating to the rights to which this Act relates;
- (b) the collection of royalties and distribution thereof to persons entitled thereto; and
- (c) any matter that is necessary for the effective operation of this Act.

Crown bound by Act

47. The Crown shall be bound by this Act.

Repeal of Act No. 22 of 1954

48. The Copyright Act, 1954 is hereby repealed.

FIRST SCHEDULE (Section 9)

Translation Licences

Application of Schedule

1. The provisions of this Schedule apply to works that have been published in a printed or in an analogous form of reproduction.

Application cap

2.- (1) Any citizen or permanent resident of St. Vincent and the Grenadines may, after the expiration of the period mentioned in sub-paragraph (2), apply to the Minister for a licence to make a translation of a work into English and to publish the translation in a printed or analogous form of reproduction in St. Vincent and the Grenadines.

(2) No licence may be granted by the Minister under this Schedule in respect of a work until the expiration of three years from the date of the first publication of the work.

Grant of licence

3.- (1) The Minister shall determine, before granting a licence under this Schedule

- (a) that no translation of the work into English has, in a printed or in an analogous form of reproduction, been published by or with the authorisation of the owner of the right of the translation, or, if there has been such a publication, that all previous editions in English are out of print;
- (b) that the applicant for the licence has established that he either has requested, and has been denied, authorisation from the owner of the right of translation or after due inquiry on his part, was unable to find the owner;
- (c) that at the same time as addressing to the owner the request referred to in clause (b), the applicant for the licence had informed any national or international information centre designated for that purpose by the government of the country in which the publisher of the work to be translated is believed to have his principal place or business, of the request; and
- (d) that, if the applicant for the licence could not find the owner of the translation, the applicant had sent, by registered airmail, a copy of his application to the publisher whose name appears on the work and another copy of the application to any information centre referred to in clause (c), or, in the absence of such an information centre, to the Unesco International Copyright Information Centre.

- (2) No licence may be granted by the Minister in respect of a work unless the owner of the right of translation in the work, if known or located, has been given an opportunity to be heard.
- (3) No licence may be granted to an applicant in respect of a work until six months
 - (a) from the date on which the applicant complies with the requirements of sub-paragraphs (1)(b) and (1)(c); or
 - (b) if the identity or the address of the owner of the right of translation of the work is unknown, from the date on which the applicant also complies with the requirements of sub-paragraph (1)(d).
- (4) No licence may be granted by the Minister when, in respect of the work for which the licence was applied for, a translation into English has, in a printed or in an analogous form of reproduction, been published, by or with the authorisation of the owner of the translation right during the period limited by subparagraph (d).
- (5) For works composed mainly of illustrations, a licence may only be granted by the Minister under this Schedule if the conditions of the Second Schedule are also complied with.
- (6) No licence may be granted by the Minister in respect of a work when the author of the work has withdrawn all copies of that work from circulation.

Scope

- 4.- (1) A licence under this Schedule
 - (a) is valid for the purpose of teaching, scholarship or research;
 - (b) allows publication only in a printed or an analogous form of reproduction and, subject to sub-paragraph (2), only in St. Vincent and the Grenadines;
 - (c) does not extend to the export of copies made under the licence, except as provided in sub-paragraph (3);
 - (d) is non-exclusive; and
 - (e) is non-transferable.
- (2) Notwithstanding sub-paragraph (1)(b), where the Minister is satisfied that facilities do not exist in St. Vincent and the Grenadines for the printing or reproduction, or that existing facilities are incapable for economic or practical reasons of ensuring printing or reproduction of the work for which the licence is requested, the reproduction may be made outside St. Vincent and the Grenadines, if
 - (a) the country where the work of reproduction is done is a party to the Berne Convention or to the Universal Copyright Convention;
 - (b) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in St. Vincent and the Grenadines and the contract between the licensee and the establishment doing the work of reproduction so requires;
 - (c) the contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and
 - (d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a licence has been granted under this Schedule.
- (3) The licence must provide for such just compensation in favour of the owner of the right of translation as is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in St. Vincent and the Grenadines and owners of translation rights in the country of the owner of the right of translation.
- (4) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the owner of the right of translation, it is a condition of his licence that he report that fact to the Minister, who must make all efforts, by the use of international machinery, to ensure transmittal of the compensation in internationally convertible currency or its equivalent.
- (5) As a condition of maintaining the validity of the licence issued under this Schedule to translate a work, the translation must be correct and all published copies must

include the following:

- (a) the original title and name of the author of the work;
 - (b) a notice in English stating that the copy is available for distribution only in St. Vincent and the Grenadines; and
 - (c) if the work that is translated was published with a copyright notice, a reprint of that notice.
- (6) A licence issued under this Schedule in respect of a work terminates when a translation of the work in the English language and with substantially the same content as the translation published under the licence is
- (a) in a printed or in an analogous form of reproduction, and
 - (b) by or with the authorisation of the owner of the right of the translation,
- published in St. Vincent and the Grenadines at a price reasonably related to that normally charged in St. Vincent and the Grenadines for comparable works.
- (7) Any copies of a translation of a work made under the licence before the licence terminates pursuant to sub-paragraph (6) may continue to be distributed in St. Vincent and the Grenadines until the stock of the copies is exhausted.

Broadcaster

- 5.- (1) A licence under this Schedule may be granted by the Minister to a Vincentian broadcaster if all the following conditions are complied with:
- (a) the translation is made from a copy made and acquired in accordance with the laws of St. Vincent and the Grenadines;
 - (b) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialised technical or scientific research to experts in a particular profession;
 - (c) the translation is used exclusively for the purpose specified in clause (b), through broadcasts that are lawfully made and that are intended for recipients in St. Vincent and the Grenadines, including broadcasts made through the medium of recordings that have been made lawfully and for the sole purpose of such broadcasts;
 - (d) recordings of the translation are not used by broadcasters other than those having their headquarters in St. Vincent and the Grenadines; and
 - (e) all uses made of the translation are without any commercial purpose.
- (2) A licence may also be granted, under all the conditions provided for in sub-paragraph (1), to a Vincentian broadcaster to translate any text incorporated in an audio-visual work that was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Application

- 6.- (1) Section 9 and this Schedule apply to works whose country of origin is the country, or any other country whose name, with reference to this Schedule, is indicated in an order made by the Minister.
- (2) The Minister may, by order, discontinue the application of section 9 and this Schedule.

SECOND SCHEDULE (Section 10) Reproduction Licences

Works covered

1. Subject to paragraph 5, this Schedule applies to works that have been published in a printed or in an analogous form of reproduction.

Application cap

2.- (1) Any citizen or permanent resident of St. Vincent and the Grenadines may, after the expiration of the period mentioned in sub-paragraph (2), apply to the Minister for a licence to reproduce and publish a particular edition of a work in a printed or in an analogous form of reproduction.

(2) No licence may be granted until the expiration of whichever of the following periods is applicable:

- (a) three years for works of technology and of the natural and physical sciences, including mathematics;
- (b) seven years for works of fiction, poetry, drama and music, and for art books; or
- (c) five years for all other works; commencing from the date of first publication of the particular edition of the work.

Grant of licence

3.- (1) Before granting a licence under this Schedule in respect of any work, the Minister must first determine:

- (a) that no distribution, by way or with the authorisation of the owner of the right of reproduction of any edition of the work, of copies in printed or analogous forms of reproduction of that particular edition has taken place in St. Vincent and the Grenadines to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in St. Vincent and the Grenadines for comparable works, or that, under the same conditions, copies of that particular edition have not been on sale in St. Vincent and the Grenadines for a continuous period of at least six months;
- (b) that the applicant for the licence has established that he either has requested, and has been denied, authorisation from the owner of the right of reproduction, or that, after due diligence on his part, he was unable to find the owner;
- (c) that, at the same time of addressing to the owner the request referred to in clause (b), the applicant for the licence had informed any national or international information centre designated for this purpose by the government of the country in which the publisher of the work to be reproduced is believed to have his principal place of business, of the request; and
- (d) that, if the applicant could not find the owner of the right of reproduction, the applicant had sent, by registered airmail, a copy of his application to the publisher whose name appears on the work and another copy of the application to any information centre referred to in clause (c), or in the absence of such a centre, to the Unesco International Copyright Information Centre.

(2) No licence may be granted by the Minister under this Schedule to reproduce a work unless the owner of the right of reproduction of that work, if known or located, has been given an opportunity to be heard.

(3) Where the three-year period referred to in sub-paragraph (a) of paragraph 2(2) applies in respect of an application to reproduce a work, no licence may be granted by the Minister in respect of that work until the expiration of six months, computed from the date on which the applicant complies with the requirements mentioned in sub-paragraph (1)(b) and (1)(c) or, if the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant also complies with the requirement mentioned in sub-paragraph (1)(d).

(4) When the seven-year or five-year periods referred to in sub-paragraph (2)(b) or (2)(c) apply and when the identity or the address of the owner of the right of reproduction of the work in respect of which the application to reproduce has been made is unknown, no licence may be granted under this Schedule until the expiration of three months, computed from the date on which the copies referred to in sub-paragraph (1)(d) have been mailed.

(5) No licence may be granted by the Minister in respect of the reproduction of a work when a distribution or placing on sale of the work as described in sub-paragraph (1)(a)

has taken place during the period of six or three months referred to in sub-paragraph (3) or (4) respectively.

(6) No licence may be granted by the Minister in respect of a work that is the subject of an application for a licence if the author of that work has withdrawn all copies of the edition from circulation.

(7) When the edition that is the subject of an application under this Schedule is a translation, the licence may only be granted if the translation is in English and was published by or with the authorisation of the owner of the right of translation.

Scope

- 4.- (1) A licence under this Schedule in respect of the reproduction of a work
- (a) is valid only for use in connection with systematic instructional activities;
 - (b) subject to sub-paragraph (5), only allows publication in a printed or in an analogous form of publication at a price reasonably related to, or lower than, that normally charged in St. Vincent and the Grenadines for a comparable work;
 - (c) only allows publication in St. Vincent and the Grenadines and does not extend to the export of copies made under the licence, but subject to sub-paragraph (2);
 - (d) is not exclusive; and
 - (e) is not transferable.
- (2) Where the Minister is satisfied that facilities do not exist in St. Vincent and the Grenadines for the reproduction of, or that existing facilities are incapable for economic or practical reasons of reproducing the edition that is the subject of the Schedule, the reproduction may be made outside St. Vincent and the Grenadines, if:
- (a) the country where the work of reproduction is done is a party to the Berne Convention or to the Universal Copyright Convention;
 - (b) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in St. Vincent and the Grenadines and the contract between the licensee and the establishment doing the work of reproduction so requires-
 - (c) the contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and
 - (d) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a licence has been granted under this Schedule.
- (3) A licence issued under this Schedule in respect of a work must provide for such just compensation in favour of the owner of the right of reproduction in the work as is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in St. Vincent and the Grenadines and owners of reproduction rights in the country of the owner of the right of reproduction.
- (4) If the licensee is unable, by reason of currency regulations, to transmit the compensation to the owner of the right of reproduction, it is a condition of his licence that he report that fact to the Minister, who must make all efforts, by the use of international machinery, to ensure transmittal of that compensation in an international convertible currency or its equivalent.
- (5) As a condition of maintaining the validity of a licence to reproduce an edition of a work, the reproduction of that particular edition must be accurate and all published copies must include the following:
- (a) the title and name of the author of the work;
 - (b) a notice in English stating that the copy is available for distribution only in St. Vincent and the Grenadines; and
 - (c) if the particular edition that is reproduced bore a copyright notice, a reprint of that notice.
- (6) A licence for the reproduction of a particular edition of a work terminates if-

- (a) copies of an edition of the work, in a printed or in an analogous form of reproduction are, by or with the authorisation of the owner of the right of reproduction, distributed in St. Vincent and the Grenadines to the general public or in connection with systematic instructional activities and at a price reasonably related to that normally charged in St. Vincent and the Grenadines for comparable works; and
 - (b) that edition of the work is in English and substantially the same in content as the edition that was published under the licence.
- (7) Any copies of the reproduction of a particular edition of a work already made before the licence thereof terminates under this section may continue to be distributed until the stock of copies is exhausted.

Audio-visual

5. Subject to similar conditions as are provided for in this Schedule, the Minister may grant a licence-

- (a) to reproduce in audio-visual form a lawfully made audio-visual work, including any protected works incorporated in it, if the audio-visual work was prepared and published for the sole purpose of being used in connection with systematic instructional activities; and
- (b) to translate into English any text incorporated into the audio-visual work described in sub-paragraph (a).

Application

6.- (1) Section 10 and this Schedule apply to works whose country of origin is the country, or any other country, whose name, with reference to this Schedule, is indicated in an order made by the Minister.

(2) The Minister may, by order, discontinue the application of section 10 and this Schedule.