

2013

Copyright

No. 8

Examined and certified by:

  
Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to this Act this 6<sup>th</sup> day of December, 2013



  
Queen's Representative

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**An Act to amend and restate the law relating to copyright and other forms of protection for intellectual creations.**

**The Parliament of the Cook Islands enacts as follows—**

**1 Title**

This Act is the Copyright Act 2013.

## 2 Commencement

This Act comes into force on the day after the day on which it receives the assent of the Queen's Representative.

## Part 1 Preliminary matters

### 3 Interpretation

(1) In this Act, unless the context otherwise requires,—

**artistic work** means—

- (a) a building or a model of a building;
- (b) any of the following, whether or not the work has artistic merit:
  - (i) a painting, sculpture, drawing, illustration, sketch, engraving, etching, lithograph, tapestry, woodcut, print, photograph, collage, model, or other similar work;
  - (ii) a map, plan, chart, diagram, sketch, technical drawing, illustration, or other similar work, or a 3-dimensional work, relating to architecture, geography, topography, or science;
  - (iii) a work of applied art, whether handmade or manufactured, that has utilitarian functions or that is incorporated in a useful article (for example, an item of furniture, pottery, or weaving);
  - (iv) any other work of artistic craftsmanship

**author**, in relation to a work,—

- (a) means the individual who created the work; or
- (b) if the work was created by 2 or more individuals and the contribution of each individual is not distinct from that of the other individual or individuals, means all those individuals

**broadcast** means a transmission by any means including by satellite or other wireless transmission

**broadcaster** means a person who makes a communication to the public

**calendar year** means a period of 12 months ending with 31 December

**collective work** means—

- (a) a work in which there are distinct contributions by different authors or in which works, or parts of works, of different authors are incorporated (for example, a newspaper);
- (b) a compilation of data (including those in electronic or other form readable by a computer or other machine)

**communication to the public**—

- (a) means a broadcast of a work, sound recording, or performance; and
- (b) includes—
  - (i) a broadcast that an individual can access from a place and at a time chosen by the individual; and
  - (ii) a broadcast to subscribers to a communications service



**copying**, in relation to a work or sound recording, means reproducing, recording, or storing the work or sound recording in any form (including any digital format) in any medium, and by any means, and includes—

- (a) reproducing, recording, or storing a substantial part of the work or sound recording; and
- (b) in relation to an artistic work, the making of a copy in 3 dimensions of a 2-dimensional work or a copy in 2 dimensions of a 3-dimensional work; and
- (c) in relation to a film, the making of a photograph of the whole or any substantial part of any image forming part of the film—

and **copy** has a corresponding meaning

**Court** means the High Court of the Cook Islands

**derivative work** includes—

- (a) translations, adaptations, arrangements, and other transformations or modifications of works (for example, a typographical arrangement of a published edition of a literary, dramatic, or musical work); and
- (b) collections of works and data sets (whether in machine-readable or other form)

**dramatic work** includes—

- (a) a work of dance or mime; and
- (b) a musical or pantomime; and
- (c) a scenario or script for a film; and
- (d) a work of improvisation; and
- (e) any work created for a stage production

**economic rights**,—

- (a) in relation to a work, means the rights specified in section 8;
- (b) in relation to a performance by a performer, means the rights specified in section 28;
- (c) in relation to a sound recording, means the rights of the producer of the sound recording specified in section 32;
- (d) in relation to a broadcaster, means the rights specified in section 35

**film**—

- (a) means a recording in any medium from which a moving image and any accompanying sounds may be produced by any means; and
- (b) includes a still picture extracted from a film

**fix** means to embody sound or visual images, or the representations of sounds or visual images, in such a way that they can, at a later date, be perceived, copied, or communicated in some form, whether with or without the aid of a device (for example, a recording of a live musical performance)—

and **fixing** has a corresponding meaning

**infringe**, in relation to the copyright in a work, has the meaning given by section 9

**infringing copy** means a thing, the making of which, the use of which, or the dealing with which is a breach of a right protected under this Act, including—

- (a) a right of the owner of the copyright in a work; or
- (b) a right of the owner of the economic rights in a performance, sound recording, or communication to the public

**literary work—**

- (a) means any work other than a dramatic or musical work that is written, spoken, or sung (for example, a book, pamphlet, article, speech, lecture, address, or sermon); and
- (b) includes a computer program

**musical work** includes any accompanying words or actions

**owner,—**

- (a) in relation to the copyright in a work, means the owner of the economic rights in the work, being—
  - (i) the original owner of the copyright in the work concerned; or
  - (ii) the person to whom the rights have been transmitted under section 11(1)(a); or
  - (iii) the person who has an exclusive licence to deal with the rights under section 11(1)(b):
- (b) in relation to the economic rights of a performer, producer of a sound recording, or broadcaster, means, as the case may be,—
  - (i) the performer, producer, or broadcaster concerned; or
  - (ii) the person to whom the rights have been transmitted under section 38(1)(a); or
  - (iii) the person who has an exclusive licence to deal with the rights under section 38(1)(b)

**original work** has the meaning given by section 4

**performer** means an actor, singer, musician, dancer, or other individual who performs a dramatic, literary, artistic, or musical work

**photograph** does not include a still picture extracted from a film

**producer**, in relation to a film or sound recording, means the person who is responsible for making the film or sound recording

**public** means a group of people other than a family and a family's closest friends and acquaintances

**public display—**

- (a) means the direct showing, or the showing by any means, to the public (other than a communication to the public) of an original work or a copy of the work irrespective of whether the public is or may be present at the same time or at different places or times; and
- (b) in the case of a film, includes the non-sequential showing of individual images from the film

**public performance,—**

- (a) for a work other than a film, means the recitation, playing, dancing, singing, acting, or other performance of the work directly or by means of any device or process at 1 or more places where and at 1 or more times when the public are or may be present:

(b) for a film, means the showing of the film (including the broadcasting of any accompanying sounds) at 1 or more places where and at 1 or more times when the public are or may be present:

(c) for a sound recording, means making the recording audible at 1 or more places where and at 1 or more times when the public are or may be present

**publish**, in relation to a work or sound recording, means making available to the public tangible copies of the work or sound recording—

(a) in a reasonable quantity; and

(b) for rent, possession, or sale or other transfer of ownership; and

(c) with the consent of the owner of the economic rights in the work or sound recording

**published edition** means a published edition of 1 or more literary, dramatic, or musical works

**sound recording**—

(a) means—

(i) a recording of sounds, from which the sounds may be reproduced, regardless of the medium in which the recording is made or the method by which the sounds are reproduced; and

(ii) a recording of a literary, dramatic, or musical work, from which the sounds reproducing the work may be produced, regardless of the medium in which the recording is made or the method by which the sounds are produced; but

(b) does not include a sound recording associated with a film

**work**—

(a) means an original work of any of the following:

(i) an artistic work:

(ii) a dramatic work, if recorded (whether in writing or otherwise):

(iii) a literary work, if recorded (whether in writing or otherwise):

(iv) a musical work, if recorded (whether in writing or otherwise):

(v) a film:

(vi) a derivative work:

(vii) a collective work:

(viii) a typographical arrangement of a published edition; and

(b) includes a part of any work described in any of subparagraphs (i) to (viii) of paragraph (a); but

(c) does not include any work that is an official text, or a translation, of a legislative, administrative, or legal nature.

#### 4 **Meaning of original work**

(1) For the purposes, of this Act, a work is not an **original work**—

(a) if it is a copy of another work:

(b) to the extent that it is a copy of another work:

(c) if it infringes the copyright in another work:

- (d) to the extent that it infringes the copyright in another work.

## **5 Act binds the Crown**

This Act binds the Crown.

## **6 Application of Act**

- (1) This Act applies to the following works:

- (a) a work authored by a Cook Islander; and
- (b) a work authored by an individual who resides in the Cook Islands; and
- (c) a work first published in the Cook Islands, irrespective of the nationality or residence of the author of the work; and
- (d) a work first published in another country but published in the Cook Islands no later than 30 days after it was published in that other country, irrespective of the nationality or residence of the author of the work; and
- (e) a film, if the producer of the film—
  - (i) is an individual who resides in the Cook Islands or has his or her principal offices in the Cook Islands; or
  - (ii) in any other case, the principal offices of the producer are in the Cook Islands; and
- (f) an architectural work erected in the Cook Islands; and
- (g) any artistic work incorporated in a building or other structure that is located in the Cook Islands; and
- (h) any work eligible for protection in the Cook Islands by virtue of, and in accordance with, any international treaty or convention to which the Cook Islands is a party (whether in its own right or as a result of its association with New Zealand).

- (2) This Act applies to the following performers, performances, sound recordings, producers of sound recordings, communications to the public, and broadcasters:

- (a) a performer who is a Cook Islander; and
- (b) a performer who is not a Cook Islander but whose performance—
  - (i) takes place in the Cook Islands; or
  - (ii) is fixed in a sound recording to which this Act applies; or
  - (iii) has not been fixed in a sound recording, but is included in a broadcast to which this Act applies; and
- (c) a sound recording, if the producer of the recording is a Cook Islander; and
- (d) a sound recording first fixed in the Cook Islands; and
- (e) a sound recording first published in the Cook Islands; and
- (f) a communication to the public of a broadcaster if the principal offices of the broadcaster are in the Cook Islands; and
- (g) a communication to the public, broadcast from transmitters situated in the Cook Islands; and
- (h) a performer, a performance, a sound recording, a producer of a sound recording, a communication to the public, or a broadcaster that or who is eligible for protection in the Cook Islands by virtue of, and in



accordance with, any international treaty or convention to which the Cook Islands is a party (whether in its own right or as a result of its association with New Zealand).

- (3) For the purposes of this section,—  
**an individual resides in the Cook Islands** if he or she lives in the Cook Islands continuously for a period of not less than 3 months  
**Cook Islander** has the same meaning as in section 2 of the Entry, Residence, and Departure Act 1971–72.

## Part 2 Copyright and moral rights in works

### Subpart 1—Copyright in works

#### 7 What is copyright

- (1) Copyright is a property right that—
- (a) exists in original works; and
  - (b) confers exclusive rights on the owner of the copyright in the works.
- (2) Despite subsection (1),—
- (a) copyright exists in an original literary, dramatic, or musical work only if the work is recorded (whether in writing or otherwise):
  - (b) no copyright exists in official texts of a legislative, administrative, or legal nature or in any translation of those texts.
- (3) Copyright exists in an original work by the sole fact of its creation and irrespective of its mode or form of expression or its content, quality, or purpose.
- (4) However, copyright does not exist in any idea, procedure, system, method of operation, concept, principle, discovery, or data expressed, described, explained, illustrated, or otherwise embodied in the work.
- (5) To avoid doubt, the copyright in a derivative work does not limit or affect the copyright existing in any work incorporated into or used in the creation of the derivative work.

#### 8 Rights of owner of copyright (economic rights)

- (1) The owner of the copyright in a work has the exclusive right to carry out, or authorise the carrying out of, the following actions in relation to the work:
- (a) copying the work:
  - (b) publishing the work:
  - (c) performing or displaying the work in public:
  - (d) distributing the work to the public (by sale, rental, or otherwise) if the work is fixed as a tangible object:
  - (e) distributing copies of the work to the public (by sale, rental, or otherwise) if the copies are fixed as tangible objects and have not already been lawfully distributed (for example, the owner of the copyright in a book has the exclusive right to authorise the first distribution of copies of the book, but no rights relating to any



subsequent distributions occurring, for example, by their resale in a second-hand bookstore):

- (f) adapting, arranging, translating, transforming, or modifying the work in any way:
  - (g) renting the original or a copy of a film, a work embodied in a sound recording, a computer program, a database, or a musical work in the form of notation, irrespective of the ownership of the original work or copy concerned:
  - (h) communicating the work to the public:
  - (i) entering into a commercial rental arrangement in respect of the work or a copy of the work:
  - (j) importing copies of the work:
  - (k) doing any of the acts referred to in paragraphs (a) to (j) in relation to any adaptation, arrangement, or other transformation of the work:
  - (l) authorising any person to do any of the acts referred to in paragraphs (a) to (k).
- (2) The commercial rental arrangement right under subsection (1)(i) does not apply to a work that is a computer program unless it is the essential object of the arrangement.

## **9 How copyright in work infringed**

- (1) A person infringes copyright in a work by acting in a way described in section 8 in relation to the work in the circumstances where the person—
- (a) is not the owner of the copyright; and
  - (b) does not have the permission of the owner of the copyright to act in that way (for example, a licence or other contractual arrangement); and
  - (c) is acting other than in a way permitted under any of sections 14 to 25 (the exceptions).
- (2) However, nothing in this Act limits or affects any requirement to make 1 or more copies of a published work in accordance with the provisions of any enactment currently in force in the Cook Islands that requires a copy of the work to be deposited with a library or other cultural institution for the purposes of preserving the Cook Island's documentary heritage.

## **10 Who is original owner of copyright**

- (1) The author of a work is the original owner of the copyright in the work.
- (2) Subsection (1) is subject to the rest of this section.
- (3) If an author creates a work in the course of his or her employment, the employer is the original owner of the copyright in the work.
- (4) If the work is a collective work, the person who initiates and directs the creation of the work is the original owner of the copyright in the work.
- (5) If a person commissions a work, the person who commissioned the work is the original owner of the copyright in the work.
- (6) If the work is a film, the producer of the film is the original owner of the copyright, unless a contract provides otherwise. However, an author of the film, or of a work included in or adapted for the film, remains the original

owner of the copyright of that work to the extent that copyright exists in the work independently of the film.

## **11 Transmission and licensing of copyright**

- (1) The copyright in a work—
  - (a) is transmissible as personal or moveable property by assignment, testamentary disposition, or operation of law; and
  - (b) may be subject to a licensing regime whereby the owner of the copyright authorises another person to exercise 1 or more of the owner's economic rights in relation to the work.
- (2) A transmission or licensing of the copyright in a work may be partial or limited and apply—
  - (a) to 1 or more, but not all, of the economic rights of the owner of the copyright; or
  - (b) to part, but not the whole, of the period for which copyright in the work exists.
- (3) An assignment of copyright in a work has no lawful effect unless signed by or on behalf of the assignor and assignee.
- (4) A licence to deal with a work has no lawful effect unless signed by or on behalf of the licensor and licensee.
- (5) Any contractual provision contained in an agreement for the assignment or licensing of a work that is contrary to any of the exceptions to copyright infringement set out in sections 14 to 25 has no lawful effect.
- (6) To avoid doubt, an assignment in whole or in part of the copyright in a work, or a licence to do an act in respect of the copyright in a work, does not include, and must not be treated for any purpose as including, the assignment or licence of any economic right not expressly specified in the assignment or licensing agreement.

## **12 Presumption of authorship**

- (1) The individual whose name is indicated as the author of a work is, in the absence of proof to the contrary, presumed to be the author of the work.
- (2) Subsection (3) applies in relation to a work if the work is published and the author's name indicated on the work is a pseudonym or the work is published anonymously.
- (3) The publisher whose name appears on a work is, in the absence of proof to the contrary, presumed to represent the author and is entitled to exercise and enforce any rights of the author under section 8 or 26 unless and until the author publicly reveals his or her identity.

## **13 Duration of copyright**

- (1) Copyright in a work (other than a work of applied art or a typographical arrangement of a published edition) exists—
  - (a) for the life of the author; and
  - (b) for 50 years from the end of the calendar year in which the author dies.

- (2) If 2 or more individuals are the authors of a work, copyright in the work (other than a work of applied art or a typographical arrangement of a published edition) exists—
  - (a) for the life of the longest-surviving author; and
  - (b) for 50 years from the end of the calendar year in which that author dies.
- (3) Copyright in a collective work (other than a work of applied art or a typographical arrangement of a published edition) or film exists for 50 years from the end of the calendar year in which the latest of the following events occurred:
  - (a) the work was made;
  - (b) the work was first made available to the public;
  - (c) the work was first published.
- (4) Copyright in a work of applied art (including a collective work) exists for 25 years from the end of the calendar year in which the work was made.
- (5) Copyright in a typographical arrangement of a published edition of the whole or any part of a literary work, dramatic work, or musical work (including a collective work) exists for 25 years from the end of the calendar year in which the edition is first published.

#### *Exceptions to copyright infringement*

#### **14 Copying for research or private study**

- (1) An individual does not infringe copyright in a work by copying the work for research, private study, or other private and non-commercial activity and the research, private study, or other activity is carried out by the individual or his or her family or friends.
- (2) Subsection (1) does not apply if the individual copies—
  - (a) the whole or a substantial part of a book or musical work (in the form of notation) without fairly compensating the owner of the copyright for doing so; or
  - (b) a building or other construction; or
  - (c) the whole or a substantial part of a database in digital form; or
  - (d) a computer program, except if section 22 applies to the copying; or
  - (e) any other work, if the copying would unreasonably prejudice the legitimate interests of the owner of the copyright in the work.

#### **15 Temporary copying**

A person does not infringe copyright in a work by copying the work if—

- (a) the copy is transient or incidental; and
- (b) the copy is an essential part of a technological process (for example, a digital transmission of the work or to make a digitally stored work perceptible) for the purpose of—
  - (i) making or receiving a communication that does not infringe copyright in the work; or
  - (ii) enabling the lawful use of the work (for example, to transmit the work in a network to a third party); and

- (c) the copy has no independent economic worth.

## **16 Quoting from work**

- (1) A person does not infringe copyright in a work by quoting from the work if—
  - (a) the work has already been lawfully made available to the public; and
  - (b) the amount of the work quoted—
    - (i) is justifiable given the purposes of the quotation; and
    - (ii) does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
  - (c) the person acknowledges the work and the author's name (if it appears in the work).

## **17 Copying for educational purposes**

- (1) A person does not infringe copyright in a work by copying the work, or recordings of the work broadcast on radio or television, for the purpose of teaching or receiving instruction at an educational institution.
- (2) Subsection (1) applies only if—
  - (a) a collective licence to copy the work is not available to the educational institution; and
  - (b) the amount of the work copied is justifiable given the purpose of the teaching or instruction; and
  - (c) the person acknowledges the source of the work and the author's name (if it appears in the work).
- (3) Despite subsection (2)(b), a person may copy an entire textbook if any of the following circumstances applies:
  - (a) the textbook is out of print;
  - (b) the owner of the copyright cannot be found;
  - (c) an authorised copy of the same edition of the textbook is not for sale in the Cook Islands or cannot be purchased at a price reasonably related to that normally charged in the Cook Islands for a comparable work.
- (4) An educational institution may incorporate a copy of a work to which subsection (1) applies in printed or electronic course materials, study materials, resource lists, or other material for use in a course of instruction given by or at the institution.
- (5) However, if the course of instruction is by means of any form of electronic or other virtual learning environment, a copy of the work may be incorporated in the materials only if the virtual learning environment is hosted on a secure network and is accessible only by those individuals who are giving or receiving the course or who are responsible for the running of the virtual learning environment.
- (6) An individual enrolled at an educational institution may copy and incorporate a work to which subsection (1) applies in assignments, portfolios, theses, dissertations, or other course work produced by the individual, even if the course work, or a copy of it, is required to be deposited with the institution.
- (7) However, the individual must—



- (a) ensure that the amount of the work copied is justifiable given the purpose of the course work; and
  - (b) in the course work, and in any copies made of it, acknowledge the source of the work and author's name (if it appears in the work).
- (8) An educational institution may communicate to individuals enrolled at the institution a work permitted to be copied or translated for private, educational, or research purposes under any of the other exceptions in this Act so long as the institution does so using a secure network that is accessible only by those individuals who are teaching or receiving instruction or who are responsible for the running of the network.
- (9) The exceptions provided by this section do not apply if the copying of the work is for commercial purposes.

#### **18 Translations of works**

- (1) A person giving or receiving instruction does not infringe copyright in a work if the person translates the work.
- (2) Subsection (1) applies only if the instruction is for private educational, teaching, or research purposes.
- (3) A person or public body does not infringe copyright in a work if the person or body translates the work from or into a minority language and communicates the translation to the public for non-commercial public information purposes.
- (4) To avoid doubt, the exceptions provided by this section do not apply if the translation of the work is for commercial purposes.

#### **19 Copying for legal purposes**

- (1) A person does not infringe copyright in a work if—
- (a) the person copies the work for the purpose of giving legal advice; and
  - (b) the amount of the work copied is justifiable given the purpose of the legal advice; and
  - (c) the person acknowledges the source of the work and the author's name (if it appears in the work).
- (2) A person does not infringe copyright in a work if the work is dealt with in any way, including by copying, for the purposes of a judicial proceeding or the reporting of a judicial proceeding.

#### **20 Copying by libraries, archives, museums, and galleries**

- (1) In this section, **cultural institution** means a library, archive, museum, or gallery that is publicly funded in whole or in part.
- (2) A cultural institution does not infringe copyright in a work by copying a work held in its collection for the purposes of backup or preservation.
- (3) A cultural institution does not infringe copyright in a work by copying an incomplete work held in its collection if—
- (a) the institution cannot reasonably acquire the work through general trade or from the publisher concerned; and
  - (b) the copy is obtained from another cultural institution.
- (4) A cultural institution does not infringe copyright by copying a work that, in its opinion, should be available in its collection in a particular format and the

work cannot reasonably be acquired in that format through general trade or from the publisher concerned.

- (5) A cultural institution does not infringe copyright in a work in its collection by copying the work for the purpose of allowing access to that copy by users of the institution whether for personal use or study on the institution's premises (with or without technical equipment) or by way of loan.
- (6) A cultural institution does not infringe copyright in a work in its collection by copying the work to replace a work or copy of a work that is lost, destroyed, or rendered unusable in the permanent collection of another cultural institution and that institution cannot reasonably acquire the work or a copy of it through general trade or from the publisher concerned.
- (7) A cultural institution does not infringe copyright in a work in its collection by copying the work if the permission of the owner of the copyright cannot be obtained despite reasonable efforts to obtain it and the work is not available through general trade or from the publisher concerned.
- (8) A library does not infringe copyright in a work by supplying to another library a copy of a work and the receiving library supplying a paper copy of the work to a user of that library, but if the copy is provided electronically to the receiving library, the file created for this purpose must be deleted by both libraries immediately after the paper copy of the work is produced.
- (9) The exceptions provided by this section do not apply if the copying of the work is for commercial purposes.

## **21 Copying to report current events to public**

- (1) A person does not infringe copyright in a work—
  - (a) by copying or communicating to the public—
    - (i) a newspaper article, periodical, communication to the public, lecture, speech, or other work of a similar nature for the purpose of reporting current events to the public; or
    - (ii) excerpts of a work seen or heard in the course of reporting on a current event; and
  - (b) the copy or communication is made without the authorisation of the owner of the copyright.
- (2) However, the person must—
  - (a) ensure that the amount of the work copied or communicated is no more than is justifiable for the purposes of reporting; and
  - (b) acknowledge the source of the work and the author's name (if it appears in the work).
- (3) Subsection (1)(a)(i) does not apply if the owner of the copyright in the work has expressly prohibited copying or communicating of the work for the purpose described in that subsection.

## **22 Copying and adaptation of computer programs**

- (1) The lawful owner of a copy of a computer program does not infringe copyright in the computer program if—
  - (a) the person makes a single copy of the program, or makes an adaptation of the program; and

- (b) the copy or adaptation is necessary—
    - (i) to use the program for the purpose and to the extent for which it was obtained; or
    - (ii) for archival purposes; or
    - (iii) to replace the lawfully owned copy of the program if that copy is lost or destroyed; and
  - (c) the copy is made without the authorisation of the owner of the copyright.
- (2) To avoid doubt, a copy or an adaptation of a computer program must not be used for any purpose other than that specified in subsection (1)(b).
- (3) A copy or an adaptation must be destroyed if its continued possession does not satisfy the requirements of this section or otherwise is no longer lawful.

### **23 Public display of works**

- (1) A person does not infringe copyright in a work if the person publicly displays a work or copies of the work—
- (a) for the purposes of promoting the work, testing the work, or training users of the work; and
  - (b) without the authorisation of the owner of the copyright in the work.
- (2) A person does not infringe copyright in a work by publicly displaying or publicly performing part of the work, without the authorisation of the copyright owner, if the display or performance is part of a presentation at a conference, seminar, workshop, or similar activity.

### **24 Copying for persons with reading disability**

- (1) A person does not infringe copyright in a work if the person, without the authorisation of the owner of the copyright in the work,—
- (a) makes an accessible format of the work for a person with a disability; or
  - (b) supplies an accessible format of the work or copies of it to 1 or more persons with disabilities by any means, including by way of lending or electronic communication.
- (2) Subsection (1) applies only if the person making the accessible format of the work or copies of it—
- (a) has lawful access to the work or copy from which the accessible format of the work is made; and
  - (b) does not make any changes to the work other than those necessary to make the work or copy accessible; and
  - (c) acknowledges the source of the work and the author's name (if it appears in the work); and
  - (d) the copying is not for commercial purposes.
- (3) A person with a disability who electronically receives a work or a copy of it under subsection (1) may make a copy of the work for personal use without the authorisation of the owner of the copyright.
- (4) A person or an organisation does not infringe copyright in a work by exporting or importing copies of an accessible format of a work without the authorisation of the owner of the copyright in the work if—

- (a) the person is a person with a disability or the organisation is an organisation that serves people with disabilities; and
  - (b) the copies acknowledge the source of the work and the author's name (if it appears in the work); and
  - (c) the exporting or importing is not for commercial purposes.
- (5) In this section,—
- accessible format**, in relation to a work or a copy of a work, means a format that will allow a person with a disability to access and use the work to substantially the same degree as a person without a disability
- person with a disability** means a person who requires a work or a copy of a work to be manipulated in some way to enable the person to access and use the work to substantially the same degree as a person without the same disability.

## 25 Circumstances in which person may circumvent technological protection measures

- (1) This section applies if—
- (a) a person has the right to use or copy a work, or use or copy a copy of a work, in accordance with any of sections 14 to 24; and
  - (b) some form of technological protection has been applied to the work or the copy of the work.
- (2) The person may, where necessary to make the work accessible, circumvent the protection technological.

## Subpart 2—Moral rights in works

### 26 Moral rights of author

- (1) The author of a work has the moral rights set out in subsection (5) in relation to the work.
- (2) The moral rights are not transferable by the author during his or her lifetime but may be transferred on the death of the author (by testamentary disposition or operation of law, as the case may be) and exercised by the transferee on the author's behalf.
- (3) The moral rights exist independently of the rights of the owner of the copyright in the work except to the extent that the rights are extinguished at the same time as the copyright in the work expires.
- (4) To avoid doubt, the moral rights exist even if the author of the work is not the owner or no longer the owner of the copyright in the work.
- (5) The moral rights are,—
  - (a) as far as practicable, to have the author's name indicated prominently on copies of the work and in connection with any public use of the work;
  - (b) to not have the author's name indicated on copies of the work, and in relation to any public use of the work, but instead to use a pseudonym on the copies or in relation to the public use;
  - (c) to object to any distortion, mutilation, or other modification of the work, or any derogatory action in relation to the work, if it would be prejudicial to the author's honour or reputation;



- (d) to object to any other action in relation to the work.
- (6) However, a work used for the purposes of caricature, parody, or pastiche is not a breach of the moral rights of the author under subsection (5)(c).

**27 Author may waive moral rights**

- (1) An author may waive the moral rights conferred on him or her under section 26.
- (2) A waiver must—
- (a) be in writing; and
  - (b) specify the right or rights waived; and
  - (c) specify the circumstances in which the waiver applies; and
  - (d) if the waiver relates to a right described in section 26(5)(c), specify the nature and extent of the modification or action in respect of which the right is waived.
- (3) On the death of the author, the person described in section 26(2) may exercise the power to waive the moral rights of the author, and this section applies, with any necessary modifications, as if the person were the author.
- (4) To avoid doubt, a person may rely on a waiver under this section only to the extent that the waiver complies with subsection (2).

**Part 3**

**Rights of performers, producers of sound recordings, and  
broadcasters**

**Subpart 1—Performers' rights**

**28 Exclusive rights of performers**

- (1) A performer has the exclusive right to carry out, or authorise the carrying out of, the following actions in relation to a performance by him or her:
- (a) a communication to the public of the performance:
  - (b) fixing the performance:
  - (c) a communication to the public of a fix of the performance:
  - (d) copying, whether directly or indirectly, the performance in any way or form:
  - (e) making available to the public, for the first time, a fix of the performance, or copies of the fix, by sale or otherwise:
  - (f) renting to the public a fix of the performance or copies of the fix, irrespective of the ownership of the copies.
- (2) However,—
- (a) a performer does not have the exclusive right described in subsection (1)(a) if the communication is a rebroadcast made or authorised by the broadcaster that initially communicated the performance:
  - (b) subsection (1) does not apply if the performer authorises the incorporation of the performance in a fix that is a film.
- (3) A performer is the owner of the rights described in subsection (1) in respect of the performance.

**29 Performers' rights in relation to live aural performances and those fixed in sound recordings**

- (1) A performer has the rights set out in subsection (5) in respect of a live aural performance by him or her or a performance by him or her fixed in a sound recording.
- (2) The rights are not transferable by the performer during his or her lifetime but may be transferred on the death of the performer (by testamentary disposition or operation of law, as the case may be) and exercised by the transferee on the performer's behalf.
- (3) The rights exist independently of the rights that the performer has under section 28, except to the extent that the rights are extinguished at the same time as the period of protection in the performance expires.
- (4) To avoid doubt, the rights exist even if the performer transfers the rights under that section to another person in accordance with section 38.
- (5) The rights are—
  - (a) the right to be identified as the performer, unless the manner of use of the performance is of such a nature that this is not possible; and
  - (b) the right to object to any distortion, mutilation, or other modification of the performance that would be prejudicial to his or her reputation.

**30 Performer may waive certain rights**

- (1) A performer may waive the rights conferred on him or her under section 29.
- (2) A waiver must—
  - (a) be in writing; and
  - (b) specify the right or rights waived; and
  - (c) specify the circumstances in which the waiver applies; and
  - (d) if the waiver relates to a right described in section 29(5)(b), specify the nature and extent of the modification or action in respect of which the right is waived.
- (3) On the death of the performer, the person described in section 29(2) may exercise the power to waive the rights of the performer, and this section applies, with any necessary modifications, as if the person were the performer.
- (4) To avoid doubt, a person may rely on a waiver under this section only to the extent that the waiver complies with subsection (2).

**31 Duration of rights**

The rights conferred on a performer under sections 28 and 29 exist,—

- (a) in the case of a performance fixed in a sound recording, until the end of the calendar year that is 50 years after the year in which the performance was fixed as a sound recording; and
- (b) in any other case, until the end of the calendar year that is 50 years after the year in which the performance took place.

## Subpart 2—Producers' rights

### 32 Exclusive rights of producers of sound recordings

- (1) A producer of a sound recording has the exclusive right to carry out, or authorise the carrying out of, the following activities:
  - (a) copying the recording in any way or form;
  - (b) importing copies of the recording to the Cook Islands;
  - (c) issuing or distributing to the public (by sale, rental, or otherwise) the original or copies of the recording, other than copies that have already been subject to a sale or other transfer of ownership authorised by the producer (for example, the exclusive right would not apply to a copy of the recording that was distributed by the producer and that was resold in a second-hand record store);
  - (d) renting to the public a copy of the recording, irrespective of the ownership of the copy rented;
  - (e) communicating the recording to the public.
- (2) A producer is the owner of the rights described in subsection (1) in respect of the sound recording.

### 33 Duration of rights

The rights conferred on a producer under section 32 exist—

- (a) until the end of the calendar year that is 50 years after the year in which the sound recording is first published; or
- (b) if the recording has not been published, until the end of the calendar year that is 50 years from the making of the recording.

### 34 Equitable payment for use of sound recording

- (1) This section applies if a sound recording published for commercial purposes or a copy of a sound recording published for commercial purposes is used in a communication to the public or is publicly performed.
- (2) The person using the sound recording must make a single equitable payment to the producer of the recording.
- (3) The producer of the recording must pay half of the amount received to the performers concerned, unless an agreement between the performers and the producer expressly provides otherwise.
- (4) The right of the producer and performers to be paid under this section exists—
  - (a) until the end of the calendar year that is 50 years after the year in which the recording is first published; or
  - (b) if the recording has not been published, until the end of the calendar year that is 50 years from the making of the recording.

## Subpart 3—Broadcasters' rights

### 35 Exclusive rights of broadcasters

- (1) A broadcaster has, in respect of a communication to the public by the broadcaster, the exclusive right to—
  - (a) rebroadcast or otherwise communicate it to the public;

- (b) fix the broadcast:
  - (c) reproduce a fix of the broadcast:
  - (d) authorise another person to do any act referred to in any of paragraphs (a) to (c).
- (2) The broadcaster is the owner of the rights described in subsection (1) in respect of the broadcast.

**36 Duration of rights**

The rights conferred on a broadcaster under section 35 exist to the end of the calendar year that is 50 years from the making of broadcast.

**Subpart 4—Miscellaneous matters applying to performers, producers of sound recordings, and broadcasters**

**37 Limitations on protection**

Despite sections 28, 29, 32, and 35, it is not a breach of the rights conferred on a performer, a producer of a sound recording, or a broadcaster under any of those sections if—

- (a) an individual copies the performance, sound recording, or communication to the public by the broadcaster exclusively for personal purposes:
- (b) a person uses or copies short excerpts of the performance, sound recording, or communication for the purpose of reporting current events and the use is justifiable for that purpose:
- (c) a person copies the performance, sound recording, or communication solely for—
  - (i) scientific research; or
  - (ii) teaching, but only if the performance, sound recording, or communication has not been published in any teaching materials:
- (d) a person acts in relation to some aspect of a performance, sound recording, or communication to the public that is a work (within the meaning of section 3) and the actions do not infringe the copyright in the work.

**38 Transmission and licensing of rights**

(1) The rights conferred on a performer, producer of a sound recording, and broadcaster under sections 28, 32, and 35—

- (a) are transmissible as personal or moveable property by assignment, testamentary disposition, or operation of law; and
  - (b) may be subject to a licensing regime, whereby the owner of the rights authorises another person to exercise 1 or more of the owner's rights in relation to the performance, sound recording, or communication to the public.
- (2) A transmission or licensing of a right may be partial or limited so as to apply—
- (a) to 1 or more, but not all, of the economic rights conferred on the owner of the rights; or



- (b) to part, but not the whole, of the period for which the right exists.
- (3) An assignment of a right has no lawful effect unless signed by or on behalf of the assignor and assignee.
- (4) A licence to deal with a right has no lawful effect unless signed by or on behalf of the licensor and licensee.
- (5) Any contractual provision contained in an agreement for the assignment or licensing that is contrary to any of the exceptions set out in section 37 has, to the extent that it is inconsistent with the exceptions, no lawful effect.
- (6) To avoid doubt, an assignment in whole or in part of the rights, or a licence to do an act in respect of rights, does not include, and must not be treated for any purpose as including, the assignment or licensing of any economic right not expressly specified in the assignment or licensing agreement.

## Part 4 Enforcement

### Subpart 1—Civil remedies

#### 39 Action for damages

- (1) A person with rights protected under this Act (the **plaintiff**) may bring an action for an infringement or breach of the right against the person responsible for the infringement or breach (the **defendant**).
- (2) On a successful action, the plaintiff is entitled to—
  - (a) damages from the defendant for the prejudice and loss suffered as a consequence of the infringement or breach; and
  - (b) expenses, including legal costs, resulting from the infringement or breach.
- (3) The Court must determine the amount of damages and, in doing so, may take into account—
  - (a) the importance of the material and moral prejudice suffered by the plaintiff; and
  - (b) the amount of the defendant's profits attributable to the infringement or breach.
- (4) An exclusive licensee of a right protected under this Act may bring proceedings under this section in respect of the right as if the exclusive licence were an assignment of the right by the owner and the exclusive licensee were the assignee.
- (5) To avoid doubt, an author of a work or a performer may bring an action for damages under this section for breach of his or her moral rights in relation to the work or performance.

#### 40 Powers of Court

- (1) The Court may exercise 1 or more of the following powers in proceedings under section 39:
  - (a) grant an injunction to prohibit the infringement of copyright in any work or breach of any other right protected under this Act;
  - (b) order the impounding of any infringing copies and their packaging;

- (c) order the destruction or other disposition of any infringing copies and their packaging in a way that avoids harm to the owner of the copyright or other right:
  - (d) order the impounding of any implements that could be used for making or packaging infringing copies, and the relevant documents, accounts, or business papers:
  - (e) order the destruction of those implements in a way that minimises the risk of further infringements or breaches:
  - (f) make any other orders that the Court considers necessary in the circumstances.
- (2) However, the Court must not make an order under subsection (1) in relation to any infringing copies and their packaging if they were acquired in good faith.
- (3) For the purposes of executing an order under this section, the Criminal Procedure Act 1980–81 applies to the search of any person or premises or the seizure of any thing.

## Subpart 2—Criminal offences

### **41 Intentional infringement or breach of protected right for profit-making purpose**

Every person commits an offence who, intentionally and for a profit-making purpose, infringes or breaches a right protected under this Act and is liable on conviction to,—

- (a) if an individual, a fine not exceeding \$50,000 or imprisonment for not more than 2 years or both:
- (b) if any other person, a fine not exceeding \$100,000.

### **42 Providing means for making infringing copies**

(1) Every person commits an offence who—

- (a) makes, imports, sells, or lets for hire (whether in the course of business or otherwise) an object specifically designed or adapted for making infringing copies, knowing or having reason to believe that the object is to be used to make infringing copies of a copyright work:
- (b) possesses, offers, or exposes for sale or hire an object specifically designed or adapted for making infringing copies, knowing or having reason to believe that the object is to be used to make infringing copies of a copyright work.

(2) Every person commits an offence who communicates a copyright work or other thing protected under this Act to 1 or more persons, knowing or having reason to believe that infringing copies of the work or thing will be made by means of the reception of the communication in the Cook Islands or elsewhere.

(3) A person who commits an offence against subsection (1) or (2) is liable on conviction to,—

- (a) if an individual, a fine not exceeding \$50,000 or imprisonment for not more than 2 years, or both:
- (b) if any other person, a fine not exceeding \$100,000

- 2013, No. 8 Copyright
- (4) In this section, **copyright work** means a work in which copyright currently exists.

#### 43 **Removal of rights management information**

- (1) Every person commits an offence who—
- (a) removes or alters any rights management information in respect of a work, performance, sound recording, or broadcast without the permission of the owner of the copyright or, in the case of a performance, sound recording, or communication to the public, without the permission of the performer, the producer of the sound recording, or the broadcaster;
  - (b) distributes, imports for distribution, broadcasts, communicates to the public, or makes available to the public a work, performance, sound recording, or communication to the public, knowing that any electronic rights management information in respect of the work has been removed or altered without the permission of the owner of the copyright or, in the case of a performance, sound recording, or communication to the public, the permission of the performer, the producer of the sound recording, or the broadcaster.
- (2) A person who commits an offence against subsection (1) is liable on conviction to,—
- (a) if an individual, a fine not exceeding \$20,000 or imprisonment for not more than 1 year or both;
  - (b) if any other person, a fine not exceeding \$50,000.
- (3) In this section, rights management information means—
- (a) information that—
    - (i) identifies the author of a work, a work, a performer, the performance of a performer, the producer of a sound recording, a broadcaster, a communication to the public, the owner of the copyright in a work, or the owner of any other right protected under this Act; or
    - (ii) is information about the terms and conditions of use of a work, a performance, a sound recording, or a communication to the public, including any numbers or codes that represent the information; and
  - (b) is information that—
    - (i) is attached to a copy of a work, a fixed performance, a sound recording, or a fixed communication to the public; or
    - (ii) appears in connection with the broadcast, communication to the public, or making available to the public of a work, a fixed performance, a sound recording or a communication to the public.

#### 44 **Abuse of technical means of protection**

- (1) Every person commits an offence who manufactures or imports for sale or rental any device or means that—
- (a) is designed or adapted to circumvent any other device or means—
    - (i) intended to prevent or restrict copying of a work, sound recording, or communication to the public; or

- (ii) intended to impair the quality of any infringing copies of a work, or copies of a sound recording, or communication to the public; or
  - (b) can enable or assist people who are not entitled to receive the program to receive an encrypted program that is broadcast.
- (2) A person who commits an offence against subsection (1) is liable on conviction to,—
- (a) if an individual, a fine not exceeding \$50,000 or imprisonment for not more than 2 years, or both:
  - (b) if any other person, a fine not exceeding \$100,000.

**45 Performance or playing in public of infringing work**

- (1) Every person commits an offence if the person—
- (a) permits or causes a literary, dramatic, or musical work to be performed in a place of public entertainment, knowing that the performance infringes the copyright in the work; or
  - (b) permits or causes a sound recording to be played in public, knowing that the playing infringes copyright in that sound recording or film.
- (2) A person who commits an offence against subsection (1) or (2) is liable on conviction to—
- (a) if an individual, a fine not exceeding \$20,000 or imprisonment for not more than 1 year, or both:
  - (b) if any other person, a fine not exceeding \$50,000.

**46 Court may make certain orders**

- (1) On conviction for an offence against any of sections 41 to 45, the Court may make any order against the convicted person that the Court may make under section 39.
- (2) Subsection (1) applies only if civil proceedings have not been taken in relation to the same matter as that to which the conviction relates.
- (3) For the purposes of this section, section 39 applies as if—
- (a) the offence were an infringement of the copyright or a breach of a right of the owner of the copyright or, as the case may be, the owner of another right protected under this Act; and
  - (b) the following were infringing copies:
    - (i) any work, performance, sound recording or communication to the public from which rights management information has been removed or altered:
    - (ii) any device described in section 44.

**Part 5**

**Miscellaneous provisions**

- 47 Application of Customs Revenue and Border Protection Act 2012**  
The Customs Revenue and Border Protection Act 2012 applies in relation to an infringing copy as if it were a prohibited import or prohibited export.



**48 Application of international treaties and conventions**

- (1) This section applies if an inconsistency arises between a provision of this Act and any international treaty or convention to which the Cook Islands is a party (whether in its own right or as a result of its association with New Zealand) in respect of copyright or other rights protected under this Act.
- (2) The international treaty prevails to the extent of the inconsistency.

**49 Effect of registration of copyright**

Registration of copyright in a work is prima facie evidence of the facts contained in the registration certificate and may be used in a court as evidence of those facts.

**50 Regulations**

- (1) The Queen's Representative may, by Order in Executive Council, make regulations providing for such matters as are necessary for giving full effect to this Act and for its due administration.
- (2) Without limiting subsection (1), regulations may be made to provide for—
  - (a) a licensing scheme for works or other rights protected under this Act;
  - (b) a copyright registration system;
  - (c) the collection of payments required under section 34.

**51 Traditional Knowledge Act 2013**

This Act does not derogate any intellectual property rights a person may have under the Traditional Knowledge Act 2013.

**52 New Zealand Copyright Act 1962**

Despite section 627 of the Cook Islands Act 1915, the New Zealand Copyright Act 1962 ceases to apply to the Cook Islands on and from the commencement of this Act.

**53 Transitional provisions**

- (1) On and from its commencement, this Act applies, with any necessary modification, to any work, performance, sound recording, or communication to the public protected under the Copyright Act 1962 or any previous Act if the term of copyright protection or rights protection for the work, performance, sound recording, or communication to the public has not expired under that enactment (the **previous enactment**).
- (2) The protection under subsection (1) applies for the balance of the term of protection as calculated in accordance with the previous enactment.
- (3) On and from its commencement, this Act applies, with any necessary modification, to any work, performance, sound recording, or communication to the public protected under the legislation of another country if—
  - (a) the term of copyright protection or rights protection for the work, performance, sound recording, or communication has not expired under that legislation; and
  - (b) the Cook Islands is required to protect copyright in the work, performance, sound recording, or communication in accordance with an international treaty or convention to which the Cook Islands is a party

(whether in its own right or as a result of its association with New Zealand).

- (4) The protection under subsection (3) applies for the balance of the term of protection as calculated in accordance with the legislation of the country concerned.
- (5) Subsections (1) to (4) are subject to any contract or agreement made before the commencement of this Act relating to a work, performance, sound recording, or broadcast to which this section applies.

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