

COPYRIGHT ACT, 2014

(Act 5 of 2014)

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**COPYRIGHT ACT, 2014***(Act 5 of 2014)**I assent*

J. A. Michel
President

15th April, 2014

AN ACT to consolidate and amend the law relating to copyrights so as to give effect to the provisions of the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994 and to repeal and replace the Copyright Act and for matters connected therewith or incidental thereto.

ENACTED by the President and the National Assembly.

PART I
PRELIMINARY

1. This Act may be cited as the Copyright Act, 2014 and shall come into operation on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Short title and
commencement

Application

2.(1) The provisions of this Act shall apply to works, performances, phonograms and broadcasts created before or after the commencement of this Act, provided that the period of protection had not expired under the laws of Seychelles or the laws of the country of origin of such works, performances, phonograms or broadcasts that are to be protected under an international treaty to which the Republic of Seychelles is a party.

(2) The provisions of this Act shall not affect contracts on works, performances, phonograms and broadcasts concluded before the commencement of this Act.

Interpretation

3. In this Act, unless the context otherwise requires, —

“audio-visual work” means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds, susceptible of being made audible;

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

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

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

“communication to the public” means the transmission by wire or by wireless means of a

work, a performance, a phonogram or a broadcast in such a way that it can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the work, performance, phonogram or broadcast would not be perceivable, including the making available of the work or other protected subject matter in such a way that members of the public may access it from a place and at a time individually chosen by them;

“computer” means an electronic or similar device having information-processing capabilities;

“computer program” is a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

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

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

“folklore” means all ancient literary, artistic or musical works created in Seychelles, passed from generation to generation and constituting a basic element of the cultural heritage of Seychelles;

“infringement” means any act that violates any rights protected under this Act;

“Minister” means the Minister responsible for culture;

“owner of copyright” means—

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

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

“phonogram” means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audio-visual work;

“photographic work” means a recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made; a still picture extracted from an audio-visual work shall not be considered a “photographic work” but a part of the audio-visual work concerned;

“producer” of an audio-visual work or a phonogram means the natural person or legal entity that undertakes the initiative and responsibility for the making of the audio-visual work or phonogram;

“public performance” means —

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

at a place or places where persons outside the normal circle of the family and its closest acquaintances are or can be present;

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

“Registrar” means the Registrar of Copyrights appointed under section 28(1);

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

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

“rights” means legal rights granted with the aim to protect the creations of the author or creator of a work, performance, phonogram or broadcast;

“rights management information” means any information that identifies the author, the work, the performer, the performance of the performer, the producer of the phonogram, the phonogram, the broadcaster, the broadcast, the owner of any right under this Act, or information about the terms and conditions of use of the work, the performance, the phonogram or the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance, a phonogram or a fixed broadcast, or appearance in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a phonogram or a broadcast;

“technological protection measures” means any technology, device or component that, in the normal course of operation, is designed to prevent or restrict acts, in respect of works or objects of related rights, which are not authorised by the rights holder;

“traditional cultural expressions” or “expressions of folklore” means any forms, whether tangible or

intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof—

- (i) verbal expressions, such as stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;
- (ii) musical expressions, such as songs and instrumental music;
- (iii) expressions by action, such as dances, plays, ceremonies, rituals and other performances, whether or not reduced to a material form; or
- (iv) tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, baskets, needlework, textiles, glassware, carpets, costumes, handicrafts, musical instruments, and architectural forms, which are—
 - (a) the products of creative intellectual activity, including individual and communal creativity;
 - (b) characteristic of a community's cultural and social identity and cultural heritage; or
 - (c) maintained, used or developed by such community, or by individuals having the right or responsibility to do so in accordance with the customary law and practices of that community;

“work” means any literary or artistic work under sections 4(1) and 5(1), but does not include folklore;

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

“work of joint authorship” means a work to the creation of which two or more authors have contributed.

PART II COPYRIGHTS

Works
protected

4.(1) Literary and artistic works (hereinafter referred to as “works”) are original intellectual creations in the literary and artistic domain, including in particular—

- (a) books, pamphlets, articles and other writings;
- (b) speeches, lectures, addresses, sermons and other oral works;
- (c) dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;
- (d) musical works, with or without accompanying words;
- (e) audio-visual works;
- (f) works of architecture;
- (g) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;

- (h) photographic works;
- (i) works of applied art;
- (j) computer programs; and
- (k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) Works shall be protected, when they are fixed or otherwise reduced to material form, irrespective of their mode or form of expression or their content, quality or purpose.

5.(1) The following shall also be protected as works —

Derivative
works

- (a) translations, adaptations, arrangements and other transformations or modifications of works or traditional cultural expressions or expressions of folklore; and
- (b) collections of works, collections of data (databases), whether in machine readable or other form, and collections of traditional cultural expressions or expressions of folklore, provided that such collections are original by reason of the selection or arrangement of their contents.

(2) The protection of a work referred to in subsection (1) shall be without prejudice to the protection of a pre-existing work or traditional cultural expression or expression of folklore incorporated in or utilised for the making of such work.

6. Notwithstanding the provisions of sections 4 and 5, no protection shall extend under this Act to —

Subject
matters not
protected

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or

mere data, even if expressed, described, explained, illustrated or embodied in a work;

- (b) news of the day or miscellaneous facts having the character of mere items of press information; or
- (c) political speeches and speeches delivered in the course of legal proceedings.

Economic
rights

7.(1) The author or other owner of the copyright shall have the exclusive right to undertake or to authorise the following acts in relation to the work —

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement or other transformation of the work;
- (d) distribution of the original or a copy of the work to the public;
- (e) rental of the original or a copy of an audio-visual work, a work embodied in a phonogram or a computer program;
- (f) public performance of the work;
- (g) broadcasting of the work; or
- (h) other communication to the public of the work.

(2) The right of distribution under subsection (1)(d) does not apply to the original or a copy of the work that has already been subject to a sale or other transfer or ownership, in any country or territory, authorised by the owner of copyright.

(3) The right of rental under subsection (1)(e) does not apply to rental of computer programs where the program itself is not the essential object of the rental.

8.(1) The author of a work shall, independently of his or her economic rights, and even where he or she is no longer the owner of the said rights, have the following moral rights —

Moral rights

- (a) to have his or her name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;
- (b) to not have his or her name indicated on the copies and in connection with any public use of his or her work or the right;
- (c) to use a pseudonym; and
- (d) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to his or her work which would be prejudicial to his or her honor or reputation.

(2) The rights mentioned in subsection (1) shall not be transferable during the life of the author, but the right to exercise any of such rights may be transferred by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies.

(4) The author, while exercising the waiver of the right under subsection (1)(c), shall specify the nature and extent of the modification or other action in respect of which the right is waived.

(5) Upon the death of the author, the natural person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

Private
reproduction
for personal
purposes

9.(1) Subject to the provisions of subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorisation of the author or other owner of copyright, where the reproduction is made by a natural person exclusively for his or her own personal purposes.

(2) The provisions of subsection (1) shall not extend to reproduction —

- (a) of a work of architecture in the form of building or other construction;
- (b) in the form of reprography of the whole or of a substantial part of a book or of a musical work in the form of notation;
- (c) of the whole or of a substantial part of a database in digital form;
- (d) of a computer program, except as provided in section 15; and
- (e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

Temporary
reproduction

10. The temporary reproduction of a work shall be permitted if all the following conditions are met —

- (a) the reproduction is made in the process of a digital transmission of the work or an act of making a digitally stored work perceptible;

- (b) it is caused by a person or entity that, by way of authorisation by the owner of copyright or of operation of law, is entitled to make that transmission or making perceptible of the work; and
- (c) it is an accessory to that transmission or making perceptible, that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those, referred to in paragraphs (a) and (b).

11.(1) The quotation from a work that has lawfully been made available to the public shall be permitted without authorisation of the author or other owner of copyright, provided that the quotation is compatible with fair practice and does not exceed the extent justified by the purpose.

Quotation

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

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

Reproduction
and other
utilisation for
teaching

- (a) the utilisation by way of illustration for the purposes of teaching or scientific research of a work that has lawfully been made available to the public, in publications, broadcasting or sound or visual recordings, provided that such utilisation is compatible with fair practice and does not exceed the extent justified by the purpose;
- (b) the utilisation by way of making available of such works in computer networks, provided that access to the works is only available to enrolled pupils or students and their teachers;

- (c) the reprographic reproduction, for face-to-face teaching in educational institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that —
 - (i) the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions;
 - (ii) not more than a single copy for each pupil or student and the teacher is made; and
 - (iii) there is no collective licence available (that is, offered by a collective administration organisation of which the educational institution is or should be aware) under which such reproduction can be made.

(2) The source of the work and the name of the author shall be indicated as far as practicable on all copies made under subsection (1) or otherwise in reasonable connection with the work.

Reproduction
by libraries
and archives

13. A library or archive whose activities do not serve direct or indirect gain may, without the authorisation of the author or other owner of copyright, make a single copy of a work —

- (a) by reprographic reproduction where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a person, provided that —

- (i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research;
 - (ii) the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions; and
 - (iii) there is no collective license available offered by a collective copyright management organisation under which such copies can be made; or for part of a work that is to say one volume of work;
- (b) where the copy is made in order to preserve and, if necessary, replace a copy, or to replace a copy which has been lost, destroyed, or rendered unusable in the permanent collection of another similar library or archive, provided that it is impossible to obtain such a copy under reasonable conditions, and the reproduction of such particular work is an isolated act occurring, if repeated, on separate and unrelated occasions.

14. The following acts shall be permitted in respect of a work without the authorisation of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable —

- (a) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character; this permission shall not apply where the right to authorize reproduction,

Reproduction,
broadcasting and
other
communication
to public for
informatory
purposes

broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work;

- (b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose; or
- (c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a lecture, address, sermon or other work of a similar nature delivered in public, to the extent justified by the purpose of providing current information.

Reproduction
and
adaptation of
computer
programs

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

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

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

16.(1) It shall be permitted without the authorisation of the author or other owner of copyright to reproduce a published work for visually impaired persons in an alternative manner or form which enables their perception of the work, and to distribute the copies exclusively to such persons, provided that the work is not reasonably available in an identical or largely equivalent form enabling its perception by the visually impaired and the reproduction and distribution are made on a non-profit basis.

Visually
impaired
persons

(2) The distribution of work referred to in subsection (1) is also permitted in case the copies of such work have been made abroad and the conditions mentioned in that subsection have been fulfilled.

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

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

Ephemeral
recordings

(2) All copies referred to in subsection (1) shall be destroyed within six months of the making or within any longer term agreed to by the author.

(3) Where the recording of a work referred to in subsection (1) has an exceptional documentary character, one copy of such recording may be preserved in official archives.

Use for public
security and for
performance or
reporting of
proceedings

Duration of
copyright

18. A work may be used for the purposes of public security and to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings.

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

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for fifty years after his or her death.

(3) In the case of an audio-visual work, the economic and moral rights shall be protected for fifty years from the date on which the work was made or first made available to the public by publication or by any other means, whichever date is the latest.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for fifty years from the date on which the work was made or first made available to the public, by publication or by any other means whichever date is the latest, provided that where the identity of the author is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2), as the case may be, shall apply.

(5) In the case of a work of applied art, the economic and moral rights shall be protected for twenty-five years from the making of the work.

(6) The period provided for under subsections (1) to (5) shall run to the end of the calendar year in which it would otherwise expire.

Original
ownership of
economic
rights

20.(1) Subject to the provisions of subsections (2) to (6), the original owner of economic rights in respect of a work is the author who has created the work.

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

(3) In case a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in the part that he or she has created.

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

(5) In respect of an audio-visual work, the original owner of the economic rights shall be the producer, unless provided otherwise in a contract.

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

21.(1) The natural person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work.

Presumption of authorship, producers of audio-visual works and publishers

(2) The provision of subsection (1) shall apply even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

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

(4) In the case of an anonymous or pseudonymous work, subject to subsection (2), the publisher whose name

appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author.

(5) The presumption under subsection (4) shall cease to apply when the author reveals his or her identity.

Assignment
and licensing
of economic
rights

22.(1) The economic rights in a work shall be assignable in whole or in part.

(2) An assignment of an economic right, and any exclusive licence to do an act subject to authorisation by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.

(3) An assignment in whole or in part of any economic right, or a licence to do an act subject to authorisation by the author or other owner of copyright, shall not include or be deemed to include the assignment or license of any other rights not explicitly referred to therein.

PART III

PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANISATIONS

Rights of
performers

23.(1) A performer shall have the exclusive right to carry out or to authorise any of the following acts —

(a) the broadcasting or other communication to the public of his or her performance, except where the broadcasting or the other communication —

(i) is made from a fixation of the performance which the performer has authorised to be made; or

- (ii) is a rebroadcasting made or authorised by the organisation initially broadcasting the performance;
- (b) the fixation of his or her unfixed performance;
- (c) the direct or indirect reproduction of a fixation of his or her performance, in any manner or form;
- (d) the distribution of a fixation of his or her performance, or of copies thereof, to the public;
- (e) the rental to the public of a fixation of his or her performance, or copies thereof; or
- (f) the making available to the public of his or her fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

(2) Once the performer has authorised the incorporation of his or her performance in an audio-visual fixation, he or she shall, in the absence of contractual provisions to the contrary, be deemed to have assigned his or her exclusive economic rights with respect to that fixation to its producer and the provisions of subsection (1) shall cease to apply.

(3) The right of distribution under subsection (1)(d) shall not apply to a copy of a fixation of his or her performance that has already been subject to a sale or other transfer of ownership in a country or territory, other than Seychelles, authorised by the performer.

(4) The performer shall, independently of his or her economic rights and even after the transfer of those rights, have the right to claim to be identified as the performer of his or her performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his or her performances that would be prejudicial to his or her reputation.

(5) Any modifications consistent with the normal exploitation of a performance in the course of a use authorised by the performer shall not be considered prejudicial to the performer's reputation and the provisions of section 8 (2) and (3) shall apply, *mutatis mutandis*, to the rights under this subsection.

(6) The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance took place.

Rights of
phonogram
producers

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

- (a) the direct or indirect reproduction of the phonogram, in any manner or form;
- (b) the distribution of the original or copies of the phonogram to the public;
- (c) the rental of a copy of the phonogram to the public; or
- (d) the making available to the public of the phonogram, by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them.

(2) The right of distribution under subsection (1)(b) shall not apply to the original or the copy of the phonogram that

has already been subject to a sale or other transfer of ownership in a country or territory, other than Seychelles, authorised by the producer.

(3) The rights under subsection (1) shall be protected from the publication of the phonogram until the end of the fiftieth calendar year following the year of publication or, if the phonogram has not been published from the fixation of the phonogram until the end of the fiftieth calendar year, following the year of fixation.

25.(1) If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the phonogram shall be paid by the user to the producer.

Equitable
remuneration
for use of
phonograms

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of fixation of the performance until the end of the fiftieth calendar year following the year of fixation of the performance, provided that the phonogram is still protected under section 24(3).

(4) For the purposes of this section, phonograms that have been made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

(5) Subsection (1) does not apply to the extent that the use of the phonogram is covered by an exclusive right under section 23(1)(f) or section 24(1)(d).

Rights of
broadcasting
organisations

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

- (a) the rebroadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast; or
- (d) the reproduction of a fixation of its broadcast.

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.

(3) Any program-carrying signals transmitted by satellite which are not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable distribution by an authorised receiving organisation, may not be broadcast or communicated to the public by any person without authorisation of the person or legal entity that decided what program the emitted signal would carry.

Limitations
on protection

27. Sections 23, 24, 25 and 26 shall not apply where, without commercial advantage, the acts referred to in those sections are related to —

- (a) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (b) reproduction solely for scientific research;
- (c) reproduction solely for the purpose of face-to-face or distance teaching activities, except for performances and phonograms which have been published as teaching or instructional materials; or

- (d) cases where, under Part II, a work can be used without the authorisation of the author or other owner of copyright.

PART IV

VOLUNTARY REGISTRATION OF COPYRIGHTS

28.(1) The President may, by notice in the Gazette, appoint a Registrar of Copyrights who shall cause a Copyrights Register to be established and maintained.

Voluntary
registration of
copyrights

(2) The owner of the copyright in a work may apply to the Registrar for registration of the copyright in such manner and with such fee and other documentation or information as may be prescribed by regulation.

(3) If the Registrar is satisfied that the applicant is the owner of the copyright in the work the Registrar shall register him or her in the Copyright Register as the registered owner of that registered copyright.

(4) Where a person claims that he or she and not the registered owner is the owner of a registered copyright, he may apply to the Supreme Court to be registered as owner in the Copyright Register in place of the then registered owner.

(5) Without prejudice to this section or to any question or action about whether copyright subsists in the work, only the registered owner is deemed for the purposes of this Act to be the owner of a registered copyright.

(6) The registered owner of a registered copyright may register in the Copyright Register any agreement, contract, assignment, licence or document relating to or dealing with the registered copyright.

(7) An agreement, contract, assignment, licence or document relating to or dealing with a registered copyright is admissible in evidence in a criminal trial or proceeding, notwithstanding that it is not registered under subsection (1).

PART V
ENFORCEMENT OF RIGHTS

Provisional
measures

29.(1) On an application made by the rights owner, the court may, on such terms as it may deem reasonable —

- (a) grant preliminary injunctions to prohibit the committing, or continuation of committing, of infringement of any rights protected under this Act;
- (b) order the preliminary impounding of copies of works or phonograms and their packaging suspected of being made or imported without the authorisation of the owner of any rights protected under this Act where the making or importation of copies is subject to such authorisation, as well as the impounding of materials and implements suspected of having been predominantly used for the making of such copies; or
- (c) order prompt and effective provisional measures to preserve relevant evidence in regard to an alleged infringement.

(2) Notwithstanding any other written law, the court may issue a search warrant where there is reason to believe that copies of works or phonograms and their packaging suspected of being made or imported without the authorisation of the owner of any rights protected under this Act, is concealed in any premises or place.

(3) The warrant under subsection (2) may authorise any police officer or any other officer as well as any person required to assist him or her, to —

- (a) enter and search any premises or place;

- (b) seize and take possession of any relevant copies of works or phonograms and their packaging; and
- (c) where necessary, use reasonable force to enter the locality, premises or place.

(4) Where authorised by a warrant issued by the court, the police officer or any other officer as well as any person required to assist him or her, may—

- (a) seize any of the copies of works or phonograms and their packaging in custody or possession of any person;
- (b) with a view to seize the works or phonograms and their packaging—
 - (i) break open any building or room of the premises or place where the copies of works or phonograms and their packaging is believed to be found; and
 - (ii) take possession of the copies of works or phonograms and their packaging found in the building, room or receptacle.

30.(1) Where an act has been found to be an infringement of any rights protected under this Act, the court may, on an application made by the rights owner, order the infringer to desist from such act.

Civil
remedies

(2) The owner of any rights protected under this Act shall be entitled to payment, by the infringer who has knowingly or with reasonable grounds to know infringed his rights,—

- (a) of damages for the prejudice suffered as a consequence of the act of infringement; and
- (b) of expenses caused by the infringement, which may include legal costs.

(3) The amount of damages referred to under subsection (2)(a) shall be determined taking into account the economic and moral prejudice suffered by the owner of the rights.

(4) The court may, while determining damages under subsection (2)(a), order the recovery of profits from the infringer, even when the infringer did not know or had no reasonable grounds to know that he was engaged in infringing activity.

(5) Where goods have been found to be infringing copies, the court may, taking into account the need for proportionality between the seriousness of the infringement and the remedy the legitimate interests of third party, order the destruction or other reasonable disposition of infringing copies and their packaging, without payment of compensation, in such a manner as the court considers appropriate, as to avoid any harm to the rights owner.

(6) The court may, taking into account the conditions set out in sub-section (2), order, without payment of compensation of any sort, the destruction or other reasonable disposition of materials and implements the predominant use of which has been the making of infringing copies, in such manner as the court considers appropriate, as to minimise the risks of continuing or subsequent infringements.

(7) The court may, if it considers appropriate, order the infringer to inform the rights owner of the identity of third persons involved in the production and distribution of the infringing goods or rendering of services, and of their channels

of distribution, unless this would be out of proportion to the seriousness of the infringement.

31.(1) A person who willfully and on a commercial scale infringes any reproduction rights protected under this Act, commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years or with a fine not exceeding SCR50,000 or with both such imprisonment and fine.

Offences and
penalties

(2) The court may, in fixing the amount of fine under subsection (1), take into account the profits or loss attributable to the infringement.

(3) Where a person is convicted for a second or subsequent offence committed within five years of a previous conviction under this section, the person shall be liable to imprisonment for a term not exceeding ten years or with a fine not exceeding SCR100,000 or with both such imprisonment and fine.

(4) The court may apply the measures and remedies referred to in section 29(1)(b) and (2) and section 30(5), (6) and (7).

32.(1) It is prohibited to—

Technological
protection
measures

- (a) circumvent effective technological protection measures; or
- (b) produce, import, distribute, sell, rent, advertise for sale or rental, or possess devices, products, components or services for commercial purposes, which —
 - (i) are promoted, advertised or marketed for the purpose of circumventing effective technological protection measures;

- (ii) have a limited commercially significant purpose or use other than to circumvent effective technological protection measures; or
- (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological protection measures.

(2) Technological protection measures referred to in subsection (1), are “effective” where the use of a work or object of related right protected under this Act is controlled by the rights holder through application of an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism which, in the normal course of its operation, achieves the protection objective.

(3) Notwithstanding subsection (1), upon the request by the beneficiary of an exception or limitation in accordance with sections 12, 13, 15, 16, 17 or 18, the Registrar or the court, as the case may be, may order that the necessary means be made available to the extent required to benefit from it.

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

Protection of
rights
management
information

33.(1) It is prohibited to —

- (a) remove or alter any electronic rights management information without the consent of the rights holder, or
- (b) distribute, import for distribution, broadcast or communicate to the public of works or

other subject-matter protected under this Act from which electronic rights management information has been removed or altered without the authorisation of the rights owner,

when such act will induce, enable, facilitate or conceal an infringement of any rights covered by this Act.

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

34. The acts prohibited under section 26(3) and sections 32 and 33 shall be deemed to be an infringement of rights protected under this Act, for the purposes of sections 29, 30 and 31.

Prohibited acts deemed to be an infringement of rights

PART VI MISCELLANEOUS

35.(1) The provisions of this Act on the protection of literary and artistic works shall apply to —

Scope of application of copyrights

- (a) works of authors who are nationals of, or have their habitual residence in, Seychelles;
- (b) works first published in Seychelles, and works first published in another country and also published in Seychelles within thirty days, irrespective of the nationality or residence of the authors;
- (c) audio-visual works, the producer of which has his or her headquarters or habitual residence in Seychelles; and
- (d) works of architecture erected in Seychelles and other artistic works incorporated in a building or other structure located in Seychelles.

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

Scope of
application of
related rights

36.(1) The provisions of this Act on the protection of performers shall apply to —

- (a) performers who are nationals of, or have their habitual residence in, Seychelles; and
- (b) performers who are not nationals of Seychelles but whose performances —
 - (i) take place on the territory of Seychelles;
 - (ii) are incorporated in phonograms that are protected under this Act; or
 - (iii) have not been fixed in a phonogram but are included in broadcasts qualifying for protection under this Act.

(2) The provisions of this Act on the protection of phonograms shall apply to —

- (a) phonograms the producers of which are nationals of, or have their habitual residence in, Seychelles;
- (b) phonograms first fixed in Seychelles; and
- (c) phonograms first published in Seychelles.

(3) The provisions of this Act on the protection of broadcasts shall apply to —

- (a) broadcasts of broadcasting organisations the

headquarters of which are situated in Seychelles; and

- (b) broadcasts transmitted from transmitters situated in Seychelles.

(4) Section 25(3) applies to program-carrying signals the originating organisation of which is situated in Seychelles.

(5) The provisions in this Act shall also apply to performers, producers of phonograms, broadcasting organisations and originating organisations, as defined in section 25(3), that are eligible for protection by virtue of and in accordance with any international convention, treaty or other agreement to which Seychelles is party.

37. The Minister may make regulations for carrying out the provisions of this Act, which may include any matter which is to be or may be prescribed under this Act.

Regulations

38.(1) The Copyright Act (Cap 58) is hereby repealed.

Repeal and savings

(2) Notwithstanding the repeal of the Copyright Act, —

- (a) the copyrights registered under the provisions of the repealed Act shall be deemed to be the copyrights protected under this Act;
- (b) the licences or authorisation granted under the repealed Act shall continue to operate as licences or authorisation, as the case may be, for the purposes of this Act, until the expiration or revocation of such licence or authorisation;
- (c) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act shall continue to subsist;

- (d) the Registrar of Copyrights appointed under the repealed Act shall be deemed to be the Registrar for the purposes of this Act, until the expiry of his or her term of office or a Registrar is appointed under this Act, whichever is earlier; and
- (e) any penalty, forfeiture or punishment incurred in respect of any offence committed under the repealed Act shall continue to be enforceable as if this Act had not been enacted.

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 1st April, 2014.



Luisa Waye-Hive
Deputy Clerk