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HOUSE OF REPRESENTATIVES

**BILL**

AN ACT to amend the Copyright Act, 1997

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## THE COPYRIGHT (AMENDMENT) BILL, 2004

**Explanatory Note**

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Copyright (Amendment) Bill, 2004 seeks to amend the Copyright Act, 1997 (Act No. 8 of 1997) (hereinafter called "the Act") to facilitate Trinidad and Tobago's accession to the World Intellectual Property Copyright Treaty (hereinafter called "the WCT") and to the World Intellectual Property Performances and Phonogram Treaty (hereinafter called "the WPPT") and to strengthen the enforcement provisions of the Act.

Clauses 1 and 2 of the Bill provide the short title and interpretation provisions.

Clause 3 of the Bill would amend section 3 of the Act to ensure consistency in and clarify the meanings of several terms used in the Act. This clause would also add a definition of "rights management information" to the Act.

Clause 4 of the Bill would amend the Act to insert a new section 18A to confer certain moral rights on performers of live aural performances and performances fixed in sound recordings. A moral right is described as the right to be identified as the performer of a copyright work and the right to object to any distortion or mutilation of the performance of that work in a manner that is prejudicial to the reputation of the performer. This provision ensures Trinidad and Tobago's compliance with Article 5 of the WPPT.

Clause 5 of the Bill would amend section 19 of the Act to reduce the duration of the protection afforded to the copyright and moral rights in certain collective works, audiovisual works and works published anonymously or under a pseudonym, from seventy-five or one hundred years, as the case may be, to fifty years from the making of the work or from the date of first publication or first lawful publication of the work. This provision complies with Article 5 of the WPPT.

Clause 6 of the Bill would amend the Act to insert a new section 19A to provide for the duration of the moral rights of performers. Such rights would be protected for a period of fifty years from the year in which the performance was fixed in a sound recording or in the absence of a fixation, fifteen years from the end of the year in which the performance took place.

Clause 7 of the Bill would amend section 21(1) of the Act to, among other things, extend the list of acts over which performers have exclusive right to authorize or prohibit. Such acts would now include the distribution or rental of a fixation of a performance or copies of that performance. This clause would make Trinidad and Tobago compliant with Articles 6, 8, 9 and 10 of the WPPT.

Clause 8 of the Bill would amend section 22(1)(e) of the Act to specify to whom the term “rental” applies.

Clause 9 of the Bill would restructure section 26(1)(a) of the Act to make the section clearer.

Clause 10 of the Bill would amend section 34(1) of the Act to remove the requirement for knowledge or belief with respect to certain infringements of copyright, thereby lessening the evidential burden on prosecutors as it relates to proof of such infringements.

Clause 11 of the Bill would amend section 36(1) of the Act to correct a typographical error.

Clause 12 of the Bill would amend the Act to insert a new section 37A to provide for the operation of certain presumptions of law with respect to the infringement of copyrights. This would also minimise the evidential burden otherwise borne by prosecutors.

Clause 13 of the Bill would amend section 41 of the Act to deem certain infringements of copyright and moral rights infringements for “profit making purposes” and consequently criminal offences. This clause would also facilitate the prosecutorial process by enabling the Magistrate to make an Order with respect to all of the copies of a work seized even though the information or complaint leading to the conviction may have related to one copy of that work.

Clause 14 of the Bill would amend section 42 of the Act to provide a penalty for offences by bodies corporate. This clause would correct a drafting error.

Clause 15 of the Bill would amend the Act to insert a new section 44A to make certain abuses in respect of rights management information, criminal infringements. This would ensure compliance with Article 12(1) of the WCT and Article 19(1) of the WPPT.

## **BILL**

AN ACT to amend the Copyright Act, 1997

[ , 2004]

ENACTED by the Parliament of Trinidad and Tobago as Enactment  
follows:—

**1.** This Act may be cited as the Short title  
(Amendment) Act, 2004.

**2.** In this Act “the Act” means the Copyright Act, 1997. Interpretation  
Act No. 8 of 1997

**3. Section 3 of the Act is amended—**

- (a)* in the definition of “collective work”, by—
  - (i) deleting the word “disclosed” and substituting the word “published”;  
and
  - (ii) deleting the words “and that the identity of the contributing natural persons will not be indicated” and substituting the words “subject to the moral rights of the contributing natural persons”;
- (b)* in the definition of “communication to the public”, by inserting after the word “times” the words “individually chosen by them”;
- (c)* in the definition of “electronic retrieval system”, by inserting after the words “means,” the words “from a place and at a time individually chosen by him,”;
- (d)* in the definition of “infringement”, by inserting after the word “Act”, the words “and infringing shall be construed accordingly”;
- (e)* in the definition of “public performance”, by deleting after the word “places”, the word “were” and substituting the word “where”;
- (f)* in the definition of the word “published”, by deleting the comma after the word “public” in the second place where it occurs;
- (g)* in the definition of “work of joint authorship”, by inserting after the word “the”, in the second place where it occurs, the words “contribution of each author is not separate from that of the other author or authors and the”; and

(h) by inserting in the appropriate alphabetical sequence the following definition:

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

4. The Act is amended by inserting immediately after section 18, the following section: Section 18A  
inserted

“Moral rights  
of performers 18A. (1) Independently of his copyright and even where he is no longer the owner of copyright, the performer shall, as regards his live aural performances and performances fixed in sound recordings, have the right—

(a) to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance; and

(b) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(2) Subsections (2) and (3) of section 18 apply *mutatis mutandis* to the rights granted under subsection (1).

(3) Nothing in this section shall be construed to deprive performers of the right to agree, by contract, on terms and conditions more favourable for them in respect of their performances.”.

Section 19  
amended

5. Section 19 of the Act is amended by repealing subsections (3) and (4) and substituting the following subsections:

“ (3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, copyright and moral rights shall be protected for fifty years from the making of the work, or if the work had been lawfully made available to the public during that period, fifty years from the date on which the work was first published or was lawfully made available to the public.

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

**6.** The Act is amended by inserting immediately after section 19, the following section: Section 19A  
inserted

“Duration of moral rights of performers” 19A. The rights under section 18A shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed in a sound recording, or, in the absence of such a fixation, from the end of the year in which the performance took place.”.

**7.** Section 21(1) of the Act is amended— Section 21  
amended

- (a) in paragraph (a), by deleting the words “other than a communication through an electronic retrieval system”;
- (b) in paragraph (c), by deleting the full stop and substituting a semicolon; and
- (c) by inserting immediately after paragraph (c), the following paragraphs:
  - “ (d) the distribution to the public, by sale or other transfer of ownership, of a fixation of his performance or copies thereof, that has not already been subject to a distribution authorized by the performer;
  - (e) rental to the public of a fixation of his performance or copies thereof, for the purposes of direct or indirect commercial advantage, irrespective of the ownership of the original or copy rented; and
  - (f) the making available to the public of his fixed performance through an electronic retrieval system.”.

**8.** Section 22(1)(e) of the Act is amended by inserting after the word “rental”, the words “to the public”. Section 22  
amended



Section 26  
amended

**9.** Section 26(1A) of the Act is amended by deleting paragraphs (a) and (b) and by substituting the following paragraphs:

- “(a) a performance, is the performer in the performance;
- (b) a sound recording, is the producer of the sound recording; and
- (c) a broadcast, is the broadcasting organization.”.

Section 34  
amended

**10.** Section 34(1) of the Act is amended by deleting the words “he knows or has reason to believe,”.

Section 36  
amended

**11.** Section 36 of the Act is amended by deleting the word “in” where it first occurs and substituting the word “In”.

Section 37A  
inserted

**12.** The Act is amended by inserting immediately after section 37, the following section:

“Other  
presumptions

37A. In all proceedings under this Act—

- (a) premises or a place shall be deemed to be used for a purpose, even if they are used for that purpose on one occasion only;
- (b) a person shall, until the contrary is proven, be deemed to be the occupier of premises or a place, if he has, or appears to have the care, control or management of such premises or place;
- (c) where any copies of a work or sound recording or any apparatus, implements or devices designed or generally used for the making of copies of a work or sound recording, are found in any premises or place,

such premises or place shall be presumed, until the contrary is proven, to be used for the purpose of making copies of a work or sound recording and the occupier shall be presumed to permit such premises or place to be used for such purpose;

- (d)* a person who is found to have had in his custody or under his control anything containing infringing copies of a work or sound recording shall, until the contrary is proven, be deemed to have been in possession of such copies and shall, until the contrary is proven, be deemed to have known that such copies of the work or sound recording constituted infringements;
- (e)* a person who is found to have had in his possession or under his control or subject to his order any document of title relating to infringing copies of a work or sound recording shall, until the contrary is proven, be deemed to have known that such copies constituted infringements;
- (f)* where any infringing copies of a work or sound recording are found to be concealed in a ship (other than a ship of war) or an aircraft (other than a military aircraft) it shall be presumed, until the contrary is proven, that the work

or sound recording is concealed with the knowledge of the master of the ship or aircraft and has been imported or is to be exported in such ship or aircraft;

- (g)* where any infringing copies of a work or sound recording are found to be concealed in any premises or place, it shall be presumed, until the contrary is proven, that the said copies were so concealed with the knowledge of the occupier of the premises or place;
- (h)* where any infringing copies of a work or sound recording are found to be concealed in any compartment, in any vehicle, they shall, until the contrary is proven, be deemed to have been so concealed with the knowledge of the owner of the vehicle and of the person in charge of the vehicle at the time the copies are found;
- (i)* where copies suspected of being infringing copies of a work or sound recording have been seized, it shall be sufficient to analyse samples of the copies seized and where such analysis establishes that such samples are all of the same nature and description, it shall be presumed, until the contrary is proven, that all the copies are of the same nature and description as the samples so analysed.”.

**13. Section 41 of the Act is amended—**Section 41  
amended

(a) by inserting immediately after subsection (1), the following subsection:

“ (1A) A person who commits an infringement under section 8, 18, 21, 22, 24 or 34 of this Act may be deemed to have committed that infringement for profit-making purposes and is liable under this section.”; and

(b) by inserting immediately after subsection (4), the following subsection:

“ (5) The Magistrate may, on conviction of a person who commits an infringement, order that all copies of the work, sound recording, broadcast or performance, as the case may be, that appear to be infringing and which have been seized in accordance with this Act, be dealt with in accordance with this Act, notwithstanding that the infringement related to only one or some of the said copies of the work or sound recording, broadcast or performance or that a complaint was filed in respect of only one or some of the said copies of the work or sound recording, broadcast or performance.”.

**14. Section 42 of the Act is amended, by deleting all** the words after the words “as well as the body corporate,” and substituting the words “commits an offence and in the case of an officer of such body corporate, is liable, upon conviction, to a fine of one hundred thousand dollars and to imprisonment for ten years and in the case of the body corporate, is liable, upon conviction, to a fine of one hundred thousand dollars.”.

Section 42  
amended

Section 44A  
inserted

**15.** The Act is amended by inserting immediately after section 44, the following section:

“Abuses in respect of rights management information”  
44A. (1) The following acts are infringements:

- (a) the removal or alteration of any electronic rights management information, without authority, from any work, performance, sound recording, or broadcast or any copy of such work, performance, sound recording, or broadcast;
- (b) the distribution, importation for distribution, broadcasting or other communication to the public, without authority, of any work, performance, sound recording or broadcast, or any copy of such work, performance, sound recording or broadcast by any person who knows or has reason to believe that electronic rights management information has been removed from or altered in such work, performance, sound recording or broadcast, without authority.

(2) For the purposes of this Part, any copy of a work, performance, sound recording or broadcast referred to in subsection (1), constitutes an infringing copy of such work, performance, sound recording or broadcast.”.

Passed in the House of Representatives this  
day of \_\_\_\_\_, 2004.

*Clerk of the House*

I confirm the above.

*Speaker*

Passed in the Senate this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

*Acting Clerk of the Senate*

I confirm the above.

*President of the Senate*

No. 36 of 2004

THIRD SESSION

**EIGHTH PARLIAMENT**

REPUBLIC OF

TRINIDAD AND TOBAGO

# **BILL**

AN ACT to amend the Copyright Act, 1997

Received and read the

First time.....

Second time.....

Third time.....