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Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Copyright Act, 1997

THE COPYRIGHT (AMENDMENT) BILL, 2006

Explanatory Note

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

The Copyright (Amendment) Bill, 2006 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 would provide the short title and interpretation provisions of the Act.

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 insert a new section 18A into the Act 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 insert a new section 19A into the Act 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, fifty 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 which performers have the 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(1A) of the Act to make the section clearer.

Clause 10 of the Bill would amend the heading in Part VII of the Act to clarify the contents of that Part.

Clause 11 of the Bill would insert a new section 32A into the Act to allow for certain infringements of copyright to be actionable by a non-exclusive licensee, that is, a person who holds a licence authorizing him to exercise a right which remains exercisable by an owner of copyright.

Clause 12 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 13 of the Bill would amend section 36(1) of the Act to correct a typographical error.

Clause 14 of the Bill would insert a new section 37A into the Act to provide for the operation of certain presumptions of law with respect to the infringement of copyright. This would also minimize the evidential burden otherwise borne by prosecutors.

Clauses 15 and 16 of the Bill would delete the heading for Part VIII of the Act and substitute a different heading to clarify the contents of that Part.

Clause 17 of the Bill would amend section 41 of the Act to deem certain infringements of copyright and moral rights for “profit making purposes” and consequently criminal offences. This clause would also facilitate the prosecutorial process by enabling a magistrate to make an order with respect to all copies of a work seized even though the information or complaint leading to the conviction may have related to one copy of the work.

Clause 18 of the Bill would amend section 42 of the Act to provide a penalty for offences by bodies corporate. This clause would also correct a drafting error.

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

Clause 19 would also insert new sections 44B, 44C and 44D, to provide for offences and penalties in respect of—

- (a) certain infringements of copyright and neighbouring rights;
- (b) unauthorized public performances of a work or sound recording; and
- (c) the making of articles specifically designed or adapted for making copies of a work, sound recording, broadcast or performance.

Clause 20 of the Bill would amend section 45(4) of the Act to empower a magistrate to issue to a police officer below the rank of Inspector, a warrant giving greater authority to the police officer.

Clause 21 of the Bill would insert a new section 59 in the Act to provide for section 3 of the Limitation of Certain Actions Act, No. 36 of 1997 to apply to actions to recover any sums recoverable under the Act.

BILL

AN ACT to amend the Copyright Act, 1997

[, 2006]

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

1. This Act may be cited as the Copyright Short title
(Amendment) Act, 2006.

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) by deleting the definition of “communication to the public” and substituting the following definition:
- “communication to the public” means the transmission to the public by wire or wireless means, including the making available to the public of the images or sound or both, of a work, performance or sound recording, in such a way that members of the public may access it from a place and at a time 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 “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 information or numbers or codes representing information, attached to a copy of a work, fixed performance, sound recording or fixed broadcast or appearing in connection with the broadcasting or communication to the public of a work, fixed performance, sound recording or broadcast—
 - (a) identifying the author, work, performer, performance of a performer, producer of a sound recording, sound recording, broadcaster, broadcast or owner of any right protected under this Act; or
 - (b) about the terms and conditions of use of the work, performance, sound recording or broadcast;”.

Section 18A
inserted

4. The Act is amended by inserting after section 18, the following section:

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

- (a) 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) 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 a performer of the right to agree by contract, on terms and conditions more favourable for him in respect of his 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 after section 19, Section 19A inserted the following section:

“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 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 have not already been subject to a distribution authorized by the performer;

- (e) the 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.”.

Section 22
amended

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

Section 26
amended

9. Section 26(1A) of the Act is amended by deleting paragraphs (a) and (b), and 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.”.

Heading amended

10. The Act is amended by deleting the subheading “INFRINGEMENT” occurring after Part VII and substituting the subheading “CIVIL REMEDIES”.

Section 32A
inserted

11. The Act is amended by inserting after section 32, the following section:

“Certain
infringement
actionable by
non-exclusive
licensee” 32A. (1) A non-exclusive licensee may bring an action for infringement of copyright where—

- (a) the infringement was directly connected to a prior licensed act of the licensee; and

(b) the licence—

- (i) is in writing and is signed by or on behalf of the owner of the copyright; and
- (ii) expressly grants the non-exclusive licensee a right of action under this section.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the owner of the copyright would have had, had he brought the action.

(3) The rights granted under this section are concurrent with those of the owner of the copyright and references in the relevant provisions of this Part to an owner of copyright, shall be construed accordingly.

(4) In an action brought by a non-exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him had the action been brought by the owner of the copyright.

(5) Section 33 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a “non-exclusive licensee” means the holder of a licence authorizing the licensee to exercise a right which remains exercisable by the owner of the copyright.”.

Section 34
amended

12. Section 34 of the Act is amended—

(a) in subsection (1)—

- (i) in paragraph (c), by deleting the word “or” in the second place where it occurs;
- (ii) by inserting after paragraph (c), the following paragraph:
 - “(d) imports into Trinidad and Tobago; or”;
- (iii) by re-lettering paragraph (d) as paragraph (e); and
- (iv) by deleting the words “the making of which he knows or has reason to believe constituted” and substituting the word “constituting”; and

(b) in subsection (2), by deleting the words “, knowing or having reason to believe that the making of those copies” and substituting the word “which”.

Section 36
amended

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

Section 37A
inserted

14. The Act is amended by inserting after section 37, the following section:

“Other
presump-
tions

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 presumed 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 presumed to have been in possession of such copies and shall, until the contrary is proven, be presumed 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 presumed 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 presumed 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 analyze 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.”.

15. The Act is amended by deleting the Heading amended heading—

“PART VIII

CIVIL REMEDIES AND CRIMINAL LIABILITY”

16. The Act is amended by inserting after section 39, Heading amended the following heading:

“PART VIII
OFFENCES”

Section 41
amended

17. Section 41 of the Act is amended—

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

“(1A) A person who commits an infringement of any of the rights under section 8, 18, 21, 22 or 24 or an infringement under section 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 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 copies of the work, sound recording, broadcast or performance or that a complaint was filed in respect of only one or some of the copies of the work, sound recording, broadcast or performance.”.

Section 42
amended

18. 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.”.

19. The Act is amended by inserting after section 44, Sections 44A, 44B, 44C and 44D inserted
the following sections:

“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; and
- (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.

Penalties in
respect of
infringing
copies of a
work,
sound
recording or
performance

44B. (1) A person who, at a time when copyright or neighbouring rights subsist in a protected work, production, performance, broadcast or edition—

- (a) makes for sale or hire;
- (b) sells or lets for hire, or by way of trade, offers or exposes for sale or hire;
- (c) imports into Trinidad and Tobago, otherwise than for his private and domestic use;
- (d) possesses in the course of a business; or
- (e) distributes—
 - (i) for the purpose of trade; or
 - (ii) for any other purpose, but to such an extent as to affect prejudicially the owner of the copyright or neighbouring rights,

any article that is an infringing copy of the work performance, sound recording or broadcast commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for ten years.

(2) The Magistrate shall have the authority to increase up to double the penalty specified in subsection (1), where the defendant has been convicted of a new act of infringement within five years of a previous conviction for an infringement.

(3) The provisions of section 38(1)(b), (c) and (g), (3) and (5) shall apply *mutatis mutandis* in criminal proceedings, provided that no decision has yet been taken on such remedies in a civil proceeding.

(4) The Court before which a person is charged with an offence under this section may, whether or not he is convicted of an offence, order that any article in his possession which appears to the Court to be an infringing copy of a work, sound recording, broadcast or performance or in which copyright or neighbouring rights subsist under this Act, be destroyed or delivered up to the owner of the copyright or neighbouring rights in question or otherwise dealt with as the Court may think fit.

44C. A person who at a time when copyright or neighbouring rights subsists in a work or sound recording to be performed in public, performs such work in public commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for ten years, unless he proves to the satisfaction of the Court that he did not know and that he had no reason to believe that copyright or neighbouring rights subsisted in the work or sound recording, as the case may be, or that the performance would constitute an infringement of the copyright or neighbouring rights.

Penalties in respect
of unauthorized
public performance

44D. A person who—

(a) makes an article specifically designed or adapted for making copies of any work, sound recording, broadcast or performance; or

Penalties in respect
of specifically
designed or adapted
articles

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FOURTH SESSION

EIGHTH PARLIAMENT

REPUBLIC OF

TRINIDAD AND TOBAGO

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Received and read the

First time

Second time

Third time