

No. 3 of 2008

First Session Ninth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Copyright Act, 1997

THE COPYRIGHT (AMENDMENT) BILL, 2008

Explanatory Note

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

The Copyright (Amendment) Bill, 2008 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 Organization Copyright Treaty (hereinafter called “the WCT”) and to the World Intellectual Property Organization Performances and Phonograms 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.

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 “infringing copies” and “rights management information” to the Act.

Clause 4 of the Bill would amend section 18 to insert new subsections (4), (5) and (6) 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 owner of 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.

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(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 allow the prosecution to prove that the offender knew that the “making of the” article constituted an infringement instead of merely showing that the copy is an infringing copy.

Clause 13 of the Bill would insert section 34A, the contents of which are the same as the existing section 44, which treats with a civil matter, i.e., infringements of copyright and neighbouring rights. This section would therefore be removed from that Part of the Act which if amended, would be identified as “Offences”. This clause would also insert a section 34B which deals with rights management information, thus bringing the Act into compliance with Article 12(1) of the WCT and Article 19(1) of the WPPT.

Clauses 14 and 15 of the Bill would delete the heading for Part VIII of the Act and substitute a different heading to clarify the contents of the Part.

Clause 16 of the Bill would introduce a new section 41, with certain offences for which penalties would be provided. It would also provide for the destruction of infringing copies, articles, apparatus, implements or devices by Order of the Magistrate’s Court. A new section 41A would also be inserted to create penalties in respect of authorized public performances.

Clause 17 of the Bill would amend section 42 of the Act to provide a penalty for offences by bodies corporate.

Clause 18 of the Bill would substitute a new section, which would allow the Magistrate to consider one per centum or any five copies, whichever is the lesser, of the entire number of infringing copies seized. Where examination establishes that such copies are infringing copies, it would be presumed until the contrary is proven, that the entire number of copies are infringing copies. The section would also grant power to the Magistrate, when deciding upon the severity of a sentence, to take the entire number of infringing copies of a work, performance, sound recording or broadcast, seized at the time of arrest or charge, into consideration.

Clause 19 would amend section 45, to empower the police to seize and detain any apparatus, implements and devices used for transporting or marketing infringing copies of a work, performance, sound recording or broadcast and would enable a police officer to bring before a Magistrate and to apply for an Order for the destruction of infringing copies of a work, performance, sound recording or broadcast, apparatus, implements or devices which are found and upon proof that the copies of a work, performance, sound recording or broadcast, apparatus, implements or devices have infringed copyright.

Clause 20 of the Bill would insert a new section 59 in the Act to provide for section 3 of the Limitation of Certain Actions Act, 1997 (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

[, 2008]

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

1. This Act may be cited as the Copyright Short title
(Amendment) Act, 2008.

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

Section 3 amended

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) by inserting in the appropriate alphabetical sequence the following definition:
 - “ “infringing copies” means—
 - (i) an article, the making of which constitutes an infringement of the copyright work, performance, sound recording or broadcast;

- (ii) an article, which if it had been imported or is proposed to be imported into Trinidad and Tobago and its making in Trinidad and Tobago would have constituted an infringement of the copyright in the work in question or infringement of neighbouring rights in the performance, sound recording or broadcast or a breach of a licence agreement relating to that work, performance, sound recording or broadcast; and
 - (iii) any other copy falling to be treated as an infringing copy, it not having been made in accordance with the provisions of sections 9, 10, 11, 12, 13, and 14;";
- (e) in the definition of "public performance", by deleting the word "were" occurring after the word "places" 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) 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 a 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;”
and

(h) 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”.

Section 18 amended

4. Section 18 of the Act is amended by inserting after subsection (3) the following subsections:

“(4) 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.

(5) Subsections (2) and (3) apply *mutatis mutandis* to the rights granted under subsection (4).

(6) Nothing in this section shall be construed to deprive the performer of the right to agree by contract, on terms and conditions more favourable for him in respect of his performance.”.

5. Section 19 of the Act is amended—

Section 19 amended

- (a) in subsection (1), by inserting after the words “moral rights” the words “of the author”; and
- (b) 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, however, where the identity of the author or the joint authors 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.”.

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

^{“Duration of moral rights of performers”} 19A. The rights under section 18(4) 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.”.

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

- (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.”.

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

9. Section 26 of the Act is amended in Section 26 amended subsection (1A), 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.”.

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

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

- “Certain infringement actionable by non-exclusive licensee 32A. (1) A non-exclusive licensee may bring an action for infringement of copyright or neighbouring rights 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 or neighbouring rights; 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 or neighbouring rights 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.

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

(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 or neighbouring rights.”.

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 an infringement of copyright.” and substituting the words “which is, and which he knows or has reason to believe, is an infringing copy of a work.”; and
- (b) in subsection (2), by deleting the words “the making of those copies would constitute an infringement of copyright.” and substituting the words “it is to be used to make infringing copies.”.

13. The Act is amended by inserting after section 34, Sections 34A and 34B inserted the following sections:

- “Measures, remedies and sanctions against acts constituting infringements of copyright and neighbouring rights 34A. (1) The following acts shall constitute infringements of copyright and neighbouring rights:
- (a) the manufacture or importation for sale or rental of any device or means, specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as “copy-protection or copy-management device or means”); and
 - (b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted programme, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the programme.

(2) Section 38 shall apply to an illicit device or means mentioned in subsection (1) as it applies to infringing copies.

(3) The owner of copyright in a work shall also be entitled to damages for infringement provided for by sections 31(1) and 38(1)(d), where—

- (a) authorized copies of the work have been made and offered for sale or rental in an electronic form combined with a copy-protection or copy-management device or means, and a device or means specifically designed or adapted to circumvent the said device or means is made or imported for sale or rental; or
- (b) the work is authorized for inclusion in an encrypted programme, broadcast or otherwise communicated to the public, including by satellite, and a device or means enabling or assisting the reception of the programme by those who are not entitled to receive the programme is made or imported for sale or rental.

Abuses in respect of rights management information 34B. (1) The following acts are infringements of copyright and neighbouring rights:

- (a) the alteration or removal 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.”.

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

“PART VIII
CIVIL REMEDIES AND CRIMINAL LIABILITY”

15. The Act is amended by inserting after section 40, Heading inserted the following heading:

“PART VIII
OFFENCES”

16. The Act is amended by deleting section 41 and Section 41 deleted and substituted substituting the following sections:

“Penalties in respect of infringing copies of a work, performance, sound recording or broadcast 41. (1) A person commits an offence who, without the licence of the copyright owner—
(a) makes for sale or hire;

- (b) imports into Trinidad and Tobago otherwise than for his private and domestic use;
- (c) possesses in the course of a business with the intention of infringing the copyright in the work or neighbouring rights in the performance, sound recording or broadcast;
- (d) in the course of a business—
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire;
 - (iii) exhibits in public;
 - (iv) distributes; or
- (e) distributes otherwise than in the course of a business in excess of three copies of,

an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work, performance, sound recording or broadcast.

(2) A person commits an offence who—

- (a) makes an article specifically designed or adapted for making copies of a particular copyright work, performance, sound recording or broadcast; or
- (b) has such an article in his possession,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

(3) A person guilty of an offence under subsections (1) and (2) is liable on summary conviction to a fine of one hundred thousand dollars and imprisonment for ten years.

(4) The Magistrate may double the penalty specified in subsection (3), where the defendant has been convicted of a new act of infringement within five years of a previous conviction for an infringement.

(5) The Magistrate before whom proceedings are brought against a person for an offence under this section may, if satisfied that at the time of his arrest or charge the person had in his possession, custody or control—

- (a) an infringing copy of a copyright work, performance, sound recording or broadcast in the case of a business;
- (b) an article specifically designed or adapted for making copies of a particular copyright work, performance, sound recording or broadcast, knowing or having reason to believe that it had been or was to be used to make infringing copies; or
- (c) any apparatus, implements or devices that may be used to commit or continue to commit an offence under this Act,

order that the infringing copy, article, apparatus, implements or devices be destroyed or delivered up to the copyright owner or to such other person as the Magistrate may direct.

Penalties in respect of unauthorized public performance 41A. (1) Where copyright or neighbouring rights are infringed (otherwise than by reception of a broadcast or cable programme)—

(a) by the public performance of a copyright work or sound recording; or

(b) by the playing or showing in public of a sound recording of film,

any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

(2) A person guilty of an offence under subsection (1), is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for ten years.”.

Section 42 amended 17. 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 44 deleted and substituted 18. The Act is amended by deleting section 44 and substituting the following section:

“Powers of the Magistrate 44. (1) For the purposes of any offence under this Part, where copies suspected of being infringing copies of a work, performance, sound recording or broadcast have been seized, it shall be sufficient to examine one per centum or any five copies,

whichever is the lesser and where such examination establishes that such copies are all infringing copies, it shall be presumed, until the contrary is proven, that the remaining copies are infringing copies.

(2) Where a person is convicted of an offence under this Part the Magistrate shall in imposing a sentence be entitled to take into consideration the entire number of infringing copies of a work, performance, sound recording or broadcast seized at the time of arrest or charge.”.

19. Section 45 of the Act is amended—

Section 45 amended

- (a) in subsection (1), by inserting after the word “broadcasts” occurring in the last line, the words “and apparatus, implements and devices used for transporting or marketing such copies”;
- (b) in subsection (2)—
 - (i) in paragraph (a), by deleting the words “; and” and substituting the word “;”;
 - (ii) by inserting the following paragraph:
 - “(b) any apparatus, implements and devices used for transporting or marketing an article which appears to him to be an infringing copy of a work, performance, sound recording or broadcast; and”;
 - (iii) by re-lettering paragraph (b) as paragraph (c);

(c) in subsection (4), by deleting all the words beginning with the word “enter” in the penultimate line to the word “be” in the last line and substituting the words “execute any of the powers vested in him under subsections (1), (2) and (3)”; and

(d) by inserting the following subsection:

“(6) A police officer who has reasonable cause to suspect that—

(i) copies of a work, performance, sound recording, or broadcast found in any premises or place, vessel, aircraft or vehicle are infringing copies; and

(ii) any apparatus, implements or devices found in any premises or place, vessel, aircraft or vehicle are being used for the purpose of transporting or marketing infringing copies,

may bring such copies, apparatus, implements or devices before a Magistrate and upon proof that the copies, apparatus, implements or devices are infringing copies, apparatus, implements or devices apply for an Order for the destruction of such copies, apparatus, implements or devices or that such copies be dealt with as the Magistrate may think fit.”.

20. The Act is amended by inserting after section 58, Section 59 inserted the following section:

“Limitation of certain actions Act No. 36 of 1997 59. Section 3 of the Limitation of Certain Actions Act, 1997 applies to an action to recover any sum recoverable under this Act.”.

Passed in the Senate this day of , 2008.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day of , 2008.

Clerk of the House

I confirm the above.

Speaker

No. 3 of 2008

FIRST SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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Received and read the

First time.....

Second time.....

Third time.....