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No. 41 of 2015

COPYRIGHT (AMENDMENT) ACT, 2015

AN ACT TO AMEND THE COPYRIGHT ACT

[Date of Assent – 10th October, 2015]

Enacted by the Parliament of The Bahamas

1. **Short title and commencement.**

- (1) This Act, which amends the Copyright Act, may be cited as the Copyright (Amendment) Act, 2015.
- (2) This Act shall come into operation on such day as the Minister may by notice published in the Gazette, appoint.

2. **Amendment of the principal Act.**

The principal Act is amended, subject to section 15, by the deletion of the word “Registry” and “Registry’s” wherever they appear and the substitution of the words “Intellectual Property Office” and “Intellectual Property Office’s” respectively; and

3. **Amendment of section 2 of the principal Act.**

Section 2 of the principal Act is amended—

- (a) by the insertion in the proper alphabetical order of the following new definitions—
 - “**architectural works**” means any buildings or structures or any model of a building or structure;
 - “**choreographic work**” includes any work of choreography, whether or not it has any story line;
 - “**industrial design**” means features of shape, configuration, pattern or ornament of an article or features of pattern or ornament applicable to articles in so far as such features appeal to and are judged on their aesthetic value;
 - “**Intellectual Property Office**” means the Intellectual Property Office referred to in section 3 of the Patents Act;

“maker” means—

- (a) in relation to motion pictures, the person by whom the arrangements necessary for the making of the work are undertaken, or
- (b) in relation to a sound recording, the person by whom the arrangements necessary for the first fixation of the sounds are undertaken;

“Register” means the Register of Copyright;

“rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public;

“Rome Convention” means the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations as signed at Rome on October 26, 1961;

“technological measure” means any technology, device or component which is designed, in the normal course of its operation, to protect copyright in a work other than a computer program;”;

- (b) by the deletion and substitution of the following definitions respectively—

“artistic works” include two-dimensional and three-dimensional work of fine, graphic and applied art including industrial designs, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, architectural plans, technical drawings and utility models;

“distribution” means the distribution to the public, and unless otherwise specifically stated in this Act, for commercial purposes, of copies or phonorecords of a work by way of rental, lease, hire, loan or similar arrangement and “distributing” has a corresponding meaning;

“literary work” means works other than audiovisual works expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material objects such as books, periodicals, manuscripts, phonorecords, films, tapes, cards or any electronic form or format in which they are embodied; and includes computer programs;

“Registrar” means the Registrar of the Registrar General's Department with responsibility for the Intellectual Property Office and any reference to the Registrar shall be construed as including a reference to any officer discharging the functions of the Registrar;”;

- (c) in the definition of “compilation” delete the words “materials” immediately after the words “works or parts thereof”;
- (d) in the definition of “performer”, insert the words “choreographic work” after the word “musical”;
- (e) in the definition of “person having recording rights” delete paragraph (a) and substitute the following —
 - “(a) is a party to, and has the benefit of a recording contract to which the performance is subject or to whom the benefit of such a contract has been assigned or is a person who otherwise has rights in relation to the performance by reason of that person's participation in the performance as a performer or producer; and;”;
- (f) by the deletion of the definition “Registry”;
- (g) in the definition of “transmission programme” delete the word “sole and substitute the word “primary”;
- (h) in the definition of “unauthorized” delete the word “licence” and substitute the word “consent”; and
- (i) in the definition of “work made for hire”, in paragraph (c), delete the word “an exclusive” and substitute the word “a recording contract”.

4. Amendment of section 3 of the principal Act.

Section 3 of the principal Act is amended by the deletion of subsections (3) and (4) and the substitution of the following as subsection (3)—

“(3) A public performance or display or construction of a work does not of itself constitute publication.”.

5. Amendment of section 4 of the principal Act.

Subsection (3) of section 4 of the principal Act is amended by the deletion of the word “transmitted” and substitute the word “transmissions”.

6. Amendment of section 6 of the principal Act.

Section 6 of the principal Act is amended —

- (a) in subsection (1), by the insertion immediately after paragraph (g) of the following new paragraph—

- “(h) architectural works;” and
- (b) by the deletion of subsection (2) and the substitution of the following —
 - “(2) Works of authorship shall not be eligible for copyright protection unless it is fixed and any reference in this Act to the time which a work is created is a reference to the time at which it is so fixed.”;
- (c) in subsection (3), by the deletion of the words “the material contributed” and the substitution of the phrase “those contributions”;
- (d) by the insertion immediately after subsection (4) of the following new subsection —
 - “(5) For greater certainty, copyright shall not subsist in the news of the day or to miscellaneous facts having the character of mere items of press information.”.

7. Amendment of section 9 of the principal Act.

Section 9 of the principal Act is amended —

- (a) in subsection (1)(a), by the insertion of the words “produce or” immediately after the word “to”;
- (b) in subsections (1)(d) and (1)(e), by the insertion immediately after the word “musical” of the words “(including sound recording)”;
- (c) in subsection (2), by the deletion of subsection (2) and the substitution of the following —
 - “(2) Paragraph (1)(b) shall not apply —
 - (a) in the case of computer programs, where the program itself is not the essential object of the rental; and
 - (b) in the case of cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of reproduction.”;

8. Amendment of section 10 of the principal Act.

Section 10 of the principal Act is amended—

- (a) by the deletion of subsection (3) and the substitution of the following —
 - “(3) Subsection (2) will not apply if the identity of one or more authors of an anonymous or pseudonymous work becomes known, the copyright in any such work will endure for the

term specified by subsections (1) or (5), based on the life of the author or authors whose identity has been revealed.”;

- (b) in subsection (4), insert the words “authors of the” immediately after the words “one or more of the”; and
- (c) by the insertion immediately after subsection (9) of the following new subsection —

“(10) The term of protection subsequent to the death of an author and the term of protection for an anonymous or pseudonymous work after having been lawfully made available to the public shall be deemed to begin on the first of January of the year following the death of an author or of the work having been lawfully made available to the public.”.

9. Amendment of section 11 of the principal Act.

Section 11 of the principal Act is amended —

- (a) in subsection (1), by the deletion of the words “dramatic or artistic work” and substitute the words “dramatic, artistic or architectural work”;
- (b) in subsection (5), by the deletion of the words “justified” and the replacement of the words “identified”; and
- (c) by the deletion of subsection (7).

10. Amendment of section 12 of the principal Act.

Subsection (1) of the section 12 is amended by the deletion of the words “a work of visual art that is”.

11. Amendment of section 13 of the principal Act.

Subsection (1) of the section 13 of the principal Act is amended by the insertion immediately after paragraph (b) of the following new paragraph (c) —

“(c) not to have an architectural work falsely attributed to him as creator.”.

12. Amendment of section 20 of the principal Act.

Subsection (2) of section 20 of the principal Act is deleted and substituted with the following —

“(2) Any of the exclusive rights comprised in a copyright, any subdivision of any of the rights specified in section 9, and of the rights transferred as provided by subsection (1) and owned separately, may be transferred by any means of conveyance or by operation of law, and may be bequeathed by will or pass as personal property by the applicable intestate succession.”.

13. Insertion of the new section 21A into the principal Act.

The principal Act is amended by the insertion immediately after section 21 of the following new section—

“21A. License.

The owner of the copyright in any work may assign the right, either wholly or partially, and either generally or subject to limitations relating to territory, medium or sector of the market or other limitations relating to the scope of the assignment, and either for the whole term of the copyright or for any other part thereof, and may grant any interest in the right by licence, but no assignment or grant is valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by the owner’s duly authorized agent.”.

14. Repeal and replacement of section 24 of the principal Act.

Section 24 of the principal Act is repealed and replaced as follows—

“24. Moral rights, etc. not assignable.

- (1) The rights conferred under Part III are not assignable but may be waived in whole or in part in writing.
- (2) An assignment of copyright in a work does not by that act alone constitute a waiver of any moral rights.”.

15. Amendment of section 27 of the principal Act.

Subsections (1) and (3) of section 27 of the principal Act is amended by the deletion of the words “Registry” and the substitution of the word “Register”.

16. Amendment of section 34 of the principal Act.

Section 34 of the principal Act is amended —

- (a) by the substitution of the full stop at the end of paragraph (j) for a semi-colon; and
- (b) by the insertion immediately after paragraph (j) of the following new paragraph —
“(k) any additional information prescribed by regulation.”.

17. Amendment of section 36 of the principal Act.

Section 36 of the principal Act is amended —

- (a) in subsection (2)(a), by the deletion of the words “not less than ten or more than thirty days of before such fixation”; and

- (b) in subsection (2)(b), the deletion of the words “within three months of its first transmission”.

18. Insertion of new section 39A into the principal Act.

The principal Act is amended by the insertion immediately after section 39 of the following new section—

“39A. Presumptions regarding authorship.

- (1) In order that the author of a literary or artistic work be entitled to institute infringement proceedings, it shall be sufficient for the author’s name to appear on the work in the usual manner in the absence of proof to the contrary.
- (2) This subsection (1) shall be applicable even if the name is a pseudonym, where the pseudonym adopted by the author leaves no doubt as to the identity of the author.
- (3) The person or body corporate whose name appears on a motion picture or other audiovisual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the said work.
- (4) In the case of anonymous and pseudonymous works, other than those referred to in subsection (1), the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity the publisher shall be entitled to protect and enforce the author’s rights.
- (5) The provisions of subsection (4) shall cease to apply if an author reveals his identity and establishes a claim to authorship of the work.
- (6) In the case of unpublished works where the identity of the author is unknown, but where there is reason to conclude that the author is a national of a country that is a member of the Berne Convention, it shall be a matter for the courts in that country to designate the competent authority which shall represent the author and he shall be entitled to protect and enforce his rights in the countries that are members of the Berne Convention.”.

19. Insertion of new sections 40A into the principal Act.

The principal Act is amended by the insertion immediately after section 40 of the following new section —

“40A. Prohibits circumvention of copyright protection.

No person shall apply or cause to be applied a technical device to a computer program.”.

20. Amendment of section 41 of the principal Act.

Subsection (3)(c) of section 41 of the principal Act is amended by the deletion of all the words appearing after the semi-colon where it first appears.

21. Repeal and replacement of section 42 of the principal Act.

Section 42 of the principal Act is repealed and replaced as follows—

“42. Order for delivery up in civil proceedings.

(1) Subject to the provisions of this section and subsection (5) of section 44, where a person—

- (a) in the course of his business has an infringing copy or phonorecord of a work in his possession, custody or control;
- (b) has in his possession, custody or control a machine or device specifically designed or adapted for reproducing copies or phonorecords of a particular protected work, knowing or having reason to believe that it has been or is being used to make infringing copies or phonorecords; or
- (c) has means or devices used to facilitate the unauthorized removal or circumvention of any technical device or technological measure,

the copyright owner may apply to the court for an order that the copy, phonorecord, machine, means or device be delivered up to the copyright owner or to such other person as the court may direct.”.

22. Amendment of section 45 of the principal Act.

Subsection (2)(e) of section 45 of the principal Act is amended by the insertion of the word “reasonable” immediately before the word “assumption”.

23. Amendment of section 46 of the principal Act.

Subsection (2)(b) of section 46 of the principal Act is amended by the deletion of the words “of recognized stature”.

24. Amendment of section 56 of the principal Act.

Section 56 of the principal Act is repealed and replaced as follows—

“56. Border measures.

The owner of copyright in a work or any person so authorized in accordance with this Act who has grounds to suspect an infringement of their rights pursuant to the Customs Management Act and regulations may thereunder, may seek to protect such rights in accordance with such regulations.”.

25. Insertion of new section 56A into the principal Act.

The principal Act is amended by the insertion immediately after section 56 of the following new section—

“56A. Publication of decisions.

- (1) Any person whose rights are infringed pursuant to this Part may apply to the court for an order that appropriate measures for the dissemination of the information concerning the finding of infringement be taken at the expense of the infringing party.
- (2) The measures referred to in subsection (1) may include displaying the decision and publishing it in full or in part, or advertising the decision.”.

26. Amendment of section 58 of the principal Act.

Section 58 of the principal Act is amended by the deletion of subsections (1) and (2) and the insertion of the following —

- “(1) Subject to section 60, fair dealing with copyright work, including such use by reproduction in copies or phonorecords for purposes of research, private study or education pursuant to sections 62 - 66 does not infringe copyright in the work.”.

27. Amendment of section 62 of the principal Act.

Subsection (1) of section 62 of the principal Act is amended by the deletion of the words “in the course of instruction or of ” and the substitution of the words “for the sole purpose of instruction or ”.

28. Amendment of section 65 of the principal Act.

Subsection (1) of section 65 is amended by the deletion of the word “purposes” and the substitution of the words “sole purpose”.

29. Amendment of section 68 of the principal Act.

Subsection (2)(b) of section 68 of the principal Act is amended by the deletion of the words “their production” and the substitution of the words “the reproduction or distribution of the copies.

30. Amendment of section 71 of the principal Act.

Section 71 of the principal Act is amended —

- (a) in subsection (1), by the insertion of the words “of any unpublished work” immediately after the words “phonorecord” where it appears the second time;
- (b) in subsection (3)(c) —
 - (i) by the deletion of the words “no person” and the substitution of the words “persons”; and
 - (ii) by the deletion of the words “their production” and the substitution of the words “the reproduction or distribution of the copies”.

31. Amendment of section 73 of the principal Act.

Subsection (6) of section 73 of the principal Act is amended by the deletion of the word “in” and the substitution of the words “owned by”.

32. Repeal and replacement of section 77 of the principal Act.

Section 77 of the principal Act is repealed and replaced as follows—

“77. Reading or recitation in public.

The reading or recitation in public of any reasonable extract that is not a substantial reproduction from a published literary or dramatic work is not an infringement of copyright in the work, if accompanied by a sufficient acknowledgement.”.

33. Amendment of section 83 of the principal Act.

Section 83 of the principal Act is amended —

- (a) in subsection (1), by the insertion immediately after the words The Bahamas, the following —
 - “and —
 - (a) the headquarters of the broadcasting organization is situated in another country that is a member of the Rome Convention; or
 - (b) the broadcast was transmitted from a transmitter situated in another country that is a member of the Rome Convention.”.

34. Repeal and replacement of Heading to Part IX of the principal Act.

The Heading to Part IX of the principal Act is repealed and replaced as follows

“THE REGISTRAR AND THE REGISTER”.

35. Repeal and replacement of section 88 of the principal Act.

Section 88 of the principal Act is repealed and replaced as follows —

“88. Functions of the Registrar.

The Registrar of the Intellectual Property Office shall be responsible for matters relating to copyright as provided herein.”.

36. Amendment of section 89 of the principal Act.

The Heading note to section 89 of the principal Act is deleted and substituted as follows —

“Regulations.”

37. Amendment of section 91 of the principal Act.

Section 91 of the principal Act is amended in subsections (3) and (4), by the deletion of the word “facsimile”.

38. Amendment of section 102 of the principal Act.

Section 102 of the principal Act is amended by renumbering the section as subsection (1) and inserting immediately thereafter a new subsection (2) as follows —

“(2) For the avoidance of doubt, a person having recording rights in relation to a live performance referred to in subsection (1) includes both living persons having such rights as well as their heirs, successors and assigns.”.

39. Amendment of section 103 of the principal Act.

Section 103 of the principal Act is amended by the insertion immediately after subsection (2) of the following new subsection —

“(3) For the avoidance of doubt, The Bahamas shall grant national treatment to producers of phonorecord if any of the following conditions are met —

- (a) the producer of the phonorecord is a national of a country that is a member of the World Trade Organization;
- (b) the first fixation of the sound was made in a country that is a member of the World Trade Organization;
- (c) the phonorecord was first published in a country that is a member of the World Trade Organization.”.

40. Amendment of section 104 of the principal Act.

Subsection (1) of section 104 of the principal Act is amended in the chapeau by the deletion of the words “his consent” and the substitution of the words “the consent of such person”.

41. Amendment of section 106 of the principal Act.

Section 106 of the principal Act is amended —

- (a) by the repeal and replacement of paragraphs (a) - (c) as follows —
 - “(a) for purposes for research, private study, or education pursuant to sections 62 - 66;
 - (b) for the purpose of criticism or review of that or another copy or phonorecord of a performance, or of a work, if accompanied by a sufficient acknowledgement as defined in section 57; or
 - (c) for the purpose of reporting current events;”;
- (b) by the insertion immediately after the words “fair dealing” of the words “for the purposes of this section”.

42. Amendment of section 107 of the principal Act.

Section 107 of the principal Act is amended in the concluding paragraph, by the deletion of the words “copies or phonorecords” and the insertion of the words “a copy or phonorecord”.

43. Amendment of section 108 of the principal Act.

Subsection (1) of section 108 of the principal Act is amended by the insertion of the words “if made solely for educational purposes” after the word “establishment”.

44. Amendment of section 114 of the principal Act.

Subsection (4) of section 114 of the principal Act is amended by the insertion of the word “an exclusive” immediately after the word “or”.

45. Amendment of section 133 of the principal Act.

Subsection (4) of section 133 of the principal Act is amended —

- (a) in paragraph (b), by the insertion immediately after the words “work created” of the words “before the appointed day”; and
- (b) in paragraph (c), by the insertion immediately before the words “before the appointed day” of the words “in relation to an architectural work of which the creator died”.