

Copyright (Amendment) Act 2000, No. 7 of 2000

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I Assent

[L.S.]

PEARLETTE LOUISY,
Governor-General

27 March, 2000

An Act to amend the Copyright Act, 1995 to provide for the registration of collective societies, protect the moral rights of performers, extend the range of civil remedies and for related purposes.

[On Order]

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

Short Title and Commencement

1.—(1) This Act may be cited as the Copyright (Amendment) Act, 2000.

(2) This Act shall come into effect on a date to be prescribed by the Minister by Order published in the *Gazette*.

Amendment of Section 2

2. Section 2 of the Copyright Act, 1995 (in this Act referred to as “the principal Act”) is amended by inserting, in their appropriate alphabetical position, the following definitions:

“communication to the public” is the transmission by wire or wireless means, of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds 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 images or sounds would not be perceivable and further, irrespective of whether the person can receive the images or sounds at the same place and time, or at different places or times.

“owner of rights” means a legal or natural person who owns the rights to a work;

“Registrar” means the Registrar of Companies and Intellectual Property.”.

Amendment of Section 8

3. Section 8 of the principal Act is amended by inserting the following new subsection:

“(9) The provisions of this Act shall also apply to works that are eligible for protection in Saint Lucia by virtue of and in accordance with any international convention or other international agreement to which Saint Lucia is party.”.

Substitution of Section 9

4. Section 9 of the principal Act is repealed and the following section is substituted:

“Nature of Copyright

9.—(1) Subject to the provisions of this Act, the owner of copyright shall have the exclusive right to do, authorize, or prohibit 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) the first public distribution of the original and each copy of the work by sale, rental or otherwise;

(e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer programme, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;

(f) importation of copies of the work, even where the imported copies were made with the authorization of the owner of copyright;

(g) public display of the original or a copy of the work;

(h) public performance of the work;

(i) broadcasting of the work;

(j) communication to the public of the work.

(2) The rights of rental and lending under paragraph (e) of subsection (1) do not apply—

(a) to rental or lending of computer programmes where the programme itself is not the essential object of the rental or lending; or

(b) to cinematographic works, unless such commercial rental has led to widespread copying of such works materially impairing the exclusive right of production.

(3) The onus of proving that widespread copying of a cinematographic work has materially impaired the exclusive right of production under this section rests upon the person who alleges that such is the case.”.

Insertion of Part VII A

5. After Part VII of the principal Act the following part is inserted:

“Part VII A Collective Societies

Collective Societies to be Registered

109A.—(1) No person or association of persons shall, after the coming into force of this Act, commence or carry on the business of issuing or granting licences in respect of any work in which copyright or related rights subsists or in respect of any other rights conferred by this Act except in accordance with the registration granted under subsection (3):

(2) Notwithstanding subsection (1)—

(a) the owner of copyright or related rights shall, in his or her individual capacity, continue to have the right to grant licences in respect of his or her own works consistent with his or her obligation as a member of a collective society; and

(b) a collective society functioning immediately before the coming into force of this Act shall be deemed to be a collective society for the purposes of this Act and every such society shall get itself registered within a period of one year from the date of commencement of this Act.

(3) Any association of persons who fulfils such conditions as may be prescribed may apply for permission to do the business specified in sub-section (1) to the Registrar.

(4) The Registrar may, having regard to the interests of authors and other owners of rights under this Act, the interest and convenience of the public and the ability and professional competence of the applicants, register such association of persons as a collective society subject to such conditions as may be prescribed.

(5) The Registrar shall not ordinarily register more than one collective society to do business in respect of the same class of works.

(6) The Registrar may, if it is satisfied that a collective society is being managed in a manner detrimental to the interests of the owners of right concerned, cancel the registration of the society after such inquiry as may be prescribed.

(7) If the Registrar is of the opinion that in the interest of the owners of rights concerned, it is necessary so to do, it may, by order, suspend the registration of a society pending inquiry for a period not exceeding one year as may be specified in the order and the Registrar shall appoint an administrator to discharge the functions of the collective society.

(8) In the exercise of his or her functions under this section the Registrar shall act after consultation with the Minister.

Administration of Rights by Collective Society

109B.—(1) Subject to such conditions as may be prescribed—

(a) a collective society may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both; and

(b) an owner of rights shall have the right to withdraw such authorisation without prejudice to the rights of the collective society under any contract.

(2) A collective society shall be competent—

(a) to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act;

(b) to entrust to such foreign society or organisation the administration in any foreign country of rights administered by the said copyright society in Saint Lucia; or

(c) for administering in Saint Lucia the rights administered in a foreign country by such foreign society or organisation.

(3) Subject to such conditions as may be prescribed, a copyright society may—

(a) issue licences in respect of any rights under this Act;

(b) collect fees in pursuance of such licences;

(c) distribute such fees among owners of rights after making deductions for its own expenses;

(d) perform any other functions consistent with its rules and by-laws.

Control over the Copyright Society by the Owner of Rights

109C.—(1) A collective society shall be subject to the control of the owners of rights whose rights it administers (not being owners of rights administered by a foreign society or organisation) and shall, in such manner as may be prescribed —

(a) prepare a scheme for determining the quantum of remuneration payable to individual owners of rights;

(b) obtain the approval of such owners of rights for its procedures of collection and distribution of fees;

(c) obtain the approval of such owners for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and

(d) provide such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(2) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

Submission of Returns and Reports

109D.—(1) A collective society shall submit to the Registrar such returns as may be prescribed.

(2) The Registrar may call for any report or records of a collective society for the purpose of satisfying himself or herself that the fees collected by the society in respect of rights administered by it are being utilised or distributed in accordance with the provisions of this Act.

Rights and Liabilities of Performing Rights Societies

109E. Nothing in this Part shall affect the rights or liabilities in any work in connection with a performing rights society which had accrued or were incurred on or before the day prior to the commencement of this Act, or any legal proceedings in respect of any such rights or liabilities pending on that day.

Rules and Byelaws of Societies

109F. The rules and bye-laws of a collective society shall include the matters contained in the Schedule.”.

Insertion of Section 110A

6. After section 110 of the principal Act the following section is inserted:

“Protection of Rights in Performance

110A.—(1) The provisions of this Act on the protection of performers shall apply to—

(a) performers who are nationals of Saint Lucia;

(b) performers who are not nationals of Saint Lucia but whose performances—

(i) take place on the territory of Saint Lucia;

(ii) are incorporated in sound recordings that are protected under this Act; or

(iii) have not been fixed in sound recording but are included in broadcasts qualifying for protection under this Act.

(2) The provision in this Act also apply to performers who are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which Saint Lucia is party.”.

Amendment of Section 111

7. Section 111 of the principal Act is amended by inserting the following as paragraph (c) to subsection (1):

“(c) infringes his or her right of distribution or right of making available to the public a fixed performance, by wire or wireless means.”.

Insertion of Section 114A

8. After section 114 of the principal Act, the following section is inserted:

“Performers Moral Rights

114A.—(1) A performer shall have as regards his or her live oral performances and performances fixed in phonogram—

(a) the right to claim to be identified as the performer of a performance, 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 or her performance that would be prejudicial to his or her reputation.

(2) The provisions of section 19 (1) and 20 of the principal Act shall apply *mutatis mutandis*.”.

Insertion of Section 139A

9. After section 139 of the principal Act, the following section is inserted:

“General Civil Remedies

139A.—(1) The court shall have the authority—

(a) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under this Act where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referred to, such copies;

(b) to order the forfeiture and seizure of all plates moulds, matrices, masters, tapes, film negatives, or other articles by means of which such copies of works or sound recordings may

be reproduced, and all electronic, mechanical or other devices for manufacturing, reproducing, or assembling such copies of works or sound recordings.

(2) The provisions of subsection (1)(a) shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

(3) Where there is a danger that acts of infringement may be continued, the Court shall, in addition to any penalty imposed, impose a fine of five hundred dollars for each day on which the infringement is continued.”.

Repeal of Section 146

10. Section 146 of the principal Act is repealed.

Repeal of Section 148

11. Section 148 of the principal Act is repealed.

Passed in the House of Assembly this 21st day of December, 1999.

MATTHEW ROBERTS,
Speaker of the House of Assembly.

Passed in the Senate this 7th day of March, 2000.

HILFORD DETERVILLE,
President of the Senate.