

## TONGA

## The Copyright Act of 1985

(No. 20, of October 15, 1985)

## An Act to make provision with respect to copyright

*Short title*

1. This Act may be cited as the Copyright Act of 1985.

*Objectives*

2. In order to promote the creation of literary, artistic and scientific works and to further productive activities in the field of communicating to the public authors' works, this Act protects the moral and economic interests of authors relating to their works, by recognizing exclusive authors' rights and providing for just and reasonable conditions of lawful use of authors' works and regulated access to them.

*Field of application*

3. (1) The provisions on copyright of this Act shall apply to:

- (a) works of authors who are nationals of, or have their habitual residence in Tonga;
- (b) works first published in Tonga, irrespective of the nationality or residence of their authors.

(2) This Act shall also apply to:

- (a) unpublished works and works first published in a foreign country of authors of foreign nationality and having their residence in a foreign country, provided that the country where their author has his or her habitual residence or, in case of published works, the country of their first publication, grants similar protection to nationals or residents of Tonga for their unpublished works or to works first published in Tonga;

- (b) works which are to be protected in Tonga by virtue of, and in accordance with, international conventions to which it is party.

*Definitions*

4. For the purposes of this Act:

- “audiovisual works” means works that consist of a series of related images which are intrinsically intended to be shown by the use of devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, regardless of the nature of the material objects, such as films, tapes, or set of slides, in which the works are embodied;
- “communication to the public” means making a work accessible to the public;
- “fixation” means the embodiment of sounds, images or both in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or otherwise communicated during a period of more than transitory duration;
- “published works” means works reproduced with the consent of their authors in copies made available to the public in a quantity sufficient to satisfy a reasonable demand for the work, having regard to the nature thereof;
- “reproduction” means the making of one or more copies of a literary, artistic or scientific work, or of a fixation, or a substantial part of the work, or fixation, in any material form including any sound or visual recording;
- “works first published in Tonga” also means works first published abroad but thereafter published in Tonga within 30 days;
- “works of joint authorship” means works created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other.

*Entry into force:* March 25, 1986.

*Source:* Communication from the Government of Tonga authorities.

*Works in which copyright may subsist*

5. (1) Authors of original literary, artistic and scientific works shall be entitled to copyright protection for their works under this Act, by the sole fact of the creation of such works.

(2) Literary, artistic and scientific works shall include in particular:

- (a) books, pamphlets and other writings;
- (b) lectures, addresses, sermons and other works expressed orally;
- (c) dramatic and dramatico-musical works;
- (d) musical works (vocal or instrumental), whether or not they include accompanying words;
- (e) choreographic works and pantomimes;
- (f) cinematographic and other audiovisual works;
- (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
- (h) photographic works, including works expressed by processes analogous to photography;
- (i) works of applied art, whether handicraft or produced on an industrial scale;
- (j) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture, technology or science.

(3) Works shall be protected irrespective of their form of expression, their quality or nature and the purpose for which they were created. Material fixation by the author or a work expressed otherwise in a reproducible manner is not a condition of the protection of the work.

*Derivative works*

6. (1) The following shall also be protected as original works:

- (a) translations, adaptations, arrangements and other transformations of literary, artistic or scientific works; and
- (b) collections of literary, artistic or scientific works, such as encyclopaedias and anthologies, which by reason of the selection and arrangement of their contents, constitute intellectual creations; and
- (c) works inspired by expressions of folklore.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work utilized for the making of such work.

*Subject matter not protected*

7. Notwithstanding the provisions of Sections 5 and 6, protection shall not extend to:

- (a) laws and decisions of courts and administrative bodies, as well as to official translations thereof;
- (b) news of the day published, broadcast or publicly communicated by any other means; and
- (c) mere communications of facts and data.

*Substance of copyright*

8. Copyright in a literary, artistic and scientific work comprises the exclusive economic and moral rights of the author provided for in Sections 9 and 10.

*Economic rights*

9. Subject to the provisions of Sections 11 to 16, and the right of the Government to control the publication in accordance with this Act, presentation or circulation of any work to maintain public order, the author of a protected work shall have the exclusive right to do, or authorize any other person to do, the following acts in relation to the whole work or a substantial part thereof:

- (a) reproduce the work;
- (b) communicate the work to the public by performance, broadcasting, distribution by cable or any other means;
- (c) make an adaptation, translation, arrangement or other transformation of the work.

*Moral rights*

10. (1) The author of a protected work shall have the right:

- (a) to claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in Section 9, except when the work is included incidentally or accidentally when reporting current events by means of photography, sound or visual recording, broadcasting or distribution by cable;
- (b) to object to, and to seek relief in connection with, any distortion, mutilation or other modification of, and any other derogatory action in relation to, his work, where such action would be or is prejudicial to his honor or reputation.

(2) The rights referred to in subsection (1) cannot be waived and shall not be transferable; after

the death of the author the said rights shall be exercisable by his heirs.

*Free use*

11. Notwithstanding the provisions of Section 9, the following uses of a protected work, either in the original language or in translation, shall be permissible without the author's consent and without the obligation to pay remuneration for the use of the work:

- (a) in the case of any work that has been lawfully published,
  - (i) the reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user's personal and private use;
  - (ii) the inclusion, subject to mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries;
  - (iii) the utilization of the work by way of illustration in publications, broadcasts, distribution by cable, or sound or visual recordings for teaching, to the extent justified by the purpose, or the communication for teaching purposes of the work broadcast or distributed by cable for use in schools, education, universities and professional training, provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast, the program distributed by cable or the recording;
- (b) the distribution by cable of any work broadcast or played back from a lawful recording thereof, where the beneficiaries of the distribution by cable live in one and the same building, or group of buildings none of which is separated from another building by a public street or road, if the cable distribution originates in such building or group of buildings and the distribution by cable is done without gainful intent;
- (c) in the case of any article published in newspapers or periodicals on current economic, political or religious topics, and in the case of any work of the same character broad-

cast or distributed by cable, the reproduction of such article or such work in the press, or the communication of it to the public, unless the said article when first published, or the said work when broadcast or distributed by cable, was accompanied by an express condition prohibiting such use, and provided that the source of the work when used in the said manner is clearly indicated;

- (d) for the purposes of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informative purpose, of any work that can be seen or heard in the course of the said current event;
- (e) the reproduction of works of art and of architecture in an audiovisual work or video recording, and the communication to the public of the works so reproduced, if the said works are permanently located in a place where they can be viewed by the public or are included in the audiovisual work or video recording only by way of background or as incidental to the essential matters represented;
- (f) the reproduction, by photography, sound or video recording, or electronic storage, by public libraries, non-commercial documentation centers, scientific institutions and educational establishments, of literary, artistic or scientific works which have already been lawfully made available to the public, provided that such reproduction, the number of copies made, and the use thereof are limited to the needs of the regular activities of the entity reproducing the work, and neither conflict with the normal exploitation of the work nor unreasonably prejudice the legitimate interests of the author;
- (g) the reproduction in the press or the communication to the public of
  - (i) any political speech delivered in public or any speech delivered during legal proceedings, or
  - (ii) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purpose of current information; the author retaining the right to publish a collection of such works;

- (h) the recording by any broadcasting organization for the purpose of its own broadcasts and by means of its own facilities, in one or several copies, of any work which it is authorized to broadcast. All copies of such recording shall be destroyed within six months of the making thereof or within any longer period agreed to by the author: Provided, however, that, where such recording has an exceptional documentary character, one copy of it may be preserved in official archives, without prejudice to the application of the provisions of Section 10.

*Limitation of the right of recording musical works*

12. (1) Where the owner of the copyright in a musical work has already authorized a person to make a sound recording of the performance of the work, and such recording has been made in, or imported into Tonga, any other person may make such recording without the authorization of the owner of the copyright concerned, provided that such other person, before making the record, gave to the owner of the copyright a proper notice of his intention to make it, and pays to the owner such remuneration as mutually agreed between them. The foregoing provisions shall apply also to any words accompanying the music.

(2) The provisions of subsection (1) shall be without prejudice to the application of the provisions of Section 10.

*Duration of authors' rights*

13. (1) Unless expressly provided otherwise in this Act, the rights referred to in Sections 9 and 10 shall be protected during the life of the author and for 50 years after his death.

(2) In the case of a work of joint authorship, the rights referred to in Sections 9 and 10 shall be protected during the life of the last surviving author and for 50 years after his death.

(3) In the case of a work published anonymously or under a pseudonym, the rights referred to in Section 9 shall be protected until the expiration of 50 years from the date on which such work was first lawfully published:

Provided that where, before the expiration of the said period, the author's identity is revealed or is no longer in doubt, the provisions of subsection (1) or subsection (2) shall apply, as the case may be.

(4) In the case of a cinematographic or other audiovisual work, the rights referred to in Section 9 shall be protected until the expiration of 50 years from the making of the work or, if the work is made available to the public during such period with the consent of the author or authors, 50 years from the date of its communication to the public.

(5) In the case of a photographic work or a work of applied art, the rights referred to in Sections 8 and 9 shall be protected until the expiration of 25 years from the making of the work.

(6) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

*Ownership of copyright*

14. (1) The rights in a work protected under this Act shall be owned in the first instance by the author or authors who created the work. The authors of a work of joint authorship shall be co-owners of the said rights.

(2) In the absence of proof to the contrary, the author of a work is the person under whose name the work is disclosed.

(3) In the case of a work created by an author for any person or body corporate in the course of fulfillment of his or her duties under a contract of service or employment, the rights in the work referred to in Section 9 shall, in the absence of contractual provisions to the contrary, be deemed to be assigned to the employer of the author to such extent as may be necessary to its customary activity at the time of the conclusion of the relevant contract of service or employment.

(4) The rights referred to in Sections 9 and 10 shall be inherited according to the general rules of the law of succession.

*Assignment of authors' rights*

15. (1) The rights referred to in Section 9 shall be assignable in whole or in part. Assignment effects transfer of ownership of the right assigned.

(2) Any assignment of a right referred to in Section 9 shall be in writing signed by the assignor and the assignee.

(3) An assignment, in whole or in part, of any right referred to in Section 9 shall not include or be deemed to include the assignment of any other rights referred to therein.

(4) Notwithstanding the provision under subsection (8) of Section 16, the assignment of rights in future works shall be void.

(5) The transfer of ownership of the original or of one or several copies of a work shall not imply the assignment of rights in the work.

*License contracts for  
the use of authors' works*

16. (1) Authorization by the owner of copyright of the use of the work shall be granted to the user by a license contract conferring on the latter the rights necessary for the envisaged use, under conditions to be stipulated in accordance with the provisions of the law, and limiting the exercise, but not conferring ownership, of the underlying author's right. Unless otherwise provided for by legislation, the contract for the use of the work shall be made in writing.

(2) The rights conferred on the user shall be specifically mentioned in the contract.

(3) When a contract for the use of the work provides for a confer of one or more rights corresponding to the categories of rights referred to in Section 9, without further specifying the right or rights conferred with regard to the intended use of the work, the scope of such a confer of right or rights shall be limited to the extent justified by the nature of the use of the work provided for in the contract; if the terms of the contract do not specify the ways in which the work may be used, the scope of the confer of right or rights shall be determined in accordance with the purpose envisaged when concluding the contract.

(4) The rights conferred on the user shall be non-exclusive unless explicitly granted as exclusive rights. The user has standing to sue in his own name for an infringement of any exclusive right conferred on him.

(5) Unless otherwise provided for by legislation, the user shall be entitled to transfer the rights conferred on him under the contract for the use of the work only with the consent of the owner of copyright.

(6) If the owner of copyright has conferred the rights to use the work on conditions the effect of which is a gross disproportion between the remuneration paid him by the user of the work and the income from the use thereof, the owner of copyright may request an amendment of the contract so as to secure him an equitable share of the income, corresponding to standards generally prevailing in similar

cases. Such claim may not be waived in advance; it cannot be enforced, however, after the lapse of two years from the time when the owner of copyright received knowledge of the circumstances which give rise to the claim; or after more than five years following the occurrence of the said circumstances.

(7) Should the user not exercise an exclusive right conferred on him by the owner of copyright, the latter may revoke the right concerned if the non-exercise thereof was prejudicial to his legitimate interests. The right of revocation may be exercised only after the expiration of the delay stipulated in the contract for the beginning of the exercise of the right conferred and not earlier than two years after the confer of same, or, if the work to be used was supplied subsequently, from the date of its delivery. In each case the owner of copyright has to notify the user on the proposed revocation, granting him a reasonable additional time, suitable for adequately exercising the right transferred, except for cases where the exercise of the right by the user became impossible or he refused it. The right of revocation may not be waived in advance.

(8) A stipulation on future confer of rights for the use of works to be created thereafter and not specified in detail but only mentioned in general or by reference to their nature, may be terminated by either party with six months notice after a period of four years from the conclusion of the contract containing the said stipulation.

(9) To all other questions relating to license contracts for the use of authors' works the general rules of the law of contracts apply.

*Special rules concerning contracts  
for commissioned works*

17. (1) Where a contract had been concluded for the use of a work to be created (commissioned work), the user shall be under the obligation to make a declaration concerning acceptance of the work within two months from the date on which the work was handed over, unless legislation otherwise provides; if the user fails to make such a declaration within the time fixed by legislation, the work shall be deemed to have been accepted.

(2) Within the time open for acceptance of the work, the user shall be entitled to return same to the author for corrections and/or amendments; such requests shall be motivated by him in writing, taking into consideration the purpose for which the creation of the work was agreed upon. Justified requests for corrections and/or amendments can be re-

peatedly made to the author, by fixing suitable dates therefor; if the author refuses to comply with such a request or the amended work does not qualify for the stipulated purpose either, the user may terminate the contract and shall be obliged to pay in consideration of the work done by the author an appropriate fee less than the remuneration agreed upon for the use of the work.

#### *Civil remedies*

18. (1) Any person whose rights under this Act are in imminent danger of being infringed or have been infringed, may institute proceedings in Tonga for

- (a) an injunction to prevent the infringement or to prohibit the continuation of the infringement,
- (b) payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing person, that are attributable to the infringement. If the infringement is found to have been prejudicial to the reputation of the person whose rights were infringed, the court may, at its discretion, award exemplary damages.

(2) Any object which was made in violation of this Act and any receipts of the person violating it

and resulting from such violations, shall be subject to seizure.

#### *Offenses and penal sanctions*

19. Without prejudice to the remedies available under Section 18, any person who knowingly violated, or causes to be violated, the rights protected under this Act shall be liable to a fine of not more than 100 pa'anga for the first offense, and shall be liable to a fine of not more than 200 pa'anga or to imprisonment for not more than six months, or both, for each subsequent offense.

#### *Acquired rights*

20. (1) The provisions of this Act shall not affect any rights hereinbefore acquired under any other law.

(2) Nothing in this Act shall prejudice the right of any person to use fixations or reproductions lawfully made before the date this Act comes into force.

#### *Regulations*

21. The Prime Minister, with the consent of Cabinet, may make such regulations as may be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.