

LAWS OF TRINIDAD AND TOBAGO

COPYRIGHT ACT

CHAPTER 82:80

Act
8 of 1997
Amended by
18 of 2000
5 of 2008

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CHAPTER 82:80

COPYRIGHT ACT

8 of 1997. **An Act to make provision in respect of copyright and neighbouring rights, in substitution for the Copyright Act, 1985, and for related purposes.**

Commencement.
[205/1997].

[1ST OCTOBER 1997]

Preamble.

WHEREAS it is enacted by section 13(1) of the Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution, and if any Act does so declare it shall have effect accordingly:

And whereas it is provided in subsection (2) of the said section 13, that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that this Act have effect even though inconsistent with sections 4 and 5 of the Constitution:

PART I

PRELIMINARY

Short title.

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

Act inconsistent
with the
Constitution.

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation.
[5 of 2008].

3. For the purposes of this Act, the following terms have the following meaning:

“audio-visual work” is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made

visible, and where accompanied by sounds, susceptible of being made audible;

“author” is the natural person who has created the work;

“broadcasting” is the communication of a work, a performance or a sound recording to the public in any country or territory by wireless transmission, including transmission by satellite, and “broadcast” and “rebroadcasting” have corresponding meanings;

“building” is a structure of any kind;

“collective work” is a work created by two or more natural persons at the initiative and under the direction of a natural person or legal entity, with the understanding that it will be published by the latter person or entity under his or its own name and subject to the moral rights of the contributing natural persons;

“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;

“computer” is an electronic or similar device having information processing capabilities; and a “computer program” is a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

“copyright” is the right subsisting under Part II;

“Court” is the High Court;

“electronic retrieval system” is an electronic system—

- (a) in which works, performances or broadcasts may be stored; and
- (b) from which a member of the public may cause a work, performance or broadcast, selected by him, to be transmitted, by wire or wireless means from a place and at a time individually chosen by him, to receiving equipment under his control;

“exclusive licence” is a licence in writing signed by or on behalf of an owner or prospective owner of copyright or neighbouring rights, authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of copyright or neighbouring rights and “exclusive licensee” shall be construed accordingly;

“future copyright or neighbouring rights” has the meaning assigned to it under section 29(2);

“general licence” has the meaning assigned to it under section 49;

“infringement” is any act that contravenes any rights protected under this Act;

“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;

“licensing body” has the meaning assigned to it under section 49;

“moral rights” are the rights subsisting under Part III;

“neighbouring rights” are the rights subsisting under Part V;

“performers” are singers, musicians, and other persons who sing, deliver, declaim, play in, or otherwise perform literary and artistic works and “performance” has a corresponding meaning;

“photographic work” is the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made; a still picture extracted from an audio-visual work shall not be considered a “photographic work” but a part of the audio-visual work concerned;

“producer” of an audio-visual work, a work of mas or a sound recording, is the natural person or legal entity by whom the arrangements necessary for the making of the audio-visual work, work of mas or sound recording are undertaken;

“prospective owner” has the meaning assigned to it in the definition of “future copyright or neighbouring rights” in section 29(2);

“public display” is the showing of the original or a copy of a work—

- (a) directly;
- (b) by means of a film, slide, television image or otherwise on screen;
- (c) by means of any other device or process; or
- (d) in the case of an audio-visual work, the showing of individual images nonsequentially,

at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time or at different places or times, and where the work can be displayed without communication to the public within the meaning of the definition of “communication to the public”;

“public lending” is the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes, by an institution, the services of which are available to the public, such as a public library or archive;

“public performance” is—

- (a) in the case of a work other than an audio-visual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;

- (b) in the case of an audio-visual work, the showing of images in sequence and the making of accompanying sounds audible; and
- (c) in the case of a sound recording, making the recorded sounds audible,

at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the performance can be perceived without the need for communication to the public within the meaning of the definition of “communication to the public”;

“published” refers to a work or a sound recording—

- (a) copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies; or
- (b) which have been made available to the public by means of an electronic retrieval system,

provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a sound recording, with the consent of the producer of the sound recording or his successor in title;

“related offence” has the meaning assigned to it under section 40(1);

“related penalty” has the meaning assigned to it under section 40(1);

“rental” is the transfer of the possession of the original or a copy of a work or sound recording for a limited period of time for profit-making purposes;

“reproduction” is the making of one or more copies of a work or sound recording in any material form, including any permanent or temporary storage of the work or sound recording in electronic form;

“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;

“sound recording” is any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied but does not include a fixation of sounds and images, such as the sound track of an audio-visual work;

“work” is any literary or artistic work under section 5(1);

“work of applied art” is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

“work of joint authorship” is a work to the creation of which two or more authors have contributed, provided the contribution of each author is not separate from that of the other author or authors and the work does not qualify as a “collective work” under the definition of “collective work”;

“work of mas” is an original production intended to be performed by a person or a group of persons in which an artistic work in the form of an adornment or image presented by the person or persons is the primary element of the production, and in which such adornment or image may be accompanied by words, music, choreography or other works, regardless of whether the production is intended to be performed on stage, platform, street or other venue.

4. (1) This Act shall also apply to works made, Application.
performances given, sound recordings made and broadcasts first transmitted before the date of the coming into force of this Act, provided that the term of protection had not expired under the Copyright Act, 1985 or, in the case of works, under the legislation 13 of 1985.
of the country of origin of such works, that are to be protected under an international treaty to which Trinidad and Tobago is party.

(2) This Act shall not affect contracts on works, performances and broadcasts concluded before the coming into force of this Act.

PART II

COPYRIGHT

Copyright and
copyright
works.

5. (1) Copyright is a property right which subsists in literary and artistic works that are original intellectual creations in the literary and artistic domain, including in particular—

- (a) books, pamphlets, articles, computer programs and other writings;
- (b) speeches, lectures, addresses, sermons and other works of the same nature;
- (c) dramatic works, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;
- (d) stage productions of works mentioned in paragraph (c);
- (e) musical works, with or without accompanying words;
- (f) audio-visual works;
- (g) works of architecture;
- (h) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- (i) photographic works;
- (j) works of applied art;
- (k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) Works shall be protected by the sole fact of their creation and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Derivative
works.

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

- (a) translations, adaptations, arrangements and other transformations or modifications of works;
- (b) collections of works and collections of mere data (databases), whether in machine readable or other form, provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents; and
- (c) works of mas.

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

7. (1) Notwithstanding the provisions of sections 5 and 6, but subject to subsection (2), no protection shall extend under this Act to—

Subject matter not protected.

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work;
- (b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof; or
- (c) political speeches and speeches delivered in the course of legal proceedings.

(2) Collections of texts or speeches referred to in subsection (1)(b) or (c), whether in machine readable or other form, shall be protected as works provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents.

8. (1) Subject to the provisions of sections 9 to 17, the owner of copyright shall have the exclusive right to do, authorise, or prohibit the following acts in relation to the work:

Nature of copyright.

- (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 audio-visual work, a work embodied in a sound recording, a computer program, a database 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 authorisation 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; or
- (j) communication to the public of the work.

(2) The rights of rental and lending under paragraph (e) of subsection (1) do not apply to rental or lending of computer programs where the program itself is not the essential object of the rental or lending.

Private reproduction for personal purposes.

9. (1) Notwithstanding the provisions of section 8(1)(a) and subject to the provisions of subsection (2) the private reproduction of a published work in a single copy shall be permitted without the authorisation of the owner of copyright, where the reproduction is made by a natural person exclusively for his own personal purposes.

(2) The permission under subsection (1) shall not extend to reproduction—

- (a) of a work of architecture in the form of a building or other construction;
- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notation;
- (c) of the whole or a substantial part of a database;
- (d) of a computer program, except as provided in section 14; or
- (e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the owner of copyright.

Quotation.

10. (1) Notwithstanding the provisions of section 8(1)(a), the reproduction of a short part of a published work, in the form of a quotation, shall be permitted without authorisation of the owner of copyright, provided that the reproduction is compatible with fair dealing and does not exceed the extent justified by the purpose.

(2) The quotation shall be accompanied by an indication of its source and the name of the author, if his name appears in the work from which the quotation is taken.

11. (1) Notwithstanding the provisions of section 8(1)(a), the following acts shall be permitted without authorisation of the owner of copyright:

Reproduction for teaching.

- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, provided that such reproduction is compatible with fair dealing and does not exceed the extent justified by the purpose;
- (b) the reprographic reproduction, for face-to-face teaching in educational institutions the activities of which do not serve direct or indirect commercial gain, of published articles, short works or short extracts from works, to the extent justified by the purpose, provided that—
 - (i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions; and
 - (ii) there is no collective licence available (that is, offered by a collective administration organisation of which the educational institution is or should be aware) under which such reproduction can be made.

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1).

12. Notwithstanding the provisions of section 8(1)(a), any library or archive whose activities do not serve direct or indirect commercial gain may, without the authorisation of the owner of copyright, make a single copy of the work by reprographic reproduction—

Reprographic reproduction by libraries and archives.

- (a) where the work reproduced is a published article, other short work or short extract of a

work, and where the purpose of the reproduction is to satisfy the request of a natural person, provided that—

- (i) the library or archive is satisfied that the copy will be used solely for the purpose of study, scholarship or private research;
 - (ii) the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; and
 - (iii) there is no collective licence available (that is, offered by a collective administration organisation of which the library or archive is or should be aware) under which such copies can be made; or
- (b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive, provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

Reproduction, broadcasting and other communication to the public for informatory purposes.

13. Notwithstanding the provisions of section 8(1)(a), (i) and (j), the following acts shall be permitted in respect of a work without the authorisation of the owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:

- (a) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character; this permission shall not apply where the owner of copyright has reserved the right to authorise reproduction, broadcasting or other communication to the public on the copies themselves, or in a prominent way in connection with broadcasting or other communication to the public of the work;

- (b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the informatory purpose;
- (c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a lecture, address, sermon or other work of a similar nature delivered in public, to the extent justified by the purpose of providing current information.

14. (1) Notwithstanding section 8(1)(a) and (c), the reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorisation of the owner of copyright, provided that the copy or adaptation is necessary—

Reproduction and adaptation of computer programs.

- (a) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or
- (b) for archival purposes and for the replacement of a lawfully owned copy of the computer program in the event that the said copy is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

15. Notwithstanding the provisions of section 8(1)(f), the importation of not more than three copies of a work by a natural person for his own personal purposes shall be permitted without the authorisation of the owner of copyright.

Importation for personal purposes.

16. Notwithstanding the provisions of section 8(1)(g), the public display of originals or copies of works shall be permitted without the authorisation of the owner of copyright, provided that the display is made other than by means of a film, slide,

Display of works.

television image or otherwise on screen or by means of any other device or process, and provided further that the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the owner of copyright or his successor in title.

Permitted use of artistic works situated in public places.

17. Notwithstanding the provisions of sections 8(1) and 16, the inclusion of an artistic work in a work, broadcast or communication to the public shall not be considered an infringement if the artistic work—

- (a) is permanently situated in a public place or in premises open to the public; or
- (b) is included in the work, broadcast or communication to the public by way only of background or as incidental to the essential matters represented.

PART III

MORAL RIGHTS

Moral rights. [5 of 2008].

18. (1) Independently of his copyright, and even where he is no longer the owner of copyright, the author of a work shall have the right—

- (a) to have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;
- (b) to not have his name indicated on the copies and in connection with any public use of his work;
- (c) to use a pseudonym; or
- (d) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to his work, which would be prejudicial to his honour or reputation.

(2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the author, but the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under paragraph (d) of subsection (1) specifies the nature and extent of the modifications or other action in respect of which the right is waived, and following the death of the author, the natural person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

(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.

PART IV

DURATION OF COPYRIGHT AND MORAL RIGHTS

19. (1) Subject to the provisions of subsections (2) to (5), copyright and moral rights of the author shall be protected during the life of the author and for fifty years after his death.

Duration of
copyright.
[5 of 2008].

(2) In the case of a work of joint authorship, copyright and moral rights shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audio-visual work, copyright and moral rights shall be protected for—

- (a) seventy-five years from the date on which the work was first published;
- (b) seventy-five years from the date on which the work was first made available to the public, if the work has not been published before twenty-five years after its making; or
- (c) one hundred years from the making of the work, if the work had neither been made available to the public nor published before twenty-five years after its making.

(4) In the case of a work published anonymously or under a pseudonym, copyright and moral rights shall be protected for—

- (a) seventy-five years from the date on which the work was first published;
- (b) seventy-five years from the date on which the work was first made available to the public, if the work has not been published before twenty-five years after its making; or
- (c) one hundred years from the making of the work, if the work had neither been made available to the public nor published before twenty-five years after its making, provided that where the author's identity is revealed or is no longer in doubt before the expiration of the said period the provisions of subsection (1) or (2) shall apply, as the case may be.

(5) In the case of a work of applied art, copyright and moral rights shall be protected for twenty-five 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.

Duration of
moral rights of
performers.
[5 of 2008].

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.

PART V

NEIGHBOURING RIGHTS

(PROTECTION OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND BROADCASTING ORGANISATIONS)

20. Neighbouring rights are property rights which subsist in performances, sound recordings and broadcasts.

Neighbouring rights subsisting in performances, sound recordings and broadcasts.

21. (1) Subject to the provisions of section 25, a performer shall have the exclusive right to do, authorise or prohibit any of the following acts:

Acts requiring authorisation of performers. [5 of 2008].

- (a) the broadcasting or other communication to the public of his performance except where the broadcasting or the other communication—
 - (i) is made from a fixation of the performance, other than a fixation made under the terms of section 25; or
 - (ii) is a rebroadcasting made or authorised by the organisation initially broadcasting the performance;
- (b) the fixation of his unfixed performance; or
- (c) the reproduction of a fixation of his performance in any manner or form;
- (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 authorised 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.

(2) Once the performer has authorised the incorporation of his performance in an audio-visual fixation, the provisions of subsection (1) shall have no further application.

(3) Nothing in this section shall be construed to deprive performers of the right to agree by contract on terms and conditions more favourable for them in respect of their performances.

(4) The rights under this section shall be protected from the moment in which the performance takes place until the end of the fiftieth calendar year following the year in which the performance takes place.

Acts requiring
authorisation of
producers of
sound
recordings.
[5 of 2008].

22. (1) Subject to the provisions of section 25, a producer of a sound recording shall have the exclusive right to do, authorise or prohibit any of the following acts:

- (a) direct or indirect reproduction of the sound recording in any manner or form;
- (b) importation of copies of the sound recording, even where the imported copies were made with the authorisation of the producer;
- (c) the first public distribution of the original or a copy of the sound recording by sale or otherwise;
- (d) adaptation or other transformation of the sound recording;
- (e) rental to the public of the original or a copy of the sound recording, for the purposes of direct or indirect commercial advantage, irrespective of the ownership of the original or copy rented;
- (f) the making available to the public of the sound recording through an electronic retrieval system.

(2) The rights under subsection (1) shall be protected from the publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

Equitable
remuneration
for use of sound
recordings.
[5 of 2008].

23. (1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly or indirectly for broadcasting or communication to the public, or is publicly performed, a single equitable remuneration for the performer and the producer of the sound recording shall be paid by the user to the producer.

(2) The single equitable remuneration paid by the user to the producer under subsection (1) shall be fixed, in default of agreement, by the Court.

(3) Unless otherwise agreed between the performer and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer.

(4) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

(5) For the purposes of this section, a sound recording which has been made available to the public through an electronic retrieval system shall be deemed to have been published for commercial purposes.

24. (1) Subject to the provisions of section 25, a broadcasting organisation shall have the exclusive right to do, authorise or prohibit any of the following acts:

Acts requiring authorisation of broadcasting organisations.

- (a) the rebroadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast;
- (d) the reproduction of a fixation of its broadcast.

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast first takes place.

25. (1) Sections 21, 22, 23 and 24 shall not apply where the acts referred to in those sections are related to—

Limitations on protection. [18 of 2000].

- (a) the use by a natural person exclusively for his own personal purposes;
- (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (c) use solely for the purpose of face-to-face teaching activities or for scientific research;

(d) cases where, under Part II, a work can be used without the authorisation of the owner of copyright.

(2) The permission under paragraph (a) shall not extend to reproduction of any performance, sound recording or broadcast in cases where reproduction would conflict with a normal exploitation of the performance, sound recording or broadcast or would otherwise unreasonably prejudice the legitimate interests of the owner of neighbouring rights.

PART VI

OWNERSHIP AND ASSIGNMENT

Original ownership of copyright and neighbouring rights. [5 of 2008].

26. (1) Subject to the provisions of subsections (2) to (5), the original owner of copyright is the author who has created the work.

(1A) Subject to the provisions of section 25 and subsections (7) to (9), the original owners of neighbouring rights in—

- (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 organisation.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of copyright, but if a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of copyright in the part that he has created.

(3) In respect of a collective work, the natural person or legal entity at the initiative and under the direction of whom or which the work has been created shall be the original owner of copyright.

(4) In respect of a work created by an author employed by a natural person or legal entity in the course of his employment, the original owner of copyright shall be, unless provided otherwise by agreement, the employer.

(5) In respect of an audio-visual work or a work of mas, the original owner of copyright shall be the producer, unless provided otherwise by agreement.

(6) The authors of the pre-existing works included in or adapted for the making of an audio-visual work or a work of mas shall maintain their copyright in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be the subject of acts covered by their copyright separately from the audio-visual work or work of mas.

(7) Where a work or a sound recording has been made by or under the direction or control of the Government and, apart from this subsection no copyright or neighbouring rights would subsist in the work or sound recording, then copyright or neighbouring rights shall subsist therein by virtue of this subsection and shall belong to the State.

(8) Copyright or neighbouring rights subsisting in a work or a sound recording which has, with the written consent of the owner of copyright or neighbouring rights, been first published in Trinidad and Tobago by or under the direction or control of the Government shall belong to the State.

(9) Subsections (7) and (8) shall have effect subject to any agreement whereby it is agreed that copyright or neighbouring rights in the work or sound recording shall vest in the owner of copyright or neighbouring rights or some other person designated in the agreement.

(10) For the purposes of this section the term “agreement” includes any conditions regulating or applying to the employment of a person in the service of the State.

27. (1) Where it appears to the President that it is desirable that this Act should apply in relation to an organisation—

- (a) of which two or more countries, or the governments of two or more countries, are members; or
- (b) that is constituted by persons representing two or more countries, or representing the governments of two or more countries,

he may by Order declare that organisation to be an international organisation to which the Act applies.

Original ownership of copyright and neighbouring rights by international organisations.

(2) An international organisation to which this Act applies which otherwise does not have, or at some material time otherwise did not have, the legal capacities of an entity has, and shall be deemed at all material times to have had, the legal capacities of an entity for the purpose of holding, dealing with and enforcing copyright or neighbouring rights and for the purposes of all legal proceedings relating to such copyright or neighbouring rights.

(3) Where an original literary work, an artistic work, a sound recording or a broadcast made by, or under the direction or control of, an international organisation to which this Act applies in such circumstances that copyright or neighbouring rights would not, apart from this subsection, subsist in the work, sound recording or broadcast, then—

- (a) copyright shall subsist in the work, and section 19(3), (5) and (6) shall apply;
- (b) neighbouring rights shall subsist in the sound recording or broadcast and sections 22(2) and 24(2) shall apply; and
- (c) the organisation shall be, subject to this Part, the owner of copyright or neighbouring rights.

(4) Save in so far as other provision is made by this section, Parts II and V shall apply in relation to copyright or neighbouring rights respectively which subsist by virtue of this section in like manner as it applies in relation to copyright or neighbouring rights subsisting by virtue of those Parts.

Assignments
and licences.

28. (1) Copyright and neighbouring rights shall be transmissible in whole or in part by assignment, by disposition or by operation of law, as personal or moveable property.

(2) An assignment of copyright or neighbouring rights is not effective unless it is in writing and signed by or on behalf of the assignor.

(3) A licence granted by the owner of copyright or neighbouring rights is binding on every successor in title to his interest in the copyright or neighbouring rights, except—

- (a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or

(b) a person deriving title from such a purchaser, and references in this Act, in relation to any copyright or neighbouring rights, to doing anything with or without the licence of the owner of copyright or neighbouring rights, shall be construed accordingly.

(4) An assignment in whole or in part of any copyright or neighbouring rights, or a licence to do an act subject to authorisation by the owner of copyright or neighbouring rights, shall not include or be deemed to include the assignment or licence of any other rights not explicitly referred to therein.

(5) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

29. (1) Where, by an agreement made in relation to future copyright or neighbouring rights, and signed by or on behalf of the prospective owner of copyright or neighbouring rights, the prospective owner purports to assign the future copyright or neighbouring rights (wholly or partly) to another person, then if, on the coming into existence of the copyright or neighbouring rights, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright or neighbouring rights to be vested in him, the copyright or neighbouring rights shall vest in the assignee or his successor in title by virtue of this subsection.

Prospective ownership of author's rights.

(2) In this section, "future copyright or neighbouring rights" means copyright or neighbouring rights which will or may come into existence in respect of any future work, performance, sound recording or broadcast, or on the coming into operation of this Act, or in any future event, and "prospective owner" shall be construed accordingly, and includes a person who is prospectively entitled to copyright or neighbouring rights by virtue of such an agreement as is mentioned in subsection (1).

(3) A licence granted by a prospective owner of copyright or neighbouring rights is binding on every successor in

title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act to doing anything with or without, the licence of the owner of copyright or neighbouring rights shall be construed accordingly.

PART VII

CIVIL REMEDIES

Action—
definition of.

30. For the purposes of this Part, the expression “action” includes a counterclaim, and reference to the plaintiff and to the defendant in an action shall be construed accordingly.

Action by
owner of rights
for
infringement.

31. (1) Subject to this Act, infringements of rights of the owner of copyright or neighbouring rights shall be actionable in the Court at the suit of the owner of copyright or neighbouring rights; and in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

(2) In an action for infringement of rights in respect of the construction of a building, no injunction or other order shall be made—

- (a) after the construction of the building has begun, so as to prevent it from being completed; or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

Action by
exclusive
licensee for
infringement.

32. (1) An exclusive licensee has, except against the owner of copyright or neighbouring rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) His rights and remedies are concurrent with those of the owner of copyright or neighbouring rights; and references in the relevant provisions of this Part to the owner of copyright or neighbouring rights shall be construed accordingly.

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

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.

Certain infringement actionable by non-exclusive licensee. [5 of 2008].

(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 authorising the licensee to exercise a right which remains exercisable by the owner of the copyright or neighbouring rights.

33. (1) Where an action for infringement of copyright or neighbouring rights brought by the owner of copyright or neighbouring rights or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the owner of copyright or neighbouring rights or,

Exercise of concurrent rights.

as the case may be, the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

(2) An owner of copyright or neighbouring rights or exclusive licensee who is added as a defendant in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) Subsections (1) and (2) do not affect the granting of interlocutory relief on an application by an owner of copyright or neighbouring rights or exclusive licensee alone.

(4) Where an action for infringement of copyright or neighbouring rights is brought which relates (wholly or partly) to an infringement in respect of which the owner of copyright or neighbouring rights and an exclusive licensee have or had concurrent rights of action—

- (a) the Court may in assessing damages take into account—
 - (i) the terms of the licence; and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
- (c) the Court may, if an account of profits is directed, apportion the profits between them as the Court considers just, subject to any agreement between them,

and these provisions apply whether or not the owner of copyright or neighbouring rights and the exclusive licensee are both parties to the action.

Secondary
infringements.
[5 of 2008].

34. (1) Copyright in a work is infringed by a person who, without the authorisation of the owner of copyright—

- (a) possesses in the course of a business;

- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) in the course of a business exhibits in public or distributes;
- (d) imports into Trinidad and Tobago; or
- (e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of copyright,

an article, which is and which he knows or has reason to believe, is an infringing copy of a work.

(2) Copyright in a work is infringed by a person who, without the authorisation of the owner of copyright—

- (a) makes;
- (b) imports into Trinidad and Tobago;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that it is to be used to make infringing copies.

(3) Where copyright in a work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

(4) In subsection (3), “place of public entertainment” includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

(5) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for showing audio-visual works or receiving visual images or sounds conveyed by electronic means, the following persons are also liable for the infringement:

- (a) a person who supplied the apparatus, or any

substantial part of it, if when he supplied the apparatus or part—

- (i) he knew or had reason to believe that the apparatus was likely to be used so as to infringe copyright; or
 - (ii) in the case of apparatus whose normal use involves a public performance or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright;
- (b) an occupier of premises who gave permission for the apparatus to be brought onto the premises, if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright;
- (c) a person who supplied a copy of an audio-visual work used to infringe copyright, if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

(6) Subsections (1) to (5) shall apply to neighbouring rights in performances, sound recordings and broadcasts as they apply to copyright in works.

Measures, remedies and sanctions against acts constituting infringements of copyright and neighbouring rights. [5 of 2008].

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) authorised 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 authorised 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.

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.

Abuses in respect of rights management information. [5 of 2008].

(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.

Presumption of authorship and of representation of the author.

35. (1) The natural person or legal entity whose name is indicated as the author in the original or copies of a work shall, in the absence of proof to the contrary, be presumed to be the owner of copyright in the work, and this provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

(2) Where no name purporting to be that of the author appears on the original or copies of a work but a name purporting to be that of a publisher appears on copies of the work as first published, the person whose name so appears shall be presumed, until the contrary is proved, to be the owner of copyright in the work as first published.

(3) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary that—

- (a) the work is an original work; and
- (b) the plaintiff's allegation as to what was the first publication of the work is correct.

Presumptions relevant to sound recordings, audio-visual works and computer programs.

36. (1) In proceedings brought by virtue of this Act with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating—

- (a) that a named person was the producer of the recording at the date of issue of the copies;
- (b) that a named person was a performer in the recording at the date of issue of the copies; or
- (c) that the recording was first published in a specific year or in a specified country,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(2) In proceedings brought by virtue of this Act with respect to an audio-visual work, where copies of the audio-visual work as issued to the public bear a statement—

- (a) that a named person was the author or director of the audio-visual work;

- (b) that a named person was the owner of copyright in the audio-visual work at the date of issue of the copies; or
- (c) that the audio-visual work was first published in a specific year or in a specified country,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(3) In proceedings brought by virtue of this Act with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement—

- (a) that a named person was the owner of copyright in the program at the date of issue of the copies; or
- (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specific year,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) Subsections (1) to (3) apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

(5) In proceedings brought by virtue of this Act with respect to an audio-visual work, where the audio-visual work as shown in a communication to the public bears a statement—

- (a) that a named person was the author or director of the audio-visual work; or
- (b) that a named person was the owner of copyright in the audio-visual work immediately after it was made,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved and this presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the audio-visual work was communicated to the public.

37. In proceedings brought by virtue of this Act with respect to a work, copyright in which belongs to the State, where

Presumptions relevant to works of the State.

there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

Civil remedies
for infringement.

38. (1) The Court shall have the authority—

- (a) to grant injunctions to prohibit the committing, or continuation of committing, of an infringement of any right protected under this Act;
- (b) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorisation of the owner of any right protected under this Act where the making or importation of copies is subject to such authorisation, 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 referring to, such copies;
- (c) to order the forfeiture and seizure of all copies of works or sound recordings manufactured, reproduced, distributed, sold or otherwise used, intended for use or possessed with intent to use in contravention of section 8 or 22 and 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;
- (d) to order that the owner of any right protected under this Act whose right has been infringed, be paid by the infringer, damages adequate to compensate for the injury suffered as a consequence of the act of infringement, as well as the payment of expenses caused by the infringement, including legal costs;
- (e) to fix the amount of damages taking into account the pecuniary and non-pecuniary loss suffered by the owner of the right;

- (f) to order an account of the infringer's profits attributable to the infringement;
- (g) where infringing copies exist, to order the destruction or other reasonable disposition of those copies and their packaging outside the channels of commerce in such a manner as to avoid harm to the right holder, unless the owner of the right requests otherwise.

(2) Where the infringer did not know or had no reasonable reason to know that he was engaged in infringing activity, the Court may limit damages to the profits of the infringer attributable to the infringement.

(3) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court shall have the authority, whenever and to the extent that it is reasonable, to order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimise the risks of further infringements, including surrender to the owner of the right.

(4) The Court shall not, in respect of the same infringement, both award the owner of rights damages and order that he shall be given an account of profits.

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

(6) Where there is a danger that acts of infringement may be continued, the Court shall have the authority to order that such acts not be committed and the Court shall fix a fine of five thousand dollars for each day on which the infringement is continued, which fine shall be paid if the order is not respected.

39. Where, in an action under this Part—

- (a) the infringement of copyright or neighbouring rights is proved or admitted;
- (b) the plaintiff is a licensing body; and
- (c) the Court, having regard to all material circumstances, is satisfied that effective relief would not otherwise be available to the plaintiff,

Wide injunction available to licensing bodies.

the Court may grant an injunction extending to all the protected works, sound recordings, broadcasts or performances, as the case may be, of which the plaintiff is the owner of copyright or neighbouring rights, notwithstanding that the infringement related to only one or some of the said works, sound recordings, broadcasts or performances.

Withdrawal of privilege against incrimination of self or spouse in infringement and related proceedings.

40. (1) In this section—

“related offence”, in relation to any proceedings to which subsection (2) applies, means—

- (a) in the case of proceedings within subsection (3)(a) or (b)—
 - (i) any offence committed by or in the course of the infringement to which those proceedings relate; or
 - (ii) any offence not within subparagraph (i) committed in connection with that infringement, being an offence involving fraud or dishonesty;
- (b) in the case of proceedings within subsection (3)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;

“related penalty”, in relation to any proceedings to which subsection (2) applies, means—

- (a) in the case of proceedings within subsection (3)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement to which those proceedings relate;
- (b) in the case of proceedings within subsection (3)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the plaintiff relies in those proceedings.

(2) In any proceedings to which this subsection applies a person shall not be excused, by reason that to do so should tend to expose that person, or his spouse, to proceedings for a related offence or for the recovery of a related penalty—

- (a) from answering any question put to that person in the first-mentioned proceedings; or

(b) from complying with any order made in those proceedings.

(3) Subsection (2) applies to the following civil proceedings in the Court, namely:

- (a) proceedings for infringement of copyright or neighbouring rights;
- (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights; and
- (c) proceedings brought to prevent any apprehended infringement of such rights.

(4) Subject to subsection (5), no statement or admission made by a person—

- (a) in answering a question put to him in any proceedings to which subsection (2) applies; or
- (b) in complying with an order made in any such proceedings,

shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person.

(5) Nothing in subsection (4) shall render any statement or admission made by a person as therein mentioned inadmissible in evidence against that person in proceedings for perjury or contempt of Court.

(6) Any reference in this section to civil proceedings in the Court includes a reference to proceedings on appeal arising out of those civil proceedings.

PART VIII

OFFENCES

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;

Penalties in respect of infringing copies of a work, performance, sound recording or broadcast. [5 of 2008].

- (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 two hundred and fifty thousand dollars and imprisonment for ten years.

(4) 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.

- 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 or film,

Penalties in respect of unauthorised public performance. [5 of 2008].

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 two hundred and fifty thousand dollars and to imprisonment for ten years.

42. Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate commits an offence and in the case of an officer of such body corporate, is liable, upon conviction, to a fine of two hundred and fifty thousand dollars and to imprisonment for ten years and in the case of the body corporate, is liable upon conviction, to a fine of two hundred and fifty thousand dollars.

Offences by bodies corporate. [5 of 2008].

43. No prosecution for an offence under this Act shall be commenced after the expiration of five years after the commission of the offence or one year after the discovery thereof, whatever date last occurs.

Time limited for prosecution.

Powers of the
Magistrate.
[5 of 2008].

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.

Powers of police
officers.
[5 of 2008].

45. (1) A police officer not below the rank of Inspector, or a police officer below the rank of Inspector acting on the authority of a warrant issued under subsection (4), may—

- (a) enter and search any premises or place;
- (b) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft); or
- (c) stop and search any vehicle,

in which he reasonably suspects that there are infringing copies of works, performances, sound recordings or broadcasts in which copyright or neighbouring rights subsist or any plates, moulds, matrices, masters, tapes, film negatives, or other articles by means of which such copies of works, performances, sound recordings or broadcasts may be reproduced, and all electronic, mechanical or other devices for manufacturing, reproducing, or assembling such copies of works, performances, sound recordings or broadcasts and apparatus, implements and devices used for transporting or marketing such copies.

(2) A police officer not below the rank of Inspector, or a police officer below the rank of Inspector acting on the authority of a warrant issued under subsection (4), may seize, remove or detain—

- (a) any article which appears to him to be an infringing copy of a work, performance, sound recording or broadcast in which copyright or

neighbouring rights subsist or any plate, mould, matrix, master, tape or film negative, or other article by means of which such copy of a work, performance, sound recording or broadcast may be reproduced, and any electronic, mechanical or other device for manufacturing, reproducing, or assembling such copy of a work, performance, sound recording or broadcast;

- (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
- (c) anything which appears to him to be or to contain evidence of an offence under this Act.

(3) A police officer not below the rank of Inspector, or a police officer below the rank of Inspector acting on the authority of a warrant issued under subsection (4), may—

- (a) break open any outer or inner door of any place which he is empowered or authorised by this Act to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Act to stop, board and search;
- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- (d) detain any person found in any place which he is empowered or authorised by this Act to search until such place has been searched;
- (e) detain any vessel or aircraft which he is empowered by this Act to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched; or
- (f) detain any vehicle which he is empowered by this Act to stop and search until it has been searched.

(4) A Magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises, place, vessel (other than a ship of war), aircraft (other than a military aircraft) or vehicle, any article which may be seized, removed or detained under subsection (2), issue a warrant authorising a police officer below the rank of Inspector to execute any of the powers vested in him under subsections (1), (2) and (3).

(5) A warrant issued under subsection (4) may authorise any person to accompany the police officer executing the warrant.

(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,

and that such copies, apparatus, implements or devices appear, having regard to all the circumstances, to have been abandoned, 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.

Obstruction of
police officers.

46. (1) Without prejudice to any other written law, any person who—

- (a) wilfully obstructs a police officer in the exercise of his powers or the performance of his duties under this Act;
- (b) wilfully fails to comply with any requirement properly made to him by any such police officer; or

- (c) without reasonable excuse, fails to give such police officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for twelve months.

(2) A person who, when required to give information to a police officer in the exercise of his powers or the performance of his duties under this Act, knowingly gives false or misleading information to any such police officer is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for twelve months.

(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

47. A police officer may arrest without a warrant any person who—

Power to arrest without warrant.

- (a) has committed or attempted to commit; or
- (b) is reasonably suspected of having committed or having attempted to commit an offence under this Act if—
- (i) he has reasonable grounds for believing that the person will abscond unless arrested;
- (ii) the name and address of the person are unknown to him and cannot be ascertained by him; or
- (iii) he has reason to believe and believes that the name and address given by the person are false.

48. (1) The owner of copyright or neighbouring rights in any published work or in any published sound recording may give notice in writing to the Comptroller of Customs and Excise—

Provision for restricting importation of infringing copies.

- (a) that he is the owner of copyright or neighbouring rights in the work or sound recording;

(b) that he requests the Comptroller during the period specified in the notice to treat as prohibited goods copies of the work or sound recording to which this section applies,

but the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright or neighbouring rights may subsist.

(2) This section applies, in the case of a work or sound recording, to any copy made outside Trinidad and Tobago which, if it had been made in Trinidad and Tobago by the importer, would be an infringing copy of the work or sound recording.

(3) Where a notice has been given under this section in respect of a work or sound recording, and has not been withdrawn, the importation into Trinidad and Tobago, at a time before the end of the period specified in the notice, of any copy of the work or sound recording to which this section applies shall, subject to the following provisions of this section, be prohibited, but this subsection shall not apply to the importation of any article by a person for his private and domestic use.

(4) The owner of copyright or neighbouring rights in a work who gives notice to the Comptroller under this section shall comply with such conditions with respect to—

- (a) the form of the notice;
- (b) the furnishing of evidence;
- (c) the payment of fees;
- (d) the giving of security; and
- (e) any other incidental or supplementary matters, as may be prescribed.

Ch. 78:01.

(5) Notwithstanding anything in the Customs Act, a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section.

PART IX

SPECIAL JURISDICTION OF THE COURT

Definitions.

49. For the purposes of this Part, the expression “general licence” means a licence extending to—

- (a) the works of several authors;

- (b) the sound recordings or audio-visual works of several producers; or
- (c) the performances of several performers,

and which does not apply different terms and conditions as between the several authors, producers or performers, as the case may be;

“licensing body” means any society or organisation which has as its main object, or one of its main objects, the negotiation or granting of general licences in respect of protected works, sound recordings or performances either as the owner or prospective owner of copyright or neighbouring rights therein, or as agent for the owners or prospective owners thereof.

50. Subject to this Act, the Court shall have jurisdiction— Jurisdiction of Court.

- (a) to determine any dispute which may be referred to it pursuant to section 52; and
- (b) to fix the amount of equitable remuneration or compensation which by any provision of this Act is required to be fixed by the Court in any case where there has been no agreement between a person and the owner of copyright or neighbouring rights as to the amount of remuneration or compensation payable in respect of the use of the work, sound recording, broadcast or performance.

51. (1) The procedure regulating the making of references and applications to the Court, and proceedings before the Court arising out of the jurisdiction conferred on the Court by this Part, and as to the fees chargeable in respect of those proceedings shall be prescribed by Rules of Court. Procedure in proceedings before the Court.

(2) The Court may order that the costs or expenses of any proceedings before it under this Part which are incurred by any party shall be paid by any other party and may tax or settle the amount of any costs or expenses to be paid under any such order or direct in what manner they are to be taxed.

(3) Where—

- (a) the Court makes an order by way of determination of a dispute referred to it pursuant

to section 52, the Court may, in its discretion, direct that the order shall have effect retroactively to such date as the Court specifies; but no order shall have effect from a date prior to the date on which the dispute was formally referred to the Court;

- (b) the Court fixes an amount of equitable remuneration or compensation pursuant to paragraph (b) of section 50, the Court may also give directions as to the method and time of payment and may stipulate such other conditions of payment as it considers reasonable.

Disputes with
licensing bodies.

52. (1) Where a dispute arises between any person and a licensing body with respect to—

- (a) the refusal of the licensing body to grant to that person a general licence to which this section applies; or
(b) the terms and conditions on which the licensing body is prepared to grant such a licence,

either that person or the licensing body may refer the dispute to the Court.

(2) This section applies to a general licence authorising the licensee—

- (a) in the case of a work or sound recording, to make a reproduction, public display, public performance, broadcast or communication to the public of the original or copies of the work or sound recording;
(b) in the case of a performance, to make a fixation or to broadcast or to communicate to the public the performance.

(3) For the purposes of this section, a licensing body shall be deemed to have refused to grant a general licence to a person if the licensing body has failed, within a reasonable time from the date when that person has made a written request to the licensing body for such a licence, to grant a licence or to state in writing the terms and conditions on which it is prepared to grant the licence.

(4) While an order made by the Court by way of determination of a dispute referred to it pursuant to subsection (1) remains in force, either party to the dispute may refer the matter back to the Court for further consideration, but except with the special leave of the Court—

- (a) an order made so as to be in force for not more than two years from the date it took effect may not be referred back to the Court under this subsection;
- (b) an order made so as to be in force indefinitely or for more than two years from the date it took effect may not be referred back to the Court before the expiry of twelve months from the date when the order was made.

53. (1) Except as provided for in subsection (2), the hearing and determination of any proceedings before the Court in the exercise of the jurisdiction conferred on it by this Part shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatsoever. Rights of appeal.

(2) A party to proceedings before the Court by virtue of the jurisdiction conferred on it by this Part is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other:

- (a) that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;
- (b) that the Court has exceeded its jurisdiction in the matter;
- (c) that the order or award has been obtained by fraud;
- (d) that any finding or decision of the Court in any matter is erroneous in point of law; or
- (e) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

(3) On the hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power—

- (a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or
- (b) to order a new hearing on any question without interfering with the finding or decision upon any other question,

and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(4) The Court of Appeal may in any matter brought on appeal before it dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred notwithstanding that it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

PART X

FINAL PROVISIONS

Scope of application of Act.

54. (1) The provisions of this Act concerning the protection of literary and artistic works shall apply to—

- (a) works of authors who are nationals or residents of, or domiciled in, Trinidad and Tobago;
- (b) works first published in Trinidad and Tobago, and works first published in another country and also published in Trinidad and Tobago within thirty days, irrespective of the nationality, residence or domicile of their authors;
- (c) audio-visual works, the producer of which is a national or resident of, or domiciled in, Trinidad and Tobago; and
- (d) works of architecture erected in Trinidad and Tobago and other artistic works incorporated in a building located in Trinidad and Tobago.

(2) The provisions of this Act shall also apply to works that are protected in Trinidad and Tobago by virtue of and in accordance with any international convention or other international agreement to which Trinidad and Tobago is party.

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

Application of Act in relation to performers, sound recordings and broadcasts.

- (a) performers who are nationals or residents of, or domiciled in, Trinidad and Tobago;
- (b) performers who are not nationals or residents of, or domiciled in, Trinidad and Tobago but whose performances—
 - (i) take place in the territory of Trinidad and Tobago;
 - (ii) are incorporated in sound recordings that are protected under this Act; or
 - (iii) have not been fixed in a sound recording but are included in broadcasts which qualify for protection under this Act.

(2) The provisions of this Act on the protection of sound recordings shall apply to—

- (a) sound recordings, the producers of which are nationals or residents of, or domiciled in, Trinidad and Tobago;
- (b) sound recordings in respect of which the first fixation took place in Trinidad and Tobago; and
- (c) sound recordings first published in Trinidad and Tobago.

(3) The provisions of this Act on the protection of broadcasts shall apply to—

- (a) broadcasts of broadcasting organisations, the headquarters of which are situated in Trinidad and Tobago; and
- (b) broadcasts transmitted from transmitters situated in Trinidad and Tobago.

(4) The provisions of this Act shall also apply to performers, producers of sound recordings and broadcasting organisations protected by virtue of and in accordance with any international convention or other international agreement to which Trinidad and Tobago is party.

56. The Copyright Act 1985, is repealed.

Act No. 13 of 1985 repealed.

LAWS OF TRINIDAD AND TOBAGO

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Chap. 82:80

Copyright

- Regulations. **57.** Except for the matters required to be prescribed by Rules of Court for the purposes of Part IX, the Minister may make Regulations prescribing such matters as are required or permitted by this Act to be prescribed or as are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.
- Savings. **58.** (1) Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence or the provisions of the Protection Against Unfair Competition Act.
- Ch. 82:36.
- (2) Nothing in this Act affects the right of the State, or any person deriving title from the State, to sell, use or otherwise deal with articles so seized, impounded or forfeited under the Customs Act, including any article forfeited by virtue of this Act or any other written law.
- Ch. 78:01.
- Limitation of
certain actions.
[5 of 2008].
Ch. 7:09. **59.** Section 3 of the Limitation of Certain Actions Act, applies to an action to recover any sum recoverable under this Act.
