



AMENDMENT TO THE COPYRIGHT ACT

SAINT VINCENT AND THE GRENADINES

Column 1	Column 2
<p align="center"><b>ACT NO. 20 OF 2018</b></p> <p align="center"><b>I ASSENT</b></p> <p>[L.S.]</p> <p align="right">DR. FREDERICK BALLANTYNE Governor-General 21st September, 2018.</p> <p>AN ACT to amend the Copyright Act, Chapter 311.</p> <p align="right">[ 10th October, 2018. ]</p> <p><b>BE IT ENACTED</b> by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly of Saint Vincent and the Grenadines and by the authority of the same, as follows:</p> <ol style="list-style-type: none"> <li>This Act may be cited as the Copyright (Amendment) Act, 2018.</li> <li>The provisions of the Copyright Act, and provisions to be inserted therein, specified in column 1 of the Schedule to this Act are dealt with in the manner set out in relation thereto in column 2 of the Schedule.</li> </ol>	<p align="center">Section 2</p> <p>Short title</p> <p>Amendment of</p> <p>Copyright Act,</p> <p>Cap. 311</p>

## SCHEDULE

## (section 2)

## AMENDMENTS TO COPYRIGHT ACT

Column 1	Column 2
Section 2	<p>1. Insert the following definitions in their correct alphabetical positions –</p> <p>"accessible format copy" in relation to a work, means a copy of the work in an alternative manner or form which gives a person who is visually impaired or print disabled access to the work, including permitting the person to have access as feasibly and comfortably as a person without visual impairment or other print disability;</p> <p>"authorised entity" means an entity that is authorised or recognised by the Government to provide on a non-profit basis, education, instructional training, adaptive reading or information access to a person who is visually impaired or print disabled and includes –</p> <p>(a) a government institution; or</p> <p>(b) a non-profit organisation, that provides the same services to such a person as one of its primary activities or institutional obligations;</p> <p>"facsimile copy" includes a copy which is reduced or enlarged in scale;</p> <p>"fixation" means the embodiment of sounds or images or the representations thereof, from which sounds or images or representations can be perceived, reproduced or communicated through a device;</p> <p>"person who is visually impaired or print disabled" means a person who is –</p> <p>(a) blind;</p> <p>(b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or</p>

	<p>(c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable;</p> <p>"producer" in relation to an audiovisual work, a sound recording or an audiovisual fixation, means the natural person or legal entity that makes the arrangements necessary for the making of the audiovisual work, sound recording or audiovisual fixation;</p> <p>"reproduction" means the making of one or more copies of a work, performance or sound recording, in any manner or form, including any permanent or temporary storage of the work, performance or sound recording in electronic form;</p> <p>"rights management information" means information, and any number or code that represents such information, attached to a copy of a work, performance, sound recording or broadcast or appearing in connection with the broadcasting, communication to the public or making available to the public of a work, performance, sound recording or broadcast—</p> <p>(a) identifying the author, work, performer, performance of the performer, producer of the sound recording, broadcaster, broadcast or owner of rights under this Act; or</p> <p>(b) about the terms and conditions of use of the work, performance, sound recording or broadcast;</p> <p>"technological protection measures" means a technology, device or component that, in the normal course of operation, is designed to prevent or restrict acts, in respect of works, performances and sound recordings which are not authorised by their owners of rights;</p>
	<p>2. Delete the definition of "broadcasting" and insert the following definition –</p> <p>"broadcasting" means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof and includes –</p> <p>(a) the transmission by satellite; and</p> <p>(b) the transmission of encrypted signals where the means for decrypting are provided to the public by the broadcasting organisation or with its consent;</p>

	<p>3. Delete the definition of "communication to the public" and insert the following definition</p> <p>"communication to the public" means the transmission to the public by wire or wireless means of a work, performance, sound recording or audio visual fixation in such a way that members of the public may access it from a place and at a time individually chosen by them;</p> <p>4. Delete the definition of "distribution" and insert the following definition –</p> <p>"distribution" means putting into circulation the original or a copy of a work, fixation of a performance or sound recording in tangible form through sale or other transfer of ownership and includes importing for such putting into circulation;</p> <p>5. In the definition of "performer" delete the words "or artistic work" appearing before the first semi-colon and insert the words ", artistic work or expressions of folklore".</p> <p>6. Delete the definition of "sound recording" and insert the following definition –</p> <p>"sound recording" means –</p> <p>(a) the fixation of the sounds of a performance or of other sounds; or</p> <p>(b) the fixation of a representation of sounds,</p> <p>other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;</p> <p>7. Delete the definitions of "exclusive licence" and "record".</p>
<p>Insert new sections 2A and 2B</p>	<p>Insert after section 2 the following sections –</p> <p>"Application of Act 2A. (1) In this section –</p> <p>"appointed day" has the meaning assigned to it in section 148 (6);</p> <p>"repealed Act" means the Act repealed by section 146.</p> <p>(2) This Act shall also apply to works, performances, sound recordings and broadcasts subsisting immediately prior to the appointed day if on that day the term of protection had not expired under the repealed Act or under the legislation of the country of origin of such works, performances, sound</p>

	<p>recording and broadcasts that are to be protected under an international treaty to which Saint Vincent and the Grenadines is a party.</p> <p>(3) This Act shall not affect contracts on works, performances, sound recordings and broadcasts that were concluded before the appointed day.</p> <p>Scope of application of Act 2B. As provided in sections 6 and 102, this Act shall not only apply to works and performers, but to producers of sound recordings and broadcasting organisations that are eligible for protection in Saint Vincent and the Grenadines by virtue of and in accordance with any international treaty or other international agreement to which Saint Vincent and the Grenadines is a party."</p>
<p>Section 3</p> <p>"Meaning of published in relation to work, sound recording etc</p>	<p>Delete section 3 and insert the following section –</p> <p>3. (1) For the purposes of this Act, "published" in relation to a work, sound recording or audio visual fixation is reference to a work, sound recording or audio visual fixation –</p> <p>(a) tangible copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of ownership or possession of the copies; or</p> <p>(b) which has been made available to the public by means of an electronic retrieval system.</p> <p>(2) A work, sound recording or audio visual fixation is not published if it is made available to the public without the consent of the author, producer of the sound recording, owner of rights or successor in title."</p>
<p>Insert new sections 5A and 5B</p> <p>"Derivative works</p>	<p>Insert after section 5 the following new sections –</p> <p>5A. (1) The following are also protected as works –</p> <p>(a) translations, adaptations, arrangements and other transformations or modifications of a work; and</p> <p>(b) collections of works, collections of mere data (databases), whether in machine readable or other form and collections of expressions of folklore except that such collections are original by reason of the selection or arrangement of their contents.</p>

	<p>(2) The protection of a work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work or expression of folklore incorporated in or utilised for the making of such a work.</p> <p>Subject matter not protected 5B. Notwithstanding sections 5 and 5A, no protection shall extend under this Act to any idea, procedure, system, method of operation, concept, principle or mere data, even if expressed, described, explained, illustrated or embodied in a work."</p>
Section 10	Delete subsections (2), (3) and (4).
Section 13	<p>1. In subsections (2) (a), (4) (a) and (6), delete the words "or included in a cable programme service" and insert the words ", included in a cable programme service or otherwise communicated to the public" after the word "broadcast".</p> <p>2. In subsection (7) (c), delete the words "or cable programme" and insert the words ", cable programme or other communication to the public" after the words "broadcast".</p> <p>3. Delete subsection (9).</p>
Section 21	<p>Insert the following new subsections after subsection (6) –</p> <p>"(6a) In respect of audiovisual work, the first owner of the copyright is the producer, unless there is an agreement to the contrary.</p> <p>(6b) The co-authors of the audiovisual work and the authors of the pre-existing works included in or adapted for the making of audiovisual work shall maintain their copyright in their contributions or pre-existing works to the extent that those contributions or pre-existing works can be the subject of acts covered by their copyright separately from the audiovisual work."</p>
Section 33	Delete the head-note and insert the following head-note "Exclusive licence".
Section 35	Delete the words "or includes in a cable programme service" in each place where they occur and insert the words ", includes in a cable programme service or otherwise communicates to the public".
Section 37	Delete the words "or includes it in a cable programme service" in each place where they occur and insert the words ", includes it in a cable programme service or otherwise communicates it to the public".

Section 42	Delete the words "or included in a cable programme service" in each place where they occur and insert the words ", included in a cable programme service or otherwise communicated to the public".
Insert new sections 44A to 44D	<p>Insert the following new sections after section 44 –</p> <p>44A (1) A person commits an offence who –</p> <ul style="list-style-type: none"> <li>(a) circumvents effective technological protection measures;</li> <li>or</li> <li>(b) produces, imports, distributes, sells, rents, or advertises for sale or rental, or possesses devices, products, components or services for commercial purposes that –             <ul style="list-style-type: none"> <li>(i) are promoted, advertised or marketed for the purpose of circumventing effective technological protection measures;</li> <li>(ii) have only a limited commercially significant purpose or use other than to circumvent effective technological protection measures; or</li> <li>(iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological protection measures.</li> </ul> </li> </ul> <p>(2) Technological protection measures are effective where the use of a work, performance or sound recording protected under this Act is controlled by the owner of rights through the application of access control or protection access such as encryption, scrambling or other transformation of the work, performance or sound recording or a copy or control mechanism which, in the normal course of its operation, achieves the protection objective.</p> <p>(3) Notwithstanding subsection (1), upon the request by the beneficiary of a prescribed exception, the Court may order that the necessary means be made available to the beneficiary in order that he may enjoy or apply the exception, to the extent required to benefit from it.</p>

	<p>(4) Subsection (3) shall not apply to works or other subject matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.</p> <p>(5) For the purposes of this section, "circumvent effective technological protection measures" means to avoid, bypass, remove, de-activate or impair such measures, including descrambling a scrambled work or performance or sound recording or decrypting an encrypted work, performance or sound recording.</p> <p><b>Rights management information</b></p> <p>44B. (1) A person commits an offence if he –</p> <p>(a) removes or alters electronic rights management information without the consent of the owner of rights; or</p> <p>(b) distributes, imports for distribution, broadcasts, includes in a cable programme service or communicates to the public, works, performances or sound recordings protected under this Act from which electronic rights management information has been removed or altered without the consent of the owner of rights if such acts will induce, enable, facilitate or conceal an infringement of a right covered by this Act.</p> <p>(2) Subsection (1) shall not apply to any governmental activity authorised by law.</p> <p><b>Penalty for section 44A, 44B.</b></p> <p>44C. A person who is convicted of an offence under section 44A or 44B is liable on summary conviction to a fine not exceeding two thousand five hundred dollars and, in the case of any subsequent conviction to such fine, or to imprisonment for a term not exceeding twelve months.</p> <p><b>Criminalised acts assimilated to infringement of rights</b></p> <p>44D. The acts criminalised under sections 44A and 44B are an infringement of a right protected under this Act for the purposes of any provisional measure or civil remedy prescribed by this Act."</p>
Section 45	Delete the words "section 44" and insert the words "section 44, 44A or 44B".
Section 49	Delete the definition of "facsimile copy".



Section 53	<p>1. In paragraph (b), delete the words "or inclusion in a cable programme service" and insert the words "or inclusion in a cable programme service or other communication to the public".</p> <p>2. Delete the words "or cable programme" and insert the words ", cable programme or communication to the public".</p>
<p>Insert new section 55A and 55B</p>	<p>Insert the following new sections after section 55 but before the heading "Use of Work for Educational Purposes" –</p> <p>Temporary reproduction of works      55A. Notwithstanding section 7 (1) (a), the temporary reproduction of a work is permitted if all of the following conditions are met –</p> <ul style="list-style-type: none"> <li>(a) the reproduction is made in the process of a transmission of the work or an act of making a stored work perceptible;</li> <li>(b) the reproduction is caused by a person or entity that, by way of authorisation by the owner of rights or operation of law, is entitled to make that transmission or to make the work perceptible; and</li> <li>(c) the reproduction is an accessory to the transmission or making perceptible that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those referred to in paragraphs (a) and (b).</li> </ul> <p>Temporary reproduction of performances      55B. Notwithstanding section 103, the temporary reproduction of a fixed performance is permitted if all of the following conditions are met –</p> <ul style="list-style-type: none"> <li>(a) the reproduction is made in the process of a transmission of the fixation or an act of making a stored work perceptible;</li> <li>(b) the reproduction is caused by a person or entity that, by way of authorisation by the owner of rights or operation of law, is entitled to make that transmission or to make the fixation perceptible; and</li> <li>(c) the reproduction is an accessory to the transmission or making perceptible that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the fixation for any other purpose than those referred to in paragraphs (a) and (b)." </li></ul>

Insert new sections 61A to 61F	<p>Insert the following heading and new sections after section 61 but before the heading "<i>Exceptions Affecting Libraries and Archives</i>" –</p> <p style="text-align: center;"><i>"Exceptions for persons who are visually impaired or print disabled"</i></p> <p>"Application of sections 61B to 61F</p> <p>61A. Sections 61B to 61F applies –</p> <p>(a) in relation to works referred to in section 5 (1) (a) that are in the form of text, notation or related illustrations, whether published or otherwise made publicly available in any media, including works in audio form, such as audio books; and</p> <p>(b) to objects of related rights as necessary to make accessible format copies.</p> <p>Authorisation to make accessible format copy</p> <p>61B. (1) Notwithstanding section 7, an authorised entity is permitted, without the consent of the owner of rights –</p> <p>(a) to make an accessible format copy of a work;</p> <p>(b) to obtain from another authorised entity an accessible format copy of a work; and</p> <p>(c) by any means, to supply such copies to a person who is visually impaired or print disabled including –</p> <p>(i) by non-commercial lending;</p> <p>(ii) by electronic communication;</p> <p>(iii) by wire; and</p> <p>(iv) by wireless means.</p> <p>(2) An authorised entity may undertake intermediate steps to achieve the objectives in subsection (1) if all of the following conditions are satisfied–</p> <p>(a) the authorised entity wishing to undertake the activity has lawful access to the work or a copy of the work;</p> <p>(b) the work is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format copy, but does not introduce</p>
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	<p>changes other than those needed to make the work accessible to the person who is visually impaired or print disabled;</p> <p>(c) the accessible format copies are supplied exclusively to be used by persons who are visually impaired or print disabled; and</p> <p>(d) the activity is undertaken on a non-profit basis.</p> <p>(3) Where he has lawful access to a work or a copy of the work, a person who is visually impaired or print disabled shall be permitted to make and use an accessible format copy of the work for his personal use.</p> <p>(4) A person is permitted to make and use an accessible format copy under subsection (3) either by himself or with the assistance of someone acting on his behalf including a primary caretaker or caregiver.</p> <p>Distribution of accessible format copy</p> <p>61C. (1) An authorised entity is permitted, without the consent of the owner of rights, to distribute or make available accessible format copies to the following persons in another contracting party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled –</p> <p>(a) an authorised entity, for the exclusive use of persons who are visually impaired or print disabled; or</p> <p>(b) a person who is visually impaired or print disabled.</p> <p>(2) The exception under subsection (1) applies only if prior to the distribution or making available, the originating authorised entity did not know or have reasonable grounds to know that the accessible format copy would be used for persons other than persons who are visually impaired or print disabled.</p> <p>(3) A distribution or making available under this section is limited to special cases –</p> <p>(a) that do not conflict with a normal exploitation of the work or object of related rights; and</p>
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<p>Importation of accessible format copy</p> <p>Procedures for authorised entity</p> <p>Accessible format copy to respect original work</p>	<p>(b) that do not unreasonably prejudice the legitimate interests of the owner of rights.</p> <p>61D. The following persons are permitted to import an accessible format copy for the benefit of a visually impaired or print disabled person without the consent of the owner of rights –</p> <p>(a) the visually impaired or print disabled person or someone acting on his behalf; or</p> <p>(b) an authorised entity.</p> <p>61E. An authorised entity shall establish procedures –</p> <p>(a) to ensure that the persons it serves are persons who are visually impaired or print disabled;</p> <p>(b) to limit its distribution and making available of accessible format copies to such persons and other authorised entities;</p> <p>(c) to discourage the reproduction, distribution and making available of unauthorised copies; and</p> <p>(d) to maintain due care in, and records of, its handling of copies of works, while respecting the privacy of persons who are visually impaired or print disabled on an equal basis with others.</p> <p>61F. An accessible format copy shall –</p> <p>(a) be used exclusively by persons who are visually impaired or print disabled; and</p> <p>(b) respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the person who is visually impaired or print disabled."</p>
<p>Section 102</p>	<p>In subsection (3), delete paragraph (a) and insert the following paragraph –</p> <p>"(a) a performer, who has the exclusive right to authorise the exploitation of his performance; and"</p>

Delete sections 103, 104, 105 and 106	<p>Delete sections 103, 104, 105 and 106 and insert the following section –</p> <p><b>'Performers' rights</b></p> <p>103.(1) A performer has the exclusive right to carry out or authorise any of the following acts with respect to his performance –</p> <ul style="list-style-type: none"> <li>(a) the broadcasting or other communication to the public of his performance except where the broadcasting or other communication – <ul style="list-style-type: none"> <li>(i) is made from a fixation of the performance which the performer has authorised to be made; or</li> <li>(ii) is a rebroadcasting made or authorised by the organisation initially broadcasting the performance;</li> </ul> </li> <li>(b) the fixation of his unfixed performance;</li> <li>(c) the direct or indirect reproduction of a fixation of his performance, in any manner or form;</li> <li>(d) the distribution of a fixation of his performance, or of copies thereof, to the public;</li> <li>(e) the rental to the public of a fixation of his performance, or copies thereof; and</li> <li>(f) the making available to the public of his fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.</li> </ul> <p>(2) The right of distribution under subsection (1) (d) does not apply to a copy of a fixation that has already been subject to a sale or other transfer of ownership in Saint Vincent and the Grenadines authorised by the performer.</p> <p>(3) Independently of the performer's economic rights, and even after the transfer of such rights, the performer has the right –</p> <ul style="list-style-type: none"> <li>(a) to claim to be identified as the performer of his performance, except where omission is dictated by the manner of the use of the performance; and</li> <li>(b) to object to any distortion, mutilation or other modification</li> </ul>
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	of the performances that would be prejudicial to his reputation. (4) Notwithstanding subsection (3) (b), modification consistent with the normal exploitation of an audiovisual performance in the course of a use authorised by the performer shall not be considered prejudicial to the performer's reputation."
Section 108	In subsection (1) (b), delete the words "or includes in a cable programme service" and insert the words ", includes in a cable programme service or otherwise communicates to the public".
Section 127	In subsection (2) (b), delete the words "or included in a cable programme service" and insert the words ", included in a cable programme service or otherwise communicated to the public".

Passed in the House of Assembly this 6th day of September, 2018.

**NICOLE HERBERT**  
Clerk of the House of Assembly.

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