

# Copyright Act 1998

## CONSOLIDATED ACTS OF SAMOA 2008

### COPYRIGHT ACT 1998

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**THE COPYRIGHT ACT 1998**

**1998 No. 25**

**AN ACT** to make provision for the protection of Copyright and other similar rights.

*(16 July 1998)*

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:-

**1. Short title, commencement and application-**

(1) This Act may be cited as the Copyright Act 1998.

(2) This Act shall come into force by notice to that effect published by the Minister in the Gazette or the Savali.

(3) The provisions of this Act shall apply also to works, performances, sound recordings and broadcasts dating back to before the date of the coming into effect of this Act, provided that the term of protection had not expired by law or under the legislation of the country of origin of such works, performances, sound recordings or broadcasts that are to be protected under an international treaty to which Samoa is party, and to that extent this Act shall have retrospective effect:

Provided that this Act shall not affect the terms or validity of contracts on works, performances, sound recordings and broadcasts concluded before the entering into force of this Act.

**2. Interpretation** - In this Act, unless the context otherwise requires:

**"Audiovisual work"** means 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"** means the physical person who has created the work:

**"Broadcasting"** means the communication of a work, a performance or a sound recording to the public by radio, television or other transmission, including transmission by satellite:

**"Collective work"** means a work created by two or more physical persons at the initiative and under the direction of a physical person or legal entity, with the understanding that it will be disclosed by the latter person or entity under his, her or its own name and that the identity of the contributing physical persons will not be indicated:

**"Communication to the public"** means the transmission of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission

originates that, without the transmission, the images or sounds would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places and/or times:

**"Computer"** means 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, or causing a computer to perform or achieve a particular task or result:

**"Court"** means the Supreme Court of Samoa:

**"Economic rights"** means the rights referred to in section 6:

**"Expression of folklore"** means a group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including –

- (a) Folktales, folk poetry, and folk riddles;
- (b) Folk songs and instrumental folk music;
- (c) Folk dances and folk plays;
- (d). Production of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terra-cotta, mosaic, woodwork, metal ware, jewelry, handicrafts, costumes, and indigenous textiles;

**"Infringement"** means any act that violates any rights protected under this Act:

**"Moral rights"** means the rights referred to in section 7:

**"Minister"** means the Minister of Justice:

**"Owner of copyright"** means –

- (a) Where the economic rights are vested in the author, the author;
- (b) Where the economic rights are originally vested in a physical person other than the author or a legal entity, that person or entity;
- (c) Where the ownership of the economic rights has been transferred to a physical person or legal entity, that person or entity;

**"Performers"** includes singers, musicians, and other persons, who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or expressions of folklore:

**"Photographic work"** means 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 audiovisual work shall not be considered a "photographic work" but a part of the audiovisual work concerned:

**"Producer"** of an audiovisual work or a sound recording, means the physical person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording:

**"Public display"** means the showing of the original or a copy of the 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 audiovisual 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 and/or times, and where the work can be displayed without communication to the public within the meaning of communication to the public:

**"Public lending"** means 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"** means –

- (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 audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and

(c) In the case of sound recording, making the recording 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 and/or times, and where the performances can be perceived without the need for communication to the public within the meaning 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 sound recording, with the consent of the producer of the sound recording or his or her successor in title;

**"Rental"** means 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"** means 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:

**"Sound recording"** means 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; it does not include a fixation of sounds and images, such as the sound track of an audiovisual work:

**"Work"** means any literary or artistic work under section 3 (1):

**"Work of applied art"** means 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"** means a work to the creation of which two or more authors have contributed, provided the work does not qualify as a "collective work" as herein defined.

## **PART 1 COPYRIGHT**

### **3. Works protected**

(1) Literary and artistic works (herein-after referred to as "works") 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 oral works;
- (c) Dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;
- (d) Stage productions of works mentioned in the previous item and of expressions of folklore that are apt for such productions;
- (e) Musical works, with or without accompanying words;
- (f) Audiovisual 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.

### **4. Derivative works**

(1) The following shall also be protected as works -

- (a) Translations, adaptations, arrangements and other transformations or modifications of works; and

(b) Collections of works and collections of mere data (data bases), whether in machine readable or other form, provided that such collections are original by reason of the selection, coordination or arrangement of their contents.

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

### **5. Subject matter not protected**

Notwithstanding the provisions of section 3 and 4, no protection shall extend under this Act to -

- (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.

### **6. Economic Rights**

(1) Subject to the provisions of sections 8 to 15, the author or other owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the work -

- (a) Reproduction of the work;
- (b) Translation of the work;
- (c) Adaptation, arrangement or other transformation of the work;
- (d) The first public distribution of the original and each copy of the work by sale, rental or otherwise;
- (e) Rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;



- (f) Importation of copies of the work, even where the imported copies were made with the authorization of the author or other owner of copyright;
- (g) Public display of the original or a copy of the work;
- (h) Public performance of the work;
- (i) Broadcasting of the work;
- (j) Other communication to the public of the work.

(2) The rights of rental and lending under item (e) of sub-section (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.

## **7. Moral rights**

(1) Independently of his or her economic rights, and even where he or she is no longer the owner of the said rights, the author of a work, shall have the right –

- (a) To have the author's name indicated prominently on the copies and in connection with any public use of his or her work, as far as practicable;
- (b) To not have his or her name indicated on the copies and in connection with any public use of his or her work, and the right to use a pseudonym;
- (c) To object to any distortion, mutilation or other modification of, or other derogatory action in relation to his or her work which would be prejudicial to his or her 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 item (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived. Following the death of the author, the physical person or legal entity upon whom or which the moral rights have devolved

shall have the right to waive the said rights.

## **8. Private reproduction for personal purposes**

(1) Notwithstanding the provisions of section 6(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 authorization of the author or owner of copyright, where the reproduction is made by a physical person exclusively for his or her own personal purposes.

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

- (a) Of a work of architecture in the form of building or other construction;
- (b) Of the whole or a substantial part of a data base;
- (c) Of a computer program, except as provided in section 13; and
- (d) 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 author or other owner of the copyright.

## **9. Quotation**

Notwithstanding the provisions of section 6(1)(a), the reproduction in the form of quotation, of a short part of a published work shall be permitted without authorization of the author or other owner of copyright; provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose. The quotation shall be accompanied by an indication of source and the name of the author, if his or her name appears in the work from which the quotation is taken.

## **10. Reproduction for teaching**

(1) Notwithstanding the provisions of section 6(1)(a), the following acts shall be permitted without authorization of the author, or other owner of copyright -

- (a) The reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings, provided that reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;
- (b) The reproduction, for face-to-face teaching in educational institutions, the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of 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 organization 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).

## **11. Reproduction by libraries and archives**

Notwithstanding the provisions of section 6(1)(a), any library or archive whose activities do not serve direct or indirect financial gain may, without the authorization of the author or other owner of copyright, make, from time to time, a single copy of the work by reproduction -

(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 physical person,

Provided that -

- (i) the library or archive is satisfied that the copy will be used solely for the purposes 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 organization 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 reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

## **12. Reproduction, Broadcasting and other communication to the public for information purposes**

Notwithstanding the provisions of section 6(1)(a), (h) and (i), the following acts shall be permitted in respect of a work without the authorization of the author or other 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; Provided that this permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or 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 purpose;

(c) The reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information;

(d) The reproduction, broadcasting, public performance or other communication to the public of church hymns or gospel music as well as any translation, adaptation and other transformation thereof for non-commercial purposes.

### **13. Reproduction and adaptation of computer programs**

(1) Notwithstanding section 6(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 authorization of the author or other owner of copyright, provided that the copy or adaptation is necessary -

(a) For use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;

(b) For archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program 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.

### **14. Importation for personal purposes**

Notwithstanding the provisions of section 6(1)(e), the importation of a copy of a work by a physical person for his or her own personal purposes shall be permitted without the authorization of the author or other owner of copyright.

### **15. Display of works**

Notwithstanding the provisions of section 6(1)(f), the public display of originals or copies of works shall be permitted without the authorization of the author, provided that the display is made other than by means of a film, slide, 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 author or his or her successor in title.

## **16. Duration of Copyright**

(1) Subject to the provisions of subsections (2) to (5), the economic and moral rights shall be protected during the life of the author and for seventy five years after his or her death.

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

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights shall be protected for seventy five years from the date of which the work was first published or, failing such an event within seventy five years from the making of the work, from its making.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for seventy five years from the date on which the work was first published:

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 subsection (2) shall apply, as the case may be.

(5) In the case of a work of applied art, the economic and moral rights shall be protected for twenty five years from the making of the work.

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

## **17. Original ownership of economic rights**

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

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights. If, however, 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 the economic rights in the part that he or she has created.

(3) With respect to a collective work, the physical 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 the economic rights.

(4) With respect to a work created by an author employed by a physical person or legal entity in the course of his or her employment, the original owner of the economic rights shall be the employer, unless provided otherwise in a contract.

(5) With respect to an audiovisual work, the original owner of the economic rights shall be the producer, unless provided otherwise in a contract. The co-authors of the audiovisual work and the authors of the pre-existing works included in or adapted for the making of the audiovisual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be subject of acts covered by their economic rights separately from the audiovisual work.

## **18. Presumption of authorship and of representation of the author**

The physical person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work. 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.

## **19. Assignment and license of authors' rights**

- (1) Economic rights shall be assignable in whole or in part.
- (2) Any assignment of an economic right, and any licence to do an act subject to authorization by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licence or and the licensee.
- (3) An assignment in whole or in part of any economic right, or a licence to do an act subject to authorization by the author or other owner of copyright, shall not include or be deemed to include the assignment or licence of any other rights not explicitly referred to therein.

## **PART II**

### **PROTECTION OF PERFORMERS ETC**

## **20. Acts requiring authorization of performers**

- (1) In this Part, "fixation" shall mean the result any process aimed at recording or presenting a performance in a permanent form.
- (2) Subject to the provisions of [section 24](#), a performer shall have the exclusive right to carry out or to authorize any of the following acts -
  - (a) The broadcasting or other communication to the public of his or her 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 24](#); or
    - (ii) is a rebroadcasting made or authorized by the organization initially broadcasting the performance;
  - (b) The fixation of his or her unfixed performance;
  - (c) The reproduction of a fixation of his or her performance.



(3) Once the performer has authorized the incorporation of his or her performance in an audiovisual fixation, the provisions of subsection (1) shall have no further application.

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

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

## **21. Acts requiring authorization of producers of sound recordings**

(1) Subject to the provisions of [section 24](#), a producer of a sound recording shall have the exclusive right to carry out or to authorize any of the following acts -

- (a) Direct or indirect reproduction of the sound recording;
- (b) Importation of copies of the sound recording, even where the imported copies were made with the authorization of the producer;
- (c) Adaptation or other transformation of the sound recording;
- (d) Rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent.

(2) The rights under subsection (1) shall be protected from the publication of the sound recording until the end of the seventy-fifth 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 seventy-fifth calendar year following the year of fixation.

## **22. Equitable remuneration for use of sound recordings**

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

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

(3) 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.

### **23. Acts requiring authorization of broadcasting organizations**

(1) Subject to the provisions of [section 24](#), a broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts –

- (a) The re-broadcasting 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 seventy fifth calendar year following the year in which the broadcast takes place.

### **24. Limitations on protection**

This Part shall not apply where the acts referred to in this Part are related to –

- (a) The use by a physical person exclusively for his or her 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 I](#), a work can be used without the authorisation of the author or other owner of copyright.

### **PART III**

## **ENFORCEMENT OF RIGHTS**

### **25. Injunctions and other remedies**

- (1) The Court shall have jurisdiction –
  - (a) To grant injunctions to prohibit the committing, or continuation of committing, of 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 authorization of the owner of any right protected under this Act where the making or importation of copies is subject to such authorization;
  - (c) To order 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 the copies to which paragraph (b) applies.
  
- (2) The provisions of the Criminal Procedure Act 1972 dealing with search and seizure shall apply to infringements of rights under this Act.
  
- (3) The provisions of the Customs Act 1977 dealing with suspension of the release of suspected illegal goods shall apply to articles and implements protected under this Act.

### **26. Civil remedies**

- (1) The owner of any right arising in Samoa and protected under this Act, whose right has been infringed shall be entitled to payment, by the infringer, of damages for the prejudice

suffered as a consequence of the act of infringement, as well as the payment of expenses caused by the infringement, including reasonable legal costs. The amount of damages shall be fixed by the Court, taking into account the importance of the material and moral prejudice suffered by the owner of the right, as well as the extent of the infringer's profits attributable to the infringement.

Provided that where the infringer did not know or had no reasonable reason to know that he, she or it was engaged in infringing activity, the Court may limit damages to the profits of the infringer attributable to the infringement.

(2) Unless the Court is satisfied that exceptional circumstances exist, damages for the prejudice suffered by an owner of a copyright arising overseas, as a consequence of an act of infringement in Samoa shall not exceed the profit gained by the person in infringing the copyright.

(3) Where infringing copies exist, the Court shall have the authority 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. This provision shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

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

(5) Where there is a danger that acts of infringement may be continued, the Court may expressly order that such acts not be committed. It is an offence to breach such an order and the penalty shall be a fine not exceeding 50 penalty units.

## **27. Criminal sanctions**

(1) Any infringement of a right protected under this Act, if committed wilfully or by gross negligence and for profit-making purposes, shall be punished by a maximum fine of not exceeding 250 penalty units where the offence involves the breach of a copyright relating to a computer or computer program, and in every other case, or to imprisonment for a term not exceeding five years or both. The amount of the fine shall be fixed by the court, taking into particular account the defendant's profits attributable to the infringement.

(2) The Court shall have the authority to increase up to double the penalties specified in subsection (1), where the defendant has been convicted for a second or further act of infringement within five years of a previous conviction for a infringement.

(3) The court shall apply the measures and remedies referred to in section 25 and 26 also in criminal proceedings, if no decision has yet been taken on such remedies in a civil proceeding.

(4) Proceedings under this section may only be taken with the authority of the Attorney-General who, when exercising this discretion, may take into account any relevant consideration, including -

- (a) The public interest in such prosecution;
- (b) The resources of the State to effectively take such prosecution; and
- (c) The nature of the right and interest sought to be protected and its relevance to Samoa.

## **28. Remedies for unlawful acts**

(1) The following acts shall be considered unlawful and, in the application of sections 25 to 27, shall be assimilated to infringements of the rights of authors and other owners of copyright –

(i) 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');

(ii) 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 program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program.

(2) In the application of sections 25 to 27, any illicit device and means mentioned in subsection (1) shall be assimilated to infringing copies of works.

(3) The author of, or other owner of copyright in, a work shall also be entitled to the damages for infringement provided for by section 26(1) or (2), as applicable where:

(i) authorized 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;

(ii) the work is authorized for inclusion in an encrypted program broadcast or otherwise communicated to the public, including by satellite, and a device or means enabling or assisting the reception of the program by those who are not entitled to receive the program is made or imported for sale or rental.

#### **PART IV**

### **PROTECTION OF EXPRESSIONS OF FOLKLORE**

## **29. Rights protected**

(1) Expressions of folklore are protected against –

(a) Reproduction;

(b) Communication to the public by performance, broadcasting, distribution by cable or other means; and

(c) Adaptation, translation and other transformation, when such expressions are made either for commercial purposes or outside their traditional or customary context.

(2) Subsection (1) of this section shall not apply where the acts referred to therein are related to -

(a) The use by a physical person exclusively for his or her 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 or for scientific research;

(d) Cases where under Part I, a work can be used without the authorization of the author or other owner of copyright.

(3) In all printed publications, and in connection with any communication to the public of any identifiable expression of folklore, its source shall be indicated in an appropriate manner and in conformity with fair practice, by mentioning the community or place from where the expression utilized has been derived.

(4) The right to authorize acts referred to in subsection (1) shall vest in a competent authority to be determined by the Minister.

(5) All monies collected in relation to this Part shall be used for purposes of cultural development.

## **30. Infringement of folklore**

Any person who, without the consent of the competent authority referred to in section 29(4), uses an expression of folklore in a manner not permitted by section 29 commits an offence in breach of a duty under law, and is liable to the competent authority referred to in section 29(4) for damages, injunctions and any other remedies as the court may deem fit.

## **PART V**

### **MISCELLANEOUS**

#### **31. Scope of application**

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

- (a) Works of authors who are nationals of, or have their permanent place of residence in Samoa; and
- (b) Works first published in Samoa, and works first published in another country and also published in Samoa within thirty days, irrespective of the nationality or residence of their authors.

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

#### **32. Protection of performers**

(1) The provisions of this Act on the protection of performers shall apply to -

- (a) Performers who are nationals of Samoa;
- (b) Performers who are not nationals of Samoa but whose performances:
  - (i) take place within the territory of Samoa; or
  - (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 qualifying 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 of Samoa;
- (b) Sound recordings first fixed in Samoa; and
- (c) Sound recordings first published in Samoa.

(3) The provisions of this Act on the protection of broad-casts shall apply to -

- (a) Broadcasts of broadcasting organizations the head-quarters of which are situated in Samoa; and
- (b) Broadcasts transmitted from transmitters situated in Samoa.

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

### **33. Application of international treaties**

The provisions of any international treaties in respect of copyright and related rights to which Samoa is a party shall apply to matters dealt with in this Act and, in case of conflict with provisions of this Act, shall prevail over the latter.

### **34. Miscellaneous provisions**

(1) Any existing provisions of legislation relating to the protection of literary and artistic works, performers, and producers of phonograms and broadcasting organizations cease to have effect, insofar as they are inconsistent with any provision of this Act.

(2) The Minister may authorize one or more non-government organizations to administer rights on behalf of the owners of such rights and determining the conditions under which such organizations work.

### **35. Regulations**

The Head of State, acting on the advice of Cabinet, may from time to time, make all such regulations as may be necessary or expedient for giving full effect to the provisions of this Act.

### **REVISION NOTES 2008**

This law has been reviewed in accordance with the powers provided for in [section 5](#) of the [Revision and Publication of Laws Act 2008](#). Some minor amendments of a non-substantive nature have been made to conform to modern drafting styles. The following general revisions have been made –

- (a) The fines have been amended and are stated as penalty units as provided for by the Fines (Review and Amendment) Act 1998.
- (b) All references to the male gender have been made gender neutral.
- (c) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (d) Amendments have been made to up-date references to offices, officers and statutes.
- (e) Other minor editing has been done in accordance with the lawful powers of the Attorney General.

No amendments have been made to this law since its enactment.

Revised and consolidated under the supervision of Lalotoa Mulitalo (Parliamentary Counsel)

### **REVISION NOTES 2008 No. 2**

There were no amendments made to this law since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

Revised and consolidated under the supervision of Lalotoa Mulitalo (Parliamentary Counsel)

**The [Copyright Act 1998](#) is administered in the Ministry of Justice and Courts Administration.**

