



SAMOA

COPYRIGHT ACT 1998

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COPYRIGHT ACT 1998

1998

No. 25

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

[Assent date: 16 July 1998]

[Commencement date: 1 September 1998]

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

**PART I
PRELIMINARY**

1. Short title, commencement and application - (1) This Act may be cited as the Copyright Act 1998..

(2) This Act comes into force on a date to be nominated by the Minister.

(3) The provisions of this Act 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 does 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;

“broadcaster” means a person licensed under the Broadcasting Act 2010 to provide a broadcasting service (as defined in that Act) by which a subscription broadcast service is delivered;

“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 or via the internet;

“CEO” means the Chief Executive Officer of the Ministry responsible for Commerce, Industry and Labour and includes any person who is duly authorised to act on his or her behalf;

“Channel provider” means a person who:

- (a) packages a channel (which might include programmes produced by the person); and
- (b) supplies a broadcaster with the channel; and
- (c) carries on a business that involves the supply of the channel, - where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is broadcast as part of a subscription broadcast;

“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 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”(Repealed by s2 of Act 2011, No.10))

“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 responsible for Commerce, Industry and Labour;

“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 traditional cultural expressions;

“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; or
- (b) by means of a film, slide, television image or otherwise on screen; or
- (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 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 or times, and where the performances can be perceived without the need for communication to the public within the meaning of communication:

“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;

“subscription broadcast” means a broadcasting service for which a person must pay money to receive the service;

“traditional cultural expression” 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;

“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 a 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 IA COPYRIGHT

3. Works protected - (1) Literary and artistic works (hereinafter 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 paragraph (c) and of traditional cultural expressions 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) is 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 - Despite sections 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; or
- (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 authorise 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 authorisation 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 subsection (1)(e) do not apply to rental or lending of computer programs where the program itself is not the essential object of the rental or lending.

(3) The rights under this section do not extend to acts in respect of works which have been put on the market anywhere in the world by the copyright owner or with the copyright owner's consent.

7. Moral rights - (1) Independently of an author's economic rights, and even where the author is no longer the owner of the economic rights, the author of a work, has 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; and
- (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; and
- (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) are transmissible during the life of the author, but the right to exercise any of those rights are 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 subsection (1)(c) specifies the nature and extent of

the modification or other action in respect of which the right is waived.

(4) Following the death of the author, the physical person or legal entity upon whom or which the moral rights have devolved has the right to waive the said rights.

8. Private reproduction for personal purposes - (1) Despite section 6(1)(a), and subject to subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorisation 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) does 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.

8A. Reproduction for purposes of research or private study - (1) Despite section 6(1)(a), but subject to subsection (2), a person reproducing a work for the purposes of research or private study is not to be regarded as infringing any of the copyright in that work.

(2) Despite subsection (1), if a person reproducing the work knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time, that person will not be regarded as reproducing the work for the purposes of subsection (1).

8B. Use of work for Parliamentary or judicial proceedings or inquiries - (1) Despite section 6(1)(a), the copyright in a work is not infringed by reproducing or using the material for the purposes of:

- (a) any Parliamentary or judicial proceedings or for the purposes of reporting any such proceedings; or
 - (b) any inquiry conducted under any enactment, or for the purposes of reporting the proceedings of any such inquiry.
- (2) The issuing to the public of the report of any inquiry referred to in subsection (1)(b) does not infringe the copyright of any work that is reproduced in the report.

8C. Incidental inclusion of copyright material - (1) Despite section 6(1)(a), but subject to subsection (2), the copyright in a work is not infringed by its incidental inclusion in an artistic work, a sound recording, an audio-visual work or a broadcast or by the publication, playing, performance or other use of the work.

(2) Despite subsection (1), if a musical work or words spoken or sung to music are deliberately included in another work, that act is not to be regarded as being incidentally included.

8D. Use of work for demonstration purposes - Despite section 6(1)(a), the copyright in a literary or musical work is not infringed by the use of the work in a good faith demonstration of a radio or television receiver or computer or any type of recording equipment or playback equipment to a client by a dealer in such equipment.

8E. Acts done under statutory authority - Despite section 6(1)(a), the copyright in a work is not infringed by the doing of anything that is specifically authorised by any enactment.

8F. Prescribed dealings in copyright works - (1) Despite section 6(1)(a), but subject to subsection (2), in addition to any other reproduction permitted under this Act, the reproduction of a work is to be permitted in such manner and circumstances as may be prescribed.

(2) Despite subsection (1), any regulations made under this section and section 35 must not:

- (a) permit any reproduction to be in conflict with a normal exploitation of the work; or
- (b) unreasonably prejudice the legitimate interests of the owner of the copyright.”

9. Quotation - Despite section 6(1)(a), the reproduction in the form of quotation, of a short part of a published work shall be permitted without authorisation 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) Despite 6(1)(a), the following acts are permitted without authorisation 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 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).

11. Reproduction by libraries and archives - Despite section 6(1)(a), any library or archive whose activities do not serve direct or indirect financial gain may, without the

authorisation 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 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: 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 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 - Despite section 6(1)(a), (h) and (i), the following acts shall be permitted in respect of a work without the authorisation 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 authorise 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) Despite 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 authorisation 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 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. Repealed by s6 of Act 2011, No.10.

15. Display of works - Despite section 6(1)(f), the public display of originals or copies of works shall be permitted without the authorisation of the author:

PROVIDED THAT—

- (a) 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
- (b) 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 subsections (2) to (5), the economic and moral rights shall be protected during the life of the author and for 75 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 75 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 75 years from the date of which the work was first published or, failing such an event within 75 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 75 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 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, the economic and moral rights shall be protected for 25 years from the making of the work.

(6) Every period provided for under subsections (1) to (5) runs to the end of the calendar year in which it would otherwise expire.

17. Original ownership of economic rights - (1) Subject to 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) An assignment of an economic right, and any licence to do an act subject to authorisation by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.

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

PART II PROTECTION OF PERFORMERS, ETC

20. Acts requiring authorisation of performers - (1) In this Part, “fixation” means the result of any process aimed at recording or presenting a performance in a permanent form.

(2) Subject to section 24, a performer has the exclusive right to carry out or to authorise 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 section 24; or

(ii) is a rebroadcasting made or authorised by the organisation 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 authorised 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 is to be construed to deprive performers of the right to agree by contracts on terms and conditions more favourable 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 75th calendar year following the year in which the performance takes place.

21. Acts requiring authorisation of producers of sound recordings - (1) Subject to section 24, a producer of a sound

recording has the exclusive right to carry out or to authorise 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 authorisation 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 75th 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 75th 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 50th 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 50th calendar year following the year of fixation.

23. Acts requiring authorisation of broadcasting organisations -

(1) Subject to section 24, a broadcasting organisation shall have the exclusive right to carry out or to authorise 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 75th calendar year following the year in which the broadcast takes place.

23A. Unauthorised commercial use of subscription broadcasts - (1) No person shall, without the authorisation of the broadcaster of a subscription broadcast, use the broadcast, or sounds or images from the broadcast, by way of trade or with the intention of obtaining a commercial advantage or profit, where:

- (a) the use prejudicially affects any of the following persons:
 - (i) anyone with an interest in the copyright in the broadcast;
 - (ii) anyone with an interest in the copyright in any content of the broadcast;
 - (iii) the channel provider who supplied the broadcaster with the channel for the broadcast; and
- (b) the person knows, or ought reasonably to know, that the use is not authorised by the broadcaster.

(2) An interested person may initiate proceedings in the Supreme Court in order to prevent a contravention of subsection (1) or seek any other remedy arising out of a contravention of subsection (1).

24. Limitations on protection - This Part does 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 IA, 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 has 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 authorisation of the owner of any right protected under this Act where the making or importation of copies is subject to such authorisation;
- (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 apply to infringements of rights under this Act.

(3) Part VIIIA of the Customs Act 1977 applies 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 is 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 minimise 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 is a fine not exceeding 50 penalty units.

26A. Powers of entry and search - (1) Subject to subsection (2), the CEO may, pursuant to a warrant issued by the Supreme Court:

- (a) enter and search any building, vessel or vehicle;
- (b) stop and search any person; or
- (c) pass across any land.

(2) The CEO, after obtaining the prior written approval of the Attorney-General, may only exercise powers under subsection (1) without a warrant:

- (a) where there is no time to apply for a warrant; and
- (b) if the CEO believes, on reasonable grounds that an infringement of any rights granted under this Act is occurring or has occurred or an offence is being or has been committed against this Act.

27. Criminal sanctions - (1) An 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 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 by to imprisonment for a term not exceeding 5 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 has 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 5 years of a previous conviction for a infringement.

(3) The Court shall apply the measures and remedies referred to in sections 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; and
- (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.

27A. Presumptions - (1) The presumptions specified in this section apply in any proceedings, whether civil or criminal, for infringement of the copyright in any work.

(2) Copyright is presumed to subsist in a work until the contrary is proved.

(3) Except as otherwise provided in this section, where the subsistence of the copyright in a work is proved or admitted, or is presumed under subsection (2), the plaintiff is presumed to be the owner until the contrary is proved.

(4) Where:

- (a) a name purporting to be that of the author of a work or of the owner appears on copies of the work; or

(b) a copy of a work bears or incorporates a statement, label or other mark indicating that a person is the author of the work or the owner, -

that name, statement, label or mark is admissible as evidence of the fact stated or indicated which is to be presumed to be correct, unless the contrary is proved.

(5) The person named or in respect of whom a statement, label or other mark appears on or is borne on or is incorporated in copies of a work in accordance with subsection (4) shall, unless the contrary is proved, be presumed not to have made the work in the course of employment referred to in section 17(4).

(6) Where a work purports to be a work of joint authorship, subsections (2), (3), (4) and (5) apply in relation to each person purporting to be one of the authors of the work.

(7) Subject to subsection (8), where no name purporting to be that of the author of the work or of the owner, appears on the work or where the work does not bear or incorporate a statement, label or other mark in accordance with subsection (4), a person named in accordance with subsection (8)(b) is presumed to have been the author of the work or the owner, at the time when the work was first lawfully made available to the public, unless the contrary is proved.

(8) Despite subsection (7), a presumption will only be made where:

(a) the work qualifies for copyright protection by reference to the country, territory, state or area, in which it was first lawfully made available to the public; and

(b) either:

(i) a name purporting to be that of the person who first lawfully made available to the public the work appears on copies of the work as first so made available; or

(ii) copies of the work bear or incorporate a statement, label or other mark indicating that a named person first lawfully made available to the public the work.

(9) Where the author of the work is dead or the identity of the author cannot be ascertained by reasonable enquiry, it is to be presumed, unless the contrary is proved:

(a) that the work is an original work; and

(b) that the claims made by the plaintiff as to the date on which the work was first lawfully made available to the public and as to the country, territory, state or area in which the work was first so made available are correct.

(10) The presumptions in subsections (2) to (9) apply to the same extent in any action relating to an infringement which occurred before the date on which copies of a work were first lawfully made available to the public.

(11) In this section “owner” includes an exclusive licensee of the copyright.

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:

(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”);

(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 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:

(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 device or means is made or imported for sale or rental;
- (b) the work is authorised 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 TRADITIONAL CULTURAL
EXPRESSIONS

29. Rights protected - (1) Traditional cultural expressions 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) does 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 IA, a work can be used without the authorisation 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 traditional cultural expressions 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 authorise 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 traditional cultural expressions - A person who, without the consent of the competent authority referred to in section 29(4), uses a traditional cultural expression 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 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 30 days, irrespective of the nationality or residence of their authors.

(2) The provisions of this Act 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 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 apply to:

- (a) sound recordings the producers of which are nationals of Samoa; and
- (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 apply to:

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

(4) The provisions in this Act 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 Samoa is party.

33. *Repealed by s11 of Act 2011, No.10.*

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

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

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

REVISION NOTES 2008-2011

This Act has been revised under section 5 of the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a” or “each” where appropriate
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) Numbers in words changed to figures
 - (viii) “hereby” and “from time to time” (or “at any time” or “at all times”) removed

The following amendments have been made to specific sections of the Act to incorporate amendments made by an Act of Parliament passed since the publication of the *Consolidated and Revised Statutes of Samoa 2007* –

By the *Copyright Amendment Act 2011*

- Section 2** - insertion of new new definitions for “broadcaster”, “CEO”, “channel provider”, “subscription broadcast” and “traditional cultural expressions” were added
 - Definition of “broadcasting” amended
 - Definition of “Minister” repealed and replaced
 - Definition of “expression of folklore” repealed
- Section 2, 3, 29, 30** - “expressions of folklore” or “expression of folklore” replaced with “traditional cultural expressions”
- Sections 6,** - new subsection (3) added
- Sections 8A-8F** - new sections added after section 8.
- Section 14** - repealed
- Section 23A** - new section added after section 23.
- Section 25** - Subsection (3) was replaced with its current form.
- 26A and 27A** - new sections added after section 26 and 27.
- Section 33** - repealed

The *Copyright Amendment Act 2011*, No.10 commenced on 11 October 2011.

This Act has been consolidated and revised in 2008, 2009, 2010 and 2011 by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is the official version of this Act as at 31 December 2011. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.



Aumua Ming Leung Wai
Attorney General of Samoa

Revised and consolidated in 2008 by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

Revised in 2009, 2010 and 2011 by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

The Copyright Act 1998 is administered by the Ministry of Justice and Courts Administration.