

COPYRIGHT (AMENDMENT) BILL 2011

SAMOA

Arrangement of Provisions

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2011 No.

A BILL INTITULED

AN ACT to amend the Copyright Act 1998 and for related purposes.

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

1. Short Title and Commencement – (1) This Act may be cited as the Copyright (Amendment) Act 2011 and shall be read together with and form part of the Copyright Act 1998 (the Principal Act).

(2) This Act comes into force on the date of assent of the Head of State.

2. Interpretation – The Principal Act is amended by inserting in correct alphabetical order the following new terms and their definitions:

“**Copyright Collecting Society Committee**” or “**Committee**” means the Committee established under section 33A.

3. Replacement of term “Expressions of folklore” – (1) The Principal Act is amended by replacing the phrase “expressions of folklore” wherever it appears in the Principal Act with the phrase “traditional cultural expressions”.

(2) The word “folklore” where it appears in the heading of section 30 is deleted and replaced with the words “traditional cultural expressions”.

4. Economic rights – Section 6(1)(f) of the Principal Act is repealed.

5. Private reproduction for personal purposes – Section 8 of the Principal Act is amended as follows:

(a) by inserting after the figure “(2)” in subsection (1), the words “and subsection (3)”; and

(b) by inserting after subsection (2) as follows:

“(3) The permission under subsection (1) is limited to only 10% of the work that is intended to be reproduced.”

6. Insertion of new sections - After section 8 of the Principal Act insert:

“8A. Fair dealing for purposes of research or private study - (1)
The copyright in a work shall not be infringed by any fair dealing for the purposes of research or private study by the person using the work.

(2) Reproducing a work shall not constitute fair dealing for the purposes of subsection (1) if the person who reproduces it 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.

8B. Private recording of musical works and sound broadcasts

- (1) Subject to this section, the copyright in -

(a) a sound recording or a musical work embodied in a sound recording; or

(b) a sound broadcast or any work embodied in such a broadcast,

shall not be infringed by the sound recording, musical work or broadcast being recorded by a person for the private use of himself and members of his or her family.

(2) Any recording made in terms of subsection (1) shall be used only for the purpose for which it was made and, in particular, shall not -

- (a) be distributed, whether by way of business or otherwise, to any person outside the family of the person who made it; or
- (b) be performed in public.

8C. Use of work for Parliamentary or judicial proceedings or inquiries - (1) The copyright in a work, performance, sound recording or broadcast shall not be 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 in terms of 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) shall not infringe the copyright of any work, performance, sound recording or broadcast that is reproduced in the report.

8D. Incidental inclusion of copyright material - (1) The copyright in a work, performance, sound recording or broadcast shall not be 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 such a sound recording, audio-visual work or broadcast.

(2) If a musical work or words spoken or sung to music are deliberately included in another work, they shall not be regarded for the purposes of subsection (1) as having been included incidentally.

8E. Use of work for demonstration purposes - (1) The copyright in a literary or musical work shall not be 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.

8F. Recording of programmes and broadcasts for purposes of subsequent viewing or listening - (1) The copyright in-

- (a) a broadcast; or
- (b) any work contained in a broadcast,

shall not be infringed by the broadcast or programme being recorded for the sole purpose of enabling it to be viewed or listened to at a more convenient time.

(2) Any recording made in terms of subsection (1) shall be used only for the purpose for which it was made and, in particular, shall not –

- (a) be distributed, whether by way of business or otherwise, to any person outside the family of the person who made it; or
- (b) be performed in public.

8G. Acts done under statutory authority - The copyright in a work shall not be infringed by the doing of anything that is specifically authorised by any enactment.

8H. Prescribed dealings in copyright works - In addition to any other reproduction permitted in terms of this Act, the reproduction of a work shall be permitted in such manner and circumstances as may be prescribed: Provided that –

- (a) regulations made under section 35 shall not permit any such reproduction to be in conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the owner of the copyright;
- (b) in making any regulations referred to in paragraph (a), the Head of State, acting on the advice of Cabinet, shall have regard to the obligations of Samoa under any international convention, treaty or agreement.”.

7. Injunctions and other remedies – For section 25(3) of the Principal Act, substitute:

“(3) The provisions of the Customs Act 1977 dealing with border protection measures shall apply to articles and implements protected under this Act.”

8. Insertion of new sections – After section 33 of the Principal Act insert:

“33A. Copyright Collecting Society Committee – (1) The Minister may establish a Copyright Collecting Society Committee (‘the Committee’) for the purpose of benefiting Samoan copyright owners

- (2) The functions of the Committee are to:
 - (a) prepare a scheme for determining the quantum of remuneration payable to individual owners of rights;
 - (b) obtain the approval of owners of rights for its procedures of collection and distribution of fees;
 - (c) obtain the approval of owners for the utilisation of any amounts collected as fees for any purpose other than distribution to the owner of rights; and
 - (d) provide owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.
- (3) The Committee shall consist of 3 members as follows:
 - (a) a representative from the Ministry responsible for Copyright who is to be the chairperson;
 - (b) a representative from the Institute of Accountants to be appointed by the CEO; and
 - (c) a representative from the Samoa Law Society to be appointed by the CEO.
- (4) The Committee shall be remunerated by the Ministry in accordance with Cabinet directives.

- (5) The Committee shall meet at least once every month.
- (6) The Committee may, by ordinary resolution make and pass its own rules for governance and the holding of any of its meetings and its operations.
- (7) Subject to subsection (8), the Minister may, at any time and for any cause dissolve the Committee.
- (8) The Minister may only dissolve the Committee upon the recommendation of the CEO.
- (9) The Committee shall report to the CEO at least once every 3 months to advise on the status of its operations.

33B. Administration of rights by Copyright Collecting Society Committee- (1) The Committee may accept from an owner of rights exclusive authorisation to administer any right in any work by issue of licences or collection of licence fees or both.

(2) An owner of rights may withdraw any authorisation given to the Committee without prejudice to the rights of the Committee under any contract.

(3) The Committee has the power —

- (a) to issue licences in respect of any rights under this Act;
- (b) to collect fees in pursuance of such licences;
- (c) to distribute such fees among owners of rights after making deductions for its own expenses;
- (d) to enter into agreement with any foreign society or organisation administering rights corresponding to rights under this Act;
- (e) to entrust to a foreign society or organisation the administration in any foreign country of rights administered by the Committee in Samoa;
- (f) for administering in Samoa the rights administered in a foreign country by the foreign society or organisation; and
- (g) to perform any other functions consistent with its rules and by-laws.

(4) All fees distributed among the owners of rights shall, as far as practicable, be distributed in proportion to the actual use of their works.

(5) Despite anything in this section, the owner of copyright or related rights shall, in his or her individual capacity, continue to have the right to grant licences in respect of his or her own works.

33C. Presumptions - (1) The presumptions specified in this section shall apply in any proceedings, whether civil or criminal, for infringement of the copyright in any work.

(2) Copyright shall be 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 shall be presumed to be the owner or, as the case may be, the exclusive licensee of the copyright, until the contrary is proved.

(4) Where:

- (a) a name purporting to be that of the author of a work or of the owner or exclusive licensee of the copyright, as the case may be, 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 or exclusive licensee of the copyright, as the case may be,

that name, statement, label or mark shall be admissible as evidence of the fact stated or indicated which shall 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(3) to (5).

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

(7) Where no name purporting to be that of the author of the work or of the owner or exclusive licensee of the copyright, as the case may be, appears on the work or where the work does not bear or incorporate a statement, label or other mark in accordance with subsection (4) and—

- (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) (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,

then, that named person shall be presumed to have been the author of the work or the owner or exclusive licensee of the copyright, as the case may be, at the time when the work was first lawfully made available to the public, unless the contrary is proved.

(8) Where the author of the work is dead or the identity of the author cannot be ascertained by reasonable enquiry, it shall 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.

(9) The presumptions set out in subsections (2) to (8) shall apply to the same extent in any actions relating to an infringement which occurred before the date on which copies of a work were first lawfully made available to the public.”.

9. Criminal sanctions – Section 27(4) of the Principal Act is repealed.

10. Application of international treaties – Section 33 of the Principal Act is repealed.

11. Miscellaneous provisions – Subsection (2) of section 34 of the Principal Act is repealed.