

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 is to 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 – Section 2 of the Principal Act is amended as follows:

(a) by substituting the definition of Minister as follows:

“**Minister**” means the Minister responsible for Commerce, Industry and Labour;

(b) by inserting after the word “satellite” where it appears in the definition of the term “**Broadcasting**” the follow words:

“or via the internet”;

(c) by inserting the definition of “Traditional cultural expression” after the definition of “Sound recording”, as follows:

“**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.

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

(2) The word “folklore” where it appears in the heading of section 30 is omitted 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 Economic rights – Section 6(1)(f) of the Principal Act is repealed.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)”;

(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. 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 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. Private recording of musical works and sound broadcasts

- (1) Despite section 6(1)(a), but 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,

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

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

- (a) be distributed, either for 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) Despite section 6(1)(a), the copyright in a work, performance, sound recording or broadcast 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, performance, sound recording or broadcast that is reproduced in the report.

8D. 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.

8E. Use of work for demonstration purposes - (1) 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.

8F. Recording of programmes and broadcasts for purposes of subsequent viewing or listening - (1) Despite section 6(1)(a) but subject to subsection (2), the copyright in-

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

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

(2) Any recording made under subsection (1) is to be used only for the personal purpose for which it was made and, in particular, must not –

- (a) be distributed, either by 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 - 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.

8H. 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):
 - (a) any regulations made under section 35 must not:
 - (i) permit any reproduction to be in conflict with a normal exploitation of the work; or
 - (ii) unreasonably prejudice the legitimate interests of the owner of the copyright; and
 - (b) in making any regulations under paragraph (a), the Head of State, acting on the advice of Cabinet, must have regard to the obligations of Samoa under any international convention, treaty or agreement.”.

7. Importation for personal purposes – Section 14 of the Principal Act is repealed.

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

“(3) Part VIIIA of the Customs Act 1977 applies to articles and implements protected under this Act.”

9. Insertion of new section – After section 27 of the Principal Act insert:

“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(3) to (5).

(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) 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) 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) 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,

then, that named person 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) 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.

(9) The presumptions in subsections (2) to (8) 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.

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

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

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