

# THE COPYRIGHT ACT 1997

Act No. 12 of 1997

I assent  
28th July 1997

C.UTEEM  
President of the Republic

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AN ACT

To make better provision for the protection of intellectual property  
and for connected matters.

ENACTED by the Parliament of Mauritius, as follows-

PART I - PRELIMINARY

**1. Short title.**

This Act may be cited as the Copyright Act 1997.

## **2. Interpretation.**

(1) In this Act-

"acknowledgement", in relation to a work, means the identification of the work-

- (a) by its title or other description; and
- (b) unless the work is anonymous or the author of the work has agreed not to be identified, by its author;

"artistic", literary or scientific work"-

(a) means a production in the artistic, literary or scientific domain;

(b) includes-

- (i) a book, pamphlet or other writing;
- (ii) an illustration or a map, plan or sketch;
- (iii) a lecture, sermon or any other address of a similar nature;
- (iv) a dramatic or dramatico-musical work;
- (v) a musical work;
- (vi) a choreographic work or pantomime;
- (vii) an audiovisual work;
- (viii) a sound recording;
- (ix) a work of fine art, such as a drawing or painting, a work of architecture or sculpture, an engraving or lithography;
- (x) a photographic work;
- (xi) a work of applied art, whether produced by handicraft or in an industrial scale;

(xii) a computer program;

(c) does not include-

- (i) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if it is or they are expressed, described, explained, illustrated or embodied in a work;
- (ii) an official text of a legislative, administrative or legal nature or an official translation thereof;

"audiovisual work"-

(a) means a work consisting of a series of related images and accompanying sounds, if any, which are intended to be shown by any appropriate device;

(b) includes a cinematograph or other film;

"author"-

(a) means the person who has intellectually created a work;

(b) includes-

- (i) in the case of an audiovisual work or a sound recording, the producer;
- (ii) in the case of a computer programme, the person who has created the program;

(iii) in the case of a photograph, the person responsible for its composition;

"Berne Convention" means the Convention for the Protection of Literary and Artistic Works signed in Berne;

"Board" means the Board referred to in section 32;

"broadcast"-

(a) means a transmission by wireless telegraphy of images, sounds or other information which-

- (i) is capable of being lawfully received by the public; and

(ii) is transmitted for presentation to the public;

(b) includes a transmission referred to in paragraph (a) made via satellite;

"broadcasting organisation" means the Mauritius Broadcasting Corporation or such other organisation as may be prescribed;

"Chairman" means the Chairman of the Board;

"communicate"-

(a) means to undertake a process required to make a work available other than a distribution of a copy;

(b) includes to perform, display or broadcast;

"communicate by cable" means to communicate a work to the public over wire or other paths provided by a material substance;

"computer" means an electronic or similar device which has information processing capabilities;

"computer program" means a set of instructions, expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a machine-readable medium, of causing a computer to perform or achieve a particular task or result;

"copy" includes a reproduction of a work in-

(a) a written form;

(b) the form of a recording; or

(c) any other material form;

"copyright" means an economic right subsisting in a work;

"copyright owner"-

(a) means the original owner of the copyright;

(b) includes any person deriving title from the original owner;

"derivative work"-

(a) means a translation, adaptation, arrangement or other alteration of a pre-existing artistic, literary or scientific work;

(b) includes-

(i) a collection or compilation of pre-existing works, of expressions of folklore or of mere facts or data;

(ii) an anthology, an encyclopaedia or a data base; or

(iii) any other work, which, by reason of selection and arrangement of its contents, is original;

"display" means to show-

(a) a copy of a work directly, or by means of a film, slide, television image or otherwise on screen, or by means of any other device or process;

(b) in the case of audiovisual work, individual images nonsequentially;

"economic right" means a right specified in section 4;

"equitable remuneration" means-

(a) such remuneration as may be prescribed; or

(b) where no such remuneration has been prescribed, such remuneration as may, in default of agreement between the relevant parties, be determined by the Society;

"exclusive licence" means a licence to the exclusion of all other persons, including the copyright owner;

"expressions of folklore"-

(a) means productions of characteristic elements of the traditional artistic heritage developed and maintained by a community or by individuals reflecting the traditional artistic expectations or a community;

(b) includes folk tales, folk poetry, folk songs, instrumental folk music, folk dances and plays, artistic forms or rituals and productions of folk art;

"first published" means-

(a) first published in Mauritius; or

(b) first published outside Mauritius and published in Mauritius not later than 30 days thereafter;

"infringing copy"-

(a) means a copy of a work which infringes copyright subsisting in the work;

(b) includes a counterfeit copy;

"licence" means a written authorisation granted by a copyright owner to another person to exploit the copyright for a limited period;

"Minister" means the Minister to whom responsibility for the subject of Copyright is assigned;

"moral right" means a right specified in section 5;

"original work"-

(a) means a work which is the product of a person's skill or labour;

(b) does not include a work which is essentially a copy of another work;

"perform" means to present a work or expressions of folklore by a personal rendition;

"photographic work" includes a work expressed by a process analogous to photography;

"producer" means the person who has taken the initiative and financial responsibility for the making of an audiovisual work or a sound recording;

"published work" means a work which, with the express authorisation of the copyright owner and, depending on the nature of the work, is reproduced and made available to the public in such copies as to satisfy its reasonable requirements;

"reproduce"-

(a) means to make one or more copies of a work in any material form;

(b) includes-

(i) to make a sound or visual recording of an audiovisual work;

(ii) to store a work in any manner by electronic means;

"reprographic reproduction" means the making of facsimile copies of the original or a copy of a work by means other than printing, such as photocopying, whether or not they are reduced or enlarged in scale;

"Society" means the Mauritius Society of Authors referred to in section 32;

"sound recording"-

(a) means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced by any appropriate device;

(b) does not include the sound track associated with an audiovisual work;

"Universal Convention" means the Universal Copyright Convention;

"work" means an artistic, literary or scientific work, or a derivative work, which is protected in accordance with section 3;

"work of applied art" means a two-dimensional or three-dimensional artistic creation with utilitarian functions or incorporated in a useful article, produced by handcraft or on an industrial scale;

"useful article" means an article having an intrinsic utilitarian function, that is not merely to portray the appearance of the article or to convey information;  
"work of joint ownership" means a work jointly created by 2 or more authors in which the individual contribution of each author cannot be readily assessed.

(2) For the purposes of this Act, a reference to a display, performance, broadcast or communication to the public includes a display, performance, broadcast or communication-

(a) at a place open to the public or when a substantial number of persons outside the normal circle of a family and its close social acquaintances is present; or

(b) to a place referred to in paragraph (a) or to the public by means of any device or process, irrespective of the time or place at which any member of the public receives the display performance, broadcast or communication.

## PART II - PROTECTION OF WORKS

### 3. Protection of works

(1) Subject to this Act, the author of an artistic, literary or scientific work or of a derivative work shall, irrespective of the quality of the work and the purpose for which the work may have been created, be entitled to protection for his work where it is-

(a) an original work; and

(b) written down, recorded, fixed or otherwise reduced to any material form.

(2) Subsection (1) shall not, in the case of a derivative work, affect the protection attaching to a pre-existing work used for making the derivative work.

(3) The protection of an author's work referred to in subsection (1) shall not be subject to any formality.

(4) The protection afforded by subsection (1) to the author of an artistic, literary or scientific work shall not be affected by any right accruing to a broadcaster or a performer under this Act.

### 4. Economic rights

(1) Subject to Part IV, the copyright owner of a work shall, in relation to the whole or a substantial part of the work, have the exclusive right to carry out or authorise any of the following acts-

(a) reproduction of the work;

(b) distribution to the public of the original and each copy of the work by sale, rental or otherwise;

(c) public performance of the work;

(d) communication of the work to the public;

(e) broadcasting the work;

(f) importation of copies of the work, even where the imported copies were made with the authorisation of the author or other owner of the copyright;

(g) translation of the work; or

(h) adaptation, arrangement or other transformation of the work;

(2) (a) Where an original work of fine art is sold by the purchaser thereof at a public auction or through a professional art dealer, the author shall be entitled to a share of the resale price if that price is higher than the amount that had been originally paid by the purchaser.

- (b) The share referred to in paragraph (a) shall be-
  - (a) determined by the Society;
  - (b) collected from the auctioneer or dealer, as the case may be, and distributed, by the Society.

## **5. Moral rights**

- (1) An author shall, whether or not he has transferred his economic rights, have the right to-
  - (a) claim authorship of his work, except where the work is included, incidentally or accidentally, in reporting current events by means of broadcasting;
  - (b) remain anonymous or use a pseudonym;
  - (c) object to any distortion, mutilation or other alteration of his work, where such an act is, or would be, prejudicial to his honour or reputation.
- (2) The rights referred to in subsection (1) shall be protected until the expiry of the period specified in section 16 for the protection of the economic rights relating to the work.
- (3) A moral right shall be unassignable.

## **6. Alienation of works**

Subject to section 22, where an author alienates the original or a copy of his work, he shall not, unless the contract of alienation otherwise provides, be deemed to have transferred any economic right, granted a licence or waived the exercise of any moral right.

## **7. Ownership of rights**

- (1) Subject to this section, the author of a work shall own the economic and moral rights relating to the work.
- (2)
  - (a) The physical person whose name is indicated on a work in the usual manner as the author shall, in the absence of proof to the contrary, be presumed to be the author of the work, even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.
  - (b) In other cases of anonymous or pseudonymous works, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author, and in this capacity he shall be entitled to protect and enforce the author's rights, unless the author reveals his identity and establishes his claim to authorship of the work.
  - (c) The person whose name, or the name of which, appears on an audiovisual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the maker of the work.
- (3) The authors of a work of joint authorship shall be the co-owners of the economic and moral rights relating to the work.
- (4) The author of an independent part of a work of joint authorship shall, while being a co-author in respect of the work of joint authorship, be considered to be the author of his contribution where it can be performed, reproduced or otherwise used separately.
- (5) Where a work is-
  - (a) made in the course of the author's employment; or

(b) commissioned by another person and the employer or person who has commissioned the work has undertaken to pay an agreed sum for the creation of the work, the economic rights relating to the work shall, subject to any agreement between the parties excluding or limiting the transfer, be deemed to be assigned to the author's employer or to the person who has commissioned the work, as the case may be.

(6) The producer of an audiovisual work shall own the economic rights relating to the work other than the rights in any musical work included therein.

### **8. Contracts for commissioned works**

(1) Where a contract has been entered into on the commissioning of a work to be created, the person who has commissioned the work shall, within 3 months from the date on which the work is delivered to him, make a written declaration indicating his acceptance of the work.

(2) Where no declaration is made within the time specified in subsection (1), the work shall be deemed to have been accepted by the person who has commissioned it.

(3) A person who has commissioned a work may, within the time specified in subsection (1), or such further time as may be agreed between the parties, return the work to the author with a written request for such corrections or amendments as may be felt necessary.

(4) Where an author refuses to comply with a request for a correction or amendment, or if the corrected or amended work does not satisfy the stipulated purpose, the person who commissioned the work may terminate the contract but shall pay to the author an equitable remuneration in return for the work done by the author.

## **PART III - FEATURES OF ECONOMIC RIGHTS**

### **9. Transfer of economic rights**

(1) Copyright shall be transmissible as movable property.

(2) Subject to section 7(5), no assignment of an economic right shall be valid unless it is made in writing.

(3) The assignment of an economic right in a work shall not imply the assignment of any other economic right therein.

(4) Where an assignment of an economic right is governed by a written agreement, the scope of the assignment shall be limited to the specific use of the economic right mentioned in the agreement.

(5) Where the ownership of a copy of a work is assigned, the economic rights relating to the work shall, unless the contrary is proved, not be deemed to be assigned.

(6) Where an agreement for the assignment of an economic right fails to mention the time for which the assignment shall operate, the assignment shall terminate after 10 years.

(7) Where an agreement for the assignment of an economic right fails to mention any country in which the assignment may have effect, the assignment shall only operate in Mauritius.

(8) Where an agreement for the assignment of an economic right fails to specify the ways and means of exploitation of the right, the assignee shall be entitled to exploit the right by such ways and means as are necessary for the purpose envisaged by the parties when the assignment was granted.



(9) Nothing in this section shall prevent the copyright owner of a work from granting a licence, whether exclusive or not, to another person.

#### **10. Agreement regarding future works**

(1) Where an author undertakes in writing to grant a licence or to assign the economic rights concerning future works which are not specified in detail, either party may on giving not less than one month's notice, terminate the agreement not earlier than 3 years after it was signed or such shorter period as may have been agreed.

(2) The right of termination referred to in subsection (1) may not be waived in advance.

#### **11. Non-use of economic rights**

(1) Subject to subsection (2), where a person to whom an economic right in a work has been assigned, or an exclusive licensee does not exercise his right, or does so only inadequately, and the author's legitimate interests are prejudiced by such failure, the author may revoke the assignment or exclusive licence.

(2) A revocation in accordance with subsection (1) shall not be effected where the non-exercise or inadequate exercise of a right is primarily due to circumstances which the author can be expected to remedy.

(3) The right to revoke an assignment or a licence in accordance with subsection (1) shall not be exercised earlier than 3 years from the date of assignment or licence, or, if the work is supplied subsequently, from the date of delivery of the work.

(4) The right of revocation referred to in subsection (1) may not be waived in advance.

#### **12. Duration of economic rights**

(1) Subject to this section, the economic rights relating to the work of an author shall be protected during his lifetime and for 50 years thereafter.

(2) The economic rights relating to a work of joint authorship shall be protected during the lifetime of the last surviving author and for 50 years thereafter.

(3) (a) Subject to paragraph (b), where a work is published anonymously or under a pseudonym, the economic rights relating to the work shall be protected until the expiry of 50 years from the date on which the work was first published.

(b) Where, before the expiry of the period of 50 years specified in paragraph (a), the author's identity is revealed or is no longer in doubt, the economic rights relating to the work shall be protected during the lifetime of the author and for 50 years thereafter.

(4) Subject to subsections (5) and (6), where the economic rights relating to a work specified in section 7(5) are deemed to be assigned under that section, they shall be protected until the expiry of 50 years from the date on which the work was created or first published, as the case may be.

(5) The economic rights relating to an audiovisual work shall be protected until the expiry of-

(a) 50 years from the making of the work; or

(b) where the work is broadcast or communicated to the public during the period specified in paragraph (a) with the express authorisation of its maker, 50 years from the end of the year during which the authorisation was granted.

(6) The economic rights relating to a photographic work or a work of applied art shall be protected until the expiry of 25 years from the making of the work.

(7) Every period specified in this section shall extend to the end of the year in which it would otherwise expire.

#### PART IV - LIMITATIONS ON ECONOMIC RIGHTS

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

- (1) Subject to this section, the private reproduction of a published work in a single copy, where the reproduction is made by a physical person exclusively for his own personal purposes, shall be permitted, without the authorisation of the author of, or other owner of the copyright in, the work.
- (2) The permission referred to in subsection (1) shall not extend to the reproduction-
- (i) of a work of architecture in the form of a building or other construction;
  - (ii) where the reproduction is a reprographic reproduction, of an entire book, of a musical work in graphic form, or of the original, or a copy made and signed by the author, of a work of fine art;
  - (iii) of a data base; or
  - (iv) of a computer program, except as provided in section 18.
- (3) (a) Where a reproduction made under subsection (1) concerns an audiovisual work or a work embodied in a sound recording, the author or other owner of copyright shall be entitled to equitable remuneration to be paid to, and distributed by, the Society.
- (b) The equitable remuneration shall be paid-
- (i) by the manufacturer of the equipment or material supports normally used for private reproduction for personal purposes of the work, except where such equipment is, or such material supports are, exported; or
  - (ii) by those who import such equipment or material supports, except where the importation is by a private person for his personal purposes.

##### **14. Quotation**

- (1) The reproduction of a short part of a published work, in the form of a quotation, in another work, shall be permitted without the authorisation of the author of, or other owner of the copyright in, the work from which the quotation is taken, where the reproduction is compatible with fair practice and its extent does not exceed the extent justified by the purpose.
- (2) The quotation shall be accompanied by the indication of its source and the name of the author if his name appears in the work from which the quotation is taken.

##### **15. Reproduction for teaching**

- (1) The following acts shall be permitted without the authorisation of the author of, or other owner of the copyright in, the work-
- (a) the reproduction of a short part of a published work, by way of illustration, in writings or sound or visual recording for teaching, where the reproduction is compatible with fair practice, and its extent does not exceed the extent justified by the purpose;
  - (b) the reprographic reproduction, for face-to-face teaching in educational institutions whose activities do not serve direct or indirect commercial gain, to the extent justified by the purpose, of a published article or other short work or short extract of a writing, with or without illustrations, where-

- (i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions; and
  - (ii) there is no licence available, offered by a collective administration organisation in a way that the educational institution is aware or should be aware of the availability of the licence, under which such reproduction can be made.
- (2) On any copy made under subsection (1), its source and the name of the author shall be indicated as far as practicable.

### **16. Reprographic reproduction by libraries and archives**

Any library or archive whose activities do not serve direct or indirect gain may, without the authorisation of the author of, or other owner of copyright in, the work, make a single copy of the work by reprographic reproduction where-

- (a) the work reproduced is a published article or other short work or short extract of a writing, with or without illustrations, and where the purpose of the reproduction is to satisfy the request of a physical person, if-
  - (i) the library or archive is satisfied that the copy will be used solely for the purpose 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 licence available, offered by a collective administration organisation in a way that the library or archive is aware or should be aware of the availability of the licence, under which such copies can be made; or
- (b) the making of such copy is in order to preserve and, if necessary in the event that it is lost, destroyed or rendered unusable, replace a copy, or to replace, in the permanent collection of another similar library or archive, a copy which has been lost, destroyed or rendered unusable, if-
  - (i) it is impossible to obtain such a copy under reasonable conditions; and
  - (ii) the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

### **17. Reproduction, broadcasting and other communication to the public for informatory purposes**

The following acts shall be permitted, without the authorisation of the author of, or other owner of copyright in, subject to the obligation to indicate, as far as practicable, the source and the name of the author-

- (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, unless the right to authorise reproduction, broadcasting or other communication to the public is expressly reserved by the author, or other owner of copyright, on the copies, or in connection with the broadcasting or other communication to the public, of the work;
- (b) the reproduction and the broadcasting or other communication to the public, for the purpose of reporting current events, of short excerpts of a work seen or heard in the course of such an event, to the extent justified by the said 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 similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information.

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

(1) The reproduction in one copy or the adaptation of a computer program, shall be permitted, without the authorisation of the author of, or other owner of copyright in, a computer program, by the lawful owner of that computer program, where the copy or adaptation is necessary-

(a) for the use of the computer program, in conjunction with a computer for the purpose, and to the 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 lawfully obtained copy of the computer program is lost, destroyed or rendered unusable.

(2) No copy or adaptation referred to in subsection (1) shall be used for any purpose other than the ones determined 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.

### **19. Importation for personal purposes**

The importation of a copy of a work, by a physical person, for his personal purposes, shall be permitted without the authorisation of the author of, or other owner of copyright in, the work.

### **20. Distribution of copies of works**

(1) Where a work has been published by means of the sale of copies to the public, such copies may, without the author's authorisation and without payment of remuneration, be redistributed by means of sale.

(2) The right of rental shall not apply to rentals of computer programs, where the computer program is not the essential object of the rental.

### **21. Public lending**

(1) A library or archive whose activities do not, directly or indirectly, serve commercial gain may, without the author's authorisation but subject to subsection (2), lend to a member of the public a copy of a work, other than a computer program, which is included in a book, periodical or other printed article which is part of the permanent collection of the library or archive.

(2) Every library or archive referred to in subsection (1) shall pay an equitable remuneration to the Society which shall distribute it to the author entitled thereto.

### **22. Display of works**

The public display of originals or copies of works shall be permitted without the authorisation of the author, where-

(a) the display is not made 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.

## PART V - BROADCASTING ORGANISATIONS, PERFORMERS AND PRODUCERS

### **23. Rights of broadcasting organisations**

(1) Subject to subsection (2), every broadcasting organisation shall have the exclusive right to authorise or prohibit-

- (a) the rebroadcasting of its broadcasts;
- (b) the fixation of its broadcasts; or
- (c) the reproduction of the fixation of its broadcasts where-
  - (i) the fixation used to make the reproduction was made without its authorisation; or
  - (ii) the broadcast, which was fixed in accordance with its authorisation, is reproduced for a purpose other than that for which the authorisation was granted.

(2) The protection referred to in subsection (1) shall subsist until the expiry of 20 years from the end of the year in which the broadcast took place.

### **24. Acts requiring authorisation of performers**

(1) Subject to subsection (4), no person shall, without the authorisation of the performer-

- (a) broadcast a performance or distribute it by cable, except where the broadcast or distribution-
  - (i) is made from a fixation of the performance; or
  - (ii) is a broadcast or distribution of a performance made or authorised by the person who initially broadcast the performance;
- (b) communicate a performance to the public, except where the communication is made from-
  - (i) a fixation of the performance; or
  - (ii) a broadcast or distribution by cable of the performance;
- (c) fix an unfixed programme;
- (d) reproduce a fixation of a performance where-
  - (i) the performance was initially fixed without the performer's authorisation;
  - (ii) the reproduction is made for a purpose which is different from that for which the performer gave his authorisation; or
  - (iii) the reproduction is made for a purpose which is different from that for which it was originally fixed.

(2) In the absence of any agreement to the contrary, or of circumstances of employment from which the contrary would ordinarily be inferred-

- (a) an authorisation to broadcast or distribute a performance by cable shall not imply an authorisation to-
  - (i) licence another person to broadcast or distribute the performance by cable;
  - (ii) fix the performance;
  - (iii) reproduce a fixation; and

- (b) an authorisation to fix a performance or to reproduce a fixation shall not imply an authorisation to broadcast or distribute the performance by cable from the fixation or any reproduction of that fixation.
- (3) Where a performer has authorised the incorporation of his performance in an audiovisual fixation, subsection (1) shall have no further application.
- (4) The protection referred to in subsection (1) shall subsist until the expiry of 50 years from the end of the year in which the performance took place.
- (5) Nothing in this section shall prevent a performer from agreeing in writing terms and conditions that are more favourable in respect of any use of his performance.

## **25. Grant of authorisation by performers**

- (1) An authorisation under section 24 may be given by a performer or by a duly appointed representative to whom the performer has delegated his power in writing.
- (2) An authorisation given by a performer claiming that he has retained any right specified in section 24, or by a person claiming to be the duly appointed representative of a performer, shall be valid unless the recipient knew, or had good reason to believe, that the claim or appointment, as the case may be, was not a valid one.

## **26. Acts requiring the authorisation of producers of sound recordings**

- (1) Subject to section 30, a producer of a sound recording shall have 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 expiry of 50 years from the end of the year of publication or, if the sound recording has not been published, until the expiry of 50 years from the end of the year of fixation.

## **27. Obligations of producers**

- (1) Every producer of a sound recording shall state on the label of the recording or on its container-
  - (a) the names of the author and of the main performer;
  - (b) the title of the work;
  - (c) the name or distinguishing mark of the producer; and
  - (d) that the rights accruing to the producer under this Act are reserved.
- (2) For the purposes of subsection (1)(a), a choir or an orchestra shall be referred to by its name and that of its leader, if any.

## **28. Notice of protection**

- (1) Where a copy of a sound recording is made for commercial purposes, there shall be printed on the label or on its container a notice consisting of-
  - (a) the symbol P; and
  - (b) the year in which the sound recording was first published, placed in such manner as to give reasonable notice of a claim to protection of the rights of the producer.

- (2) Where the label of a copy of a sound recording or its container do not identify the producer by its name, description or trade mark, the notice referred to in subsection (1) shall also include the name of the owner of the copyright in the recording.
- (3) A notice referred to in subsection (1) shall be prima facie evidence of the facts stated thereon for the purposes of any proceedings brought under this Act with respect to the rights of the producer.
- (4) No person shall deal in, or have in his possession, a copy of a sound recording referred to in subsection (1) unless a mark or stamp of the Society is affixed to its label or container.

### **29. Equitable Remuneration for use of sound recordings**

- (1) Where 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 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.
- (3) The right to an equitable remuneration under this section shall subsist from the publication of the sound recording until the expiry of 50 years from the end of the year of publication or, if the sound recording has not been published, until the expiry of 50 years from the end of the year of fixation.

### **30. Limitation on Protection**

Sections 23, 24, 26 and 29 shall not apply where the acts referred to in those sections are related to-

- (a) the use by a physical person exclusively for his own personal purposes;
- (b) using a short excerpt 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 IV, a work can be used without the authorisation of the author of, or the other owner of copyright in, the work.

## **PART VI - APPLICATION OF ACT**

### **31. Scope of protection**

- (1) The protection referred to in section 3 shall apply to-
  - (a) a work whose author is a citizen of, or has his habitual residence in, Mauritius or another country party to the Berne Convention;
  - (b) a work which was first published-
    - (i) in Mauritius; or
    - (ii) in another country and published in Mauritius not later than 30 days thereafter;
  - (c) an audiovisual work whose producer has his headquarters or habitual residence in Mauritius;
  - (d) a work of architecture erected in Mauritius and any other artistic work incorporated in such a work of architecture.
- (2) The protection referred to in section 26 shall apply to a performer who-
  - (a) is a citizen of Mauritius;
  - (b) is not a citizen of Mauritius but whose performance-

- (i) takes place in Mauritius;
  - (ii) is incorporated in a sound recording that is protected under this Act; or
  - (iii) has not been fixed in a sound recording but is carried by a broadcast qualifying for protection under this Act.
- (3) The protection referred to in section 29 shall apply to a sound recording-
- (a) the producer of which is a citizen of Mauritius;
  - (b) in the case of which the first fixation of the sound was made in Mauritius;
- or
- (c) which was first published in Mauritius.
- (4) The protection referred to in section 23 shall apply to a broadcast-
- (a) of a broadcasting organisation the headquarters of which are situated in Mauritius; or
  - (b) transmitted from transmitters situated in Mauritius.
- (5) The protection referred to in the sections specified in subsections (1) to (3) shall apply to performers and to producers of sound recordings who, and to works and broadcasting organisations which, are to be protected by virtue of, and in accordance with, any international convention or other international agreement to which Mauritius is party.

## PART VII - THE SOCIETY

### **32. The Society and its management**

- (1) The Society established by the Copyright Act 1986 under the name of the Mauritius Society of Authors shall continue to exist as a body corporate and be deemed to have been established by this Act.
- (2) The Society shall be managed and administered by a Board.
- (3) The Board shall consist of-
- (a) a Chairman, who shall be a barrister-at-law of not less than 10 years' standing; and who has knowledge of, and competence in, copyright matters;
  - (b) a member of the Society and who shall be an author or composer of a work with wide experience and knowledge in copyright matters;
  - (c) a representative of the Prime Minister's Office;
  - (d) a representative of the Ministry of the Foreign Affairs and International Trade;
  - (e) a representative of the Ministry of Industry and Commerce;
  - (f) a representative of the Ministry of Telecommunications and Information Technology;
  - (g) a representative of the Ministry of Finance;
  - (h) a representative of the Ministry of Arts and Culture;
  - (i) 7 persons to be elected from among the members of the Society in such manner as the Society may decide.
- (4) The Chairman and the other members specified in subsection 3 (b) shall be appointed by the Minister.
- (5) The members of the Board specified in subsection (3)(c) and (i) shall hold office for 3 years but shall be eligible for re-appointment or re-election, as the case may be, for a further period of 3 years.
- (6) At every meeting of the Board, the Chairman and 6 other members shall constitute a quorum.
- (7) Every member of the Board shall be paid by the Society such remuneration or allowance as the Board may determine.



### **33. Appointment of staff**

- (1) The Board shall appoint on such terms and conditions as it thinks fit-
  - (a) a Director who shall be responsible for the execution of the policy of the Board and act in accordance with such directions as he may receive from the Board;
  - (b) such other staff as may be necessary for the proper discharge of the functions of the Society.
- (2) The staff referred to in subsection (1)(b) shall be under the administrative control of the Director.

### **34. Functions of the Society**

- (1) The Society shall-
  - (a) determine the criteria for, and classes of, membership of the Society;
  - (b) represent and defend the interests of its members in Mauritius and abroad;
  - (c) contribute by all appropriate means to the promotion of national creativity in the artistic, literary and scientific fields;
  - (d) administer within Mauritius on an exclusive basis such economic rights of its members as it may determine;
  - (e) negotiate with any users of a work-
    - (i) the conditions of, and the fees to be paid for, the authorisation to be given to do an act covered by any economic rights referred to in paragraph (d);
    - (ii) the amount of equitable remuneration where the right to such remuneration is administered by the Society;
  - (f) grant any authorisation which it is permitted to give under this Act;
  - (g) collect copyright fees from the users of a work on behalf of its members and distribute those fees among those members;
  - (h) make reciprocal agreements with foreign societies of authors for the issue of exclusive authorisation in respect of their members' works and for the collection and distribution of copyright fees deriving from those works;
  - (i) endeavour to obtain the transfer of membership of Mauritian authors who are members of foreign societies of authors and safeguard in favour of Mauritian authors whose membership has been transferred all the advantages which may have accrued to them before the transfer;
  - (j) help in the preparation of standard forms of contracts for the benefit and use of its members;
  - (k) foster such harmony and understanding between authors and the users of their works as are necessary for the protection of the authors' economic rights;
  - (l) provide its members with information or advice on all matters relating to copyright;
  - (m) establish and administer a Provident Fund and a Benevolent Fund for its members and their heirs;
  - (n) do any further activities which it has been authorised to do by any authors whose economic rights or rights to equitable remuneration it administers.
- (2) The Board may set up such technical committees as it deems fit in the discharge of its functions under subsection (1).

### **35. Membership of the Society**

- (1) A copyright owner or exclusive licensee may apply to the Board for membership of the Society.
- (2) The Board may, on receipt of an application under subsection (1), request the applicant to furnish such particulars as it may require for the purpose of determining whether the application ought to be granted or not.
- (3) The Board may refuse the application or grant it on such terms and conditions and on payment of such membership fee as it thinks fit to impose.

### **36. General Fund**

- (1) The Board shall establish a General Fund-
  - (a) into which any money received by the Society shall be paid;
  - (b) out of which all payments required to be made by the Society shall be effected.
- (2) The Board may, in the discharge of its functions and in accordance with the terms and conditions upon which its funds may have been obtained or derived, charge to the General Fund all remunerations, allowances, salaries, fees, gratuities, working expenses and other charges properly arising.
- (3) The Board shall manage, utilise, or invest the assets and the funds of the Society in such manner as for such purposes as in its opinion will best promote the interests of the Society.

### **37. Publication of accounts**

- (1) The Board shall, not later than 30 September in every year, publish in the Gazette an audited statement of its accounts in respect of the preceding financial year ending on 30 June.
- (2) For the purposes of subsection (1) the Board shall appoint an auditor on such terms and conditions as it thinks fit.

### **38. Execution of documents**

- (1) Subject to subsection (2), every cheque or other document shall be deemed to be executed by or on behalf of the Society where it is signed by the Chairman and the Director.
- (2) The Board may, where the Chairman or the Director is unable to do so, designate a member of the Board to sign a cheque or other document.

### **39. Exemptions**

- (1) Article 910 of the Code Napoleon shall not apply to the Society.
- (2) The Society shall not be liable to the payment of income tax.
- (3) No registration duty shall be payable in respect of any document signed or executed by the Society or under which it is the sole beneficiary.

### **40. Rules**

- (1) The Board may make such rules as it thinks fit in order to implement the objects of the Society.
- (2) Any rules made under subsection (1) shall not be-
  - (a) laid before the Assembly;
  - (b) approved by a Minister;

## **PART VIII - JUDICIAL PROCEEDINGS**

### **41. Civil remedies**

- (1) An action by a copyright owner or an exclusive licensee for an infringement of copyright shall be commenced by plaint with summons before the Supreme Court.
- (2) In an action under subsection (1), the Supreme Court may, notwithstanding any other enactment, grant such remedies, by way of damages, injunction, forfeiture of any infringing copy and of any apparatus, article or thing used for the making the infringing copy or otherwise, as the Supreme Court thinks fit.
- (3) Where a person-
  - (a) has an infringing copy of a work in his possession, custody or control; or
  - (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a work entitled to protection under this Act, the copyright owner may apply to a Judge in Chambers for an order that the infringing copy or article be delivered up to him or to such other person as the Judge in Chambers may direct.

#### **42. Presumptions**

In any action for an alleged infringement of copyright-

- (a) it shall be presumed, unless the defendant puts it in issue, that-
  - (i) copyright subsists in the work to which the action relates;
  - (ii) the plaintiff is the copyright owner if he claims so to be;
  - (iii) the person whose name is indicated on an audiovisual work in the usual manner as producer is the producer of the work;
- (b) it shall be presumed, unless the contrary is proved, that the person named as author of a published work, if it was his true name or a name by which he was commonly known, is the author of the work;
- (c) where it is proved or admitted that the author of a work is dead or a work was published anonymously or under a pseudonym, it shall be presumed, unless the contrary is proved, that-
  - (i) the work is an original work;
  - (ii) any allegation by the plaintiff that the publication was a first publication and occurred in a specified country on a specific date is true;
  - (iii) in the case of a work which was published anonymously or under a pseudonym, the publisher of the work is the copyright owner.

#### **43. Vain Threats**

- (1) Subject to subsection (2), where a person who claims to be a copyright owner or an exclusive licensee threatens any other person with legal proceedings in respect of an alleged infringement of his copyright, the person threatened may-
  - (a) bring an action against the claimant and obtain an injunction against the continuance of the threat;
  - (b) recover damages for any injury which he has sustained where the alleged infringement to which the threat related was not in fact an infringement of any copyright of the claimant.
- (2) Subsection (1) shall not apply where the claimant commences and prosecutes an action with due diligence for infringement of his copyright.

#### **44. Offences**

- (1) Any person who-
  - (a) without the express authorisation of the copyright owner-

- (i) publishes, distributes or reproduces a work;
  - (ii) performs a work for the public;
  - (iii) communicates a work to the public;
  - (iv) broadcasts a work;
  - (v) makes a derivative work;
  - (vi) imports otherwise than exclusively for his own private and personal use, sells, exposes or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute such an infringement if the copy of the work were made in Mauritius;
- (b) manufactures or imports for sale or rental any device or means which is-
- (i) 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 any copy made thereof; or
  - (ii) susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;
- (c) has in his possession in the course of trade any apparatus, article or thing, knowing that it is to be used for making infringing copies of a work or for a purpose referred to in paragraph (b);
- (d) in any other manner contravenes this Act, shall commit an offence.
- (2) For the purposes of subsection (1)(a), where a work is communicated to the public on the premises of an occupier by the operation of any apparatus which is provided by or with the consent of the occupier of those premises, the occupier shall be deemed to be the person communicating the work to the public, whether he operates the apparatus or not.
- (3) (a) Any person who commits an offence shall,
- (i) on a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years.
  - (ii) on a second or subsequent offence be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.
- (b) Notwithstanding any other enactment, a District Magistrate shall have jurisdiction to try any person charged with an offence under this Act.
- (4) The Court before which a person is convicted of an offence may, in addition to any other penalty imposed-
- (a) order the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence;
  - (b) order that such apparatus, article or thing shall be delivered up to any person lawfully entitled to it.

## PART IX - MISCELLANEOUS

### **45. Regulations**

- (1) The Minister may make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide for the amount of the equitable remuneration and the conditions of its payment to the Society.

### **46. Transitional provisions**

- (1) In this section-  
"former society" means the Mauritius Society of Authors established by the Copyright Act 1986.
- (2) Every asset, right or liability of the former society shall vest in, or attach to, the Society.
- (3) Any act commenced or done by, or in relation to the former society shall be deemed to have been commenced or done by, or in relation to, the Society.

#### **47. Repeal**

Subject to subsection (2), the Copyright Act 1986 is repealed.

- (2) This Act shall-
- (a) apply to any work, performance, sound recording or broadcast which, at the commencement of this Act, enjoys protection under the Copyright Act 1986;
  - (b) not affect any contracts relating to a work, performance, sound recording or broadcast entered into before the commencement of this Act.

#### **48. Commencement**

This Act shall come into operation on a day to be fixed by Proclamation.

Passed by the National Assembly on the twenty-second day of July one thousand nine hundred and ninety-seven.

ANDRÉ POMPON

Clerk of the National Assembly