

No. 21 of 2000.

Copyright and Neighbouring Rights Act 2000.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Copyright and Neighbouring Rights Act 2000,

Being an Act to make provision for the protection of copyright and neighbouring rights, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) For the purposes of:

- (a) Section 29 of the *Organic Law on Provincial Governments*; and
- (b) Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*,

it is declared that this law relates to a matter of national interest.

(2) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (qualified rights) of the *Constitution*, namely:

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
- (c) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (d) the right to privacy conferred by Section 49 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public welfare.

2. INTERPRETATION.

In this Act, unless the contrary intention appears:

“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 sound, susceptible of being made audible;

“author”, in relation to a work, means the person who has created the work;

“broadcast” means the communication of a work, performance or sound recording to the public by wireless transmission, including transmission by satellite;

“collective work” means a work created by the collective contribution of two or more persons at the initiative and under the direction of another person or legal entity with the understanding that it shall be disclosed by that other person or entity under his or its own name and that the identity of the contributing persons shall not be indicated;

“communication to the public” means the transmission by wire or without wire of the images or sounds, or both, of a work, performance, sound recording or broadcast 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 distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places or times individually chosen by them;

“computer” means an electronic or similar device having 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 medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

“copyright” means copyright under this Act;

“Court” means the National Court;

“derivative work” includes a work described in Section 4(1)(b);

“economic rights” has the meaning given to it under Section 6;

“expression of folklore” means a group-oriented and tradition-based creation of groups or individuals reflecting the expectations of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including:

- (a) folktales, folk poetry and folk riddles; and

- (b) folk songs and instrumental folk music; and
- (c) folk dances and folk plays; and
- (d) production of folk arts in particular drawings, paintings, carvings, sculptures, pottery, terra cotta, mosaic, woodwork, metalware, jewellery, handicrafts, costumes and indigenous textiles;

“fixation” means the embodiment of sounds or of the representations thereof from which they can be perceived, reproduced or communicated through a device;

“infringement” means any act that violates a right protected under this Act;

“literacy and artistic work” includes a work described in Section 4(1)(a);

“moral rights” has the meaning given to it in Section 7;

“neighbouring rights” means the rights protected under Part III;

“owner of copyright” means:

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

“performers” includes singers, musicians and other persons who sing, deliver, declaim, play in or otherwise perform literacy and artistic works or expressions of folklore;

“person” includes a corporation;

“photographic work” means a 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 but does not include a still picture extracted from an audiovisual work;

“producer”, in relation to an audiovisual work or a sound recording, means the 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 a 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

in the case of an audiovisual work, the showing of individual images non-sequentially, 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;

“public institution” includes a public library or an archive;

“public lending” 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 non-profit making purposes by a public institution in the normal course of providing such services to the public;

“public performance” means:

- (a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process; and
- (b) in the case of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and

in the case of a sound recording, the making of 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 or time, or at different places or times and where the performances can be perceived without the need for communication to the public;

“published” means a work or sound recording tangible 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, 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, or, in the case of a sound recording, with the consent of the producer of the sound recording or his 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 for a limited period of time for profit-making purposes;

“rights” means the rights protected under this Act;

“rights management information” means any information which identifies the author, the work, the performer, the performance of the performer, the producer of the sound recording, the broadcaster, the broadcast, the owner of any right under this Act, the information about the terms and conditions of the use of the work, the performance, the sound recording or the broadcast and any numbers or codes that represent such

information is attached to a copy of a work, a fixed performance, a sound recording or a fixed broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast;

“sound recording” means any exclusively aural fixation of the sounds of a performance or of other sounds, or of a representation of sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied but does not include a fixation of sounds and images such as the sound-track of an audiovisual work;

“work” means any literary, artistic or derivative work eligible for copyright under Section 4;

“work of applied art” means an artistic creation with utilitarian functions or incorporated in a useful article whether made by hand or produced on an industrial scale;

“work of joint authorship” means a work the creation of which two or more authors have contributed provided the work does not qualify as a collective work.

3. APPLICATION.

(1) This Act shall apply to works, performances, sound recordings and broadcasts existing at the coming into operation of this Act provided that the terms of any protection of such works, performances, sound recordings or broadcasts have not expired under any Act or under a law of the country of origin that requires protection under an international treaty to which Papua New Guinea is a party.

(2) Nothing in this Act constitutes a breach of, or default under, or terminates an agreement or obligation under a contract on works, performances, sound recordings or broadcasts concluded or existing at the coming into operation of this Act.

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

- (a) works of authors who are citizens of, or have their habitual residence in, Papua New Guinea; and
- (b) works first published in Papua New Guinea and works first published in another country and also published in Papua New Guinea within thirty days, irrespective of the nationality or residence of their authors; and
- (c) audiovisual works the producer of which has his headquarters or habitual residence in Papua New Guinea; and
- (d) works or architecture erected in Papua New Guinea and other artistic works incorporated in a building or other structure located in Papua New Guinea.

(4) The provisions of this Act shall apply to works that are eligible for protection in Papua New Guinea by virtue of, and in accordance with, any international convention or other international agreement to which Papua New Guinea is party.

(5) The provisions of this Act on the protection of performers shall apply to:

- (a) performers who are citizens of Papua New Guinea; and
- (b) performers who are not citizens of Papua New Guinea but whose performances:
 - (i) take place within Papua New Guinea; 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.

(6) The provisions of this Act on the protection of sound recordings shall apply to:

- (a) sound recordings the producers of which are citizens of Papua New Guinea; and
- (b) sound recordings first fixed in Papua New Guinea; and
- (c) sound recordings first published in Papua New Guinea.

(7) The provisions of this Act on the protection of broadcasts shall apply to:

- (a) broadcast of broadcasting organizations the headquarters of which are situated in Papua New Guinea; and
- (b) broadcasts transmitted from transmitters situated in Papua New Guinea.

(8) The provisions in this Act shall apply to performers, producers of sound recordings and broadcasting organizations that are eligible for protection by virtue of, and in accordance with, any international convention or other international agreement to which Papua New Guinea is party.

PART II. – COPYRIGHT.

4. WORKS PROTECTED.

(1) Subject to this Act, the following works are protected works and are eligible for copyright for under this Act:–

- (a) literary and artistic works of original intellectual creations in the literary and artistic domain, including in particular:
 - (i) books, pamphlets, articles, computer programs and other writings; and
 - (ii) speeches, lectures, addresses, sermons and other oral works; and
 - (iii) dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions; and
 - (iv) musical works, with or without accompanying words; and
 - (v) audiovisual works; and
 - (vi) works of architecture; and
 - (vii) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art; and
 - (viii) photographic works; and
 - (ix) works of applied art; and
 - (x) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science; and
- (b) derivative works including in particular:
 - (i) translations, adaptations, arrangements and other transformations or modifications of works; and
 - (ii) collections of works and databases, whether in machine, readable or other forms; and
 - (iv) collections of expressions of folklore provided that such collections are original by reason of the selection or arrangement of their contents.

(2) Works eligible for copyright under this section are protected by the sole fact of their creation irrespective of the mode or form of expression, content, quality or purpose.

(3) The protection of any work referred to in this section shall be without prejudice to any protection of a pre-existing work or expression of folklore incorporated in or utilized for the making of such a work.

5. SUBJECT MATTERS NOT PROTECTED.

Notwithstanding the provisions of Section 4, protection under this Act shall not extend to:

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, whether expressed, described, explained, illustrated or embodied in a work; and
- (b) any official text of a legislative, administrative or legal nature or any official translation thereof.

6. ECONOMIC RIGHTS.

(1) Subject to this Act, the author or other owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the work:—

- (a) the reproduction of the work; and
- (b) the translation of the work; and
- (c) the adaptation, arrangement or other transformation of the work; and
- (d) the distribution to the public by sale, rental, public lending or otherwise of the original or a copy of the work that has not already been subject to a distribution authorized by the owner of the copyright; and
- (e) the 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 database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned; and
- (f) the importation of copies of the work; and
- (g) the public display of the original or a copy of the work; and
- (h) the public performance of the work; and
- (i) the broadcasting of the work; and
- (j) other communication of the work to the public.

(2) The rights of rental and lending under Subsection (1)(e) does not apply to rental or lending of a computing program where the program itself is not the essential object of the rental or lending.

7. MORAL RIGHTS.

(1) The author of a copyright work shall have the right:

- (a) to have his name indicated prominently on the copies and in connection with any public use of his work; and
- (b) not to have his name indicated on the copies and in connection with any public use of his work; and
- (c) the right to use a pseudonym; and

(d) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudice to his honor or reputation.

(2) Subsection (1) shall apply whether or not a person no longer owns the rights of a copyright work.

(3) The rights referred to in Subsection (1) may be transmissible during the life of the author, but the right to exercise any of those rights may be transmissible by testamentary disposition or by operation of law following the death of the author.

(4) The author of a copyright work may waive any of the rights referred to 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.

(5) Any waiver of the right under Subsection (1)(d) shall specify the nature and extent of the modification or other action in respect of which the right is waived.

(6) Following the death of the author of the a copyright work, the person or legal entity upon whom or which the moral rights have devolved shall be entitled to waive the rights under this section.

8. PRIVATE REPRODUCTIONS FOR PERSONAL PURPOSES.

(1) Notwithstanding the provisions of Section 6(1)(a), and subject to Subsection (2), the private reproduction of a published work in a single copy may be made without the authorization of the author or owner of copyright where the reproduction is made by a person exclusively for his own personal purposes.

(2) Subsection (1) does not apply to the reproduction:

- (a) of a work of architecture in the form of building or other construction; or
- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notation; or
- (c) of the whole or a substantial part of a database in digital form; or
- (d) of a computer program except as provided in Section 13; or
- (e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

9. TEMPORARY REPRODUCTIONS.

Notwithstanding the provisions of Section 6(1)(a), the temporary reproduction of a work shall be permitted where all the following conditions are met:–

- (a) the reproduction is made in the process of a digital transmission of the work or an act of making a digitally stored work perceptible; and
- (b) it is caused by a person or entity that, by way of authorization by the owner of copyright or by operation of law, is entitled to make that transmission or making perceptible of the work; and

- (c) it is an accessory to a transmission or making perceptible during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than referred to in Paragraphs (a) and (b).

10. QUOTATIONS.

(1) Notwithstanding the provisions of Section 6(1)(a), the reproduction, in the form of quotation, of a short part of a published work may be made without authorization of the author or other owner of the copyright provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose.

(2) A quotation referred to in Subsection (1) shall be accompanied by an indication of the source and the name of the author where his name appears in the work from which the quotation is taken.

11. REPRODUCTIONS FOR TEACHING.

(1) Notwithstanding the provisions of Section 6(1)(a), the following acts may be taken without authorization of the author or other owner of copyright:—

- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, writings or sound or visual recordings, provided that such reproduction is compatible with fair practice and it does not exceed the extent justified by the purpose; and
- (b) the reproduction of published articles, other short works or short extracts of works for face-to-face teaching in educational institutions the activities of which do not serve direct or indirect commercial gain, to the extent justified by the purposes, provided that:
 - (i) the act of reproduction is an isolated one occurring, where repeated, on separate and unrelated occasions; and
 - (ii) there is no license or other copyright available under which approval for 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).

12. REPROGRAPHIC REPRODUCTIONS BY PUBLIC INSTITUTIONS.

Notwithstanding the provisions of Section 6(1)(a), a public institution whose activities does not serve direct or indirect commercial gain may, without the authorization of the author or other owner of copyright, make a single copy of the work by reprographic 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 person, provided that:

- (i) the public institution is satisfied that the copy shall be used solely for the purposes of study, scholarship or private research; and
 - (ii) the act of reproduction is an isolated case occurring, where repeated, on separate and unrelated occasions; and
 - (iii) there is no license or other authority available under which approval for such copies can be made; or
- (b) where the copy is made in order to preserve and, where necessary, replace a copy or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another public institution provided that it is impossible to obtain such a copy under reasonable conditions and that the act of reprographic reproduction is an isolated case occurring, where repeated, on separate and unrelated occasions.

13. REPRODUCTIONS, BROADCASTS AND OTHER COMMUNICATION TO THE PUBLIC FOR INFORMATORY PURPOSES.

Notwithstanding the provisions of Section 6(1)(a), (i) and (j), the following acts may be taken in respect of a work without the authorization of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:—

- (a) the reproduction in a newspaper or periodical or 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 except where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work;
- (b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose;
- (c) the reproduction in a newspaper or periodical or the broadcasting or other communication to the public of a political speech, 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.

14. REPRODUCTIONS AND ADAPTIONS OF COMPUTER PROGRAMS.

(1) Notwithstanding Section 6(1)(a) and (c), the reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program may be made without the authorization of the author or other owner of copyright, provided that the copy or adaptation is necessary:

- (a) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or
- (b) for archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer program shall be used for any purposes other than those specified in Subsection (1), and any such copy or adaptation shall be destroyed in the event that the continued possession of the copy of the computer program ceases to be lawful.

15. IMPORTATIONS OF WORKS FOR PERSONAL PURPOSES.

Notwithstanding the provisions of Section 6(1)(f), the importation of a copy of a work by a person for his own personal purposes may be made without the authorization of the author or other owner of copyright.

16. DISPLAYS OF WORKS.

Notwithstanding the provisions of Section 6(1)(g), the public display of originals or copies of works may be made without the authorization of the author, provided:

- (a) that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process; and
- (b) that the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

17. DURATION OF COPYRIGHT.

(1) Subject to this section, the economic and moral rights in respect of a copyright work shall be protected during the life of the author and for a period of 50 years of the date of his death.

(2) In the case of a work of joint authorship, the economic and moral rights of the author shall be protected during the life of the author and for a period of 50 years from the date of his 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 a period of 50 years from the date on which the work was made, first made available to the public or first published, whichever occurs last.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for a period of 50 years from the date on which the work was made, first made available to the public or first published, whichever occurs last, provided that where the author's identity is revealed or is no

longer in doubt before the expiration of the said period, the provisions of Subsection (1) or Subsection (2), as the case may be, shall apply.

(5) In the case of a work of applied art, the economic and moral rights shall be protected for a period of 25 years from the making of the work.

18. ORIGINAL OWNERSHIP OF ECONOMIC RIGHTS.

(1) Subject to this section, the original owner of the economic rights in a work 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 unless a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, in which case, the author of each part shall be the original owner of the economic rights in the part that he has created.

(3) In respect of a collective work, the 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) In respect of a work created by an author employed by a person or legal entity in the course of his employment, the original owner of the economic rights shall be the employer unless otherwise provided under a written agreement.

(5) In respect of an audiovisual work:

- (a) the original owner of the economic rights shall be the producer unless otherwise provided under a written agreement; and
- (b) 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 maintain their economic rights in their contributions or pre-existing work 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.

19. PRESUMPTION OF AUTHORSHIP AND OF REPRESENTATION OF THE AUTHOR.

(1) A person whose name is indicated as the author on a work shall, in the absence of proof to the contrary, be presumed to be the author of the work.

(2) Subsection (1) applies where the name is a pseudonym and there is no doubt as to the identity of the author.

(3) Subject to Subsection (2), in the case of an anonymous or pseudonymous work, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in that capacity, shall be entitled to exercise and enforce the moral and economic rights of the author except that when the author reveals his identity, this presumption shall cease to apply.

20. ASSIGNMENT AND LICENSING OF AUTHOR'S RIGHTS.

(1) Economic rights in respect of a copyright work may be assignable in whole or in part.

(2) An assignment of an economic right under this section , and any license to do an act subject to authorization by the author or other owner of the copyright shall be in writing signed by the assignor and the assignee or by the licensor and the licensee, as the case may be.

(3) An assignment in whole or in part of any economic right in respect of a copyright work , or a license to do an act subject to authorization by the author or other owner of the copyright, shall not include, or be deemed to include, the assignment or license of any other right not explicitly referred to therein.

PART III. – NEIGHBOURING RIGHTS.

21. ACTS REQUIRING AUTHORIZATION OF PERFORMERS.

(1) Subject to Section 25, a performer shall have the exclusive right to carry out or to authorize any of the following acts:–

- (a) the broadcasting or other communication to the public of his performance, except where the broadcasting or other communication:
 - (i) is made from a fixation of the performance, other than a fixation made under Section 25 or otherwise made without the authorization of the performer; or
 - (ii) is a re-broadcasting made or authorized by the organization initially broadcasting the performance; and
- (b) the fixation of his unfixed performance; and
- (c) the direct or indirect reproduction of a fixation of his performance, in any manner or form; and
- (d) the first making available to the public of a fixation of his performance, or copies thereof, through sale or other transfer or ownership; and
- (e) the rental to the public or public lending of a fixation of his performance, or copies thereof, irrespective of the ownership of the copy rented or lent; and
- (f) the making available to the public of his fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

(2) Where a performer has authorized the incorporation of his performance in an audiovisual fixation, Subsection (1) shall have no further application.

(3) Independently of the performer's economic rights, and notwithstanding the transfer of those rights, the performer has, in respect of his live aural performances and performances fixed in phonograms, the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and the right to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(4) Section 7(3) and (4) applies mutatis mutandis to any right conferred by Subsection (3).

(5) Nothing in this section shall be construed to deprive a performer of the right to agree by written agreement on such terms and conditions that are most favourable to him in respect of his performances.

(6) The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed in a phonogram, or, in the absence of such a fixation, from the end of the year in which the performance took place.

22. ACTS REQUIRING AUTHORIZATION OF PRODUCERS OF SOUND RECORDINGS.

(1) Subject to Section 25, a producer of a sound recording shall have the exclusive right to carry out or to authorize any of the following acts:—

- (a) the direct or indirect reproduction of the sound recording in any manner or form; and
- (b) the importation of copies of the sound recording; and
- (c) the making available to the public by sale or other transfer of ownership of the original or copies of the sound recording that has not already been subject to a distribution authorized by the producer; and
- (d) the rental to the public or public lending of a copy of the sound recording irrespective of the owner of the copy rented or lent; and
- (e) the making available to the public of the sound recording, by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them.

(2) The rights under Subsection (1) shall be protected from the publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, where the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

23. 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 or performers and the producer of the sound recording shall be paid by the user to the producer.

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

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, where the sound recording has not been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

(4) For the purposes of this section, a sound recording that has been made available to the public by wire or wireless means in such a way that members of the public may access it from a place and at a time individually chosen by them shall be considered as if it has been published for commercial purposes.

24. ACTS REQUIRING AUTHORIZATION OF BROADCASTING ORGANIZATIONS.

(1) Subject to Section 25, a broadcasting organization has, in relation to a broadcast, the exclusive right to carry out or to authorize any of the following acts:—

- (a) the re-broadcasting of the broadcast; and
- (b) the communication to the public of the broadcast; and
- (c) the fixation of the broadcast; and
- (d) the reproduction of a fixation of the broadcast.

(2) The right under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.

25. LIMITATIONS OF PROTECTION.

Sections 21, 22 and 24 shall not apply where the acts referred to in those sections are related to:

- (a) the use of short excerpts for reporting current events to the extent justified by the purpose of providing current information; or
- (b) reproduction solely for scientific research; or
- (c) reproduction solely for the purpose of face-to face- teaching activities except for performances and phonograms which have been published as teaching or instruction materials; or
- (d) cases where, under Part II, a work can be used without the authorization of the author or other owner of copyright.

PART IV. – ENFORCEMENT OF RIGHTS.**26. CONSERVATORY AND PROVISIONAL MEASURES.**

(1) The Court shall have the authority, under its civil and criminal jurisdiction, and on such terms as it may deem reasonable:

- (a) to grant injunctions to prohibit the committing, or continuation of committing, of an infringement of any right protected under this Act; or
- (b) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under this Act where the making or importation of copies is subject to such authorization; or
- (c) to order the impounding or packaging of the implements that could be used for the making of copies of works and sound recordings, and the documents, accounts or business papers relating to such copies.

(2) The provisions of the *Criminal Code Act* (Chapter 262) dealing with search and seizure shall apply to infringement of rights under this Act.

(3) The provisions of the *Customs Act* (Chapter 101) dealing with illegal goods shall apply to articles and implements used in relation to infringements of rights protected under this Act.

27. CIVIL REMEDIES.

(1) The owner of any right protected under this Act whose right has been infringed shall be entitled to payment of damages by the infringer for the prejudice suffered as a consequence of the act of infringement including such expenses directly caused by the infringement.

(2) For the purposes of Subsection (1), the amount of damages shall be fixed taking into account the importance of the material, the moral prejudice suffered by the owner of the right and the importance of the infringer's profits attributable to the infringement.

(3) Where the infringer did not or had no justifiable reason to know that he was engaged in an infringing activity, the Court may limit damages to the profits of the infringer attributable to the infringement.

(4) Subject to Subsection (5), where infringing copies exist, the Court shall order the destruction or other reasonable disposition of those copies and their packaging in such a manner as to avoid harm to the right holder, unless the owner of the right requests otherwise.

(5) Subsection (4) shall not apply to copies and their packaging which were acquired by a third party in good faith.

(6) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court may, whenever and to the extent it is reasonable, order their destruction or other reasonable disposition in such a

manner as to minimize the risks of further infringements, including the surrender of the implements to the owner of the right.

(7) Where it appears to the Court that there likelihood of an act of infringement continuing, the Court may order that such act of infringement shall cease to be continued.

(8) A person who carries on an act of infringement in contravention of an order under Subsection (7) shall be liable, on conviction, to a fine not exceeding K100,000.00 in addition to any other penalty the Court is empowered to impose.

28. CRIMINAL SANCTIONS.

(1) A person who infringes a right protected under this Act, if done wilfully or by gross negligence and for profit-making purposes, is guilty of an offence.

Penalty: Imprisonment for a term not exceeding ten years or a fine not exceeding K100,000.00, or both.

(2) The Court may apply the measures and remedies referred to in Sections 31 and 32 in any criminal proceedings under Subsection (1) provided that no decision has yet been taken on such remedies in a civil proceeding.

29. MEASURES, REMEDIES AND SANCTIONS AGAINST ABUSES.

(1) The following acts shall be considered unlawful and, in the application of Sections 26, 27 and 28, shall be assimilated to infringements of the rights protected under this Act:—

- (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, a sound recording or a broadcast, or to impair the quality of copies made;
- (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;
- (c) the removal or alteration of any electronic rights management information without authority;
- (d) the distribution, import for distribution, broadcasting, communication to the public or making available to the public,

without authority, of works, performances, sound recordings or broadcasts, knowing, or having reason to know, that electronic rights management information has been removed or altered without authority.

(2) In the application of Sections 26, 27 and 28, any illicit device and means referred to in Subsection (1) and any copy from which rights management information has been removed, or in which such information has been altered, shall

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be assimilated to infringing copies or works, and any illicit act referred to in Subsection (1) shall be treated as an infringement of copyright or neighbouring rights to which the civil remedies and criminal sanctions provided for in Sections 26, 27 and 28 are applicable.

PART V. – PROTECTION OF EXPRESSIONS OF FOLKLORE.

30. RIGHTS PROTECTED.

(1) Expressions of folklore are protected against:

- (a) reproduction; and
- (b) communication to the public by performance, broadcasting, distribution by cable or by other means; and
- (c) adaptation, translation and other transformation when such uses are made either for commercial purposes or outside their traditional or customary context.

(2) Subsection (1) shall not apply where acts referred to therein are related to:

- (a) the use by a person exclusively for his own personal purposes; and
- (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information; and
- (c) the use solely for the purposes of face-to-face teaching or for scientific research.

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

(4) The right to authorize acts referred to in Subsection (1) and the terms and conditions of such authorization shall vest in a competent authority as determined by the Minister for the purposes of this section.

(5) All monies collected in relation to this Part shall be used for purposes of cultural development as the competent authority referred to in Subsection (4), on the approval of the Minister, determines.

31. INFRINGEMENT OF FOLKLORE.

A person who, without the consent of the competent authority referred to in Section 30(4), uses an expression of folklore in a manner not permitted by that section, is guilty of an offence and shall be liable to the competent authority for damages, injunctions and any other remedies as the Court may deem fit.

PART VI. – MISCELLANEOUS.

32. APPLICATION OF INTERNATIONAL TREATIES.

The provisions of any international treaty in respect of copyright and related rights to which Papua New Guinea is a party shall apply to matters dealt with under this Act and, in case of any conflict with a provision of this Act, the treaty shall prevail to the extent of any inconsistency.

33. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing all matters that are by this Act required to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

34. REPEAL.

The *Copyright Act 1978* is repealed.

Office of Legislative Counsel, PNG