

*Legal Supplement Part A to the "Trinidad and Tobago Gazette", Vol. 39,
No. 70, 8th May, 2008*

First Session Ninth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 5 of 2008

[L.S.]

AN ACT to amend the Copyright Act, 1997

[Assented to 1st May, 2008]

WHEREAS it is enacted by section 13(1) of the ^{Preamble} Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution, and if any Act does so declare it shall have effect accordingly:

And whereas it is provided in subsection (2) of the said section 13, that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that this Act have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:—
Short title	1. This Act may be cited as the Copyright (Amendment) Act, 2008.
Act inconsistent with Constitution	1A. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Interpretation Act No. 8 of 1997	2. In this Act “the Act” means the Copyright Act, 1997.
Section 3 amended	<p>3. Section 3 of the Act is amended—</p> <p>(a) in the definition of “collective work”, by—</p> <p style="padding-left: 20px;">(i) deleting the word “disclosed” and substituting the word “published”; and</p> <p style="padding-left: 20px;">(ii) deleting the words “and that the identity of the contributing natural persons will not be indicated” and substituting the words “subject to the moral rights of the contributing natural persons”;</p> <p>(b) by deleting the definition of “communication to the public” and substituting the following definition:</p> <p style="padding-left: 20px;">“communication to the public” means the transmission to the public by wire or wireless means, including the making available to</p>

the public of the images or sound or both, of a work, performance or sound recording, in such a way that members of the public may access it from a place and at a time individually chosen by them;”;

(c) in the definition of “electronic retrieval system”, by inserting after the words “means,” the words “from a place and at a time individually chosen by him,”;

(d) by inserting in the appropriate alphabetical sequence the following definition:

“ ‘infringing copies’ means—

- (i) an article, the making of which constitutes an infringement of the copyright work, performance, sound recording or broadcast;
- (ii) an article, which if it had been imported or is proposed to be imported into Trinidad and Tobago and its making in Trinidad and Tobago would have constituted an infringement of the copyright in the work in question or infringement of neighbouring rights in the performance, sound recording or broadcast or a breach of a licence agreement relating to that work, performance, sound recording or broadcast; and
- (iii) any other copy falling to be treated as an infringing copy, it not having been made in accordance with the provisions of sections 9, 10, 11, 12, 13, and 14;”;

-
- (e) in the definition of “public performance”, by deleting the word “were” occurring after the word “places” and substituting the word “where”;
- (f) in the definition of “published”, by deleting the comma after the word “public” in the second place where it occurs;
- (g) by inserting in the appropriate alphabetical sequence the following definition:
- “rights management information” means information or numbers or codes representing information, attached to a copy of a work, fixed performance, sound recording or fixed broadcast or appearing in connection with the broadcasting or communication to the public, of a work, fixed performance, sound recording or a broadcast—
- (a) identifying the author, work, performer, performance of a performer, producer of a sound recording, sound recording, broadcaster, broadcast or owner of any right protected under this Act; or
- (b) about the terms and conditions of use of the work, performance, sound recording or broadcast;”
- and
- (h) in the definition of “work of joint authorship”, by inserting after the word “the”, in the second place where it occurs, the words “contribution of each author is not separate from that of the other author or authors and the”.

4. Section 18 of the Act is amended by inserting after subsection (3) the following subsections:

“(4) Independently of his copyright and even where he is no longer the owner of copyright, the performer shall, as regards his live aural performances and performances fixed in sound recordings, have the right—

(a) 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

(b) to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(5) Subsections (2) and (3) apply *mutatis mutandis* to the rights granted under subsection (4).

(6) Nothing in this section shall be construed to deprive the performer of the right to agree by contract, on terms and conditions more favourable for him in respect of his performance.”.

5. Section 19 of the Act is amended in subsection (1), by inserting after the words “moral rights” the words “of the author”.

6. The Act is amended by inserting after section 19, the following section:

“Duration of moral rights of performers

19A. The rights under section 18(4) shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed in a sound recording or, in the absence of such a fixation, from the end of the year in which the performance took place.”.

Section 21 amended

7. Section 21 of the Act is amended in subsection (1)—

- (a) in paragraph (a), by deleting the words “other than a communication through an electronic retrieval system”;
- (b) in paragraph (c), by deleting the full stop and substituting a semicolon; and
- (c) by inserting after paragraph (c), the following paragraphs:
 - “(d) the distribution to the public, by sale or other transfer of ownership, of a fixation of his performance or copies thereof, that have not already been subject to a distribution authorized by the performer;
 - (e) the rental to the public of a fixation of his performance or copies thereof, for the purposes of direct or indirect commercial advantage, irrespective of the ownership of the original or copy rented; and
 - (f) the making available to the public of his fixed performance through an electronic retrieval system.”.

Section 22 amended

8. Section 22 of the Act is amended in subsection (1)(e), by inserting after the word “rental”, the words “to the public”.

Section 23 amended

9. Section 23 of the Act is amended in subsection (1), by inserting after the word “directly” in the third line, the words “or indirectly”.

Section 26 amended

10. Section 26 of the Act is amended in subsection (1A), by deleting paragraphs (a) and (b), and substituting the following paragraphs:

- “(a) a performance, is the performer in the performance;

(b) a sound recording, is the producer of the sound recording; and

(c) a broadcast, is the broadcasting organization.”.

11. The Act is amended by deleting the subheading ^{Heading amended} “INFRINGEMENT” occurring after Part VII and substituting the subheading “CIVIL REMEDIES”.

12. The Act is amended by inserting after section 32, ^{Section 32A inserted} the following section:

^{“Certain infringement actionable by non-exclusive licensee} 32A. (1) A non-exclusive licensee may bring an action for infringement of copyright or neighbouring rights where—

(a) the infringement was directly connected to a prior licensed act of the licensee; and

(b) the licence—

(i) is in writing and is signed by or on behalf of the owner of the copyright or neighbouring rights; and

(ii) expressly grants the non-exclusive licensee a right of action under this section.

(2) In an action brought under this section, the non-exclusive licensee shall have the same rights and remedies available to him as the owner of the copyright or neighbouring rights would have had, had he brought the action.

(3) The rights granted under this section are concurrent with those of the owner of the copyright.

(4) In an action brought by a non-exclusive licensee by virtue of this section the defendant may avail himself of the defence which would have been available to him had the action been brought by the owner of the copyright or neighbouring rights.

(5) Section 33 shall apply to a non-exclusive licensee who has a right of action by virtue of this section as it applies to an exclusive licensee.

(6) In this section a “non-exclusive licensee” means the holder of a licence authorizing the licensee to exercise a right which remains exercisable by the owner of the copyright or neighbouring rights.”.

Section 34 amended

13. Section 34 of the Act is amended—

(a) in subsection (1)—

- (i) in paragraph (c), by deleting the word “or” in the second place where it occurs;
- (ii) by inserting after paragraph (c), the following paragraph:

“(d) imports into Trinidad and Tobago; or”;
- (iii) by re-lettering paragraph (d) as paragraph (e); and
- (iv) by deleting the words “the making of which he knows or has reason to believe constituted an infringement of copyright.” and substituting the words “which is, and which he knows or has reason to believe, is an infringing copy of a work.”; and

- (b) in subsection (2), by deleting the words “the making of those copies would constitute an infringement of copyright.” and substituting the words “it is to be used to make infringing copies.”.

14. The Act is amended by inserting after section 34, Sections 34A and 34B inserted the following sections:

“Measures, remedies and sanctions against acts constituting infringements of copyright and neighbouring rights

34A. (1) The following acts shall constitute infringements of copyright and neighbouring rights:

- (a) the manufacture or importation for sale or rental of any device or means, specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as “copy-protection or copy-management device or means”); and
- (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 programme, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the programme.

(2) Section 38 shall apply to an illicit device or means mentioned in subsection (1) as it applies to infringing copies.

(3) The owner of copyright in a work shall also be entitled to damages for infringement provided for by sections 31(1) and 38(1)(d), where—

- (a) authorized copies of the work have been made and offered for sale or rental in an electronic form combined with a copy-protection or copy-management device or means, and a device or means specifically designed or adapted to circumvent the said device or means is made or imported for sale or rental; or
- (b) the work is authorized for inclusion in an encrypted programme, broadcast or otherwise communicated to the public, including by satellite, and a device or means enabling or assisting the reception of the programme by those who are not entitled to receive the programme is made or imported for sale or rental.

Abuses in
respect of
rights
management
information

34B. (1) The following acts are infringements of copyright and neighbouring rights:

- (a) the alteration or removal of any electronic rights management information without authority, from any work, performance, sound recording, or broadcast or any copy of such work, performance, sound recording or broadcast; and
- (b) the distribution, importation for distribution, broadcasting or other communication to the public, without authority, of any

work, performance, sound recording or broadcast, or any copy of such work, performance, sound recording or broadcast by any person who knows or has reason to believe that electronic rights management information has been removed from or altered in such work, performance, sound recording or broadcast, without authority.

(2) For the purposes of this Part, any copy of a work, performance, sound recording or broadcast referred to in subsection (1), constitutes an infringing copy of such work, performance, sound recording or broadcast.”.

15. The Act is amended by deleting the heading— Heading

“PART VIII
CIVIL REMEDIES AND CRIMINAL LIABILITY”

16. The Act is amended by inserting after section 40, Heading inserted
the following heading:

“PART VIII
OFFENCES”

17. The Act is amended by deleting section 41 and Section 41 deleted
and substituted
substituting the following sections:

“Penalties in respect of infringing copies of a work, performance, sound recording or broadcast

41.(1) A person commits an offence who, without the licence of the copyright owner—

(a) makes for sale or hire;

(b) imports into Trinidad and Tobago otherwise than for his private and domestic use;

- (c) possesses in the course of a business with the intention of infringing the copyright in the work or neighbouring rights in the performance, sound recording or broadcast;
- (d) in the course of a business—
 - (i) sells or lets for hire;
 - (ii) offers or exposes for sale or hire;
 - (iii) exhibits in public;
 - (iv) distributes; or
- (e) distributes otherwise than in the course of a business in excess of three copies of,

an article which is, and which he knows or has reason to believe is, an infringing copy of a copyright work, performance, sound recording or broadcast.

(2) A person commits an offence who—

- (a) makes an article specifically designed or adapted for making copies of a particular copyright work, performance, sound recording or broadcast; or
- (b) has such an article in his possession,

knowing or having reason to believe that it is to be used to make infringing copies for sale or hire or for use in the course of a business.

(3) A person guilty of an offence under subsections (1) and (2) is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for ten years.

(4) The Magistrate before whom proceedings are brought against a person for an offence under this section may, if satisfied that at the time of his arrest or charge the person had in his possession, custody or control—

- (a) an infringing copy of a copyright work, performance, sound recording or broadcast in the case of a business;
- (b) an article specifically designed or adapted for making copies of a particular copyright work, performance, sound recording or broadcast, knowing or having reason to believe that it had been or was to be used to make infringing copies; or
- (c) any apparatus, implements or devices that may be used to commit or continue to commit an offence under this Act,

order that the infringing copy, article, apparatus, implements or devices be destroyed or delivered up to the copyright owner or to such other person as the Magistrate may direct.

Penalties in respect of unauthorized public performance

41A. (1) Where copyright or neighbouring rights are infringed (otherwise than by reception of a broadcast or cable programme)—

- (a) by the public performance of a copyright work or sound recording; or
- (b) by the playing or showing in public of a sound recording or film,

any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.

(2) A person guilty of an offence under subsection (1), is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for ten years.”.

Section 42 amended

18. Section 42 of the Act is amended by deleting all the words after the words “as well as the body corporate” and substituting the words “commits an offence and in the case of an officer of such body corporate, is liable, upon conviction, to a fine of two hundred and fifty thousand dollars and to imprisonment for ten years and in the case of the body corporate, is liable upon conviction, to a fine of two hundred and fifty thousand dollars.”.

Section 44 deleted and substituted

19. The Act is amended by deleting section 44 and substituting the following section:

“Powers of the Magistrate

44. (1) For the purposes of any offence under this Part, where copies suspected of being infringing copies of a work, performance, sound recording or broadcast have been seized, it shall be sufficient to examine one per centum or any five copies, whichever is the lesser and where such examination establishes that such copies are all infringing copies, it shall be presumed, until the contrary is proven, that the remaining copies are infringing copies.

(2) Where a person is convicted of an offence under this Part the Magistrate shall in imposing a sentence be entitled to take into consideration the entire number of infringing copies of a work, performance, sound recording or broadcast seized at the time of arrest or charge.”.

20. Section 45 of the Act is amended—

Section 45 amended

- (a) in subsection (1), by inserting after the word “broadcasts” occurring in the last line, the words “and apparatus, implements and devices used for transporting or marketing such copies”;
- (b) in subsection (2)—
 - (i) in paragraph (a), by deleting the words “; and” and substituting the word “;”;
 - (ii) by inserting the following paragraph:
 - “(b) any apparatus, implements and devices used for transporting or marketing an article which appears to him to be an infringing copy of a work, performance, sound recording or broadcast; and”;
 - (iii) by re-lettering paragraph (b) as paragraph (c);
- (c) in subsection (4), by deleting all the words beginning with the word “enter” in the penultimate line to the word “be” in the last line and substituting the words “execute any of the powers vested in him under subsections (1), (2) and (3)”;
- (d) by inserting the following subsection:
 - “(6) A police officer who has reasonable cause to suspect that—
 - (i) copies of a work, performance, sound recording, or broadcast found in any

premises or place, vessel, aircraft or vehicle are infringing copies; and

- (ii) any apparatus, implements or devices found in any premises or place, vessel, aircraft or vehicle are being used for the purpose of transporting or marketing infringing copies,

and that such copies, apparatus, implements or devices appear, having regard to all the circumstances, to have been abandoned, may bring such copies, apparatus, implements or devices before a Magistrate and upon proof that the copies, apparatus, implements or devices are infringing copies, apparatus, implements or devices apply for an Order for the destruction of such copies, apparatus, implements or devices or that such copies be dealt with as the Magistrate may think fit.”.

Section 59 inserted

21. The Act is amended by inserting after section 58, the following section:

“Limitation of
certain
actions
Act No. 36 of
1997

59. Section 3 of the Limitation of Certain Actions Act, 1997 applies to an action to recover any sum recoverable under this Act.”.

Passed in the Senate this 12th day of February, 2008.

J SANDY

Acting Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less that three-fifths of all the members of the Senate, that is to say, by the votes of 28 Senators.

J. SANDY
Acting Clerk of the Senate

Passed in the House of Representatives this 18th day of April, 2008.

N. JAGGASSAR
Acting Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less that three-fifths of all the members of the House, that is to say, by the votes of 26 members of the House.

N. JAGGASSAR
Acting Clerk of the House