

LEGAL NOTICE No. 28

REPUBLIC OF TRINIDAD AND TOBAGO

THE COPYRIGHT ACT, 1985

REGULATIONS

MADE BY THE MINISTER OF SPORT, CULTURE AND YOUTH AFFAIRS UNDER
SECTION 64 OF THE COPYRIGHT ACT, 1985

THE COPYRIGHT REGULATIONS, 1986

PART I

PRELIMINARY

1. These Regulations may be cited as the Copyright Regulations, 1986. Citation
2. (1) For the purposes of these Regulations, the expression “the Act” means the Copyright Act, 1985. Definitions
No. 13 of 1985
- (2) A reference to a section by number is a reference to the section so numbered in the Act.

PART II

PROCEDURE FOR RESTRICTING INFORMATION OF
INFRINGEMENT COPIES

3. For the purposes of this Part, the expression “Comptroller” means the Comptroller Comptroller of Customs and Excise.
4. (1) A notice which is to be given to the Comptroller under section 34(1) shall be in the form set out in Schedule I. Notices to
Comptroller
Schedule I
- (2) A separate notice in that form shall be given in respect of each literary, musical, or audio-visual production or sound recording.
- (3) A fee of twenty-five dollars in respect of each notice shall be paid to the Comptroller at the time such notice is given.
5. (1) The owner of the copyright in any published literary or musical work or of neighbouring rights in any audio-visual work or sound recording in respect of which a notice has been given under regulation 4 shall notify the Comptroller in writing of any change in ownership or other change affecting the notice within twenty-eight days after such change and further notice shall be given as the Comptroller may require. Changes of
ownership
of work

(2) Any notice under regulation 4 shall be deemed to have been withdrawn as from the expiry of twenty-eight days after the change of ownership of the copyright or neighbouring rights in any such work or sound recording, whether a notice has been given under paragraph (1) or not.

Furnishing
of informa-
tion and
documents
requested by
Comptroller

6. (1) The owner of the copyright or neighbouring rights, and any agent of his, who gives a notice under regulation 4 shall—

- (a) at the time of giving the notice and, if so requested by the Comptroller, at the time when the work or sound recording is imported, furnish to the Comptroller such evidence and information, within such time and in such form, as he may require; and
- (b) within such time as the Comptroller may specify produce such books or other documents as he may require.

(2) Where any such evidence or information is not furnished or any such books or documents are not produced as required by the Comptroller, the notice shall be deemed to have been withdrawn from the expiry of the time so required or specified.

Giving of
security

7. (1) The owner of the copyright or neighbouring rights, and any agent of his, who gives a notice under regulation 4 shall give to the Comptroller security or further security, within such time and in such manner, whether by bond, deposit of a sum of money or otherwise, as the Comptroller may require, against all actions, proceedings, claims and demands whatsoever which may be taken or made against, or costs and expenses which may be incurred by, the Comptroller in consequence of the detention of any copy of the work or sound recording to which the notice relates.

(2) Such security or further security shall be given at the time the notice is given or at such other time as the Comptroller may require.

(3) Where such security or further security is not given within such time or in the manner specified by the Comptroller, the notice shall be deemed to have been withdrawn as from the expiry of the time so required.

Indemnities

8. (1) In every case—

- (a) in which the Comptroller has not required security or further security to be given under regulation 7;
- (b) in which the Comptroller has taken security and that security is insufficient; or
- (c) in which the notice is deemed to have been withdrawn under regulation 5(2), 6(2) or 7(3);

the owner of the copyright or neighbouring rights, and any agent of his, who has given a notice under regulation 4 shall—

- (i) jointly and severally keep the Comptroller indemnified against all actions, proceedings, claims and demands whatsoever which may be taken or made against them; and

- (ii) repay the Comptroller all costs and expenses which may be incurred by him in consequence of the detention of, or anything done in relation to, any copy of a work or sound recording to which the notice relates.

(2) Any such costs, expenses, damages or other sums may be recoverable as a debt due to the State.

PART III

NOTICE OF INTENDED PUBLICATION OF A NEW WORK

9. For the purposes of this Part, the expressions "old work" and "new work" have the meanings assigned to those expressions in section 35(2)(j). Definitions

10. Notice of an intended publication of a new work for the purposes of section 35(2)(j) shall be given by advertisement in a daily newspaper circulating in Trinidad and Tobago. Advertisement of notice of intended publication

11. Notice shall be given twice, on the first occasion to appear not less than three months, and on the second not less than two months, before the intended date of publication, with an interval of not less than one month between the two occasions. Frequency of advertisements

12. Such notice shall be signed by or on behalf of the person giving it and shall include the following particulars: Contents of notice

- (a) the name and address of the person intending to publish and a statement of his intention to publish;
- (b) the title (if any) and a description of the old work and the date or estimated date when the old work was made;
- (c) the name of the author of the old work, if known to the person intending to publish;
- (d) the name and address of the library or other institution in which the manuscript or a copy of the old work is kept;
- (e) the name of the person from whom the library or other institution, in which the manuscript or a copy of the old work is kept, acquired it, or a statement that the person intending to publish has failed after reasonable enquiries to discover the name of that person;
- (f) an invitation to any person claiming to be the owner of the copyright in the old work to give notice of his claim to the person intending to publish.

PART IV

PAYMENT OF RECORDING ROYALTIES

Definitions

13. For the purposes of this Part, the expressions—

- (a) “importer” means a person who imports, or who causes to be imported into Trinidad and Tobago, copies of a record which are intended for retail sale in Trinidad and Tobago;
- (b) “presser” means a person who makes a record of a musical or literary work under contract for another person and otherwise than on his own account;
- (c) “producer” means a person who—
 - (i) makes or authorises the making of a record of a musical or literary work; or
 - (ii) reproduces, or authorises the reproduction of, a record of a musical or literary work, by the manufacture of copies thereof;
- (d) “record” means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound-track associated with an audio-visual production;
- (e) “recording right” means, in relation to a musical or literary work, the right to make, or authorise the making, of records of the work;
- (f) “recording right society”, means the licensing body designated under regulation 22(1) for the purposes of this Part;
- (g) “writer” means the author of a literary work or the composer of a musical work.

Conditions under which records of published works may be made

14. A producer who intends to make, or for his own account to authorise the making of, records of a musical or literary work in which copyright subsists, pursuant to section 36(2), may do so only if he complies with the following conditions, but not otherwise—

- (a) not less than seven days before the records are made the producer shall cause a notice to be served upon the recording right society containing the following particulars—
 - (i) his name and address;
 - (ii) the names of the works to which the notice refers, or a description sufficient to identify them and the names of the writers thereof;
 - (iii) the total duration of the playing time of the record,

- (iv) the name of the person by whom, and the address of the premises where, the record will be made;
 - (v) the retail selling price fixed or proposed by the producer for each copy of the record intended to be sold by retail;
 - (vi) the number of records intended to be made;
 - (vii) the date on which the records will be released for retail sale to the public (in this Part referred to as "the date of release");
- (b) within fifteen days after a person has made copies of a record of a musical or literary work (whether for his own account or under contract to another person) he shall—
- (i) submit to the recording right society a statement, certified by an official of the Department of Customs and Excise, specifying the number of records made, together with a copy of the label affixed to each record;
 - (ii) pay to the recording right society the amount of standard royalties due in respect of the records made, calculated in accordance with the rates set out in the Schedule to the Act or such other rates as may be substituted therefor from time to time;
- (c) where a producer has authorised a presser to make records of a musical or literary work pursuant to this Part, he shall reimburse the presser with all royalties paid by the presser to the recording right society in accordance with the following terms—
- (i) the producer shall make reimbursement in full to the presser within seven days after being notified in writing by the presser of the amount of royalties paid by the presser on his behalf;
 - (ii) any sums due to a presser from a producer pursuant to this regulation shall be recoverable by the presser as a civil debt;
 - (iii) without prejudice to his rights under subparagraph (c)(ii), a presser, to whom reimbursement is due from a producer under this regulation, may withhold delivery of any record in his possession which he has made for the account of the producer, until reimbursement in full has been made by the producer and, if reimbursement in full is not made within one month from the notification by the presser of the amount due to be reimbursed, the presser may sell the records and recover from the proceeds all sums due to him by way of reimbursement

of royalties paid by him on behalf of the producer together with the costs of the sale (if any), and shall pay the balance, if any, to the producer;

- (d) where the recording right society considers that additional royalties are payable in respect of records on which standard royalties have already been paid, or are already due, the society may calculate the amount of additional royalties due and serve written notice of the amount due on the producer of the record (not being simply the presser of the record);
- (e) the producer on whom a written notice of additional royalties has been served shall pay the amount specified in the notice to the society within fifteen days of the date of the notice;
- (f) if a producer, on whom a notice of additional royalties due has been served pursuant to this Part, fails to pay the amount specified to the recording right society within the prescribed period, the society may bring proceedings for recovery of the amount as a civil debt; but the court shall not order the producer to make any payment of any amount to the society unless it is satisfied that additional royalties of that amount are payable in accordance with the Schedule to the Act;
- (g) where—
 - (i) a producer, not less than six months after the date of release of a record, produces to the recording right society one hundred or more unsold copies of the record in respect of which he had given notice under subparagraph (a); and
 - (ii) the unsold copies are, to the satisfaction of the society, rendered unsaleable by destruction or otherwise, the society shall refund to the producer a sum equivalent to ninety-five per cent of the royalties paid on the unsold records.

Conditions
under which
imported
records of
published
works may
be made

15. An importer of copies of a record made outside Trinidad and Tobago of a musical or literary work—

- (a) in which copyright subsists; and
- (b) the writer of which is a citizen of, or is domiciled or resident in, Trinidad and Tobago,

shall not less than seven days before the copies of the record are due to arrive in Trinidad and Tobago—

- (i) cause a notice to be served on the recording right society containing the following particulars—
 - (A) his name and address;

- (B) the names of the works to which the notice refers, or a description sufficient to identify them and the names of the writers thereof;
- (C) the total duration of the playing time of the record;
- (D) the name and address of the person who made the record;
- (E) the retail selling price fixed or proposed for each copy of the record intended to be sold by retail;
- (F) the number of copies of the record to be imported;

and shall—

(ii) either—

- (a) submit to the recording right society evidence establishing to the satisfaction of the society that royalties have been paid to the writer of the work of an amount which is no less than the amount which would have been paid to the writer if the record had been made in Trinidad and Tobago and the payment had been made to the society pursuant to regulation 14; or
- (b) pay to the recording right society an amount equivalent to the amount which would have been payable pursuant to regulation 14 if the record had been made in Trinidad and Tobago.

16. Where pursuant to regulation 15 royalties have been paid or treated by the recording right society as having been paid, subparagraphs (d), (e), (f) and (g) of regulation 14 shall apply as if the record had been made in Trinidad and Tobago.

Application of regulation 14 (d), (e), (f) and (g) where royalties paid

17. (1) Regulations 14, 15 and 16 shall not apply if the producer or importer of the record is either—

Circumstances in which regulations 14, 15 and 16 do not apply

- (a) the writer of all the musical and literary works recorded on the record; or
- (b) a corporate body, firm, partnership or other business association controlled by the writer or writers of all the musical and literary works recorded on the record.

(2) For the purposes of paragraph (1)(b) a corporate body, firm, partnership or other business association (hereinafter referred to as “the enterprise”) shall be taken to be controlled by the writer or writers of all the musical and literary works recorded on the record of the said writer or writers if the said writer or writers—

- (a) exercise or are entitled to exercise control directly or indirectly over the affairs of the enterprise;

- (b) are entitled to appoint a majority of the directors of the Board of Directors of the enterprise; or
 - (c) hold at least fifty per cent of the ordinary share capital of the enterprise;
- as the case may be.

Regulations to apply in respect of payment of royalties on first recordings

18. Where records of a literary or musical work are, with the licence or consent of the recording right society, made for the first time in Trinidad and Tobago for the purpose of retail sale, these Regulations shall apply for the purpose of securing the payment of royalties, in respect of such records, by the producer to the recording right society; but in such cases there shall be substituted for references in this Part to rates of royalties set out in the Schedule to the Act, references to rates of royalties as agreed between the recording right society and the producer.

If no society, producer to deal with right-owner

19. If no recording right society has been designated for the purposes of these Regulations, the references to the recording right society in regulations 14, 15, 16 and 18 shall be read as references to the person who for the time being is the owner of, or who has authority to grant a licence in respect of, the recording right in the work.

Penalty for false information

20. Any person who provides information pursuant to this Part as to—

- (a) the number of records of a musical or literary work which have been made, or are to be imported into Trinidad and Tobago; or
- (b) the retail price at which it is intended that records of a musical or literary work shall be sold,

which is false in any material particular is guilty of an offence and on summary conviction liable to a fine of five hundred dollars.

PART V

RECORDING RIGHT SOCIETY

Definitions

21. For the purposes of this Part, the expression—

- (a) “interested person” means, in relation to a work—

- (i) the writer of the work;

- (ii) any person who has acquired an interest in any royalties or other sums accruing from the exercise of the recording right in the work;

- (b) “the recording right society” means the licensing body designated, under regulation 22(1), for the purpose of Part IV;

- (c) “writer” means the author of a literary work or the composer of a musical work.

22. (1) Where the Minister is satisfied that a licensing body is a non-profit body whose objects include the collection of royalties payable in respect of the exercise of the recording rights in musical and literary works and the distribution of such royalties among writers and other interested persons, he may, in his discretion, designate that licensing body as the recording right society for the purpose of Part IV.

Minister's
power to
designate
recording
right society

(2) Subject to paragraph (3), where, in the opinion of the Minister, a licensing body—

- (a) no longer is a body of the kind described in paragraph (1), or
- (b) does not conduct its affairs in accordance with this Part,

he may withdraw the designation of the licensing body under paragraph (1).

(3) The Minister shall not withdraw any designation under paragraph (2) without first giving not less than one month's written notice to the licensing body of his intention to do so and affording the licensing body an opportunity to show cause why the designation should not be withdrawn.

(4) Every designation, or withdrawal of a designation, by the Minister pursuant to this regulation shall be notified in a daily newspaper circulating in Trinidad and Tobago.

23. The recording right society shall—

Accounts

- (a) maintain proper books of account showing all royalties and other payments received, all expenses or other costs incurred, all amounts distributed to writers or other interested persons, and all amounts not distributed;
- (b) cause such accounts to be audited annually by auditors approved by the Minister and the audited accounts to be published in a daily newspaper circulating in Trinidad and Tobago;
- (c) publish an annual set of accounts.

24. The recording right society shall apply all royalties and other payments received by it in accordance with the following rules—

Application
of royalties

- (a) the society's expenses of, and incidental to, the collection of royalties payable in respect of the exercise of the recording rights in musical and literary works and the distribution of such royalties shall be deducted from the royalties and all other payments received by it;
- (b) the society may establish such reserve funds of such sums as it estimates, in accordance with good accounting practice, may be required to meet future liabilities, and all such reserves shall be held or invested in such accounts or securities as the Minister shall from time to time approve;

- (c) the society shall, after deduction of expenses under subparagraph (b), and not less than once every six months, distribute all the royalties and other payments made to it, to the writers and other interested parties in accordance with rules made by the society and approved by the Minister.

Rules of
Society

25. The rules of the recording right society shall make provision for the following matters—

- (a) the maintenance of registers containing—
- (i) the names and addresses of all members;
 - (ii) the names and addresses of all other interested persons for whose account the society receives royalties pursuant to Part IV;
 - (iii) particulars of the works on which members and other interested persons are entitled to a share of royalties due in respect of records made thereof;
- (b) the maintenance of separate accounts for all royalties and other payments received by the society in respect of the works of its own members on the one hand and of the works of other interested persons on the other;
- (c) a scheme, where there is more than one writer or other person with an interest in the royalties payable in respect of a record, for apportioning equitably between the writers and other interested persons all the royalties received;
- (d) adequate procedures for notifying interested persons who are not members of the society that the society has received royalties due to them;
- (e) safeguards to ensure as far as practicable that all royalties or other payments due from the society to writers are received by them for their personal benefit.

The
Cultural
Fund

26. (1) The recording right society shall, in accordance with rules made by it and approved by the Minister (in this regulation referred to as "the rules"), transfer from time to time to trustees royalties or other sums received from producers which the society has been unable to identify or whose writers or other interested persons the society has been unable to trace.

- (2) The trustees, for the purpose of this regulation, shall be—
- (a) two persons appointed by the Minister to represent the public interest in the cultural and artistic development of Trinidad and Tobago;
 - (b) two persons appointed by the recording right society to represent writers.

(3) The trustees shall be appointed on such terms and conditions as shall be provided for in the rules.

(4) The funds transferred to the trustees pursuant to this regulation shall, subject to the rules, be held and applied by them, in their discretion, for the following purposes—

- (a) the encouragement and promotion of national culture and art;
- (b) making payments to writers or other interested persons who establish that royalties received by the recording right society, in respect of records made of their works, have been transferred to the trustees.

PART VI

REPRODUCTION IN DESIGNATED LIBRARIES

27. For the purposes of this Part, the expression—

Definitions

- (a) “authorised person” means any person authorised by law to certify the application and photograph of a person applying for a passport;
- (b) “corresponding library” means a library in another Member State of the Caribbean Community in respect of which a designation corresponding to one made under section 36(5)(c) has been made;
- (c) “designated library” means a library designated by the Minister pursuant to section 36(5)(c) as a public library for the purposes of the Act;
- (d) “librarian” in relation to a designated library includes the person in charge of the library and any person authorised to act on behalf of that person.

28. A reproduction of an extract from a published literary musical or artistic work or sound recording, or of an article in a magazine or periodical, in which copyright or neighbouring rights subsist, in the custody of a designated library may only be made on the premises of the library if the following conditions have been complied with—

Reproductions of extracts or articles

- (a) The librarian has caused a notice in the terms set out in Form A in Schedule II to be displayed in such a way and place that it is most likely to come to the attention of persons using any equipment available on the premises of the library for the purpose of making such reproductions. Schedule II
(Form A)
- (b) The librarian has taken such other steps as are reasonably necessary to ensure that any person who intends to make such a reproduction is aware that—
 - (i) he may make such a reproduction only for the purposes of research or private study;

- (ii) the extract to be reproduced (otherwise than in the case of an article in a magazine or periodical) shall not exceed 10 per cent in length of the entire work;
- (iii) only one reproduction of each extract may be made;
- (iv) in the case of a magazine or periodical only one article in each issue may be reproduced.

Reproduction of entire work or recording in special cases

29. Where a request is made for a reproduction of an entire literary, musical or artistic work or a sound recording in the custody of a designated library by a person who is not the librarian of a designated library or of a corresponding library, the librarian of the custodian library shall not make or authorise the making of the reproduction requested unless the person requesting the reproduction, either—

Schedule II (Form B)

- (a) delivers a written declaration in the terms and substantially in the form set out in Form B in Schedule II signed by the person who is entitled to authorise the making of such a reproduction that he has no objection to the reproduction being made and supplied as requested; or
- (b) (i) delivers a written declaration in the terms and substantially in the form set out in Form C in Schedule II signed by him and by an authorised person that despite diligent enquiry it has not been possible to ascertain the name and address of the person entitled to authorise the making of the reproduction; and
 - (ii) the name and address of the person entitled to authorise the making of the reproduction is not known to the librarian, and the librarian has no reason to believe that the name and address could be ascertained with reasonable enquiry; and
 - (iii) the librarian is satisfied that a copy of this work or sound recording could not be obtained from a normal retail or wholesale source within a reasonable time having regard to the urgency of the purpose for which the reproduction is needed.

Reproductions for replacing damaged works or recordings

30. Where the librarian of a designated library is satisfied that, by reason of damage or deterioration, an unpublished literary, musical or artistic work or an unpublished sound recording in the custody of the library can only be preserved for use by persons using the library if it is replaced by a reproduction, then the librarian may authorise the making of a reproduction for that purpose.

Reproduction for other libraries

31. Where the librarian of a designated library receives a request for a reproduction of an unpublished literary, musical or artistic work or an unpublished sound recording in the custody of the library from the librarian of another designated library or from the librarian of a corresponding library and the librarian of the other library certifies that he requires the reproduction

for a purpose corresponding to the purpose described in regulation 30, the librarian of the custodian library may make, or authorise the making of a reproduction for supply in the other library.

32. No reproduction of a literary, musical or artistic work or of a sound recording, or of an extract from such a work or recording may be made pursuant to regulation 28 or regulation 29 unless the reproduction becomes the property of the person making or requesting it, as the case may be.

Reproductions supplied becomes property of person requesting them

33. The librarian of every designated library as far as practicable shall keep a register of the names and addresses of all persons to whom reproductions, made pursuant to regulation 29, have been supplied; and the register shall contain particulars of the works or sound recording reproduced and the date on which the reproduction was supplied to each person.

Librarian to keep register

34. (1) The librarian shall periodically check, or cause to be checked, that all reproductions made on the premises of the library of works or sound recording in the custody of the library are made in compliance with this Part.

Supervision of reproduction facilities

(2) Where the librarian is satisfied that a person has knowingly made reproductions of works or sound recordings in the custody of the library by the use of equipment on the premises of the library without complying with this Part, the librarian may withdraw from that person permission to use that equipment for such period as he shall determine.

SCHEDULE I

(Regulation 4)

FORM

COPYRIGHT ACT, 1985

(Section 34)

Notice relating to copyright in any published literary or musical work or neighbouring rights in any audio-visual production or sound recording

To: The Comptroller of Customs and Excise:

I,.....

of..... hereby give you notice that copyright in the literary/musical¹ work/neighbouring rights in the audio-visual production/sound recording² specified in the Schedule hereto now subsists under the Copyright Act, 1985; that.....² is the owner of the copyright/neighbouring rights¹ in the said work production/sound recording¹ and requests that copies of the said work/production/sound recording¹ made outside of *Trinidad and Tobago* and which are identified in the Schedule hereto shall be treated as prohibited goods and shall not be imported into *Trinidad and Tobago* for a period up to and including³.....

Dated this.....day of.....19.....

Signature.....

⁴.....

2. Except in the case of an article in a magazine or periodical no copy may be made of an entire work without applying to the Librarian for special permission.
3. The amount copied from a work (other than an article in a magazine or periodical) may not exceed 10 per cent in length of the entire work.
4. Only one article from any one issue of a magazine or periodical may be copied.
5. The staff of the library is responsible for reporting all cases of non-compliance with these Conditions and anyone found making copies without observing these Conditions is liable to have permission to use the copying equipment withdrawn from him.

FORM B

(Regulation 29(a))

DECLARATION OF NON-OBJECTION

(Section 36(5)(a), (b))

To: The Librarian of _____ Library

I,
of
declare that I am entitled to authorise the making of reproduction of [description of work or sound recording to be reproduced] and that I have no objection to one reproduction of the work/sound recording described above being made and supplied to
of

*Signature

Date

FORM C

(Regulation 29 (b))

DECLARATION REGARDING RIGHT OWNER

To: The Librarian of _____ Library

I,
of
declare that I have made diligent enquiries for the purpose of ascertaining the name and address of the person who is entitled to authorise the making of reproductions of [description of work/sound recording to be reproduced] but have failed to trace him.

*Signature

Date

2. I,
of
declare that I have known _____ for _____ years
and I believe him to be trustworthy and I have no reason to believe that he would sign the foregoing declaration if it were not true.

Signature (Authorised Person)

Capacity

Date

*This must be the personal signature of the person making the request. A stamped or typewritten signature, or the signature of an agent, is NOT sufficient.

Made this 21st day of January, 1986.

BASIL A. INCE
Minister of Sport, Culture and
Youth Affairs.