

THE COPYRIGHT (AMENDMENT) BILL
(No. of 2017)

Explanatory Memorandum

The object of this Bill is to amend the Copyright Act in order to provide for a better protection of the rights of authors, creators, performers and other stakeholders as well as the review of the composition of the Board of the Rights Management Society.

2. Some provisions of the Act are hereby being clarified.

P. ROOPUN
Minister of Arts and Culture

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To amend the Copyright Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Copyright (Amendment) Act 2016.

2. Interpretation

In this Act –

“principal Act” means the Copyright Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definitions of “broadcasting organisation” and “sound recording” and replacing them by the following definitions –

“broadcasting organisation” means the legal entity that takes the initiative for packaging, assembling and scheduling program content for which it has, where necessary, been authorised by rights holders, and takes the legal and editorial responsibility for the communication to the public of everything which is included in its broadcast signal;

“sound recording” means the fixation of a sequence of sounds capable of being perceived aurally and of being reproduced by any appropriate device;

- (b) in the definition of “Society”, by deleting the words “Rights Management Society” and replacing them by the words “Mauritius Copyright Management Society”;
- (c) by inserting, in the appropriate alphabetical order, the following new definitions –

“equipment” means any recording or transmission equipment;

4. Section 7 of principal Act amended

Section 7 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “the right” and replacing them by the words “the moral right”;
- (b) in subsection (2)(b), by inserting, after the word “These”, the word “moral”.

5. Section 9 of principal Act amended

Section 9 of the principal Act is amended, in subsection (4), in paragraphs (a) and (b), by inserting, after the words “audiovisual work”, the words “or phonogram”, wherever they appear.

6. Section 10 of principal Act amended

Section 10 of the principal Act is amended –

- (a) in the heading, by inserting, after the words “**audiovisual works**”, the words “**or phonogram**”;
- (b) in subsection (2), by inserting, after the words “audiovisual work”, the words “or phonogram”.

7. Section 15 of principal Act amended

Section 15 of the principal Act is amended –

- (a) in subsection (1), by deleting the figure “50” and replacing it by the figure “70”;
- (b) in subsection (2), by deleting the figure “50” and replacing it by the figure “70”;
- (c) in subsection (3) –

- (i) by inserting, after the words “audiovisual work”, the words “or phonogram”;
- (ii) by deleting the figure “50” and replacing it by the figure “70”;
- (d) in subsection (4), by deleting the figure “50” and replacing it by the figure “70”.

8. Section 16 of principal Act amended

Section 16 of the principal Act is amended by repealing subsection (3) and replacing it by the following subsection –

(3) (a) Where a reproduction made under subsection (1) concerns an audiovisual work or a work embodied in a sound recording, the author or owner of copyright shall be entitled to equitable remuneration to be paid to, and distributed by, the Society.

(b) The equitable remuneration shall be paid –

- (i) by the manufacturer of the equipment or material supports, normally used for private reproduction for personal purposes of the work, except where such equipment is, or such material supports are, exported; or
- (ii) by those who import such equipment or material supports, except where the importation is by a private person for his personal purposes.

9. Section 20 of principal Act amended

Section 20 of the principal Act is amended, in paragraph (a) (ii) (C), by deleting the words “a collective copyright management organization under which such copies can be made” and replacing it by the words “the Society”.

10. Section 27 of principal Act amended

Section 27 of the principal Act is amended, by repealing subsection (2) and replacing it by the following subsection –

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

11. New section 28A inserted in principal Act

The principal Act is amended, by inserting after section 28, the following new section –

28A Conditions for use of copyright protected works

The limitations of economic rights in Part IV of the Act shall be applicable where they do not conflict with the normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the owner of the work.

12. Section 30 of principal Act amended

Section 30 of the principal Act is amended, in subsection (5), by deleting the word “fiftieth” and replacing it by the word “seventieth”.

13. Section 31 of principal Act amended

Section 31 of the principal Act is amended by deleting the word “may” and replacing it by the word “shall”.

14. Section 32 of principal Act amended

Section 32 of the principal Act is amended –

(a) in subsection (1)(d), by deleting the words “place or” and replacing it by the words “place and”.

(b) in subsection (3), in paragraphs (a) and (b), by deleting the word “fiftieth” and replacing it by the word “seventieth”.

15. Section 33 of principal Act amended

Section 33 of the principal Act is amended by repealing subsection (1).

16. Section 34 of principal Act repealed and replaced

Section 34 of the principal Act is repealed and replaced by the following section –

34. Notice of protection of rights of producers

(1) Where a copy of a sound recording or audiovisual work is made for commercial purposes, it shall conspicuously bears on the label of the recording or on its container a notice bearing –

- (a) the symbol P;
- (b) the hologram;
- (c) the year of the first publication; and
- (d) the name of the copyright owner.

(2) A notice shall be placed in a manner that gives reasonable notice of claim of protection to the rights of the producer.

(3) Where the notice referred to in subsection (1) does not identify –

- (a) the producer, it shall indicate the name of the person who owns the rights of the producer;
- (b) the principal performer, it shall indicate the name of the person who owns the rights of the performers.

(4) Where there is non-compliance with this section by a producer, this shall not deprive the producer of copyright protection.

(5) No person shall deal in or have in his possession a copy of a sound recording or audiovisual work referred to in subsection (1) unless a hologram of the Society is affixed on its label or container.

17. Section 35 of principal Act repealed and replaced

Section 35 of principal Act is repealed and replaced by the following section –

35. Equitable remuneration for use of phonogram

(1) Subject to subsection (5), where a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer and the producer of the phonogram shall, as the case may be, be paid by the user to the Society.

(2) Unless otherwise agreed between the performer and the producer, the amount received under subsection (1) shall be paid by the Society in equal amount to the performer and producer.

(3) Where the phonogram is protected under section 32(3), the right to an equitable remuneration under this section shall subsist from the date of publication of the phonogram until the end of the seventieth calendar year following the year of publication.

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

(5) Section 35(1) shall not apply to the extent that the use of the phonogram is covered by an exclusive right under section 32.

18. Section 36 of principal Act amended

Section 36 of the principal Act is amended, in paragraph (d), by deleting the words “Part I” and replacing them by the words “Part IV”.

19. Section 41 of principal Act amended

Section 41 of the principal Act is amended, in subsection (1)(c), by deleting the words “been fixed in a phonogram but is included in broadcasts” and replacing them by the words “not been fixed in a phonogram but is carried by a broadcast”.

20. Section 42 of principal Act repealed and replaced

Section 42 of the principal Act is repealed and replaced by the following section –

42. Management of rights

Copyright and related rights may be managed by the Society.

21. Section 43 of principal Act amended

Section 43 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “Rights Management Society” and replacing them by the words “Mauritius Copyright Management Society”;

(b) by repealing subsections (2) to (7) and replacing them by the following subsections –

(2) The Society shall be managed and administered by a Board and shall have its own seal.

(3) The Board shall consist of –

- (a) a Chairperson, to be appointed by the Minister;
- (b) a representative of the Ministry responsible for arts and culture;
- (c) a representative of the Attorney General's Office;
- (d) a representative of the Ministry responsible for the subject of industry;
- (e) a representative of the Ministry responsible for the subject of information and communication technology;
- (f) a representative of the Customs Department;
- (g) a representative of the Industrial Property Office;
- (h) a person having knowledge and experience in the field of copyright and related rights, to be appointed by the Minister after consultation with such person as the Minister may deem appropriate; and
- (i) 7 members of the Society, to be elected in accordance with the rules of election specified out in the Schedule.

(4) The composition of the Board shall be published in the Gazette.

(5) Every member, other than a member referred to in subsection (3)(b) to (g), shall hold office for a period of 3 years and shall be eligible for re-election or reappointment for one additional term.

(6) At any meeting of the Board, 9 members shall constitute a quorum.

(7) Every member shall be paid such allowance or fees as the Board may, after consultation with the Minister, determine.

(c) by adding the following new subsection –

(8) For the purposes of subsection (3)(i), the election of the members of the Society shall be held within 3 months of the commencement of this section.

22. Section 44 of principal Act amended

Section 44 of the principal Act is amended, in subsection (1), by inserting, after paragraph (a), the following new paragraph –

(aa) a Secretary who shall –

- (i) act as Secretary to the Board;
- (ii) for every meeting of the Board, give notice of the meeting to the members and keep minutes of proceedings; and
- (iii) carry out such other duties as the Board may direct.

23. Section 45 of principal Act repealed and replaced

Section 45 of the principal Act is repealed and replaced by the following section –

45. Functions of Society

The Society shall –

- (a) collect copyright fees from the users of a work on behalf of its members and distribute those fees among the members;
- (b) determine the criteria for, and classes of, membership of the Society;
- (c) represent and defend the interests of its members in Mauritius and abroad;

- (d) contribute by all appropriate means to the promotion of national creativity in the artistic, literary and scientific fields;
- (e) administer within Mauritius such economic rights of its members as it may determine;
- (f) collect with users of a work –
 - (i) the conditions of, and the fees to be paid for, the authorisation to be given to do an act covered by any economic rights referred to in paragraph (e);
 - (ii) the amount of equitable remuneration where the right to such remuneration is administered by the Society;
- (g) grant any authorisation which it is permitted to give under this Act;
- (h) make reciprocal agreements with foreign collective management organisations for the issue of exclusive authorisation in respect of their members' works and for the collection and distribution of copyright fees deriving from those works;
 - (i) endeavor to obtain the transfer of membership of Mauritian authors who are members of foreign collective management organisations and safeguard in favour of Mauritian authors whose membership has been transferred all the advantages which may have accrued to them before the transfer;
 - (j) help in the preparation of standard forms of contracts for the benefit and use of its members;
- (k) foster such harmony and understanding between copyright owners and the users of their works as are necessary for the protection of the authors' economic rights;
- (l) provide its members with information or advice on all matters relating to copyright;

- (m) establish and administer a Provident Fund and a Benevolent Fund for its members and their heirs; and
- (n) discharge such other functions as may be prescribed.

24. New section 45A inserted in principal Act

The principal Act is amended, by inserting after section 45, the following new section –

45A. Technical committees

(1) The Board may set up such technical committees as it may determine to assist it in the discharge of its functions.

(2) A technical committee shall consist of at least 3 members and 2 other persons as the Board may co-opt.

(3) The Board shall appoint a chairperson of the technical committee.

(4) A technical committee shall meet as often as may be necessary and at such time and place as the chairperson of the technical committee may determine.

(5) A technical committee shall submit its report on any matter referred to it within such time as the Board may determine.

(6) The report referred to in subsection (5) shall contain the technical committee's observations, comments and recommendations.

(7) A technical committee shall be subject to the direction, control and supervision of the Board.

(8) Subject to this section, a technical committee shall regulate its meetings and proceedings in such manner as it may determine.

25. Section 46 of principal Act repealed and replaced

Section 46 of the principal Act is repealed and replaced by the following section –

46. Membership of Society

(1) A copyright owner or exclusive licensee may apply to the Board for membership of the Society.

(2) The Board may, on receipt of an application under subsection (1), request the applicant to furnish such particulars as it may require for the purpose of determining the application.

(3) The Board may grant the application on such terms and conditions and on payment of such membership fee as it may determine.

26. Section 48 of principal Act repealed and replaced

Section 48 of the principal Act is repealed and replaced by the following section –

48. Annual report

(1) The Director shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Board for approval, together with an audited statement of accounts on the operations of the Society, in respect of every financial year.

(2) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

27. Section 51 of the principal Act amended

Section 51 of the principal Act is amended –

(a) in subsection (1), by inserting, after the word “may”, the words “, with the approval of the Minister,”;

(b) by repealing subsection (3).

28. Section 56 of the principal Act repealed and replaced

Section 56 of the principal Act is repealed and replaced by the following section –

56. Offences

(1) Any person who –

- (a) without the written authorisation of the right owner or society –
 - (i) publishes, distributes, sells or reproduces a work;
 - (ii) performs in public;
 - (iii) communicates a work to the public;
 - (iv) broadcasts a work;
 - (v) makes a derivative work;
 - (vi) imports otherwise than exclusively for his own private and personal use, buys, sells, exposes, or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute such an infringement if the copy of the work were made in Mauritius;
 - (vii) is found in possession of any copies of a work which constitutes an infringement;
- (b) manufactures or imports for sale or rental any device or means which is –
 - (i) specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of any copy made thereof; or
 - (ii) susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;
- (c) has in his possession in the course of trade any apparatus, article or thing, knowing that it is to be used for making infringing copies of a work or for a purpose referred to in paragraph (b);
- (d) in any other manner contravenes this Act,

shall commit an offence.

(2) For the purposes of subsection (1)(a), where a work is performed in public or communicated to the public on the premises of an occupier by the operation of any apparatus which is provided by or with the consent of the occupier of those premises, the occupier shall be deemed to be the person communicating the work to the public, whether he operates the apparatus or not.

(3) (a) Any person who commits an offence shall –

- (i) on a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years;
- (ii) on a second or subsequent offence, be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.

(b) Notwithstanding any other enactment, a District Magistrate shall have jurisdiction to try any person charged with an offence under this Act.

(4) The Court before which a person is convicted of an offence may, in addition to any other penalty imposed –

- (a) order the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence;
- (b) order that such apparatus, article or thing be delivered up to any person lawfully entitled to it.

29. Schedule added to principal Act

The principal Act is amended by adding the Schedule set out in the Schedule to this Act.

30. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[Section 43(3)(i)]

RULES OF ELECTION

1. Calling for nominations and appointment of nomination day

Not less than one month before the expiry of the three-month period specified in section 43(8) and thereafter, not less than one month before the expiry of the term of office of the members specified in section 43(3)(i), the Secretary shall publish in the Gazette and such newspaper as the Society may direct, a notice inviting the submission of nominations and appointing a day on which and the time at which nominations must be submitted.

2. Eligibility to stand as candidate

No person shall be eligible to stand as candidate for the election as a member of the Board unless, on the nomination day, he is a member of the Society.

3. Procedure after nomination

(1) If the number of persons duly nominated exceeds the number of persons to be elected, the Secretary shall publish in the Gazette and such newspaper as the Society may direct a notice –

- (a) specifying the names of persons duly nominated;
- (b) appointing a day, time and place, being not less than 15 days after the publication of the notice, for the holding of an election.

(2) A person who has been duly nominated shall not publish or distribute any manifesto which is calculated or likely to induce persons to vote for him to be a member of the Board.

4. Persons entitled to vote

(1) Every person who, on nomination day, is a member of the Society shall be entitled to vote at an election of the members of the Board.

(2) Every member of the Society voting pursuant to subparagraph (1) shall vote for such number of candidates as there are vacancies available in the membership of the Board.

(3) Any vote which is cast contrary to subparagraph (2) shall be null and void.

5. Election

(1) The election of members of the Board shall be conducted by the Office of the Electoral Commissioner who shall communicate the results to the Secretary.

(2) The Secretary shall submit to the Minister the results of the election forthwith.

(3) The Minister shall, within 21 days of the receipt of the results of the election, publish in the Gazette the elected members of the Board.

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