

AS AMENDED IN THE SENATE

No. 9 of 2019

Fifth Session Eleventh Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Copyright Act, Chap. 82:80, to
give effect to the Marrakesh Treaty to Facilitate
Access to Published Works for Persons who are
Blind, Visually Impaired or otherwise Print
Disabled and to the Beijing Treaty on
Audiovisual Performances

THE COPYRIGHT (AMENDMENT) BILL, 2019

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The Copyright (Amendment) Bill, 2019 seeks to amend the Copyright Act, Chap. 82:80 (hereinafter called “the Act”) in order to facilitate the following:

- (a) the accession of Trinidad and Tobago to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, by introducing a set of limitations or exceptions to copyright rules in order to permit reproduction, distribution and making available copies of books and other published materials accessible in formats to beneficiary persons without the authorisation of the right-holder;
- (b) the accession of Trinidad and Tobago to the Beijing Treaty on Audiovisual Performances, by expanding the limited protection currently afforded to performers including actors, comedians, dancers and those expressing folklore within the definition of performers; by improving the legal status of audio-visual performers (those in videos, television and film); by protecting performers both in respect of unfixed (live) performances and audio-visual fixations of their performances; and, by bolstering the economic and moral rights of performers for their live and audio-visual performances; and
- (c) the provision of adequate legal protection and effective legal remedies against the circumvention of technological protection measures with the intention of infringing copyright or neighbouring rights, while at the same time allowing for limited circumvention when undertaking acts permitted by a limitation or an exception contained in the Act.

Clause 1 of the Bill contains the short title of the proposed Act.

Clause 2 provides that the Bill has effect even though it is inconsistent with the Constitution.

Clause 3 of the Bill would amend section 3 of the Act to provide for the interpretation of certain terms used in the Act including new terms introduced by the Bill.

Clause 4 would amend section 5 of the Act to expand the list of literary and artistic works to include audio-visual fixations and audio-books.

Clause 5 would insert in the Act, a new section 12(A) which would provide an exception to copyright law by allowing authorised entities to exercise stipulated privileges and to carry out specified activities without the need to seek authorisation from the right-holder provided certain conditions are met and under specified circumstances.

Clause 6 seeks to remedy a deficiency in the law which limits the moral rights of performers to their live aural performances and performances fixed in sound recordings. The clause would amend section 18(4) of the Act to expand the scope of moral rights to include protection in relation to live performances and audio-visual fixations of their performances.

Clause 7 would amend section 19A of the Act to provide for the protection of the moral rights of performers to include all fixed performances.

Clause 8 would amend section 21 of the Act by amending subsection (1) to extend the economic rights of performers to include their unfixed performances and performances fixed in audio-visual fixations. The clause would also amend subsection (2) to provide for the transfer of rights by the performer to the producer of an audio-visual fixation. The amendment seeks to clarify that once a performer has consented to fixation of his performance in an audio-visual fixation, the exclusive rights of authorisation provided for in section 21(1) would be owned or exercised by or transferred to the producer of the audio-visual fixation, subject to any contract to the contrary and that such contract must be in writing and signed by both parties or their duly authorised representatives. In addition, the clause would amend subsection (4) to provide for the term of protection for performers to include all fixed performances until the end of a period of fifty years computed from the end of the year in which the performance was fixed.

Clause 9 would amend section 34A(1) and (3) of the Act to prescribe that the circumvention of technological protection measures as well as the commercial use of a technological protection measures circumvention device would constitute infringements of copyright or neighbouring rights.

Clause 10 would insert in the Act a new section 34C which would provide an exception to the prohibition and criminalisation of circumvention of technological protection measures in the case of undertaking acts permitted by limitations or exceptions contained in the Act.

Clause 11 would amend section 41(2) of the Act to provide for the offence of the manufacture and commercial use of technological protection measures circumvention devices.

Clause 12 would amend section 41A(1) of the Act to provide for a person committing an offence under section 41A to know or have reason to believe that copyright or neighbouring rights would be infringed by the inclusion of the words “neighbouring rights”.

THE COPYRIGHT (AMENDMENT) BILL, 2019

Arrangement of Clauses

Clause

1. Short title
2. Act inconsistent with Constitution
- 3. Section 3 amended**
4. Section 5 amended
5. New section 12(A) inserted
6. Section 18(4) amended
7. Section 19(A) amended
- 8. Section 21 amended**
- 9. Section 34A amended**
10. New section 34C inserted
11. Section 41(2) amended
12. Section 41A(1) amended

BILL

AN ACT to amend the Copyright Act, Chap. 82:80, to give effect to the Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired or otherwise Print Disabled and to the Beijing Treaty on Audiovisual Performances

[, 2019]

WHEREAS the World Intellectual Property Organization ^{Preamble} (WIPO) adopted the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled in 2013 (“Marrakesh Treaty”);

And whereas the Marrakesh Treaty mandates contracting parties to adopt certain limitations or exceptions into domestic copyright law that allow the reproduction of published works into accessible format copies for beneficiary persons like the blind and otherwise print-disabled persons, the distribution of accessible format copies to beneficiary persons, and the cross-border sharing of such accessible format copies;

And whereas it is necessary and expedient to give effect to the requirements of the Marrakesh Treaty to facilitate its implementation in Trinidad and Tobago;

And whereas the Beijing Treaty on Audiovisual Performances (“the Beijing Treaty”) was adopted by the Diplomatic Conference on the Protection of Audiovisual Performances, which took place in Beijing, China from 20th to 26th June , 2012;

And whereas the Beijing Treaty provides for the intellectual property rights of performers in audiovisual performances so as to grant performers additional economic and moral rights for their performances fixed in audio-visual fixations;

And whereas it is necessary and expedient to give effect to the provisions of the Beijing Treaty to facilitate its implementation in Trinidad and Tobago;

And whereas it is enacted by section 13(1) of the Constitution of the Republic of Trinidad and Tobago (“the 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 section 13(2) of the Constitution that an Act of Parliament to which that section applies is one for which the Bill 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 the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:

PART I
PRELIMINARY

1. This Act may be cited as the Copyright Short title (Amendment) Act, 2019.

2. This Act shall have effect even though inconsistent Act inconsistent with Constitution with sections 4 and 5 of the Constitution.

3. Section 3 of the Act is amended— Section 3 amended

(a) by repealing the definition of “broadcasting” and substituting the following definition:

“broadcasting” is the communication of visual images, sounds or both to the public in any country or territory by wireless transmission including transmission by satellite, and includes an encrypted transmission where the means to decode the transmission has been provided by or with the authority of the person making the communication, and “broadcast” has a corresponding meaning;” ;

(b) **in the definition of “communication to the public”, by deleting the words “wire or wireless means, including the making available to the public of the images or sound or both, of a work, performance or sound recording” and substituting the words, “any medium, of the visual images or sounds or both, of a work, performance or sound recording, including the making available thereof”;**

- (c) in the definition of “infringing copies”, by inserting after the words “sound recording” wherever it appears, the words “, audio-visual fixation” and by inserting after the words “12,”, the words “12A,”;
- (d) in the definition of “performers”, by deleting the words “singers, musicians, and other persons who sing, deliver, declaim, play in, or otherwise perform literary and artistic works”, and substituting the words “actors, comedians, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, improvise or otherwise perform literary, artistic, dramatic or musical works or works of mas or expressions of folklore”;
- (e) by inserting in the appropriate alphabetical sequence, the following definitions:

“accessible format copy” means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access and use the work as feasibly and comfortably as a person without visual impairment or other print disability;

“audio-visual fixation” means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, which allows the moving images to be perceived, reproduced or communicated through a device;

“authorised entity” means the National Library and Information System Authority, established under section 3 of the National Library and Information System Act or an Chap. 40:01 entity designated by the Minister under section 12A;

“beneficiary person” means a person who, regardless of any other disability—

- (a) is blind;
- (b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(c) has a print disability;

“circumventing technological protection measures” means avoiding, bypassing, removing, deactivating or impairing technological protection measures, including descrambling a scrambled work or decrypting an encrypted work;

“print disability” means the inability, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading;

“rebroadcasting” means the unaltered and simultaneous retransmission of a broadcast by wireless transmission;

“technological protection measures” means any technology, device or component that, in the normal course of operations, is designed to prevent or restrict acts, in respect of works or objects of neighbouring rights, which are not authorised by the owner of the rights or permitted by law;

“technological protection measures circumvention device” means a device or means that—

(a) is primarily designed, produced, or adapted for the purpose of enabling or facilitating the circumvention of technological protection measures; and

(b) has only a limited commercially significant purpose or use other than to circumvent technological protection measures;”.

Section 5(1) amended 4. Section 5(1) of the Act is amended by—

(a) deleting the full stop at the end of paragraph (k) and substituting a semicolon; and

(b) inserting after paragraph (k), the following paragraphs:

“(l) audio-visual fixations; and

(m) audio-books.”.

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

^{“Authorised entity} 12A. (1) For the purposes of this Act, the Minister may, by Order, designate an entity which provides education, instructional training, adaptive reading or information access to beneficiary persons on a non-profit basis as one of its primary activities or institutional obligations, as an authorised entity.

(2) Notwithstanding section 8, an authorised entity, upon satisfying the conditions in subsection (3), may—

- (a) undertake the changes in the work that are necessary, including adapting and transforming the work, to create an accessible format copy;
- (b) reproduce, distribute, communicate to the public by any means, or lend, an accessible format copy or supply the accessible format copy to another authorised entity or to a beneficiary person;
- (c) export an accessible format copy to an authorised entity or beneficiary person located in a country which is a party to the Marrakesh Treaty; and
- (d) obtain, or import, from another authorised entity, an accessible format copy,

without the need to seek authorisation from the author or other owner of copyright and without infringing any copyright in such works.

(3) The following conditions shall be satisfied to enable an authorised entity to facilitate the availability of works in accessible format copies:

- (a) the authorised entity shall have lawful access to the work or copy of the work used to create an accessible format copy;
- (b) an accessible format copy shall respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary person;
- (c) the work being converted to an accessible format copy may include any means needed to navigate information in the accessible format, but shall not introduce changes other than those necessary to make the work accessible to the beneficiary person;
- (d) the activity shall be undertaken on a non-profit basis and if an authorised entity charges for supplying an accessible format copy, the sum charged shall not exceed the cost of making and supplying the copy and a reasonable contribution to the general expenses of the authorised entity, with no element of profit;

- (e) the source of the work reproduced and the name of the author shall be indicated as far as practicable on all accessible format copies; and
- (f) accessible format copies shall be supplied exclusively to be used by beneficiary persons or other authorised entities.

(4) An authorised entity shall establish procedures to ensure that the accessible format copies are used only by beneficiary persons and to avoid unauthorised reproduction, distribution and communication to the public and public lending of the works or accessible format copies.

(5) For purpose of carrying out any activity permitted by the exception provided in this section, circumventing technological protection measures or using a technological protection measures circumvention device shall not be treated as the commission of an offence or infringement of any copyright in the work.”.

6. Section 18(4) of the Act is amended by—

Section 18(4)
amended

- (a) deleting the word “aural”; and
- (b) inserting after the words “sound recordings”, the words “and audio-visual fixations”.

7. Section 19A of the Act is amended by deleting the words “fiftieth calendar year following the year in which the performance was fixed in a sound recording” and substituting the words, “fiftieth year in which the performance was fixed”.

Section 19A
amended

Section 21 amended

8. Section 21 of the Act is amended—

(a) in subsection (1)—

- (i) in the *chapeau* of paragraph (a), by inserting after the word “performance”, the words “whether fixed or unfixed”;
- (ii) in subsection (c), by inserting after the word “performance”, the words “whether direct or indirect, fixed or unfixed”;
- (iii) in paragraph (d), by—
 - (A) deleting the word “by” and substituting the word “through”; and
 - (B) deleting the words “a fixation of his performance or copies thereof,” and substituting the words “**the original** and copies of his performance, including those fixed in audio-visual fixations”; and
- (iv) in paragraph (e), by—
 - (A) inserting after the words “a fixation of his performance or copies thereof,” the words “including those fixed in audio-visual fixations,”; and
 - (B) inserting after the words “or copy rented”, the words “even after distribution of them by, or pursuant to, authorisation by the performer”;

(b) in subsection (2) by—

- (i) inserting after the word “authorised”, the words “or consented to”; and
- (ii) deleting the words “the provisions of subsection (1) shall have no further application” and substituting the words “the exclusive rights provided for under subsection (1) shall be owned or exercised by or transferred to the producer of the audio-visual fixation subject to any contract to the contrary between the performer and the producer of the audio-visual fixation, and the contract shall be in writing and signed by both parties or their duly authorised representatives.”; and

(c) in subsection (4) by deleting the words “from the moment in which the performance takes place until the end of the fiftieth calendar year following the year in which the performance takes place” and substituting the words “until the end of a period of fifty years computed from the end of the year in which the performance was fixed or in the absence of such a fixation, from the end of the year in which the performance took place.”.

9. Section 34A of the Act is amended—

Section 34A
amended

(a) in subsection (1), by deleting paragraphs (a) and (b) and substituting the following paragraphs:

- “ (a) circumventing technological protection measures; and
- (b) the manufacture or importation for sale or rental of any technological protection measures circumvention device;”;

(b) in subsection (3)(a), by deleting all the words after “combined with” and substituting the following words “technological protection measures, or a technological protection measures circumvention device which is made or imported for sale or rental; or”.

New section 34C
inserted

10. The Act is amended by inserting after section 34B, the following section:

“Exceptions
to offences

34C. Notwithstanding the provisions of section 34A, the circumvention of technological protection measures shall not be prohibited when undertaking acts permitted by a limitation or an exception contained in this Act.”.

Section 19A
amended

11. Section 41(2) of the Act is amended—

(a) in paragraph (a), by deleting the word “or”;
and

(b) in paragraph (b)—

(A) by deleting the comma and inserting the words “;or”; and

(B) by inserting after subparagraph (b), the following paragraph:

“(c) makes, imports, sells, distributes, lets for hire, offers or exposes for sale or hire, or advertises for sale or hire, a technological protection measures circumvention device.”.

Section 41A(1)
amended

12. Section 41A (1) of the Act is amended by inserting after the words “believe that copyright” the words “or neighbouring rights”.

Passed in the Senate this day of , 2019.

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 than three-fifths of all the members of the Senate, that is to say, by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this day of , 2019.

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 than three-fifths of all the members of the House, that is to say, by the votes of members of the House.

Clerk of the House

I confirm the above.

Speaker

No. 9 of 2019

FIFTH SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
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Received and read the

First time

Second time

Third time
