



COPYRIGHT (AMENDMENT) BILL 2011

SUMMARY

This Act amends certain provisions of the Copyright Act 1998. The Act updates the Copyright Act to take into account some recent developments in copyright law and to ensure that Samoa's copyright law is consistent with the requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (1994), or "TRIPS". The TRIPS Agreement is one of the suite of agreements to which Samoa will become a party once it accedes to the World Trade Organization ("WTO"). The provisions of the Act include the updating of references to traditional knowledge, to use the more appropriate term "traditional cultural expressions". The Act also adjusts the copyright exception provisions to make them consistent with the requirements of the TRIPS Agreement, and introduces some new exceptions that are appropriate to the needs of copyright owners and users in Samoa. New provisions are introduced to assist with copyright enforcement, particularly evidential presumptions and removal of the requirement for the Attorney General to consent to criminal enforcement proceedings.

EXPLANATORY MEMORANDUM

- Clause 1** This Act shall be called the Copyright (Amendment) Act 2011. The Act is to commence on the date of assent of the Head of State.
- Clause 2** This provides for the definition of certain words and terms used in the Act.
- Clause 3** Replaces the term “expressions of folklore” used in the Copyright Act with the more appropriate term “traditional cultural expressions”.
- Clause 4** Repeals the importation right of copyright owners. This amendment will permit parallel importation of legitimate (ie non-pirated) copies of copyright works from another country without the permission of the copyright owner.
- Clause 5** Amends the provision in the Copyright Act for private reproduction for personal purposes to limit such reproductions to 10% of the work.
- Clause 6** Provides for certain new copyright exceptions. These exceptions will permit copying of copyright material for the purposes of research or private study, private recording of musical works and sound broadcasts, use of copyright material for Parliamentary or judicial proceedings or inquiries, incidental inclusion of copyright material in various other works, use of copyright material for demonstration purposes, recording of programmes and broadcasts for purposes of subsequent viewing or listening (also known as “time-shifting”) and copying when expressly permitted by a statute. The Act also includes a power to allow regulations to be made for further copyright exceptions.
- Clause 7** Repeals the provision of the Copyright Act permitting importation for personal purposes. This section is no longer required as the importation right has been repealed by clause 4.
- Clause 8** Updates reference to the Customs Act provisions for border protection for copyright enforcement.
- Clause 9** Provides for new evidential presumptions that would apply in civil and criminal proceedings for copyright infringement. These presumptions aim to address common difficulties faced in such proceedings in relation to subsistence of copyright and the identity of the owner of copyright in various circumstances. These presumptions may be rebutted where the contrary is proved.
- Clause 10** Repeals the provision of the Copyright Act that prevent criminal enforcement proceedings from being brought without the authorization of the Attorney General.

Clause 11 Repeals the provision of the Copyright Act that automatically incorporates international copyright treaties and permits such treaties to prevail over the Copyright Act where there is an inconsistency.

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(HONOURABLE FONOTOE PIERRE MEREDITH)
DEPUTY PRIME MINISTER AND
MINISTER OF COMMERCE, INDUSTRY AND LABOUR