

## SAMOA

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### 2011, No. 10

#### **AN ACT to amend the Copyright Act 1998.** [11<sup>th</sup> October 2011]

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:

**1. Short title and commencement-**(1) This Act may be cited as the Copyright Amendment Act 2011 and is to be read together with and form part of the Copyright Act 1998 (the Principal Act).

(2) This Act commences on the date of assent of the Head of State.

**2. Interpretation** - In section 2 of the Principal Act:

(a) after the definition of ōAuthorö, insert:

“**Broadcaster**” means a person licensed under the Broadcasting Act 2010 to provide a broadcasting service (as defined in that Act) by which a subscription broadcast service is delivered;ö; and

word "satellite" in the definition of

"**Broadcasting**" insert "or via the internet"; and

(c) after the definition of "**Broadcasting**", insert:

"**CEO**" means the Chief Executive Officer of the Ministry responsible for Commerce, Industry and Labour and includes any person who is duly authorised to act on his or her behalf;

"**Channel provider**" means a person who:

- (a) packages a channel (which might include programs produced by the person); and
- (b) supplies a broadcaster with the channel; and
- (c) carries on a business that involves the supply of the channel,

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is broadcast as part of a subscription broadcast; and

(d) the definition of "**Expressions of folklore**" is repealed; and

(e) for the definition of "**Minister**" substitute:

"**Minister**" means the Minister responsible for Commerce, Industry and Labour; and

(f) after the definition of "**Sound recording**" insert:

"**Subscription broadcast**" means a broadcasting service for which a person must pay money to receive the service;

"**Traditional cultural expression**" means a group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means; and

**3. Replacement of term "Expressions of folklore"**-(1) The Principal Act is amended by replacing the phrase "expressions of folklore" or "expression of folklore" wherever they appear in the Principal Act with the phrase "traditional cultural expressions" or "traditional cultural expression" respectively.

where it appears in the heading of section 30 is omitted and replaced with the words "traditional cultural expressions".

**4. Economic rights** - After section 6(2) of the Principal Act, insert:

(3) The rights under this section do not extend to acts in respect of works which have been put on the market anywhere in the world by the copyright owner or with the copyright owner's consent.

**5. Insertion of new sections** - After section 8 of the Principal Act insert:

**8A. Reproduction for purposes of research or private study**-(1) Despite section 6(1)(a), but subject to subsection (2), a person reproducing a work for the purposes of research or private study is not to be regarded as infringing any of the copyright in that work.

(2) Despite subsection (1), if a person reproducing the work knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time, that person will not be regarded as reproducing the work for the purposes of subsection (1).

**8B. Use of work for Parliamentary or judicial proceedings or inquiries**-(1) Despite section 6(1)(a), the copyright in a work is not infringed by reproducing or using the material for the purposes of:

- (a) any Parliamentary or judicial proceedings or for the purposes of reporting any such proceedings; or
- (b) any inquiry conducted under any enactment, or for the purposes of reporting the proceedings of any such inquiry.

(2) The issuing to the public of the report of any inquiry referred to in subsection (1)(b) does not infringe the copyright of any work that is reproduced in the report.

**8C. Incidental inclusion of copyright material**-(1) Despite section 6(1)(a), but subject to subsection (2), the copyright in a work is not infringed by its incidental inclusion in an artistic

ing, an audio-visual work or a broadcast or by the publication, playing, performance or other use of the work.

(2) Despite subsection (1), if a musical work or words spoken or sung to music are deliberately included in another work, that act is not to be regarded as being incidentally included.

**8D. Use of work for demonstration purposes** - Despite section 6(1)(a), the copyright in a literary or musical work is not infringed by the use of the work in a good faith demonstration of a radio or television receiver or computer or any type of recording equipment or playback equipment to a client by a dealer in such equipment.

**8E. Acts done under statutory authority** - Despite section 6(1)(a), the copyright in a work is not infringed by the doing of anything that is specifically authorised by any enactment.

**8F. Prescribed dealings in copyright works**-(1) Despite section 6(1)(a), but subject to subsection (2), in addition to any other reproduction permitted under this Act, the reproduction of a work is to be permitted in such manner and circumstances as may be prescribed.

(2) Despite subsection (1), any regulations made under this section and section 35 must not:

- (a) permit any reproduction to be in conflict with a normal exploitation of the work; or
- (b) unreasonably prejudice the legitimate interests of the owner of the copyright.

**6. Importation for personal purposes** ó Section 14 of the Principal Act is repealed.

**7. Insertion of new section** – After section 23 of the Principal Act, insert:

**“23A. Unauthorised commercial use of subscription broadcasts**-(1) No person shall, without the authorisation of the broadcaster of a subscription broadcast, use the broadcast, or sounds or images from the broadcast, by way of trade or with the intention of obtaining a commercial advantage or profit, where:

- (a) the use prejudicially affects any of the following persons -

- (i) anyone with an interest in the copyright in the broadcast;
  - (ii) anyone with an interest in the copyright in any content of the broadcast;
  - (iii) the channel provider who supplied the broadcaster with the channel for the broadcast;
- and
- (b) the person knows, or ought reasonably to know, that the use is not authorised by the broadcaster.
- (2) Any interested person may initiate proceedings in the Supreme Court in order to prevent a contravention of subsection (1) or seek any other remedy arising out of a contravention of subsection (1).ö.

**8. Injunctions and other remedies** ö For section 25(3) of the Principal Act, substitute:

ö(3) Part VIIIA of the Customs Act 1977 applies to articles and implements protected under this Act.ö.

**9. Insertion of new section** - After section 26 of the Principal Act insert:

**ö26A. Powers of entry and search-**(1) Subject to subsection (2), the CEO may, pursuant to a warrant issued by the Supreme Court,:

- (a) enter and search any building, vessel or vehicle;
- (b) stop and search any person; or
- (c) pass across any land.

(2) The CEO, after obtaining the prior written approval of the Attorney-General, may only exercise powers under subsection (1) without a warrant:

- (a) where there is no time to apply for a warrant; and
- (b) if he or she believes, on reasonable grounds that an infringement of any rights granted under this Act is occurring or has occurred or an offence is being or has been committed against this Act.ö.

**10. Insertion of new section** ö After section 27 of the Principal Act insert:

17(1) The presumptions specified in this section apply in any proceedings, whether civil or criminal, for infringement of the copyright in any work.

(2) Copyright is presumed to subsist in a work until the contrary is proved.

(3) Except as otherwise provided in this section, where the subsistence of the copyright in a work is proved or admitted, or is presumed under subsection (2), the plaintiff is presumed to be the owner until the contrary is proved.

(4) Where:

(a) a name purporting to be that of the author of a work or of the owner appears on copies of the work; or

(b) a copy of a work bears or incorporates a statement, label or other mark indicating that a person is the author of the work or the owner,

that name, statement, label or mark is admissible as evidence of the fact stated or indicated which is to be presumed to be correct, unless the contrary is proved.

(5) The person named or in respect of whom a statement, label or other mark appears on or is borne on or is incorporated in copies of a work in accordance with subsection (4) shall, unless the contrary is proved, be presumed not to have made the work in the course of employment referred to in section 17(4).

(6) Where a work purports to be a work of joint authorship, subsections (2), (3), (4) and (5) apply in relation to each person purporting to be one of the authors of the work.

(7) Subject to subsection (8), where no name purporting to be that of the author of the work or of the owner, appears on the work or where the work does not bear or incorporate a statement, label or other mark in accordance with subsection (4), a person named in accordance with subsection (8)(b) is presumed to have been the author of the work or the owner, at the time when the work was first lawfully made available to the public, unless the contrary is proved.

(8) Despite subsection (7), a presumption will only be made where:

(a) the work qualifies for copyright protection by reference to the country, territory, state or area, in which it was first lawfully made available to the public; and

(b) either -

(i) a name purporting to be that of the person who first lawfully made available to the public the work appears on copies of the work as first so made available; or

(ii) copies of the work bear or incorporate a statement, label or other mark indicating that a named person first lawfully made available to the public the work.

(9) Where the author of the work is dead or the identity of the author cannot be ascertained by reasonable enquiry, it is to be presumed, unless the contrary is proved:

(a) that the work is an original work; and

(b) that the claims made by the plaintiff as to the date on which the work was first lawfully made available to the public and as to the country, territory, state or area in which the work was first so made available are correct.

(10) The presumptions in subsections (2) to (9) apply to the same extent in any action relating to an infringement which occurred before the date on which copies of a work were first lawfully made available to the public.

(11) In this section **owner** includes an exclusive licensee of the copyright.

**11. Application of international treaties** ó Section 33 of the Principal Act is repealed.

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**The Copyright Amendment Act 2011 is administered  
by the Ministry of Commerce, Industry and Labour.**