

# **DRAFT COPYRIGHT ACT**

# **THE REPUBLIC OF SEYCHELLES**

## **The Copyright Act, [date]**

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## DRAFT COPYRIGHT BILL

### *Short title, Entry into Force*

1. (a) This Law may be cited as the Copyright Act of [date].  
  
(b) This Law shall enter into force on [date to be determined]. The provisions of this Law shall apply also to works, performances, phonograms and broadcasts dating back to before the date of the entry into force of this Law, provided that the term of protection had not expired under the former legislation or under the legislation of the country of origin of such works, performances, phonograms or broadcasts that are to be protected under an international treaty to which the Republic of Seychelles is party. The Law shall not affect contracts on works, performances, phonograms and broadcasts concluded before the entry into force of this Law.  
  
(c) Copies that were lawfully made without the authorization of the right owner before the entry into force of this Law may be distributed to the public without the permission of the right owner for a period of two years from the date of entry into force of this Law.

### *Interpretation*

2. For the purpose of this Law, the following terms have the following meaning:
  - (i) an “audiovisual work” is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds, susceptible of being made audible;
  - (ii) “author” is the natural person who has created the work;
  - (iii) “broadcasting” is the communication of a work, a performance or a phonogram to the public by wireless transmission, including transmission by satellite;
  - (iv) “communication to the public” is the transmission by wire or by wireless means of a work, a performance, a phonogram or a broadcast in such a way that it can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the work, performance, phonogram or broadcast would not be perceivable, including the making available of the work or other protected subject matter in such a way that members of the public may access it from a place and at a time individually chosen by them;
  - (v) “computer” is an electronic or similar device having information-processing capabilities; and a “computer program” is a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

(vi) “distribution [to the public]” is putting into public circulation the original or a copy of a work, a fixation of a performance or a phonogram in tangible form through sale or other transfer of ownership, including importing for the purpose of such putting into circulation and public offering for sale and other transfer of ownership;

(vii) “traditional cultural expressions” or “expressions of folklore” are any forms, whether tangible and intangible, in which traditional culture and knowledge are expressed, appear or are manifested, and comprise the following forms of expressions or combinations thereof:

(a) verbal expressions, such as: stories, epics, legends, poetry, riddles and other narratives; words, signs, names, and symbols;

(b) musical expressions, such as songs and instrumental music;

(c) expressions by action, such as dances, plays, ceremonies, rituals and other performances, whether or not reduced to a material form; and,

(d) tangible expressions, such as productions of art, in particular, drawings, designs, paintings (including body-painting), carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, baskets, needlework, textiles, glassware, carpets, costumes; handicrafts; musical instruments; and architectural forms; which are:

(i) the products of creative intellectual activity, including individual and communal creativity;

(ii) characteristic of a community’s cultural and social identity and cultural heritage; and

(iii) maintained, used or developed by such community, or by individuals having the right or responsibility to do so in accordance with the customary law and practices of that community.

(viii) “fixation” means the embodiment of sounds, images or both or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

(ix) “infringement” is any act that violates any rights protected under this Act;

(x) “owner of copyright” is:

- where the economic rights are vested in the author, the author,
- where the economic rights are originally vested in a natural person other than the author or in a legal entity, that person or entity,
- where the ownership of the economic rights has been transferred to a natural person or legal entity, that person or entity;

(xi) “performers” are singers, musicians, and other persons who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or traditional cultural expressions/expressions of folklore;

(xii) “phonogram” is the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

(xiii) “photographic work” is a recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made; a still picture extracted from an audiovisual work shall not be considered a “photographic work” but a part of the audiovisual work concerned;

(xiv) “producer” of an audiovisual work or a phonogram is the natural person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or phonogram;

(xv) “public performance” is:

(a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;

(b) in the case of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and

(c) in the case of a phonogram, making the recorded sounds audible,

in each case at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present;

(xvi) “publication and published” in respect of a work, or a phonogram, is the making of tangible copies available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies, provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a phonogram, a fixation of a performance with the consent of the producer of the phonogram or his successor in title;

(xvii) “rental” is the transfer of the possession of the original or a copy of a work or phonogram for a limited period of time for profit-making purposes;

(xviii) “reproduction” is the making of one or more copies of a work or phonogram in any manner or form, including any permanent or temporary storage of the work or phonogram in electronic form;

(xix) “rights management information” is any information that identifies the author, the work, the performer, the performance of the performer, the producer of the phonogram, the phonogram, the broadcaster, the broadcast, the owner of any right under this Law, or information about the terms and conditions of use of the work, the performance, the phonogram or the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance, a phonogram or a fixed

broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a phonogram or a broadcast;

(xx) “technological protection measures” means any technology, device or component that, in the normal course of operation, is designed to prevent or restrict acts, in respect of works or objects of related rights, which are not authorized by the right holder.

(xxi) “circumvent technological protection measures” means to avoid, bypass, remove, deactivate, or impair these measures, including descrambling a scrambled work or object of related right or decrypting an encrypted work or object of related right.

(xxii) “work” is any literary or artistic work under Sections 3(1) and 4(1);

(xxiii) “work of applied art” is an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

(xxiv) “work of joint authorship” is a work to the creation of which two or more authors have contributed.

## PART I

### COPYRIGHT

#### *Works Protected*

3. (1) Literary and artistic works (hereinafter referred to as “works”) are original intellectual creations in the literary and artistic domain, including in particular:

(a) books, pamphlets, articles and other writings;

(b) speeches, lectures, addresses, sermons and other oral works;

(c) dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;

(d) musical works, with or without accompanying words;

(e) audiovisual works;

(f) works of architecture;

(g) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;

(h) photographic works;

(i) works of applied art;

(j) computer programs;

(k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) Works shall be protected [by the sole fact of their creation] [when they are fixed in some material form] and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

#### *Derivative Works*

4. (1) The following shall also be protected as works:

(a) translations, adaptations, arrangements and other transformations or modifications of works or traditional cultural expressions/expressions of folklore; and

(b) collections of works, collections of data (databases), whether in machine readable or other form, and collections of traditional cultural expressions/expressions of folklore, provided that such collections are original by reason of the selection or arrangement of their contents.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work or traditional cultural expression/expression of folklore incorporated in or utilized for the making of such a work.

#### *Subject Matter Not Protected*

5. Notwithstanding the provisions of Sections 3 and 4, no protection shall extend under this Law to:

(a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work;

(b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof;

(c) news of the day or miscellaneous facts having the character of mere items of press information

(d) political speeches and speeches delivered in the course of legal proceedings.



### *Economic Rights*

6. (1) The author or other owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the work:

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement or other transformation of the work;
- (d) distribution of the original or a copy of the work to the public;
- (e) rental of the original or a copy of an audiovisual work, a work embodied in a phonogram or a computer program;
- (f) public performance of the work;
- (g) broadcasting of the work;
- (h) other communication to the public of the work.

(2) The right of distribution under item (d) of subsection (1) does not apply to the original or a copy of the work that has already been subject to a sale or other transfer or ownership in [any country] [the national territory] authorized by the owner of copyright.

(3) The right of rental under item (e) of subsection (1) does not apply to rental of computer programs where the program itself is not the essential object of the rental.

### *Moral Rights*

7. (1) Independently of his economic rights, and even where he is no longer the owner of the said rights, the author of a work shall have the following moral rights:

(a) to have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;

(b) to not have his name indicated on the copies and in connection with any public use of his work[,and the right];

(c) to use a pseudonym;

(d) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to his work which would be prejudicial to his honor or reputation.

(2) The rights mentioned in subsection (1) shall not be transmissible during the life of the author, but the right to exercise any of those rights may be transferred by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under item (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived. Following the death of the author, the natural person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

#### *Private Reproduction for Personal Purposes*

8. (1) Subject to the provisions of subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorization of the author or owner of copyright, where the reproduction is made by a natural person exclusively for his own personal purposes.

(2) The permission under subsection (1) shall not extend to reproduction:

(a) of a work of architecture in the form of building or other construction;

(b) in the form of reprography of the whole or of a substantial part of a book or of a musical work in the form of notation;

(c) of the whole or of a substantial part of a database in digital form;

(d) of a computer program, except as provided in Section 14; and

(e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

#### *Temporary Reproduction*

9. The temporary reproduction of a work shall be permitted if all the following conditions are met:

(a) the reproduction is made in the process of a digital transmission of the work or an act of making a digitally stored work perceptible;

(b) it is caused by a person or entity that, by way of authorization by the owner of copyright or of operation of law, is entitled to make that transmission or making perceptible of the work; and

(c) it is an accessory to that transmission or making perceptible, that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those, referred to in items (a) and (b).

### *Quotation*

10. The quotation from a work that has lawfully been made available to the public shall be permitted without authorization of the author or other owner of copyright, provided that the quotation is compatible with fair practice and does not exceed the extent justified by the purpose. The quotation shall be accompanied by an indication of source and the name of the author, if the name appears in the source from which the quotation is taken.

### *Reproduction and other Utilization for Teaching*

11. (1) The following acts shall be permitted without authorization of the author, or other owner of copyright:

(a) the utilization by way of illustration for teaching or scientific research purposes of a work that has lawfully been made available to the public, in publications, broadcasting or sound or visual recordings, provided that such utilization is compatible with fair practice and does not exceed the extent justified by the purpose; the utilization can also include the making available of such works in computer networks, provided that access to the works is only available to enrolled pupils or students and their teachers;

(b) the reprographic reproduction, for face-to-face teaching in educational institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that :

(i) the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions,

(ii) no more than a single copy for each pupil or student and the teacher is made, and

(iii) there is no collective license available (that is, offered by a collective administration organization of which the educational institution is or should be aware) under which such reproduction can be made.

(2) The source of the work and the name of the author shall be indicated as far as practicable on all copies made under paragraph (1) or otherwise in reasonable connection with the work.

*Reproduction  
by Libraries and Archives*

12. Any library or archive whose activities do not serve direct or indirect gain may, without the authorization of the author or other owner of copyright, make a [single] copy of a work:

(a) by reprographic reproduction where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a person, provided that:

(i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research,

(ii) the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions, and

(iii) there is no collective license available offered by a collective copyright management organization under which such copies can be made; or for part of a work [e.g. one volume]

(b) where the copy is made in order to preserve and, if necessary, replace a copy, or to replace a copy which has been lost, destroyed, or rendered unusable in the permanent collection of another similar library or archive, provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions.

*Reproduction, Broadcasting and Other Communication  
to the Public for Informatory Purposes*

13. The following acts shall be permitted in respect of a work without the authorization of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:

(a) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character; this permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work;

(b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose;

(c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a lecture, address, sermon or other work of a similar nature delivered in public, to the extent justified by the purpose of providing current information.

#### *Reproduction and Adaptation of Computer Programs*

14. (1) The reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorization of the author or other owner of copyright, provided that the copy or adaptation is necessary:

(a) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;

(b) for archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

#### *Visually Impaired Persons*

15. (1) It shall be permitted without the authorization of the author or other owner of copyright to reproduce a published work for visually impaired persons in an alternative manner or form which enables their perception of the work, and to distribute the copies exclusively to those persons, provided that the work is not reasonably available in an identical or largely equivalent form enabling its perception by the visually impaired; and the reproduction and distribution are made on a non-profit basis.

(2) The distribution is also permitted in case the copies have been made abroad and the conditions mentioned above have been fulfilled.

(3) The provisions in subsections (1) and (2) are subject to the obligation to indicate the source and the name of the author:

### *Ephemeral recordings*

16. Any broadcasting organization may make, without the authorization of the author or other owner of copyright, for the purpose of its own broadcasts and by means of its own facilities, an ephemeral recording of any work which it is authorized to broadcast. All copies of it shall be destroyed within six months of the making or within any longer term agreed to by the author; however, where such recording has an exceptional documentary character, one copy of it may be preserved in official archives.

### *Use for public security and for the performance or reporting of proceedings*

17. A work may be used for the purposes of public security and to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings.

### *Duration of Copyright*

18. (1) The economic and moral rights shall be protected during the life of the author and for fifty years after his death.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of an audiovisual work, the economic and moral rights shall be protected for fifty years from the date on which the work was made or first made available to the public by publication or by any other means, whichever date is the latest.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for fifty years from the date on which the work was made or first made available to the public, by publication or by any other means whichever date is the latest, provided that where the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2) shall apply, as the case may be.

(5) In the case of a work of applied art, the economic and moral rights shall be protected for twenty five years from the making of the work.

(6) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

### *Original Ownership of Economic Rights*

19. (1) Subject to the provisions of subsections (2) to (4), the original owner of economic rights in respect of a work is the author who has created the work.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in the part that he has created.

(3) In respect of a work created by an author, employed by a natural person or legal entity, in the course of his employment, the original owner of the economic rights shall be, unless provided otherwise in a contract, the employer.

(4) In respect of an audiovisual work, the original owner of the economic rights shall be the producer, unless provided otherwise in a contract. The co-authors of the audiovisual work and the authors of the pre-existing works included in or adapted for the making of the audiovisual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be subject of acts covered by their economic rights separately from the audiovisual work.

#### *Presumption regarding Authorship, Producers of Audiovisual Works and Publishers*

20. (1) The natural person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

(2) The person whose name appears on an audiovisual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the producer of the work.

(3) In the case of an anonymous or pseudonymous work, subject to the provision in the second sentence of paragraph (1), the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author. This presumption shall cease to apply when the author reveals his identity.

#### *Assignment and Licensing of Authors' Rights*

21. (1) Economic rights shall be assignable in whole or in part.

(2) Any assignment of an economic right, and any exclusive license to do an act subject to authorization by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.

(3) An assignment in whole or in part of any economic right, or a license to do an act subject to authorization by the author or other owner of copyright, shall not include or be deemed to include the assignment or license of any other rights not explicitly referred to therein.

## PART II

### PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANIZATIONS

#### *Rights of Performers*

22. (1) A performer shall have the exclusive right to carry out or to authorize any of the following acts:

(a) the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication:

- (i) is made from a fixation of the performance which the performer has authorized to be made; or
- (ii) is a rebroadcasting made or authorized by the organization initially broadcasting the performance;

(b) the fixation of his unfixed performance;

(c) the direct or indirect reproduction of a fixation of his performance, in any manner or form;

(d) the distribution of a fixation of his performance, or of copies thereof, to the public;

(e) the rental to the public of a fixation of his performance, or copies thereof;

(f) the making available to the public of his fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

(2) Once the performer has authorized the incorporation of his performance in an audiovisual fixation, [the provisions of subsection (1) shall have no further application.] [he shall, in the absence of contractual provisions to the contrary, be deemed to have assigned his exclusive economic rights with respect to that fixation to its producer.]



(3) The right of distribution under item (d) of subsection (1) shall not apply to a copy of a fixation of his performance that has already been subject to a sale or other transfer of ownership in [any country] [the national territory] authorized by the performer.

(4) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation. [Modifications consistent with the normal exploitation of a performance in the course of a use authorized by the performer shall not be considered prejudicial to the performer's reputation.] The provisions of subsections (2) and (3) of Section 7 apply *mutatis mutandis* to the rights granted under this subsection.

(5) The rights under this Section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed.

#### *Rights of Phonogram Producers*

23. (1) A producer of a phonogram shall have the exclusive right to carry out or to authorize any of the following acts:

(a) the direct or indirect reproduction of the phonogram, in any manner or form;

(b) the distribution of the original or copies of the phonogram to the public;

(c) the rental of a copy of the phonogram to the public,

(d) the making available to the public of the phonogram, by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them.

(2) The right of distribution under item (b) of subsection (1) shall not apply to the original or the copy of the phonogram that has already been subject to a sale or other transfer of ownership [in any country] [in the national territory] authorized by the producer.

(3) The rights under subsection (1) shall be protected from the publication of the phonogram until the end of the fiftieth calendar year following the year of publication or, if the phonogram has not been published from the fixation of the phonogram until the end of the fiftieth calendar year, following the year of fixation.

#### *Equitable Remuneration for Use of Phonograms*

24. (1) If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or other communication to the public, or is publicly

performed, a single equitable remuneration for the performer or performers and the producer of the phonogram shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(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 fiftieth calendar year following the year of publication, provided that the phonogram is still protected under Section 23(3).

(4) For the purposes of this Section, phonograms that have been made available to the public by wire or wireless means 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) Subsection (1) does not apply to the extent that the use of the phonogram is covered by an exclusive right under Section 22(1)(f) or Section 23(1)(e).

#### *Rights of Broadcasting Organizations*

25. (1) A broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts:

- (a) the rebroadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast;
- (d) the reproduction of a fixation of its broadcast.

(2) The rights under this Section shall be protected from the moment when the broadcasting takes place until the end of the [twentieth] [fiftieth] calendar year following the year in which the broadcast takes place.

(3) Program-carrying signals transmitted by satellite which are not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable distribution by an authorized receiving organization, may not be broadcast or communicated to the public by anyone else without authorization of the person or legal entity that decided what program the emitted signal would carry (originating organization).

### *Limitations on Protection*

26. Sections 22, 23, 24 and 25 shall not apply where the acts referred to in those Sections are related to:

(a) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;

(b) reproduction solely for scientific research;

(c) reproduction solely for the purpose of [face-to-face] [distance teaching] teaching activities, except for performances and phonograms which have been published as teaching or instructional materials;

(d) cases where, under Part I, a work can be used without the authorization of the author or other owner of copyright.

## PART III

### ENFORCEMENT OF RIGHTS

#### *Provisional Measures*

27. (1) Upon the request of the right owner, the court having jurisdiction of a civil action arising under this Law may, in accordance with [the relevant provisions of the national legislation on judicial procedure], and on such terms as it may deem reasonable:

(a) grant preliminary injunctions to prohibit the committing, or continuation of committing, of infringement of any right protected under this Law;

(b) order the preliminary impounding of copies of works or phonograms and their packaging suspected of being made or imported without the authorization of the owner of any right protected under this Law where the making or importation of copies is subject to such authorization, as well as the impounding of materials and implements suspected of having been predominantly used for the making of such copies or suspected of posing a risk for such future use.

(c) order prompt and effective provisional measures to preserve relevant evidence in regard to an alleged infringement.

(2) The provisions of [the relevant provisions of the national legislation on search and seizure] shall apply to infringements of rights under this Law.

### *Civil Remedies*

28. (1) Where an act has been found to be an infringement of any right protected under this Law, the court may, upon the request of the right owner, order the infringer to desist from such act.

(2) The owner of any right protected under this Law shall be entitled to payment, by the infringer who has knowingly or with reasonable grounds to know infringed his rights, of damages for the prejudice suffered as a consequence of the act of infringement, as well as the payment of expenses caused by the infringement, which may include legal costs. The amount of damages shall be fixed in keeping with [the relevant provisions of the Civil Code], taking into account [the importance of] the economic and moral prejudice suffered by the owner of the right. The court may also, even when the infringer did not know nor had no reasonable grounds to know that he was engaged in infringing activity, order the recovery of profits.

(3) Where goods have been found to be infringing copies, the court may, taking into account the need for proportionality between the seriousness of the infringement and the remedy as well as legitimate interests of third parties, order the destruction or other reasonable disposition of those copies and their packaging outside the channels of commerce without compensation of any sort in such a manner as to avoid any harm to the right holder.

(4) The court may also, taking into account the conditions set out in sub-section (2), order without compensation of any sort the destruction or other reasonable disposition outside the channels of commerce of materials and implements the predominant use of which has been the making of infringing copies in such a manner as to minimize the risks of further infringements.

(5) The court may order the infringer to inform the right owner of the identity of third persons involved in the production and distribution of the infringing goods or rendering of services, and of their channels of distribution, unless this would be out of proportion to the seriousness of the infringement.

### *Criminal Sanctions*

29. (1) In keeping with [the relevant provisions of the Penal Code and the Code on Criminal Procedure], any infringement of a right protected under this Law, if committed willfully and on a commercial scale, shall be punished by imprisonment for a period of between... and ..., or by a fine of between ... and ... or by both. The amount of the fine shall be fixed by the court, taking into particular account the defendant's profits attributable to the infringement.

(2) The court may increase up to double the upper limit of the penalties specified in paragraph (1), where the defendant has been convicted for a new act of infringement committed within five years of a previous conviction for an infringement.

(3) The court may apply the measures and remedies referred to in Section 27(1)(b) and (2) and Section 28(3) and (4) also in criminal proceedings.

### *Technological Protection Measures*

30. (1) It is prohibited to:

(a) circumvent effective technological protection measures; or

(b) produce, import, distribute, sell, rent, advertise for sale or rental, or possess devices, products, components or services for commercial purposes that:

(i) are promoted, advertised or marketed for the purpose of circumventing effective technological protection measures;

(ii) have only a limited commercially significant purpose or use other than to circumvent effective technological protection measures; or

(iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological protection measures.

Technological protection measures are “effective” where the use of a work or object of related right protected under this Law is controlled by the right holder through application of an access control or protection process – such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism – which, in the normal course of its operation, achieves the protection objective.

(2) Notwithstanding subsection (1), upon the request by the beneficiary of an exception or limitation in accordance with Sections 11, 12, 13, 15, 16 or 17, a [competent administrative authority] [court] may order that the necessary means be made available to the extent required to benefit from it.

[(3) The provisions of paragraph (2) shall not apply to works or other subject matter made available to the public on agreed contractual terms in such a way that members of the public may access them from a place and at a time individually chosen by them.]

### *Protection of Rights Management Information*

31. (1) It is prohibited to:

(a) remove or alter any electronic rights management information without the consent of the right holder, or

(b) distribute, import for distribution, broadcast or communicate to the public of works or other subject-matter protected under this Law from which electronic copyright management information has been removed or altered without the authorization of the right owner  
when such act will induce, enable, facilitate or conceal an infringement of any right covered by this Law.

(2) Subsection (1) does not prohibit any governmental activities for public policy or security authorized by law.

#### *Prohibited Acts Assimilated to Infringement of Rights*

32. The acts prohibited according to Section 25(3) and Sections 30 and 31 shall be deemed to be an infringement of a right protected under this law, for the purposes of Sections 27 and 28.

### PART IV

#### FINAL PROVISIONS

##### *Scope of Application, Copyright*

33. (1) The provisions of this Law concerning the protection of literary and artistic works shall apply to:

(a) works of authors who are nationals of, or have their habitual residence in the Republic of Seychelles ;

(b) works first published in the Republic of Seychelles , and works first published in another country and also published in the Republic of Seychelles within thirty days, irrespective of the nationality or residence of their authors;

(c) audiovisual works, the producer of which has his headquarters or habitual residence in the Republic of Seychelles ; and

(d) works of architecture erected in the Republic of Seychelles and other artistic works incorporated in a building or other structure located in the Republic of Seychelles .

(2) The provisions of this Law shall also apply to works that are eligible for protection in the Republic of Seychelles by virtue of and in accordance with any international convention or other international agreement to which the Republic of Seychelles is party.

### *Scope of Application, Related Rights*

34. (1) The provisions of this Law on the protection of performers shall apply to:
- (a) performers who are nationals of the Republic of Seychelles ;
  - (b) performers who are not nationals of the Republic of Seychelles but whose performances:
    - (i) take place on the territory of the Republic of Seychelles ; or
    - (ii) are incorporated in phonograms that are protected under this Law; or
    - (iii) have not been fixed in a phonogram but are included in broadcasts qualifying for protection under this Law.
- (2) The provisions of this Law on the protection of phonograms shall apply to:
- (a) phonograms the producers of which are nationals of the Republic of Seychelles ;
  - (b) phonograms first fixed in the Republic of Seychelles ; and
  - (c) phonograms first published in the Republic of Seychelles .
- (3) The provisions of this Law on the protection of broadcasts shall apply to:
- (a) broadcasts of broadcasting organizations the headquarters of which are situated in the Republic of Seychelles ; and
  - (b) broadcasts transmitted from transmitters situated in the Republic of Seychelles .
- Section 24(3) applies to program-carrying signals the originating organization of which is a national of the Republic of Seychelles .
- (4) The provisions in this Law shall also apply to performers, producers of phonograms, broadcasting organizations and originating organizations, as defined in Section 24(3), that are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which the Republic of Seychelles is party.

### *Application of International Treaties*

35. The provisions of any international treaties in respect of copyright and related rights to which the Republic of Seychelles is a party shall apply to matters dealt with in this Law and, in case of conflict with provisions of this Law, shall prevail over the latter.

*Miscellaneous Provisions*

36. (1) Existing provisions on the protection of literary and artistic works, performers, producers of phonograms and broadcasting organizations cease to have effect.

(2) The Minister of ..... shall be authorized to regulate by decree questions whose regulation may be necessary for the implementation of this Law, including the setting up of one or more organizations to manage rights on behalf of the owners of such rights and determining the conditions under which such organizations shall work.