

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

Explanatory Memorandum

The object of this Bill is to amend the Copyright Act in order to, inter alia –

- (a) make better provisions regarding phonograms;
 - (b) increase the length of the duration of copyright;
 - (c) make better provisions regarding the payment of equitable remuneration; and
 - (d) replace the Rights Management Society by the Mauritius Society of Authors and provide for the procedure regarding its membership.
2. Opportunity is also being taken to clarify some provisions of the Act.

P. ROOPUN

Minister of Arts and Culture

26 October 2017

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ARRANGEMENT OF CLAUSES

Clause

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| 2. Interpretation | 13. Section 31 of principal Act amended |
| 3. Section 2 of principal Act amended | 14. Section 32 of principal Act amended |
| 4. Section 7 of principal Act amended | 15. Section 33 of principal Act amended |
| 5. Section 9 of principal Act amended | 16. Section 34 of principal Act repealed and replaced |
| 6. Section 10 of principal Act amended | 17. Section 35 of principal Act amended |
| 7. Section 15 of principal Act amended | 18. Section 36 of principal Act amended |
| 8. Section 16 of principal Act amended | 19. Section 41 of principal Act amended |
| 9. Section 20 of principal Act amended | 20. Section 42 of principal Act amended |
| 10. Section 27 of principal Act amended | 21. Section 43 of principal Act amended |
| 11. New section 28A inserted in principal Act | 22. Section 44 of principal Act amended |

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| 23. Section 45 of principal Act repealed and replaced | 27. New section 48A inserted in principal Act |
| 24. New section 45A inserted in principal Act | 28. Section 51 of principal Act amended |
| 25. Section 46 of principal Act amended | 29. Section 56 of principal Act amended |
| 26. Section 48 of principal Act repealed and replaced | 30. Schedule added to principal Act |
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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 2017.

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 “broadcasting organisation”, “Society” and “sound recording” and replacing them by the following definitions –

“broadcasting organisation” means a legal entity which takes –

- (a) the initiative of packaging, assembling and scheduling programme content for which it has, where necessary, been authorised by right holders; and
- (b) the legal and editorial responsibility for the communication to the public of everything which is included in its broadcast signal;

“Society” means the Mauritius Society of Authors established under section 43;

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

- (b) by inserting, in the appropriate alphabetical order, the following new definitions –

“equipment” means any recording or transmission equipment;

“Ministry” means the Ministry responsible for the subject of copyright and related rights;

4. Section 7 of principal Act amended

Section 7 of the principal Act is amended –

- (a) in subsection (1), by inserting, after the words “shall have the”, the word “moral”;
- (b) in subsection (2) –
 - (i) in paragraph (a), by inserting, after the word “The”, the word “moral”;
 - (ii) in paragraph (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) –

- (a) in paragraph (a), by inserting, after the words “audiovisual work”, the words “or phonogram”;
- (b) in paragraph (b), by inserting, after the words “audiovisual work” wherever they appear, the words “or phonogram”.

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 phonograms,**”;

- (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 subsections (1) and (2), by deleting the figure “50” and replacing it by the figure “70”;
- (b) in subsection (3), by deleting the figure “50” and the words “audiovisual work, the economic and moral rights” and replacing them by the figure “70” and the words “audiovisual work or phonogram, the economic rights”, respectively;
- (c) 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 concerns an audiovisual work or a work embodied in a sound recording, other than the reproduction of a single copy by an individual exclusively for his own personal purposes, 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 the importers of 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 organisation under which such copies may be made” and replacing them by the words “the Society”.

10. Section 27 of principal Act amended

Section 27 of the principal Act is amended, in subsection (2), by deleting the words “such equitable remuneration as may be prescribed” and replacing them by the words “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 on economic rights in this Part 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 them by the words “place and”;
- (b) in subsection (3), by deleting the word “fiftieth” wherever it appears 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 an audiovisual work is made for commercial purposes, the label of the recording or its container shall conspicuously bear a notice, as follows –

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

(2) The notice referred to in subsection (1) shall be placed in a manner that gives reasonable indication 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 a producer fails to comply with this section, 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 an audiovisual work referred to in subsection (1) unless the hologram of the Society is affixed on its label or container.

17. Section 35 of principal Act amended

Section 35 of the principal Act is amended –

- (a) in subsection (1), by deleting the words “directly”, “or performers” and “producer or”;
- (b) by repealing subsection (2) and replacing it by the following subsection –
 - (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.
- (c) in subsection (3), by deleting the word “fiftieth” and replacing it by the word “seventieth”;
- (d) in subsection (5), by deleting the words “Section 32(1)(d)” and replacing them by the words “Section 35(1)”.

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 amended

Section 42 of the principal Act is amended by repealing paragraph (a).

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 Society of Authors”;
- (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;
- (c) a representative of the Attorney-General's Office;
- (d) a representative of the Ministry responsible for the subject of finance;
- (e) a representative of the Ministry responsible for the subject of industry;
- (f) a representative of the Ministry responsible for the subject of information and communication technology;
- (g) a representative of the Customs Department;
- (h) a representative of the Industrial Property Office;
- (i) a member having knowledge and experience in the field of copyright and related rights, to be appointed by the Minister after consultation with such persons as the Minister may determine; and
- (j) 7 other members, to be elected in accordance with the rules of election specified 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 (h), 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 subsections –

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

(9) (a) All rights, obligations and liabilities subsisting in favour of or against the Rights Management Society shall, on the commencement of this section, continue to exist under the same terms and conditions in favour of or against the Mauritius Society of Authors.

(b) Any act or thing done, or any contract or agreement entered into, by the Rights Management Society shall, on the commencement of this section, be deemed to have been done or entered into by the Mauritius Society of Authors.

(c) All proceedings, judicial or otherwise, initiated before and pending on the commencement of this section, by or against the Rights Management Society, shall be deemed to have been initiated, and may be continued, by or against the Mauritius Society of Authors.

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 to the Board who shall –

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

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 and charges 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) negotiate with any users of a work –
 - (i) the conditions of, and the fees and charges 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) enter into 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) endeavour to obtain the transfer of membership of Mauritian authors who are members of foreign collective management organisations and safeguard in favour of the Mauritian authors whose membership has been transferred, all the advantages which may have accrued to them before the transfer;
- (j) enter into contracts with relevant persons, for the benefit of its members, regarding the use of the works of the members;
- (k) foster such harmony and understanding between copyright owners and the users of their works as may be necessary for the protection of the economic rights of the authors;
- (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. Committees

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

(2) (a) A committee shall consist of at least 3 members and 2 other persons with relevant expertise not already available to the Board as the Board may co-opt.

(b) The members and persons referred to in paragraph (a) shall be appointed by the Board on such terms and conditions as it may determine and be paid such allowance as the Board may determine.

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

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

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

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

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

25. Section 46 of principal Act amended

Section 46 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection –

(1) (a) A copyright owner or exclusive licensee may, in accordance with the rules of the Society, apply for membership of the Society.

(b) The Society shall manage the economic rights of its members where such members deposit their works with the Society.

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, in respect of every financial year, an annual report and submit it to the Board for approval, together with an audited statement of accounts on the operations of the Society.

(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. New section 48A inserted in principal Act

The principal Act is amended by inserting, after section 48, the following new section –

48A. Directions by Minister

(1) The Minister may give such written directions of a general character to the Society, not inconsistent with this Act, as he considers necessary in the public interest, and the Society shall comply with those directions.

(2) The Minister may require the Society to furnish such information in such manner and at such time as he thinks necessary in respect of its activities and the Society shall supply such information.

28. Section 51 of 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).

29. Section 56 of principal Act amended

Section 56 of the principal Act is amended by repealing subsection (1) and replacing it by the following subsection –

- (1) Any person who –
 - (a) without the written authorisation of the copyright owner or Society –
 - (i) publishes, distributes, sells or reproduces a work;
 - (ii) performs a work 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, 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) has, in his possession, any copy 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 in 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.

30. Schedule added to principal Act

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

31. 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 30]

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) of the Act, and thereafter, not less than one month before the expiry of the term of office of the members referred to in section 43(3)(i), the Secretary to the Board shall publish in the Gazette and such newspaper as the Society may determine, a notice inviting the submission of nominations and appointing a day on, and the time at, which nominations shall be submitted.

2. Eligibility to stand as candidate

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

3. Procedure after nomination

(1) If the number of persons nominated exceeds the number of persons to be elected, the Secretary to the Board shall publish in the Gazette and such newspaper as the Society may determine, 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 nominated shall not publish or distribute any manifesto which is 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 to the Board.

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

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