

THE COPYRIGHT BILL, 2010

EXPLANATORY NOTES

The Copyright Bill provides for the protection of copyright and neighbouring rights and for incidentals and connected matters.

1. **Part I** of the Bill provides for the preliminary provisions. Clauses 1-4 provide for the short title, the binding of the State by the Bill, the interpretation of the words used throughout the Bill and the application of the Bill.

2. **Part II** of the Bill contains clauses 5-19 and provides for matters relating to copyright and copyright works, the basis of the protection provided for such work, the derivative works that fall under this protection and the exceptions, the exclusive control of the copyright owner over his work, the cases where no authorization is required from the copyright owner for the use or reproduction of his work.

Clause 5 defines copyright as a property right existing in original literary and artistic works such as books, speeches, stage productions, musical works, audiovisual works, works of fine art, architectural or scientific works. Further, by virtue of clause 5(2) the basis of protection of such works stem from their creation, not their mode, form of expression, content, quality or purpose.

3. Provision is made in **Part III** of the Bill in clause 20 for the protection of the copyright owner's moral rights. Irrespective of having economic rights, the author or a work has the right to choose whether or not his name is placed on his work during public use and to object to any negative action taken in relation to his work. These rights are only transmissible through the transfer of property through the law upon the author's death.

4. **Part IV** of the Bill contains clause 21 and makes provision for the duration of the copyright owner's economic and moral rights, which are subject to protection during his life and for fifty years after death. Where there is a collective or audiovisual work involved, economic and moral rights are protected for fifty years after publishing, after being made publicly available or after being made.

5. **Part V** of the Bill contains clauses 22- 27 and provides for neighbouring rights which are property rights that exist in performances, sound recordings and broadcasts. Performers and producers of sound recordings are provided with the exclusive right to carry out or authorize specific acts with respect to the use, reproduction, rental and public availability of their works (clauses 23- 24).

Clause 25 provides for equitable remuneration to be fixed by the Court, paid by the user to the performer and the producer of a sound recording for the commercial use or reproduction of such a work. The right to equitable remuneration exists from the date of publication of the work and lasts fifty years.

By virtue of clauses 26 and 27 respectively, a broadcasting organisation has the exclusive right to do, authorize or prohibit the re- broadcasting, public communication, fixation or reproduction of its broadcast. These rights are protected from the time of the first broadcast and lasts fifty years and the protection is subject to exceptions.

6. **Part VI** of the Bill contains clauses 28- 31 and provides for ownership of copyright and neighbouring rights, including provision for original ownership of neighbouring rights by international organizations, assignment and licenses related to economic rights, the transmission of an assignment of economic rights as personal and moveable property, the granting of a license and its binding effect on successors in title and the requisite exceptions, and the prospective ownership of an author's rights,

By virtue of clause 30, the effective transmission of an assignment of economic rights as personal or moveable property must be in writing and signed for the assignor. Where the owner of the economic rights grants a license, that license is binding on all successors in title except a purchaser in good faith or a person who holds title from that purchaser. An exclusive licensee has the same rights as a successor in title, bound by a license, as he has against the grantor of the license.

Clause 31 makes provision for the prospective ownership of an author's rights. Sub- clause 2 defines "future copyright and neighbouring rights" as such rights that will or may come into existence in any future work, sound recording, performance or broadcast. The term "prospective owner" includes a person who has future entitlement to copyright or neighbouring rights through any agreement made between the prospective owner and the other person. A license granted by a prospective owner of copyright or neighbouring rights is binding on successors in title. The exceptions are the same as listed in clause 30.

7. **Part VII** of the Bill contains clauses 32-39 and makes provision for matters of infringement of copyright or neighbouring rights including the actions (claims and counterclaims) that may be taken, the available remedies (compensation, injunctions, accounts) with exceptions for construction cases, the matters that are considered by the Court when assessing these remedies.

Clause 34 provides for the actions taken by the exclusive licensee, who has the same rights and can use the same remedies as the owner of copyright or neighbouring rights in matters that occur after the license has been granted, except where the action is taken against the latter person.

Clause 35 provides for cases where there is an infringement of copyright or neighbouring rights and both an owner of the copyright or neighbouring rights and an exclusive licensee have rights to bring an action (claim or counterclaim), this may not occur without the permission of Court, unless both parties are included in the action. The party that is added to the action is not liable for costs unless he participates in the proceedings.

Secondary infringements are defined in clause 36 as acts involving copyright works without the authorization of the owner of copyright and the details of such acts are given. There are presumptions with respect to the authorship of works, producers of sound recordings, performers in the recording, authors or directors of audiovisual works, or the author or publisher of computer programs, that the named person or legal entity is the owner of copyright until the contrary is proved. The same applies where the State is the copyright owner.

8. **Part VIII** of the Bill contains clauses 40- 50 and makes provisions for civil remedies and criminal liability for matters of infringement and provides for the discretion of the Court in particular cases.

Clause 43 provides that a person who commits an infringement of a right protected under this Bill for profit- making purposes, and that person did so knowingly or had reason to believe that he was committing an infringement, commits an offence and is liable on summary conviction to a maximum fine of five thousand dollars and to imprisonment not exceeding ten years.

Further provision is made in clauses 46 - 50 for offences by bodies corporate, the time limit for prosecution (five years after the offence or one year after the discovery of the offence, whichever is later), measures, remedies and sanctions against abuses of technological works, police powers under this Bill which includes the power to arrest without a warrant, the restriction of importation of infringing copies.

9. **Part IX** of the Bill contains clauses 51- 55 and makes provision for special jurisdiction of the Court to determine disputes with licensing bodies in the grant of general licences, to fix equitable compensation in the absence of an agreement between an owner of copyright and another person for the use of work, the procedure regulating the proceedings brought before the court, the fees chargeable in the proceedings and the right of appeal in court proceedings,.

The term “general licence” means a licence extending to the works of several authors, the sound recordings or audiovisual works of several producers or performances of several performers.

The term “licensing body” means any society or organization which specializes in the negotiation or granting of general licences for protected works, sound recordings or performances to owners or prospective owners of copyright or neighbouring rights, or to the agents of the latter.

10. **Part X** of the Bill contains clauses 56- 61 and sets out the final provisions including the scope of application of the Bill, the application of the Bill in relation to performers, sound recordings and broadcasts, the repeal of the previous Copyright Act of 1988, the savings clause and the commencement of the Bill.

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Rohan A. Phillip
Hon. Attorney-General

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GRENADA

ACT NO OF 2010

AN ACT to make provision for the protection of copyright and neighbouring rights, and for incidental and connected matters.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Senate and the House of Representative and by authority of the same as follows:-

**PART I
PRELIMINARY**

Short title

1. This Act may be cited as the
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Act binds the Government

2. This Act binds the Government, but nothing in this Act shall render the Government liable to prosecution.

Interpretation

3. In this Act -

"audio-visual work" means 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;

"author" means the natural person who has created the work;

"Berne Convention country" means a country that is a party to the Convention for the Protection of Literary and Artistic Works concluded at Berne on September 19, 1886, or any of its revisions, including the Paris Act of 1971;

"broadcasting" means the communication of a work, a performance or a sound recording to the public in any country or territory by wireless transmission, including transmission by satellite, and "broadcast" and "rebroadcasting" have corresponding meanings;

"building" means a structure of any kind;

"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;

"collective work" means a work created by two or more natural persons at the initiative and under the direction of a natural person or legal entity, with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing natural persons will not be indicated;

"communication to the public" means 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;

"computer" means an electronic or similar device having information processing capabilities; and a "computer program" means 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;

"copyright" means the right subsisting under Part II;

"Court" means the High Court;

“distribution to the public” means the putting into circulation of 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;

"electronic retrieval system" means an electronic system-

- (a) in which works, performances or broadcasts may be stored; and
- (b) from which a member of the public may cause a work, performance or broadcast, selected by him, to be transmitted, by wire or wireless means, to receiving equipment under his control;

"exclusive licence" means a licence in writing signed by or on behalf of an owner or prospective owner of copyright or neighbouring rights, authorizing the licensee to the exclusion of all other persons, including the person granting the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of copyright or neighbouring rights and "exclusive licensee" shall be construed accordingly;

“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;

"future copyright or neighbouring rights" has the meaning assigned to it under sub-section 31(2);

"general licence" has the meaning assigned to it under section 51;

"infringement" means any act that contravenes any rights protected under this Act;

"licensing body" has the meaning assigned to it under section 51;

“Minister” means the Minister responsible for matters relating to copyright and neighbouring rights;

"moral rights" means the rights subsisting under Part III;

"neighbouring rights" means the rights subsisting under Part V;

"performers" means singers, musicians, and other persons who sing, deliver, declaim, play in, or otherwise perform literary, artistic works, and expressions of folklore, and "performance" has a corresponding meaning;

"photographic work" means the 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;

"producer" of an audiovisual work, a work of carnival or a sound recording, means the natural person or legal entity by whom the arrangements necessary for the making of the audiovisual work, work of carnival or sound recording are undertaken;

"prospective owner" has the meaning assigned to it in the definition of "future copyright or neighbouring rights" in subsection 31(2);

"public display" means the showing of the original or a copy of a work-

- (a) directly;
- (b) by means of a film, slide, television image or otherwise on screen;
- (c) by means of any other device or process; or
- (d) in the case of an audiovisual work, the showing of individual images nonsequentially,

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

"public lending" means the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes, by an institution, the services of which are available to the public, such as a public library or archive;

"public performance", means-

- (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 sound recording, making the recorded sounds audible,

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

"published" in respect of a work, or a phonogram, means 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 phonogram, a fixation of a performance with the consent of the producer of the phonogram or his successor in title;

"related offence" has the meaning assigned to it under subsection 42(1);

"related penalty" has the meaning assigned to it under subsection 42(1);

"rental" means the transfer of the possession of the original or a copy of a work or sound recording for a limited period of time for profit-making purposes;

"reproduction" means the making of one or more copies of a work or sound recording in any material form, including any

permanent or temporary storage of the work or sound recording in electronic form;

“rights management information” means 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 Act, 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;

"sound recording" means any exclusively aural fixation of the sounds, of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied but does not include a fixation of sounds and images, such as the sound track of an audiovisual work;

“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;

“treaty country” means a Berne Convention country or WTO Member;

"work" means any literary or artistic work under subsection 5(1);

"work of applied art" means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

"work of carnival" means an original production intended to be performed by a person or a group of persons in which an artistic work in the form of an adornment or image presented by the person or persons is the primary element of the production, and in which such adornment or image may be

accompanied by words, music, choreography or other works, regardless of whether the production is intended to be performed on stage, platform, street or other venue;

"work of joint authorship" means a work to the creation of which two or more authors have contributed, provided the work does not qualify as a "collective work" under the definition of "collective work".

Application

4.(1) This Act shall also apply to works made, performances given, sound recordings made and broadcasts first transmitted before the date of the coming into force of this Act, provided that the term of protection had not expired under the *Copyright Act*, Cap. 67 or, in the case of works, under the legislation of the country of origin of such works, that are to be protected under an international treaty to which Grenada is party.

(2) This Act shall not affect contracts on works, performances and broadcasts concluded before the coming into force of this Act.

PART II COPYRIGHT

Copyright and copyright works

5.(1) Copyright is a property right which subsists in literary and artistic works that are original intellectual creations in the literary and artistic domain, including in particular-

- (a) books, pamphlets, articles, computer programs and other writings;
- (b) speeches, lectures, addresses, sermons and other works of the same nature;
- (c) dramatic works, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;
- (d) stage productions of works mentioned in paragraph (c);
- (e) musical works, with or without accompanying words;
- (f) audiovisual works;

- (g) works of architecture;
- (h) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- (i) photographic works;
- (j) works of applied art;
- (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 and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Derivative works

6.(1) The following shall also be protected as works -

- (a) translations, adaptations, arrangements and other transformations or modifications of works;
- (b) collections of works and collections of mere data (databases), whether in machine readable or other form, provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents; and
- (c) works of carnival.

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

Subject matter not protected

7.(1) Notwithstanding sections 5 and 6, but subject to subsection (2), no protection shall extend under this Act 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) political speeches and speeches delivered in the course of legal proceedings;
- (d) news of the day or miscellaneous facts having the character of mere items of press information.

(2) Collections of texts or speeches referred to in paragraph (1)(b) or (c), whether in machine readable or other form, shall be protected as works provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents.

Nature of copyright

8.(1) Subject to sections 9 to 19, the owner of copyright shall have the exclusive right to do, authorize, or prohibit 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 sound recording, a computer program, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;
- (f) public display of the original or a copy of the work;
- (g) public performance of the work;
- (h) broadcasting of the work;
- (i) communication to the public of the work.

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

(3) The right of distribution under paragraph (1)(d) does not apply to the original or a copy of the work that has been put on the market or been subject to a sale or other transfer or ownership anywhere in the world by the owner of the copyright or by another person with the owner's consent.

Private reproduction for personal purposes

9.(1) Notwithstanding section 8(1)(a) and subject to subsection (2) the private reproduction of a published work in a single copy shall be permitted without the authorization of the 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 a building or other construction;
- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notation;
- (c) of the whole or a substantial part of a data base;
- (d) of a computer program, except as provided in section 17; 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 owner of copyright.

Quotation

10.(1) Notwithstanding section 8(1)(a), the reproduction of a short part of a published work, in the form of a quotation, shall be permitted without authorization of the owner of copyright, provided that the reproduction is compatible with fair dealing and does not exceed the extent justified by the purpose.

(2) The quotation shall be accompanied by an indication of its source and the name of the author, if his name appears in the work 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 subsection (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 purpose of study, scholarship or private research;
 - (ii) the reproduction of any particular work is an isolated case occurring, if repeated, on separate and unrelated occasions; and
 - (iii) there is no collective license available offered by a collective administration organization under which such copies can be made;
- (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 case occurring, if repeated, on separate and unrelated occasions.

Temporary reproduction

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

- (a) the reproduction is made in the process of a transmission of the work or an act of making a 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 the transmission or making perceptible that which 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 paragraphs (a) and (b).

Exception for the visually impaired

14.(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 referred to in subsection (1) have been fulfilled.

(3) Subsections (1) and (2) are subject to the obligation to indicate the source and the name of the author.

Public interest exception

15. 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.

Reproduction, broadcasting and other communication to the public for informatory purposes

16. Notwithstanding section 8(1)(a), (h) and (i), the following acts shall be permitted in respect of a work without the authorization of the 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 owner of copyright has reserved the right to authorize reproduction, broadcasting or other communication to the public on the copies themselves, or in a prominent way 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 informatory 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

17.(1) Notwithstanding section 8(1)(a) and (c), 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 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 a lawfully owned copy of the computer program in the event that the said copy 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.

Display of works

18. Notwithstanding section 8(1)(f), the public display of originals or copies of works shall be permitted without the authorization of the owner of copyright, provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process, and provided further that the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the owner of copyright or his successor in title.

Permitted use of artistic works situated in public places

19. Notwithstanding section 8(1) and section 18, the inclusion of an artistic work in a work, broadcast or communication to the public shall not be considered an infringement if the artistic work-

- (a) is permanently situated in a public place or in premises open to the public; or
- (b) is included in the work, broadcast or communication to the public by way only of background or as incidental to the essential matters represented.

PART III MORAL RIGHTS

Moral rights

20.(1) Independent of his economic rights, and even where he is no longer the owner of the economic rights, the author of a work shall have the right-

- (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;
- (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 honour or reputation.

(2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the author, but the right to exercise any of those rights shall be transmissible 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 subsection (1) (d) specifies the nature and extent of the modifications or other action in respect of which the right is waived, and 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.

PART IV DURATION OF ECONOMIC AND MORAL RIGHTS

Duration of economic and moral rights

21.(1) Subject to subsections (2) to (5), 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, 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 a collective work, other than a work of applied art or a photographic work, and in the case of an audiovisual work, economic and moral rights shall be protected for-

- (a) fifty years from the date on which the work was first published;
- (b) fifty years from the date on which the work was first made available to the public, if the work has not been published before twenty-five years after its making; or
- (c) fifty years from the making of the work, if the work had neither been made available to the

public nor published before twenty-five years after its making.

(4) In the case of a work published anonymously or under a pseudonym, economic and moral rights shall be protected for-

(a) fifty years from the date on which the work was first published;

(b) fifty years from the date on which the work was first made available to the public, if the work has not been published before twenty-five years after its making; or

(c) fifty years from the making of the work, if the work had neither been made available to the public nor published before twenty-five years after its making, provided that where the author's identity is revealed or is no longer in doubt before the expiration of the said period, subsection (1) or (2) shall apply, as the case may be.

(5) In the case of a work of applied art or a photographic work, 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.

PART V NEIGHBOURING RIGHTS

Neighbouring rights subsisting in performances, sound recordings and broadcasts

22. Neighbouring rights are property rights which subsist in performances, sound recordings and broadcasts.

Acts requiring authorization of performers

23.(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 of 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) Notwithstanding subsection (1), a performer that has authorized the incorporation of his performance in an audiovisual fixation, 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 subsection (1) *(d)* does 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, 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.

Acts requiring authorization of producers of sound recordings

24.(1) Subject to section 27, a producer of a sound recording shall have the exclusive right to do, authorize or prohibit any of the following acts-

- (a) direct or indirect reproduction of the sound recording in any manner or form;
- (b) the distribution of the original or copies of the sound recording to the public;
- (c) adaptation or other transformation of the sound recording;
- (d) rental of the original or a copy of the sound recording, for the purposes of direct or indirect commercial advantage, irrespective of the ownership of the original or copy rented;
- (e) the making available to the public of the sound recording through an electronic retrieval system.

(2) The right of distribution under subsection (1)(b) does not apply to the original or the copy of the sound recording that has already been subject to a sale or other transfer of ownership, in any country, authorized by the producer.

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

Equitable remuneration for use of sound recordings

25.(1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or communication to the public, or is publicly performed, a single equitable remuneration for the performer and the producer of the sound recording shall be paid by the user to the producer.

(2) The single equitable remuneration paid by the user to the producer under subsection (1) shall be fixed, in default of agreement, by the Court.

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

(4) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

(5) For the purposes of this section, a sound recording which has been made available to the public through an electronic retrieval system shall be deemed to have been published for commercial purposes.

Acts requiring authorization of broadcasting organisations

26.(1) Subject to section 27, a broadcasting organization shall have the exclusive right to do, authorize or prohibit 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 fiftieth calendar year following the year in which the broadcast first takes place.

(3) No person shall broadcast or communicate to the public a program-carrying signal transmitted by satellite which is not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable distribution by an authorized receiving organization, without authorization of the person or legal entity that decided the program that the emitted signal carries.

Limitation on protection

27.(1) Sections 23, 24, 25 and 26 shall not apply where the acts referred to in those sections are related to-

- (a) the use by a natural person exclusively for his own personal purposes;
- (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;

- (c) use solely for the purpose of face-to-face teaching activities or for scientific research;
- (d) cases where, under Part II, a work can be used without the authorization of the owner of copyright.

(2) The permission under subsection (1) (a) shall not extend to the reproduction of any performance, sound recording or broadcast in cases where reproduction would conflict with a normal exploitation of the performance, sound recording or broadcast or would otherwise unreasonably prejudice the legitimate interests of the owner of neighbouring rights.

PART VI OWNERSHIP AND ASSIGNMENT

Original ownership of copyright and neighbouring rights

28.(1) Subject to subsections (3) to (6), the original owner of copyright is the author.

(2) Subject to section 27 and subsections (8) to (10), the original owners of neighbouring rights in-

- (a) a performance or sound recording are the producer of, and the performer or performers in, the performance or sound recording, as the case may be; and
- (b) a broadcast is the broadcasting organization.

(3) In respect of a work of joint authorship, the co-authors shall be the original owners of copyright, but if a work of joint authorship consists of parts than can be used separately and the author of each part can be identified, the author of each part shall be the original owner of copyright in the part that he has created.

(4) In respect of a collective work, the natural person or legal entity at the initiative and under the direction of whom or which the work has been created shall be the original owner of copyright.

(5) 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 copyright shall be, unless provided otherwise by agreement, the employer.

(6) In respect of an audiovisual work or a work of carnival, the original owner of copyright shall be the producer, unless provided otherwise by agreement.

(7) The authors of the pre-existing works included in or adapted for the making of an audiovisual work or work of carnival shall maintain their copyright in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be the subject of acts covered by their copyright separately from the audiovisual work or work of carnival.

(8) Where a work or a sound recording has been made by or under the direction or control of the Government and, apart from this subsection no copyright or neighbouring rights would subsist in the work or sound recording, then copyright or neighbouring rights shall subsist therein by virtue of this subsection and shall belong to the State.

(9) Copyright or neighbouring rights subsisting in a work or a sound recording which has, with the written consent of the owner of copyright or neighbouring rights, been first published in Grenada by or under the direction or control of the Government shall belong to the State.

(10) Subsections (8) and (9) shall have effect subject to any agreement whereby it is agreed that copyright or neighbouring rights in the work or sound recording shall vest in the owner of copyright or neighbouring rights or some other person designated in the agreement.

(11) For the purposes of this section the term "agreement" includes any conditions regulating or applying to the employment of a person in the service of the State.

Original ownership of copyright and neighbouring rights by international organisations

29.(1) Where it appears to the Minister that it is desirable that this Act should apply in relation to an organization-

- (a) of which two or more countries, or the governments of two or more countries, are members; or
- (b) that is constituted by persons representing two or more countries, or representing the Governments of two or more countries,

he may by Order declare that organization to be an international organization to which this Act applies.

(2) An international organization to which this Act applies which otherwise does not have, or at some material time otherwise did not have, the legal capacities of an entity has, and shall be deemed at all material times to have had, the legal capacities of an entity for the purpose of holding, dealing with and enforcing copyright or neighbouring rights and for the purposes of all legal proceedings relating to such copyright or neighbouring rights.

(3) Where an original literary work, an artistic work, a sound recording or a broadcast made by, or under the direction or control of, an international organization to which this Act applies in such circumstances that copyright or neighbouring rights would not, apart from this subsection, subsist in the work, sound recording or broadcast, then-

- (a) copyright shall subsist in the work, and subsections 21(3), (5) and (6) shall apply;
- (b) neighbouring rights shall subsist in the sound recording or broadcast and subsections 24(3) and 26(2) shall apply; and
- (c) the organization shall be, subject to this Part, the owner of copyright or neighbouring rights.

(4) Save in so far as other provision is made by this section, Parts II and V shall apply in relation to copyright or neighbouring rights respectively which subsist by virtue of this section in like manner as it applies in relation to copyright or neighbouring rights subsisting by virtue of those Parts.

Assignments and licences

30.(1) Economic rights shall be transmissible in whole or in part by assignment, by disposition or by operation of law, as personal or moveable property.

(2) An assignment of economic rights is not effective unless it is in writing and signed by or on behalf of the assignor.

(3) A licence granted by the owner of the economic rights is binding on every successor in title to his interest in the economic rights, except-

- (a) a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence; or

(b) a person deriving title from such a purchaser, and references in this Act, in relation to any economic rights, to doing anything with or without the licence of the owner of the economic rights, shall be construed accordingly.

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

(5) An exclusive licensee has the same rights against a successor in title who is bound by the licence as he has against the person granting the licence.

Prospective ownership of author's rights

31.(1) Where, by an agreement made in relation to future copyright or neighbouring rights, and signed by or on behalf of the prospective owner of copyright or neighbouring rights, the prospective owner purports to assign the future copyright or neighbouring rights (wholly or partly) to another person, then if, on the coming into existence of the copyright or neighbouring rights, the assignee or another person claiming under him would be entitled as against all other persons to require the copyright or neighbouring rights to be vested in him, the copyright or neighbouring rights shall vest in the assignee or his successor in title by virtue of this subsection.

(2) In this section, "future copyright or neighbouring rights" means copyright or neighbouring rights which will or may come into existence in respect of any future work, performance, sound recording or broadcast, or on the coming into operation of this Act, or in any future event, and "prospective owner" shall be construed accordingly, and includes a person who is prospectively entitled to copyright or neighbouring rights by virtue of such an agreement as is mentioned in subsection (1).

(3) A licence granted by a prospective owner of copyright or neighbouring rights is binding on every successor in title to his interest (or prospective interest) in the right, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act to doing anything with or without, the licence of the owner of copyright or neighbouring rights shall be construed accordingly.

PART VII INFRINGEMENT

Definition of action

32. For the purposes of this Part, the expression "action" includes a counterclaim, and reference to the plaintiff and to the defendant in an action shall be construed accordingly.

Action by owner of rights for infringement

33.(1) Subject to this Act, infringements of rights of the owner of copyright or neighbouring rights shall be actionable in the Court as the suit of the owner of copyright or neighbouring rights; and in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

(2) In an action for infringement of rights in respect of the construction of a building, no injunction or other order shall be made-

- (a) after the construction of the building has begun, so as to prevent it from being completed; or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

(3) The rights of the owner of copyright or neighbouring rights shall not extend to acts in respect of works which have been put on any market by the owner or with his consent.

Action by exclusive licensee for infringement

34.(1) An exclusive licensee has, except against the owner of copyright or neighbouring rights, the same rights and remedies in respect of matters occurring after the grant of the licence as if the licence had been an assignment.

(2) The rights and remedies of the exclusive licensee are concurrent with those of the owner of copyright or neighbouring rights; and references in the relevant provisions of this Part to the owner of copyright or neighbouring rights shall be construed accordingly.

(3) In an action brought by an exclusive licensee by virtue of this section a defendant may avail himself of any defence which would have been available to him if the action had been brought by the owner of copyright or neighbouring rights.

Exercise of concurrent rights

35.(1) Where an action for infringement of copyright or neighbouring rights brought by the owner of copyright/ or neighbouring rights or an exclusive licensee relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action, the owner of copyright or neighbouring rights or, as the case may be, the exclusive licensee may not, without the leave of the Court, proceed with the action unless the other is either joined as a claimant or added as a defendant.

(2) An owner of copyright or neighbouring rights or exclusive licensee who is added as a respondent in pursuance of subsection (1) is not liable for any costs in the action unless he takes part in the proceedings.

(3) Subsections (1) and (2) do not affect the granting of interlocutory relief on an application by an owner of copyright or neighbouring rights or exclusive licensee alone.

(4) Where an action for infringement of copyright or neighbouring rights is brought which relates (wholly or partly) to an infringement in respect of which the owner of copyright or neighbouring rights and an exclusive licensee have or had concurrent rights of action-

- (a) the Court may in assessing damages take into account-
 - (i) the terms of the licence; and
 - (ii) any pecuniary remedy already awarded or available to either of them in respect of the infringement;
- (b) no account of profits shall be directed if an award of damages has been made, or an account of profits has been directed, in favour of the other of them in respect of the infringement; and
- (c) the Court may, if an account of profits is directed, apportion the profits between them as the Court considers just, subject to any agreement between them,

and these provisions apply whether or not the owner of copyright or neighbouring rights and the exclusive licensee are both parties to the action.

Secondary infringements

36.(1) Copyright in a work is infringed by a person who, without the authorization of the owner of copyright-

- (a) possesses in the course of a business;
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) in the course of a business exhibits in public or distributes; or
- (d) distributes otherwise than in the course of a business to such an extent as to prejudicially affect the owner of copyright,

an article, the making of which he knows or has reason to believe, would constitute an infringement of copyright.

(2) Copyright in a work is infringed by a person who, without the authorization of the owner of copyright-

- (a) makes;
- (b) imports into Grenada;
- (c) possesses in the course of a business; or
- (d) sells or lets for hire, or offers or exposes for sale or hire,

an article specifically designed or adapted for making copies of that work, knowing or having reason to believe that the making of those copies would constitute an infringement of copyright.

(3) Where copyright in a work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission he believed on reasonable grounds that the performance would not infringe copyright.

(4) In subsection (3), "place of public entertainment" includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

(5) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for showing audiovisual works or receiving visual images or sounds conveyed by electronic means, the following persons are also liable for the infringement-

- (a) a person who supplied the apparatus, or any substantial part of it, if when he supplied the apparatus or part-
 - (i) he knew or had reason to believe that the apparatus was likely to be used so as to infringe copyright; or
 - (ii) in the case of apparatus where normal use involves a public performance or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright;
- (b) an occupier of premises who gave permission for the apparatus to be brought onto the premises, if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright;
- (c) a person who supplied a copy of an audiovisual work used to infringe copyright, if when he supplied it he knew or had a reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

(6) Subsections (1) to (5) shall apply to neighbouring rights in performances, sound recordings and broadcasts as they apply to copyright in works.

Presumption of authorship and of representation of the author

37.(1) The natural person or legal entity whose name is indicated as the author in the original or copies of a work shall, in the absence of proof to the contrary, be presumed to be the owner of copyright in the work, and 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) Where no name purporting to be that of the author appears on the original or copies of a work but a name purporting to be that of a publisher appears on copies of the work as first published, the person whose name so appears shall be presumed, until the contrary is proved, to be the owner of copyright in the work as first published.

(3) If the author of the work is dead or the identity of the author cannot be ascertained by reasonable inquiry, it shall be presumed, in the absence of evidence to the contrary that-

- (a) the work is an original work; and
- (b) the claimant's allegation as to what was the first publication of the work is correct.

Presumptions relevant to sound recordings, audiovisual works and computer programs

38.(1) In proceedings brought by virtue of this Act with respect to a sound recording, where copies of the recording as issued to the public bear a label or other mark stating-

- (a) that a named person was the producer of the recording at the date of issue of the copies;
- (b) that a named person was a performer in the recording at the date of issue of the copies; or
- (c) that the recording was first published in a specific year or in a specified country,

the label or mark shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(2) In proceedings brought by virtue of this Act with respect to an audiovisual work, where copies of the audiovisual work as issued to the public bear a statement-

- (a) that a named person was the author or director of the audiovisual work;
- (b) that a named person was the owner of copyright in the audiovisual work at the date of issue of the copies; or
- (c) that the audiovisual work was first published in a specified year or in a specified country,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(3) In proceedings brought by virtue of this Act with respect to a computer program, where copies of the program are issued to the public in electronic form bearing a statement-

- (a) that a named person was the owner of copyright in the program at the date of issue of the copies;
or
- (b) that the program was first published in a specified country or that copies of it were first issued to the public in electronic form in a specified year,

the statement shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

(4) Subsections (1) to (3) apply equally in proceedings relating to an infringement alleged to have occurred before the date on which the copies were issued to the public.

(5) In proceedings brought by virtue of this Act with respect to an audiovisual work, where the audiovisual work as shown in a communication to the public bears a statement-

- (a) that a named person was the author or director of the audiovisual work; or
- (b) that a named person was the owner of copyright in the audiovisual work immediately after it was made,

the statement shall be admissible as evidence of the facts and shall be presumed to be correct until the contrary is proved and this presumption applies equally in proceedings relating to an infringement alleged to have occurred before the date on which the audiovisual work was communicated to the public.

Presumptions relevant to works of the State

39. In proceedings brought by virtue of this Act with respect to a work, copyright in which belongs to the State, where there appears on printed copies of the work a statement of the year in which the work was first published commercially, that statement shall be admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

PART VIII CIVIL REMEDIES AND CRIMINAL LIABILITY

Civil remedies for infringement

40.(1) The Court shall have the authority-

- (a) to grant injunctions to prohibit the committing, or continuation of committing, of an infringement of any right protected under this Act;
- (b) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under this Act where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to, such copies;
- (c) to order the forfeiture and seizure of all copies of works or sound recordings manufactured, reproduced, distributed, sold or otherwise used, intended for use or possessed with intent to use in contravention of section 8 or 24 and all plates, moulds, matrices, masters, tapes, film negatives, or other articles by means of which such copies of works or sound recordings may be reproduced and all electronic, mechanical or other devices for manufacturing, reproducing, or assembling such copies of works or sound recordings;

- (d) to order that the owner of any right protected under this Act whose right has been infringed, be paid by the infringer, damages adequate to compensate for the injury suffered as a consequence of the act of infringement, as well as the payment of expenses caused by the infringement, including legal costs;
- (e) to fix the amount of damages taking into account the pecuniary and non-pecuniary loss suffered by the owner of the right;
- (f) to order an account of the infringer's profits attributable to the infringement;
- (g) where infringing copies exist, to order the destruction or other reasonable disposition of those copies and their packaging outside the channels of commerce in such a manner as to avoid harm to the right holder, unless the owner of the right requests otherwise.

(2) Where the infringer did not know or had no reasonable cause to know that he was engaged in infringing activity, the Court may limit damages to the profits of the infringer attributable to the infringement.

(3) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court shall have the authority, whenever and to the extent that it is reasonable, to order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the right.

(4) The Court shall not, in respect of the same infringement, both award the owner of rights damages and order that he shall be given an account of profits.

(5) Subsection (1)(g) shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

(6) Where there is a danger that acts of infringement may be continued, the Court shall have the authority to order that such acts not be committed and the Court shall fix a fine of five thousand dollars for each day on which the infringement is continued, which fine shall be paid if the order is not respected.

Wide injunction available to licensing bodies

41. Where, in an action under this Part-

- (a) the infringement of copyright or neighbouring rights is proved or admitted;
- (b) the plaintiff is a licensing body; and
- (c) the Court, having regard to all material circumstances, is satisfied that effective relief would not otherwise be available to the claimant,

the Court may grant an injunction extending to all the protected works, sound recordings, broadcasts or performances, as the case may be, of which the plaintiff is the owner of copyright or neighbouring rights, notwithstanding that the infringement related to only one or some of the said works, sound recordings, broadcasts or performances.

Withdrawal of privilege in infringement and related proceedings

42.(1) In this section-

"related offence", in relation to any proceedings to which subsection (2) applies, means-

- (a) in the case of proceedings within subsection (3)(a) or (b)-
 - (i) any offence committed by or in the course of the infringement to which those proceedings relate; or
 - (ii) any offence not within subsection (i) committed in connection with that infringement, being an offence involving fraud or dishonesty;
- (b) in the case of proceedings within subsection (3)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;

"related penalty" in relation to any proceedings to which subsection (2) applies, means-

- (a) in the case of proceedings within subsection (3)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement to which those proceedings relate;
- (b) in the case of proceedings within subsection (3)(c), any penalty incurred in respect of any act or omission revealed by the facts on which the plaintiff relies in those proceedings.

(2) In any proceedings to which this subsection applies a person shall not be excused, by reason that to do so should tend to expose that person, or his spouse, to proceedings for a related offence or for the recovery of a related penalty from complying with any order made in those proceedings.

(3) Subsection (2) applies to the following civil proceedings in the Court, namely-

- (a) proceedings for infringement of copyright or neighbouring rights;
- (b) proceedings brought to obtain disclosure of information relating to any infringement of such rights; and
- (c) proceedings brought to prevent any apprehended infringement of such rights.

(4) Subject to subsection (5), no statement or admission made by a person-

- (a) in answering a question put to him in any proceedings to which subsection (2) applies; or
- (b) in complying with an order made in any such proceedings,

shall, in proceedings for any related offence or for the recovery of any related penalty, be admissible in evidence against that person or (unless they married after the making of the statement or admission) against the spouse of that person.

(5) Nothing in subsection (4) shall render any statement or admission made by a person as therein mentioned inadmissible in evidence against that person in proceedings for perjury or contempt of court.

(6) Any reference in this section to civil proceedings in the Court includes a reference to proceedings on appeal arising out of those civil proceedings.

Criminal liability for infringement

43.(1) A person who commits an infringement of a right protected under this Act for profit-making purposes, knowing or having reason to believe that he is committing an infringement, commits an offence and is liable on summary conviction, to a fine not exceeding fifty thousand dollars and to imprisonment not exceeding ten years.

(2) The amount of the fine shall be fixed by the Magistrate, taking into particular account the defendant's profits attributable to the infringement.

(3) The Magistrate shall have the authority to increase up to double the penalty specified in subsection (1), where the defendant has been convicted for a new act of infringement within five years of a previous conviction for an infringement.

(4) Subsection 40(1)(b), (c) and (g), and subsections 40 (3) and (5) shall apply, *mutatis mutandis*, in criminal proceedings, provided that no decision has yet been taken on such remedies in a civil proceeding.

Offences by bodies corporate

44. Where an offence under this Part committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits an offence and is liable to be proceeded against and punished accordingly.

Time limited for prosecution

45. No prosecution for an offence under this Act shall be commenced after the expiration of five years after the commission of the offence or one year after the discovery thereof, whatever date last occurs.

Measures, remedies and sanctions against abuses in respect of technical means

46. (1) No person shall -

- (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.

(2) Notwithstanding subsection (1), upon the request by the beneficiary of an exception or limitation under this Act, the Court may order that the necessary means be made available to the beneficiary in order that he may enjoy or apply the exception or limitation, to the extent required to benefit from it.

(3) Subsection (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.

(4) No person shall -

- (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, works or other subject-matter protected under this Act 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 Act.

(5) Section 40 shall apply to an illicit device, product, component or service mentioned in subsection (1) as it applies to infringing copies.

(6) The owner of copyright in a work shall also be entitled to the damages for infringement provided for by subsection 33(1) and subsection 40 (1) (d), where -

- (a) authorized copies of the work have been made and offered for sale or rental in an electronic form combined with a copy-protection or copy-management device or means, and a device or means specifically designed or adapted to circumvent the said device or means is made or imported for sale or rental;
- (b) the work is authorized for inclusion in an encrypted program broadcast or otherwise communicated to the public, including by satellite, and a device or means enabling or assisting the reception of the program by those who are not entitled to receive the program is made or imported for sale or rental.

Powers of public officers

47.(1) A police officer not below the rank of Inspector, or a police officer below the rank of Inspector acting on the authority of a warrant issued under subsection (4), may-

- (a) enter and search any premises or place;
- (b) stop, board and search any vessel (other than a ship of war) or any aircraft (other than a military aircraft);
- (c) stop and search any vehicle,

in which he reasonably suspects that there are infringing copies of works, performances, sound recordings or broadcasts in which copyright or neighbouring rights subsist or any plates, moulds, matrices, masters, tapes, film negatives, or other articles by means of which such copies of works, performances, sound recordings or broadcasts may be reproduced, and all electronic, mechanical or other devices for manufacturing, reproducing, or assembling such copies of works, performances, sound recordings or broadcasts.

(2) A police officer not below the rank of Inspector, or a police officer below the rank of Inspector acting on the authority of a warrant issued under subsection (4), may seize, remove or detain-

- (a) any article which appears to him to be an infringing copy of a work, performance, sound recording or broadcast in which copyright or neighbouring rights subsist or any plate, mould, matrix, master, tape or film negative, or other article by means of which such copy of a work, performance, sound recording or broadcast may be reproduced, and any electronic, mechanical or other device for manufacturing, reproducing, or assembling such copy of a work, performance, sound recording or broadcast; and
- (b) anything which appears to him to be or to contain evidence of an offence under this Act.

(3) A police officer not below the rank of Inspector, or a police officer below the rank of Inspector acting on the authority of a warrant issued under subsection (4), may-

- (a) break open any outer or inner door of any place which he is empowered or authorized by this Act to enter and search;
- (b) forcibly board any vessel, aircraft or vehicle which he is empowered by this Act to stop, board and search;
- (c) remove by force any person or thing obstructing him in the exercise of any power conferred on him by this Act;
- (d) detain any person found in any place which he is empowered or authorized by this Act to search until such place has been searched;
- (e) detain any vessel or aircraft which he is empowered by this Act to stop, board and search, and prevent any person from approaching or boarding such vessel or aircraft until it has been searched;

- (f) detain any vehicle which he is empowered by this Act to stop and search until it has been searched.

(4) A Magistrate may, if he is satisfied by information on oath that there is reasonable ground for suspecting that there is in any premises, place, vessel (other than a ship of war), aircraft (other than a military aircraft) or vehicle, any article which may be seized, removed or detained under subsection (2), issue a warrant authorizing a police officer below the rank of Inspector to enter and search the premises, vessel, aircraft or vehicle, as the case may be.

(5) A warrant issued under subsection (4) may authorize any person to accompany the police officer executing the warrant.

Obstruction of police officers

48.(1) Without prejudice to any other written law, any person who-

- (a) wilfully obstructs a police officer in the exercise of his powers or the performance of his duties under this Act;
- (b) wilfully fails to comply with any requirement properly made to him by any such police officer;
or
- (c) without reasonable excuse, fails to give such police officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this Act,

is liable on summary conviction to a fine not exceeding ten thousand dollars and to imprisonment for twelve months.

(2) A person who, when required to give information to a police officer in the exercise of his powers or the performance of his duties under this Act, knowingly gives false or misleading information to any such police officer is liable on summary conviction to a fine not exceeding ten thousand dollars and to imprisonment for twelve months.

(3) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.

Power to arrest without warrant

49. A police officer may arrest without a warrant any person who-

- (a) has committed or attempted to commit; or
- (b) is reasonably suspected of having committed or having attempted to commit an offence under this Act if-
 - (i) he has reasonable grounds for believing that the person will abscond unless arrested;
 - (ii) the name and address of the person are unknown to him and cannot be ascertained by him; or
 - (iii) he has reason to believe and believes that the name and address given by the person are false.

Provision for restricting importation of infringing copies

50.(1) In this section -

“Comptroller” means the Comptroller of Customs;

“duties” means any duties or taxes levied or imposed on imported goods;

“release” means -

- (a) to authorize the removal of goods from a customs office, bonded warehouse or duty free shop for use in Grenada; and
- (b) to receive the goods at the place of business of the importer, owner or consignee.

(2) A Court may make an order described in subsection (4) where the Court is satisfied that-

- (a) copies of the work are about to be imported into Grenada or have been imported into Grenada but have not yet been released;
- (b) either -

- (i) copies of the work were made without the consent of the person who then owned the copyright in the country where the copies were made; or
- (ii) the copies were made elsewhere that in a treaty country; and
- (c) the copies would infringe copyright if they were made in Grenada by the importer and the importer knows or should have known this.

(3) A Court may make an order described in subsection (4) on application by the owner or exclusive licensee of copyright in a work in Grenada.

(4) The order referred to in subsection (2) is an order -

- (a) directing the Comptroller -
 - (i) to take reasonable measures, on the basis of information reasonably required by the Comptroller and provided by the applicant, to detain the work, and
 - (ii) to notify the applicant and the importer, forthwith after detaining the work, of the detention and the reasons thereof; and
- (b) providing for such other matters as the Court considers appropriate.

(5) An application for an order made under subsection (2) may be made in an action or otherwise, and either on notice or *ex parte*, except that it must always be made on notice to the Comptroller.

(6) Before making an order under subsection (2), the Court may require the applicant to furnish security, in an amount fixed by the Court-

- (a) to cover duties, storage and handling charges, and any other amount that may become chargeable against the work; and

- (b) to answer any damages that may by reason of the order be incurred by the owner, importer or consignee of the work.

(7) The Comptroller may apply to the Court for directions in implementing an order made under subsection (2).

(8) The Comptroller may give the applicant or the importer an opportunity to inspect the detained work for the purpose of substantiating or refuting, as the case may be, the applicant's claim.

(9) Unless an order made under subsection (2) provides otherwise, the Comptroller shall, subject to the Customs Act 1960 and to any other Act of Parliament that prohibits, controls or regulates the importation or exportation of goods, release the copies of the work without further notice to the applicant if, two weeks after the applicant has been notified under subparagraph (4)(a)(ii), the applicant has not notified the Comptroller that the applicant has commenced a proceeding for a final determination by the Court of the issues referred to in paragraphs (2)(b) and (c).

(10) Where, in a proceeding commenced under this section, the Court finds that the circumstances referred to in paragraphs (2)(b) and (c) existed, the Court may make any order that it considers appropriate in the circumstances, including an order that the copies of the work be destroyed, or that they be delivered up to the plaintiff as the plaintiff's property absolutely.

(11) For greater certainty, nothing in this section affects any remedy available under any other provision of this Act or any other Act of Parliament.

PART IX SPECIAL JURISDICTION OF THE COURT

Definitions

51. For the purposes of this Part, the expression "general licence" means a licence extending to-

- (a) the works of several authors;
- (b) the sound recordings or audiovisual works of several producers; or
- (c) the performances of several performers,

and which does not apply different terms and conditions as between the several authors, producers or performers, as the case may be;

"licensing body" means any society or organization which has as its main object, or one of its main objects, the negotiation or granting of general licences in respect of protected works, sound recordings or performances either as the owner or prospective owner of copyright or neighbouring rights therein, or as agent for the owners or prospective owners thereof.

Jurisdiction of court

52. Subject to this Act, the Court shall have jurisdiction-

- (a) to determine any dispute which may be referred to it pursuant to section 54;
- (b) to fix the amount of equitable remuneration or compensation which by any provision of this Act is required to be fixed by the Court in any case where there has been no agreement between a person and the owner of copyright or neighbouring rights as to the amount of remuneration or compensation payable in respect of the use of the work, sound recording, broadcast or performance.

Procedure in proceedings before the court

53.(1) The procedure regulating the making of references and applications to the Court, and proceedings before the Court arising out of the jurisdiction conferred on the Court by this Part, and as to the fees chargeable in respect of those proceedings shall be prescribed by Rules of Court.

(2) The Court may order that the costs or expenses of any proceedings before it under this Part which are incurred by any party shall be paid by any other party and may tax or settle the amount of any costs or expenses to be paid under any such order or direct in what manner they are to be taxed.

(3) Where-

- (a) the Court makes an order by way of determination of a dispute referred to it pursuant to section 54, the Court may, in its discretion, direct that the order shall have effect

retroactively to such date as the Court specifies; but no order shall have effect from a date prior to the date on which the dispute was formally referred to the Court;

- (b) the Court fixes an amount of equitable remuneration or compensation pursuant to paragraph 52(b), the Court may also give directions as to the method and time of payment and may stipulate such other conditions of payment as it considers reasonable.

Dispute with licensing bodies

54.(1) Where a dispute arises between any person and a licensing body with respect to-

- (a) the refusal of the licensing body to grant to that person a general licence to which this section applies; or
- (b) the terms and conditions on which the licensing body is prepared to grant such a licence,

either that person or the licensing body may refer the dispute to the Court.

(2) This section applies to a general licence authorizing the licensee-

- (a) in the case of a work or sound recording, to make a reproduction, public display, public performance, broadcast or communication to the public of the original or copies of the work or sound recording;
- (b) in the case of a performance, to make a fixation or to broadcast or to communicate to the public the performance.

(3) For the purposes of this section, a licensing body shall be deemed to have refused to grant a general licence to a person if the licensing body failed, within a reasonable time from the date when that person made a written request to the licensing body for such a licence, to grant a licence or to state in writing the terms and conditions on which it is prepared to grant the licence.

(4) While an order made by the Court by way of determination of a dispute referred to it pursuant to subsection (1) remains in force, either party to the dispute may refer the matter back to the Court for further consideration, but except with the special leave of the Court-

- (a) an order made so as to be in force for not more than two years from the date it took effect may not be referred back to the Court under this subsection;
- (b) an order made so as to be in force indefinitely or for more than two years from the date it took effect may not be referred back to the Court before the expiry of twelve months from the date when the order was made.

Right of appeal

55.(1) Except as provided for in subsection (2), the hearing and determination of any proceedings before the Court in the exercise of the jurisdiction conferred on it by this Part shall not be challenged, appealed against, reviewed, quashed or called in question in any Court on any account whatsoever.

(2) A party to proceedings before the Court by virtue of the jurisdiction conferred on it by this Part is entitled as of right to appeal to the Court of Appeal on any of the following grounds, but no other-

- (a) that the Court had no jurisdiction in the matter, but it shall not be competent for the Court of Appeal to entertain such ground of appeal, unless objection to the jurisdiction of the Court has been formally taken at some time during the progress of the matter before the making of the order or award;
- (b) that the Court has exceeded its jurisdiction in the matter;
- (c) that the order or award has been obtained by fraud;
- (d) that any finding or decision of the Court in any matter is erroneous in point of law; or

- (e) that some other specific illegality not mentioned above, and substantially affecting the merits of the matter, has been committed in the course of the proceedings.

(3) On the hearing of an appeal in any matter brought before it under this Act, the Court of Appeal shall have power-

- (a) if it appears to the Court of Appeal that a new hearing should be held, to set aside the order or award appealed against and order that a new hearing be held; or
- (b) to order a new hearing on any question without interfering with the finding or decision upon any other question,

and the Court of Appeal may make such final or other order as the circumstances of the matter may require.

(4) The Court of Appeal may in any matter brought on appeal before it dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred notwithstanding that it is of the opinion that any point raised in the appeal might have been decided in favour of the appellant.

PART X FINAL PROVISIONS

Scope of application of Act

56.(1) The provisions of this Act concerning the protection of literary and artistic works shall apply to-

- (a) works of authors who are nationals or residents of, or domiciled in, Grenada;
- (b) works first published in Grenada, and works first published in another country and also published in Grenada within thirty days, irrespective of the nationality, residence or domicile of their authors;
- (c) audiovisual works, the producer of which is a national or resident of, or domiciled in, Grenada; and

- (d) works of architecture erected in Grenada and other artistic works incorporated in a building located in Grenada.

(2) The provisions of this Act shall also apply to works that are protected in Grenada by virtue of and in accordance with any international convention or other international agreement to which Grenada is party.

Application of Act in relation to performers, sound recordings and broadcasts

57.(1) The provisions of this Act on the protection of performers shall apply to-

- (a) performers who are nationals or residents of, or domiciled in, Grenada;
- (b) performers who are not nationals or residents of, or domiciled in, Grenada but whose performances-
 - (i) take place in the territory of Grenada;
 - (ii) are incorporated in sound recordings that are protected under this Act; or
 - (iii) have not been fixed in a sound recording but are included in broadcasts which qualify for protection under this Act.

(2) The provisions of this Act on the protection of sound recordings shall apply to-

- (a) sound recordings, the producers of which are nationals or residents of, or domiciled in, Grenada;
- (b) sound recordings in respect of which the first fixation took place in Grenada; and
- (c) sound recordings first published in Grenada.

(3) The provisions of this Act on the protection of broadcasts shall apply to-

- (a) broadcasts of broadcasting organizations, the headquarters of which are situated in Grenada; and
- (b) broadcasts transmitted from transmitters situated in Grenada.

(4) The provisions of this Act shall also apply to performers, producers of sound recordings and broadcasting organisations protected by virtue of and in accordance with any international convention or other international agreement to which Grenada is party.

Act No. 32 of 1988 repealed

58. The *Copyright Act 1988* is repealed.

Regulations

59. Except for the matters required to be prescribed by Rules of Court for the purposes of Part IX, the Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or as are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

Savings

60.(1) Nothing in this Act shall affect the operation of any rule of equity relating to breaches of trust or confidence.

(2) Nothing in this Act affects the right of the State, or any person deriving title from the State, to sell, use or otherwise deal with articles so seized, impounded or forfeited under the Customs Act 1960, including any article forfeited by virtue of this Act or any other written law.

Commencement

61.(1) This Act shall come into force on such day as the Minister may, by order published in the Gazette, appoint.

(2) Different days may be appointed for bringing different provisions into force, or for bringing different purposes of the same provisions into force.

Passed by the House of Representatives this day of , 2010.

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Clerk to the House of Representatives

Passed by the Senate this day of , 2010.

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Clerk to the Senate