

REPUBLIC OF VANUATU

BILL FOR THE COPYRIGHT AND RELATED RIGHTS (AMENDMENT) ACT NO. OF 2021

Explanatory Note

This Bill amends the Copyright and Related Rights Act No. 42 of 2000 (“the Act”).

The Act is amended to align with obligations under the treaties administered by the World Intellectual Property Organization (“WIPO”). In particular, some terms are added to and some terms are repealed from the Act and new terms are substituted to reflect the terms used in the WIPO treaties.

The amendments also include registration of ownership of work. Currently, the Act does not have provisions for the registration of work so it is difficult to identify the owner of a work, and to enforce the rights of an owner when there is an infringement. A further issue identified in relation to works such as songs, books, paintings, drawings, carving, videos and works of traditional knowledge are being reproduced, distributed, rented and sold without the consent of the rightful owners. Therefore, these amendments are to strengthen the Act to include the provisions for the registration of a work, to ensure all records of the personal details of the owners and their works are kept in a registry.

Minister of Tourism, Trade, Commerce and Ni-Vanuatu Business



REPUBLIC OF VANUATU

**BILL FOR THE
COPYRIGHT AND RELATED RIGHTS
(AMENDMENT) ACT NO. OF 2021**

Arrangement of Sections

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REPUBLIC OF VANUATU

BILL FOR THE COPYRIGHT AND RELATED RIGHTS (AMENDMENT) ACT NO. OF 2021

An Act to amend the Copyright and Related Rights Act No. 42 of 2000.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Copyright and Related Rights Act No. 42 of 2000 is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF COPYRIGHT AND RELATED RIGHTS ACT NO. 42 OF 2000

1 Subsection 1(1)

Insert in their correct alphabetical positions:

““communication to the public” means the transmission of work by a wire or wireless transmission, 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 from;

“Registrar” has the same meaning as in the Trademarks Act No. 1 of 2003;

“related rights” means the protected rights of performers, producers of phonograms and broadcasting organisations under Part 5.”

2 Subsection 1(1) (Definition of “broadcast”)

Repeal the definition, substitute

““broadcast” or “broadcasting” is a communication of a work, a performance or a phonogram to the public by wire or wireless transmission, including transmission by satellite or a submarine cable;”

3 Subsection 1(1) (Definition of “published”)

After “lending”, insert “with the consent of the author or the owner”

4 Subsection 1(1) (Definition of “reproduction”)

Delete “or sound recording” (wherever occurring), substitute “, sound recording or fixation of a performance”

5 Paragraph 1(1)(b) (Definition of “right protected under this Act”)

Delete “right”, substitute “related rights”

6 Paragraph 5(2)(f)

Repeal the paragraph, substitute

“(f) an architecture work.”

7 After Part 2

Insert

“PART 2A REGISTRATION OF WORK

9A. Application for registration of work

- (1) A person may apply to the Registrar for the registration of a work.
- (2) The application must:
 - (a) be made in the prescribed form; and
 - (b) be accompanied by the prescribed application fee; and
 - (c) include a copy of the work; and
 - (d) include a brief description of the work.
- (3) The Registrar may, in writing, require the applicant to provide, within a specified time, additional information or documents in connection with the determination of the application, if the Registrar so requires.
- (4) The Registrar may make any other enquiries relating to the application as he or she considers necessary.

9B. Registrar may register a work

- (1) The Registrar may register or refuse to register a work.
- (2) The Registrar may issue a certificate to the applicant, if the Registrar is satisfied that the applicant has met all the requirements for registration set out under section 9C.

9C. Requirement for registration of a work

The Registrar must not register a work unless the Registrar is satisfied that:

- (a) the applicant has completed his or her application as required under section 9A; and
- (b) the applicant’s work is an original work; and
- (c) the applicant’s work is a work of authorship; and
- (d) the applicant’s work is fixated or expressed in a physical form.

9D. Register of works

- (1) The Registrar must establish and maintain a register of the works in such form as the Registrar determines.
- (2) The Registrar must keep up to date and accurate information relating to all registered owners of works particularly in relation to the following matters:
 - (a) names, addresses and contacts; and
 - (b) all registered works; and
 - (c) certificates issued to the owners.”

8 Subparagraph 23(1)(a)(i)

Delete “live”, substitute “public”

9 Subsection 23(3)

Repeal the subsection.

10 Section 24 (Heading)

Repeal the heading, substitute “24 PERFORMERS RIGHTS IN RELATION TO THEIR PUBLIC PERFORMANCES”

11 Subsection 24(2)

Delete “live aural performances”, substitute “public performances”

12 At the end of section 24

Add

- “(5) For the purposes of this section, **public performances** 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; or
 - (b) in the case of an audiovisual work - the showing of images in sequence and the making of accompanying sounds audible; or
 - (c) in the case of a phonogram - making the recorded sounds audible, at a place or at places, where persons outside the normal circle of family and its closest acquaintances are or can be present.”

13 Paragraph 32(d)

Repeal the paragraph, substitute

“(d) all cases where, under Part 3, a work can be used without the authorization of the author or other owner of the copyright.”

14 Section 37

Repeal the section, substitute

“37. ABUSES OF TECHNICAL MEANS OF PROTECTION

(1) It is prohibited to:

- (a) circumvent effective technical means of protection; 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 purposes of circumventing effective technological protection measures; and
 - (ii) have only a limited commercially significant purpose or use other than to circumvent effective technical means of protection; and
 - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technical means of protection.

(2) Subject to section 32, a Court may order that the necessary means be made available to the beneficiary in order that the beneficiary may enjoy or apply the limitations to an extent that he or she requires, to benefit from it.

(3) For the purposes of this section:

- (a) **circumvent effective technical means of protection** means to avoid, bypass, remove, deactivate, or impair these measures, including descrambling a scramble work or object of a related right or decrypting an encrypted work or object of related right;
- (b) **technical means of protection** means any technology, device or a 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 owner of the rights or permitted by this Act.”

15 Subparagraph 40(1)(b)(iii)

Delete “.”, substitute

“; and

- (c) performers who are not citizens of Vanuatu but whose performances are fixed in audiovisual fixations in Vanuatu.”