ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER C120

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Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises and consolidates—

Act 3/2002, in force 12 August 2002
U.K. S.I. 2019 No. 852, in force 14 May 2019

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PART 1

PRELIMINARY PROVISIONS

Interpretation

1. In this Act—

"Anguillian" means a person who is regarded as an Anguillian under section 80(2) of the Constitution of Anguilla;

(U.K. S.I. 2019 No. 852, s. 13(c))

"audiovisual 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 and includes a still picture extracted from the work;

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

"broadcasting" means the communication of a work, a performance or a phonogram to the public by wireless transmission, including transmission by satellite;

"building" means a structure of any kind;

"collective work" means a work created by 2 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 without wire of the images or sounds, or both, of a work, a performance, a phonogram or a broadcast in such a way that the images or sounds 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 images or sounds would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places or times, or both, individually chosen by them;

"computer" means an electronic or similar device having information-processing capabilities;

"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;

"Court" means the High Court;

"economic rights" means the rights mentioned in section 5;

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"exclusive licence" means a licence in writing signed by or on behalf of an owner or prospective owner of copyright, authorising 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 and "exclusive licensee" shall be construed accordingly;

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

(a) folk tales, folk poetry, and folk riddles;

(b) folk songs and instrumental folk music;

(c) folk dances and folk plays;

(d) productions of folk arts, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, handicrafts, costumes, and indigenous textiles;

"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;

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

"moral rights" means the rights mentioned in section 6;

"owner of copyright" means—

(a) where the economic rights are vested in the author, the author;

(b) where the economic rights are originally vested in a natural person other than the author or in a legal entity, that person or entity; and

(c) where the ownership of the economic rights has been transferred to a natural person or legal entity, that person or entity;

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

"phonogram" means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

"photographic work" means a recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made, but does not include an audiovisual work;

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"producer", of an audiovisual work or a phonogram, means the natural person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or phonogram;

"public display" means the showing of the original or a copy of the 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, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the work can be displayed without the need for communication to the public;

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

"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 phonogram, making the recording sounds audible;

in each case at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the performance can be perceived without the need for communication to the public;

"published", in reference to a work or a phonogram, means made available to the public in the form of tangible copies in a reasonable quantity for sale, rental, public lending, or for other transfer of the ownership or the possession of the copies, if, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a phonogram, with the consent of the producer of the phonogram or his successor in title;

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

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"reproduction" means the making of one or more copies of a work or phonogram in any manner or form, including any permanent or temporary storage of the work or phonogram in electronic form;

"rights management information" means any information which 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;

"work" means any literary or artistic work under sections 2(1) and 3(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 joint authorship" means a work to the creation of which 2 or more authors have contributed, if the work does not qualify as a "collective work".

PART 2

COPYRIGHT

Works protected

2. (1) Literary and artistic works 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 oral works;

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

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

(e) audiovisual works;

(f) works of architecture;

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

(h) photographic works;

(i) works of applied art; and

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(j) 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

3. (1) The following shall also be protected as works—

(a) translations, adaptations, arrangements and other transformations or modifications of works;

(b) collections of works, collections of mere data (databases), whether in machine-readable or other form, and collections of expressions of folklore, if such collections are original by reason of the selection or arrangement of their contents.

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

Subject matter not protected

4. (1) Notwithstanding sections 2 and 3, 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; or

(b) any official text of administrative or legal nature or to any official translation thereof.

(2) In paragraph (1)(b), "official text of administrative or legal nature" does not include an Act of the Legislature of Anguilla or a regulation under such an Act.

Economic rights

5. (1) Subject to sections 8 to 15, the author or other owner of copyright shall have the exclusive right to carry out or authorise 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) the distribution to the public by sale, rental, public lending or otherwise of the original or a copy of the work that has not already been subject to a distribution authorised by the owner of copyright;

(e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a phonogram, a computer program, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;

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(f) public display of the original or a copy of the work;

(g) public performance of the work;

(h) broadcasting of the work;

(i) other communication to the public of the work.

(2) The rights of rental and lending under paragraph (1)(e) do not apply to rental or lending of computer programs where the program itself is not the essential object of the rental or lending.

Moral rights

6. (1) Independently 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) not to have his name indicated on the copies and in connection with any public use of his work, and the right to use a pseudonym; and

(c) 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), if—

(a) such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies; and

(b) any waiver of the right under paragraph (1)(c) specifies the nature and extent of the modification or other action in respect of which the right is waived.

Following the death of the author, the natural person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the moral rights.

Private reproduction for personal purposes

7. (1) Notwithstanding section 5(1)(a), and subject to subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorisation of the author or owner of copyright, where the reproduction is made by a natural person exclusively for his own personal purposes.

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

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

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(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 database in digital form;

(d) of a computer program, except as provided in section 13; or

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

Temporary reproduction

8. Notwithstanding section 5(1)(a), the temporary reproduction of a work shall be permitted if all the following conditions are met—

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

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

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

Quotation

9. Notwithstanding section 5(1)(a), the reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorisation of the author or other owner of copyright, if the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose. The quotation shall be accompanied by an indication of source and the name of the author, if his name appears in the work from which the quotation is taken.

Reproduction for teaching

10. (1) Notwithstanding section 5(1)(a), the following acts shall be permitted without authorisation of the author or other owner of copyright—

(a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings, if such reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;

(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, if—

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

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

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1).

Reprographic reproduction by libraries and archives

11. Notwithstanding section 5(1)(a), any library or archive whose activities do not serve direct or indirect gain may, without the authorisation of the author or other owner of copyright, make a single copy of the work by reprographic reproduction—

(a) 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 natural person, if—

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

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

(iii) there is no collective licence available (that is, offered by a collective administration organisation of which the library or archive is or should be aware) under which such copies can be made; or

(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, if—

(i) it is impossible to obtain such a copy under reasonable conditions, and

(ii) provided further that the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

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

12. Notwithstanding sections 5(1)(a), (h) and (i), the following acts shall be permitted in respect of a work without the authorisation of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable—

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

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

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

Reproduction and adaptation of computer programs

13. (1) Notwithstanding sections 5(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 authorisation of the author or other owner of copyright, if 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; or

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

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

Display of works

14. Notwithstanding section 5(1)(f), the public display of originals or copies of works shall be permitted without the authorisation of the author, if—

(a) 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

(b) 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 author or his successor in title.

Duration of copyright

15. (1) Subject to subsections (2) to (5), the economic and moral rights of the author shall be protected during the life of the author and for 50 years after his death.

(2) In the case of a work of joint authorship, the economic and moral rights of the authors shall be protected during the life of the last surviving author and for 50 years after his death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights to the work shall be protected for 50 years from the date on which the work was either made, first made available to the public, or first published, whichever date is the latest.

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(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights to the work shall be protected for 50 years from the date on which the work was either made, first made available to the public or first published, whichever date is the latest, but, where the author's identity is revealed or is no longer in doubt before the expiration of that period, subsection (1) or (2) shall apply, as the case may be.

(5) In the case of a work of applied art, the economic and moral rights to the work shall be protected for 25 years from the making of the work.

(6) Every period provided for under subsections (1) to (5) shall run to the end of the calendar year in which it would otherwise expire.

Original ownership of economic rights

16. (1) Subject to subsections (2) to (5), the original owner of economic rights is the author who has created the work.

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

(3) In respect of a 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 the economic rights.

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

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

Presumption of authorship and of representation of the author

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

(2) In the case of an anonymous or pseudonymous work, other than a pseudonymous work referred to in subsection (1), the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and in this capacity shall be entitled to exercise and enforce the moral and economic rights of the author. This presumption shall cease to apply when the author reveals his identity.

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Assignment and licence of author's rights

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

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

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

PART 3

PROTECTION OF PERFORMERS, PRODUCERS OF PHONOGRAMS AND BROADCASTING ORGANISATIONS

Acts requiring authorisation of performers

19. (1) Subject to section 23, a performer shall have the exclusive right to carry out or to authorise 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, other than a fixation made under the terms of section 23 or otherwise made without the authorisation of the performer, or

(ii) is a rebroadcasting made or authorised by the organisation initially broadcasting the performance;

(b) the fixation of his unfixed performance;

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

(d) the distribution to the public by sale or other transfer of ownership, of a fixation of his performance, or copies thereof, that has not already been subject to a distribution authorised by the performer;

(e) rental to the public or public lending of a fixation of his performance, or copies thereof, irrespective of the ownership of the copy rented or lent;

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

(2) Once the performer has authorised the incorporation of his performance in an audiovisual fixation, subsection (1) shall have no further application.

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(3) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances and performances fixed in phonograms, 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. Sections 6(2) and (3) apply *mutatis mutandis* to the rights granted under this subsection.

(4) Nothing in this section shall be construed to deprive a performer of the right to agree by contract on terms and conditions more favourable to him in respect of his performance.

(5) The rights under this section shall be protected until the end of the 50th calendar year following the year in which the performance was fixed in a phonogram, or in the absence of such a fixation, from the end of the year in which the performance took place.

Acts requiring authorisation of producers of phonograms

20. (1) Subject to section 23, a producer of a phonogram shall have the exclusive right to carry out or to authorise any of the following acts—

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

(b) importation of copies of the phonogram;

(c) the distribution to the public by sale or other transfer of ownership of the original or copies of the phonogram that have not already been subject to a distribution authorised by the producer;

(d) rental to the public or public lending of a copy of the phonogram, irrespective of the ownership of the copy rented or lent;

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

(2) The rights under subsection (1) shall be protected from the publication of the phonogram until the end of the 50th calendar year following the year of publication or, if the phonogram has not been published, from the fixation of the phonogram until the end of the 50th calendar year following the year of fixation.

Equitable remuneration for use of phonograms

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

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

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the phonogram until the end of the 50th calendar year following the year of publication

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or, if the phonogram has not been published, from the date of fixation of the phonogram until the end of the 50th calendar year following the year of fixation.

(4) For the purposes of this section, phonograms that have been made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

Acts requiring authorisation of broadcasting organisations

22. (1) Subject to section 23, a broadcasting organisation shall have the exclusive right to carry out or to authorise 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 50th calendar year following the year in which the broadcast takes place.

Limitations on protection

23. Sections 19, 20, 21, and 22 shall not apply where the acts referred to in those sections are related to—

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

(b) reproduction solely for scientific research;

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

(d) cases where, under Part 2, a work can be used without the authorisation of the author or other owner of copyright.

PART 4

INFRINGEMENT

Definition of "action"

24. In this Part, "action" includes a counterclaim, and reference to the plaintiff and to the defendant in an action shall be construed accordingly.

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Action by owner of rights for infringement

25. (1) Subject to this Act, infringements of rights of the owner of copyright shall be actionable in the Court at the suit of the owner of copyright; 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.

Action by exclusive licensee for infringement

26. (1) An exclusive licensee has, except against the owner of copyright, 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 an exclusive licensee are concurrent with those of the owner of copyright, and references in the relevant provisions of this Part to the owner of copyright 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.

Exercise of concurrent rights

27. (1) Where an action for infringement of copyright brought by the owner of copyright 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 the exclusive licensee, as the case may be, may not, without the leave of the Court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

(2) An owner of copyright or exclusive licensee who is added as a defendant 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 exclusive licensee alone.

(4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the owner of copyright 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

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(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 and the exclusive licensee are both parties to the action.

Secondary infringements

28. (1) Copyright in a work is infringed by a person who, without the authorisation 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 affect prejudicially the owner of copyright;

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

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

(a) makes;

(b) imports into Anguilla;

(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.

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(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 whose normal use involves a public performance or showing, he did not believe on reasonable grounds that it would 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 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.

Presumption of authorship and of representation of the author

29. (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 plaintiff's allegation as to what was the first publication of the work is correct.

Presumptions relevant to sound recordings, audiovisual works and computer programs

30. (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

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(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 Government

31. In proceedings brought by virtue of this Act with respect to a work, copyright in which belongs to the Government of Anguilla, 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

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admissible as evidence of the fact stated and shall be presumed to be correct in the absence of evidence to the contrary.

PART 5

CIVIL REMEDIES AND CRIMINAL LIABILITY

Civil remedies for infringement

32. (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 authorisation of the owner of any right protected under this Act where the making or importation of copies is subject to such authorisation, 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 5 or 20 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; and

(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 holder of the right, unless the owner of the right requests otherwise.

(2) Where the infringer did not know or had no reasonable reason 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

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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) The provisions of paragraph (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 may fix a fine of $5,000 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

33. Where, in an action under this Part—

(a) the infringement of copyright 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 plaintiff;

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, notwithstanding that the infringement related to only one or some of the works, sound recordings, broadcasts or performances.

Withdrawal of privilege against incrimination of self or spouse in infringement and related proceedings

34. (1) In this section—

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

(a) in the case of proceedings within paragraph (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 subparagraph (i) committed in connection with that infringement, being an offence involving fraud or dishonesty; and

(b) in the case of proceedings within paragraph (3)(c), any offence revealed by the facts on which the plaintiff relies in those proceedings;

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

(a) in the case of proceedings within paragraph (3)(a) or (b), any penalty incurred in respect of anything done or omitted in connection with the infringement to which those proceedings relate; and

(b) in the case of proceedings within paragraph (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—

(a) from answering any question put to that person in the first-mentioned proceedings; or

(b) from complying with any order made in the first-mentioned proceedings.

(3) Subsection (2) applies to the following civil proceedings in the Court—

(a) proceedings for infringement of copyright;

(b) proceedings brought to obtain disclosure of information relating to any infringement of copyright;

(c) proceedings brought to prevent any apprehended infringement of copyright.

(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 proceedings to which subsection (2) applies;

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

35. (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 indictment to imprisonment for 10 years or to a fine of $100,000 or to both.

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

(3) The Court 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 5 years of a previous conviction for an infringement.

(4) The provisions of section 32(1)(b), (c) and (g), (3) and (5) shall apply *mutatis mutandis* in criminal proceedings, if no decision has yet been taken on such remedies in a civil proceeding.

Offences by bodies corporate

36. 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, is guilty of that offence and is liable to be proceeded against and punished accordingly.

Time limited for prosecution

37. No prosecution for an offence under this Act shall be commenced after the expiration of 5 years after the commission of the offence or 1 year after the discovery thereof, whichever date last occurs.

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

38. (1) The following acts shall constitute infringements of copyright—

(a) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means");

(b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program.

(2) Section 32 shall apply to an illicit device or means mentioned in subsection (1) as it applies to infringing copies.

(3) The owner of copyright in a work shall also be entitled to the damages for infringement provided for by sections 25(1) and 32(1)(d), where—

(a) authorised 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 device or means is made or imported for sale or rental; or

(b) the work is authorised for inclusion in an encrypted program broadcast or otherwise communicated to the public, including by satellite, and a device or means enabling or

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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 police officers

39. (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); or

(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 subsists 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 subsists 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 authorised 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 authorised by this Act to search until such place has been searched;

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(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; or

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

(4) The 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 authorising 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 authorise any person to accompany the police officer executing the warrant.

Obstruction of police officers

40. (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 imprisonment for 1 year or to a fine of $10,000 or to both.

(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 of $10,000 or to imprisonment for 1 year.

(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

41. 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—

(c) he has reasonable grounds for believing that the person will abscond unless arrested;

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(d) the name and address of the person are unknown to him and cannot be ascertained by him; or

(e) he has reason to believe and believes that the name and address given by the person are false.

PART 6

SPECIAL JURISDICTION OF THE COURT

Definitions

42. For the purposes of this Part—

"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 organisation 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 therein, or as agent for the owners or prospective owners thereof.

Jurisdiction of Court

43. Subject to this Act, the Court shall have jurisdiction—

(a) to determine any dispute which may be referred to it pursuant to section 45; and

(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 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

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

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(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 45, 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; and

(b) the Court fixes an amount of equitable remuneration or compensation pursuant to section 43(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

45. (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 authorising 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; and

(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 has failed, within a reasonable time from the date when that person has 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 2 years from the date it took effect may not be referred back to the Court under this subsection; and

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(b) an order made so as to be in force indefinitely or for more than 2 years from the date it took effect may not be referred back to the Court before the expiry of 1 year from the date when the order was made.

Rights of appeal

46. (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 not on any 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;

(e) that some other specific illegality not mentioned in paragraphs (a) to (d), 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.

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PART 7

FINAL PROVISIONS

Scope of application: literary and artistic works

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

(a) works of authors who are Anguillian, or have their habitual residence in Anguilla;
(U.K. S.I. 2019 No. 852, s. 13(c))

(b) works first published in Anguilla, and works first published in another country and also published in Anguilla within 30 days, irrespective of the nationality or residence of their authors;

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

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

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

Scope of application: protection of performers, phonograms and broadcasts

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

(a) performers who are Anguillian; and
(U.K. S.I. 2019 No. 852, s. 13(c))

(b) performers who are not Anguillian but whose performances—

(i) take place on the territory of Anguilla,

(ii) are incorporated in phonograms that are protected under this Act, or

(iii) have not been fixed in a phonogram but are included in broadcasts qualifying for protection under this Act.
(U.K. S.I. 2019 No. 852, s. 13(c))

(2) The provisions of this Act on the protection of phonograms shall apply to—

(a) phonograms, the producers of which are Anguillian;
(U.K. S.I. 2019 No. 852, s. 13(c))

(b) phonograms first fixed in Anguilla; and

(c) phonograms first published in Anguilla.

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

(a) broadcasts of broadcasting organisations, the headquarters of which are situated in Anguilla; and

(b) broadcasts transmitted from transmitters situated in Anguilla.

(4) The provisions of this Act shall also apply to performers, producers of phonograms and broadcasting organisations that are eligible for protection by virtue of and in accordance with any international convention or other international agreement which is extended to Anguilla.

Application of international treaties

49. The provisions of any international treaty in respect of copyright and related rights which is extended to Anguilla shall apply to matters dealt with in this Act and, in case of conflict with provisions of this Act, the Act shall prevail over the latter.

Regulations

50. The Governor in Council may make such regulations as are necessary in his opinion for the implementation of this Act, including copyright in an Act of the House of Assembly of Anguilla or a regulation under such an Act and the setting up of one or more organisations to administer rights on behalf of the owners of such rights and determining the conditions under which such organisations shall work.

Citation

51. This Act may be cited as the Copyright Act, Revised Statutes of Anguilla, Chapter C120.

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