



REPUBLIC OF KIRIBATI

COPYRIGHT ACT 2018

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REPUBLIC OF KIRIBATI
(No. of 2018)



I assent,

A handwritten signature in black ink, consisting of a stylized, flowing script.

Beretitenti

6/11/18

AN ACT

entitled

An Act to make new provisions for the protection of Copyright and other connected purposes

Commencement date:

2018

MADE by the Maneaba Ni Maungatabu and assented to by the Beretitenti

PART I

PRELIMINARY

1 Short title

This Act may be cited as the Copyright Act, 2018.

2. Commencement

This Act commences on a date appointed by the Minister by notice.

3. Interpretation

In this Act, unless the context otherwise requires—

“accessible format” has the meaning in section 24;

“artistic work” means—

- (a) a building or model of a building;
- (b) any of the following, whether or not the work has artistic merit -
 - (i) a painting sculpture, drawing, illustration, sketch, engraving, etching, lithography, tapestry, woodcut, print, photograph, collage, model, or other similar work;
 - (ii) a map, plan, chart, diagram, sketch, technical drawing, illustration, or other similar work, or a 3-dimensional work, relating to architecture, geography, topography, or science;
 - (iii) a work of applied art, whether handmade or manufactured, that has utilitarian functions or that incorporated in a useful article

(for example, an item of furniture, pottery, or weaving); and

(iv) any other work of artistic craftsmanship;

“author”, in relations to a work—

- (a) means the individual who created the work; or
- (b) if the work was created by two or more individuals and the contribution of each individual is not distinct from that of the other individual or individuals, means all those individuals;

“broadcaster” means a person who makes a communication to the public;

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

“calendar year” means a period of 12 months from 1 January to 31 December;

“collective” work means—

- (a) work in which there are distinct contributions by different authors or in which works, or parts of works, of different authors are incorporated (for example, a newspaper); and
- (b) a compilation of data (including those in electronic or other form readable by a computer or other machine).

“Communication to the public” is the transmission by wire or without wire 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, performance fixed on a phonogram or broadcast would not be perceivable; in respect of a work, including its making available in such a way that members of the public may access it from a place and at a time individually chosen by them;

“copying”, in relation to a work or sound recording, means reproducing, recording, or storing the work or sound recording in any form (including any digital format) in any medium, and by any means, and includes—

- (a) reproducing, recording, or storing a substantial part of the work or sound recording;
- (b) in relation to an artistic work, the making of a copy in 3 dimensions of a 2-dimensional work or a copy in 2 dimensions of a 3-dimensional work; and
- (c) in relation to an artistic work, the making of a photograph of the whole or any substantial part of any image forming part of the film;

“Copyright Inspectors” means any person or persons appointed as Inspectors under section 39;

“Court” means the High Court of Kiribati;

“cultural institution” has the meaning given by section 20(1);

“derivative work” includes—

- (a) translations, adaptations, arrangements, and other transformations or modifications of works (for example, a typographical arrangement of a published edition of a literary, dramatic, or musical work); and

- (b) collections of work and dates sets (whether in machine-readable or other form),

“dramatic work” includes—

- (a) a work of dance or mime;
- (b) a musical or pantomime;
- (c) a scenario or script for a film; and
- (d) any work created for a stage production;

“economic rights”—

- (a) in relation to a work, means the rights specified in section 8;
- (b) in relation to a performance by a performer, means the rights specified in section 28;
- (c) in relation to a sound recording, means the right of the producer of the sound recording specified in section 32;
- (d) in relation to a broadcaster, means the rights specified in section 35;

“film”—

- (a) means a recording in any medium from which a moving image and any accompanying sounds may be produced by any means; and
- (b) includes a still picture extracted from a film;

“fix” means -

- (a) to embody sound;
- (b) visual images;
- (c) the representations of sounds; or
- (d) visual images, in such a way that they can, at a later date, be perceived, copied, or communicated in some form, whether with or without the aid of a device (for example, a recording of a live musical performance);

“infringe”, in relation to the copyright in a work, has the meaning given by section 9;

“infringing copy” means a thing, the making of which, the use of which, or the dealing with which is a breach of a right protected under this Act, including—

- (a) a right of the owner of the copyright in a work; or
- (b) a right of the owner of the economic rights in a performance, sound recording, or communication to the public;

“literary work”—

- (a) means any work, other than a dramatic or musical work, that is written, spoken, or sung (for example, a book, pamphlet and other writings, article, speech, lecture, address, or sermon); and
- (b) includes a computer program;

“Minister” means the Minister responsible for commerce;

“musical work” includes any accompanying words or actions;

“owner”—

- (a) in relation to the copyright in a work, means the owner of the economic rights in the work, being—
 - (i) the original owner of the copyright in the work concerned;
 - (ii) the person to whom the rights have been transmitted under section 11(1) (a); or
 - (iii) the person who has an exclusive licence to deal with the rights under section 11(1)(b);
- (b) in relation to the economic rights of a performer, producer of a sound recording, or broadcaster, means, as the case may be—
 - (i) the performer, producer, or broadcaster concerned;
 - (ii) the person to whom the rights have been transmitted under section 38(1)(a); or
 - (iii) the person who has an exclusive licence to deal with the rights under section 38(1)(b);

“original work” has the meaning given by section 10;

“performer” means an actor, singer, musician, dancer, or other individual who performs a dramatic, literary, artistic, or musical work;

“person with a disability” has the meaning in section 24;

“photograph” does not include a still picture extracted from a film;

“producer”, in relation to a film or sound recording, means the person who is responsible for making the film or sound recording;

“public” means a group of people other than a family and a family's closest friends and acquaintances;

“public display”—

- (a) means the direct showing, or the showing by any means, to the public (other than a communication to the public) of an original work or a copy of the work irrespective of whether the public is or may be present at the same time or at different places or times; and
- (b) in the case of a film, includes the non-sequential showing of individual images from the film;

“public performance” is:

- (a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- (b) in the case of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and
- (c) in the case of a phonogram, making the recorded sounds audible,
in each case at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present.

"publish", in relation to a work or sound recording, means making available to the public tangible copies of the work or sound recording—

- (a) in a reasonable quantity;
- (b) for rent, possession, or sale or other transfer of ownership; and
- (c) with the consent of the owner of the economic rights in the work or sound recording;

"published edition" means a published edition of one or more literary, dramatic, or musical works;

"sound recording"—

(a) means—

a recording of the sounds of a performance of a work, or of other sounds, from which the sounds may be reproduced, regardless of the medium in which the recording is made and the method by which the sounds are produced; but

(b) does not include a sound recording associated with a film;

"Secretary" means Permanent or Deputy responsible for the copyright or any person or persons who has or have been given the authority to perform the task of the Secretary;

"work"—

(a) means an original work of any of the following -

- (i) an artistic work;
- (ii) a dramatic work, if recorded (whether in writing or otherwise);
- (iii) a literary work, if recorded (whether in writing or otherwise);
- (iv) a musical work, if recorded (whether in writing or otherwise);
- (v) a film;
- (vi) a derivative work;
- (vii) a collective work;
- (viii) a typographical arrangement of a published edition; and

(b) includes a part of any work described in any of sub-paragraphs (i) to (viii) of paragraph (a); but

(c) does not include any work that is an official text, or a translation, of a legislative, administrative, or legal nature;

Meaning of "original work"

(1) For the purposes of this Act, a work is not an original work—

- (a) if it is a copy of another work;
- (b) to the extent that it is a copy of another work;
- (c) if it infringes the copyright in another work; and
- (d) to the extent that it infringes the copyright in another work.

4. Objects

The objects of this Act are to -

- (1) govern copyright, the right to control the use and distribution of artistic and literary works in Kiribati;
- (2) to promote the creation of literary and artistic work and to further productive activities in the field of communicating to the public authors' works; and
- (3) protect the moral and economic interests of authors relating to their works, by recognizing exclusive authors' rights and providing for just and reasonable conditions of lawful use of authors' works and regulated access to them.

5. Act binds the Republic

This Act binds the Republic.

6. Application of Act

(1) This Act applies to the following works -

- (a) a work authored by an I-Kiribati;
- (b) a work authored by an individual who resides in Kiribati;
- (c) work first published in Kiribati, irrespective of the nationality or residence of the author of the work;
- (d) a film, if the producer of the film -
 - (i) is an individual who resides in Kiribati or has his or her principal offices in Kiribati; or
 - (ii) in any other case, the principal offices of the producer are in Kiribati;
- (e) an architectural work erected in Kiribati;
- (f) any artistic work incorporated in a building or other structure that is located Kiribati; and
- (g) any work eligible for protection in Kiribati by virtue of, and in accordance with, any international treaty or convention to which Kiribati is a party.

(2) This Act applies to the following performers, performances, sound recordings, producers of sound recordings, communications to the public, and broadcasters -

- (a) a performer who is an I-Kiribati; and
- (b) a performer who is not an I-Kiribati but whose performance—
 - (i) takes place in Kiribati;
 - (ii) is fixed in a sound recording to which this Act applies; or
 - (iii) has not been fixed in a sound recording, but is included in a broadcast to which this Act applies;
- (c) a sound recording, if the producer of the recording is an I-Kiribati;
- (d) a sound recording first fixed in Kiribati;
- (e) a sound recording first published in Kiribati;

- (f) a communication to the public of a broadcaster if the principal offices of the broadcaster are in Kiribati;
 - (g) a communication to the public, broadcast from transmitters situated in Kiribati; and
 - (h) a performer, a performance, a sound recording, a producer of a sound recording, a communication to the public, or a broadcaster that or who is eligible for protection in Kiribati by virtue of, and in accordance with any international treaty or convention to which Kiribati is a party.
- (3) For the purposes of this section—
an individual resides in Kiribati if he or she lives in Kiribati continuously for a period of not less than 3 months.

PART II

COPYRIGHT AND MORAL RIGHTS IN WORKS

Division 1- Copyright in works

7. What is copyright

- (1) Copyright is a property right that—
 - (a) exists in original works; and
 - (b) confers exclusive rights on the owner of the copyright in the works.
- (2) Despite subsection (1)—
 - (a) copyright exists in an original literary, dramatic, or musical work only if the work is recorded (whether in writing or otherwise); and
 - (b) no copyright exists in official texts of a legislative, administrative, or legal nature or in any translation of those texts.
- (3) Copyright exists in an original work by the sole fact of its creation and irrespective of its mode or form of expression or its content, quality, or purpose.
- (4) However, copyright does not exist in any idea, procedure, system, method of operation, concept, principle, discovery, or data expressed, described, explained, illustrated, or otherwise embodied in the work.
- (5) To avoid doubt, the copyright in a derivative work does not limit or affect the copyright existing in any work incorporated into or used in the creation of the derivative work.

8. Rights of owner of copyright (economic rights)

- (1) The owner of the copyright in a work has the exclusive right to carry out, or authorise the carrying out of the following actions in relation to -
 - (a) copying the work;
 - (b) publishing the work;
 - (c) performing or displaying the work in public;

- (d) distributing copies of the work to the public (by sale, rental, or otherwise) if the copies are fixed as tangible objects and have not already been lawfully distributed (for example, the owner of the copyright in a book has the exclusive right to authorise the first distribution of copies of the book, but no rights relating to any subsequent distributions occurring, for example, by their resale in a second-hand bookstore);
 - (e) adapting, arranging, translating, transforming, or modifying the work in any way;
 - (f) renting the original or a copy of a film, a work embodied in a sound recording, a computer program, a database, or a musical work in the form of notation, irrespective of the ownership of the original work or copy concerned;
 - (g) communicating the work to the public of a broadcasting work and other communication to the public of the work;
 - (h) importing copies of the work;
 - (i) doing any of the acts referred to in paragraphs (a) to (j) in relation to any adaption, arrangement, or other transformation of the work; or
 - (j) authorising any person to do any of the acts referred to in paragraphs (a) to (i).
- (2) The commercial rental arrangement right under subsection (1)(f) does not apply to a work that is a computer program unless a computer program is the essential object of the arrangement.

9. How copyright in work infringed

- (1) A person infringes copyright in a work by acting in a way described in section 8 in relation to the work in the circumstances where the person—
- (a) is not the owner of the copyright; and
 - (b) does not have the permission of the owner of the copyright to act in that way (for example licence or other contractual arrangement); and
 - (c) is acting other than in a way permitted under any of sections 14 to 25 (the exceptions).
- (2) However, nothing in this Act limits or affects any requirement to make one or more copies of a published work in accordance with the provisions of any enactment currently in force in Kiribati that requires a copy of the work to be deposited with a library or other cultural institution for the purposes of preserving the Kiribati documentary heritage.

10. Who is original owner of copyright

- (1) The author of a work is the original owner of the copyright in the work.
- (2) Subsection (1) is subject to the rest of this section.
- (3) If an author creates a work in the course of his or her employment, the employer is the original owner of the copyright in the work.
- (4) If the work is a collective work, the person who initiates and directs the

creation of the works is the original owner of the copyright in that work.

- (5) If a person commissions a work, the person who commissioned the work is the original owner of the copyright in the work.
- (6) If the work is a film, the producer of the film is the original owner of the copyright, unless a contract provides otherwise. However, an author of a work included in or adapted for the film, remains the original owner of the copyright of that work to the extent that copyright exists in the work independently of the film.

11. Transmission and licensing of copyright

- (1) The copyright in a work—
 - (a) is transmissible as personal or moveable property by assignment, testamentary disposition, or operation of law; and
 - (b) may be subject to a licensing regime whereby the owner of the copyright authorises another person to exercise one or more of the owner's economic rights in relation to the work.
- (2) A transmission or licensing of the copyright in a work may be partial or limited and apply—
 - (a) to one or more, but not all of the economic rights of the owner of the copyright; or
 - (b) to part, but not the whole of the period for which copyright in the work exists.
- (3) An assignment of copyright in a work has no lawful effect unless signed by or on behalf of the assignor and assignee.
- (4) A licence to deal with a work has no lawful effect unless signed by or on behalf of the licensor and licensee.
- (5) Any contractual provision contained in an agreement for the assignment or licensing of a work that is contrary to any of the exceptions to copyright infringement set out in sections 14 to 25 has no lawful effect.
- (6) To avoid doubt, an assignment in whole or in part of the copyright in a work, or a licence to do an act in respect of the copyright in a work, does not include, and must not be treated for any purpose as including, the assignment or licence of any economic right not expressly specified in the assignment or licensing agreement.

12. Presumption of authorship

- (1) The individual whose name is indicated as the author of a work is, in the absence of proof to the contrary, presumed to be the author of the work.
- (2) Subsection (3) applies in relation to a work if the work is published and the author's name indicated on the work is a pseudonym or the work is published anonymously.
- (3) The publisher whose name appears on a work is, in the absence of proof to the contrary, presumed to represent the author and is entitled to exercise and enforce any rights of the author under section 8 or 26 unless and until the

author publicly reveals his or her identity.

13. Duration of copyright

- (1) Copyright in a work (other than a work of applied art or a typographical arrangement of a published edition) exists—
 - (a) for the life of the author; and
 - (b) for 50 years from the end of the calendar year in which the author dies.
- (2) If two or more individuals are the authors of a work, copyright in the work (other than a work of applied art or a typographical arrangement of a published edition) exists—
 - (a) for the life of the longest-surviving author; and
 - (b) for 50 years from the end of the calendar year in which that author dies.
- (3) Copyright in a collective work (other than a work of applied art or a typographical arrangement of a published edition) or film exists for 50 years from the end of the calendar year in which the latest of the following events occurred -
 - (a) the work was made;
 - (b) the work was first made available to the public; and
 - (c) the work was first published.
- (4) Copyright in a work of applied art (including a collective work) exists for 25 years from the end of the calendar year in which the work was made.
- (5) Copyright in a typographical arrangement of a published edition of the whole or any part of a literary work, dramatic work, or musical work (including a collective work) exists for 25 years from the end of the calendar year in which the edition is first published.

Division 2 - Exceptions to copyright infringement

14. Copying for research or private study

- (1) An individual does not infringe copyright in a work by reproducing one or a very few copies of the work for research, private study, or other private and non-commercial activity and the research, private study, or other activity is carried out by the individual or his or her family or friends.
- (2) Subsection (1) does not apply if the individual copies—
 - (a) the whole or a substantial part of a book or musical work (in the form of notation) without fairly compensating the owner of the copyright for doing so;
 - (b) a building or other construction;
 - (c) the whole or a substantial part of a database in digital form;
 - (d) a computer program, except if section 22 applies to the copying; or
 - (e) any other work, if the copying would unreasonably prejudice the legitimate interests of the owner of the copyright in the work.

15. Temporary copying

- (1) A person, does not infringe copyright in a work by copying the work if—
- (a) the copy is transient or incidental; and
 - (b) the copy is an essential part of a technological process (for example, a digital transmission, of the work or to make a digitally stored work perceptible) for the purpose of—
 - (i) making or receiving a communication that does not infringe copyright in the work; or
 - (ii) enabling the lawful use of the work (for example, to transmit the work in a network to a third party); and
 - (c) the copy has no independent economic worth.

16. Quoting from work

- (1) A person does not infringe copyright in a work by quoting from the work if—
- (a) the work has already been lawfully made available to the public; and
 - (b) the amount of the work quoted—
 - (i) is justifiable given the purposes of the quotation; and
 - (ii) does not unreasonably prejudice the legitimate interests of the owner of the copyright; and
 - (c) the person acknowledges the work and the author's name (if it appears in the work); and
 - (d) the number of copies made does not exceed what is required for fulfilling the educational purpose.

17. Copying for educational purposes

- (1) A person does not infringe copyright in a work by copying the work, or recordings of the work broadcast on radio or television, for the purpose of teaching or receiving instruction at an educational institution.
- (2) Subsection (1) applies only if—
- (a) a collective licence to copy the work is not available to the educational institution; and
 - (b) the amount of the work copied is justifiable given the purpose of the teaching or instruction; and
 - (c) the person acknowledges the source of the work and the author's name (if it appears in the work).
- (3) An educational institution may incorporate a copy of a work to which subsection (1) applies in printed or electronic course materials, study materials, resource lists, or other material for use in a course of instruction given by or at the institution.
- (4) Where, if the course of instruction is by means of any form of electronic or other virtual learning environment, a copy of the work may be incorporated

in the materials only if the virtual learning environment is hosted on a secure network and is accessible only by those individuals who are giving or receiving the course or who are responsible for the running of the virtual learning environment.

- (5) An individual enrolled at an educational institution may copy and incorporate a work to which subsection (1) applies in assignments, portfolios, theses, dissertations, or other course work produced by the individual, even if the course work, or a copy of it, is required to be deposited with the institution.
- (6) However, the individual must—
 - (a) ensure that the amount of the work copied is justifiable given the purpose of the course work; and
 - (b) in the course work, and in any copies made of it, acknowledge the source of the work and author's name (if it appears in the work).
- (7) An educational institution may communicate to individuals enrolled at the institution a work permitted to be copied or translated for educational, or research purposes under any of the other exceptions in this Act so long as the institution does so using a secure network that is accessible only by those individuals who are teaching or receiving instruction or who are responsible for the running of the network.
- (8) The exceptions provided by this section do not apply if the copying of the work is for commercial purposes.

18. Translations of works

- (1) A person giving or receiving instruction does not infringe copyright in a work if the person translates the work.
- (2) Subsection (1) applies only if the translation is for private educational teaching or research purposes.
- (3) To avoid doubt, the exceptions provided by this section do not apply if the translation of the work is for commercial purposes.

19. Copying for legal purposes

- (1) A person does not infringe copyright in a work if—
 - (a) the person copies the work for the purpose of giving legal advice;
 - (b) the amount of the work copied is justifiable given the purpose of the legal advice; and
 - (c) the person acknowledges the source of the work and the author's name (if it appears in the work).
- (2) A person does not infringe copyright in a work if the work is dealt with in any way, including by copying, for the purposes of a judicial proceeding or the reporting of a judicial proceeding.

20. Copying by cultural institution

- (1) In this section, "cultural institution" means a library, archive, museum, or gallery that is publicly funded in whole or in part.

- (2) A cultural institution does not infringe copyright in a work by copying a work held in its collection for the purposes of backup or preservation including transferring the copy into a newer technological format if that is required for a reasonable future access to the work.
- (3) A cultural institution does not infringe copyright in a work by copying an incomplete work held in its collection if—
 - (a) the institution cannot reasonably acquire the work through general trade or from the publisher concerned; and
 - (b) the copy is obtained from another cultural institution.
- (4) A cultural institution does not infringe copyright in a work in its collection by copying the work for the purpose of allowing access to that copy by users of the institution whether for personal use or study on the institution's premises (with or without technical equipment) or by way of loan.
- (5) A cultural institution does not infringe copyright in a work in its collection by copying the work to replace a work or copy of a work that is lost, destroyed, or rendered unusable in the permanent collection of another cultural institution and that institution cannot reasonably acquire the work or a copy of it through general trade or from the publisher concerned.
- (6) The exceptions provided by this section do not apply if the copying of the work is for commercial purposes.

21 Copying to report current events to the public

- (1) A person does not infringe copyright in a work—
 - (a) by copying or communicating to the public—
 - (i) a newspaper article, periodical, communication to the public, lecture, speech, or other work of a similar nature for the purpose of reporting current events to the public; or
 - (ii) excerpts of a work seen or heard in the course of reporting on a current event; and
 - (b) the copy or communication is made without the authorisation of the owner of the copyright.
- (2) However, the person must—
 - (a) ensure that the amount of the work copied or communicated is no more than is justifiable for the purposes of reporting; and
 - (b) acknowledge the source of the work and the author's name (if it appears in the work).
- (3) Subsection (1)(a)(i) does not apply if the owner of the copyright in the work has expressly prohibited copying or communicating of the work for the purpose described in that subsection.

22 Copying and adaptation of computer programs

- (1) A person does not infringe copyright in the computer program if—
 - (a) he makes a single copy of the program, or makes an adaptation of the program; and

- (b) the copy or adaptation is necessary—
 - (i) to use the program for the purpose and to the extent for which it was obtained; or
 - (ii) for archival purposes; or
 - (iii) to replace the lawfully owned copy of the program if that copy is lost or destroyed; and
 - (c) the copy is made without the authorisation of the owner of the copyright.
- (2) To avoid doubt, a copy or an adaptation of a computer program must not be used for any purpose other than that specified in subsection (1)(b).
 - (3) A copy or an adaptation must be destroyed if its continued possession does not satisfy the requirements of this section or otherwise is no longer lawful.

23. Public display of works

A person does not infringe copyright in a work if the person publicly displays a copy of the work—

- (1) if the work is published and the copy displayed is lawfully obtained; or
- (2) if the work is unpublished, but the author has transferred ownership of the copy to another person.

24 Copying of persons with reading disability

- (1) A person does not infringe copyright in a work if the person, without the authorisation of the owner of the copyright in the work—
 - (a) makes an accessible format of the work for a person with a disability; or
 - (b) without the authorisation of the owner of the copyright of the work.
- (2) Subsection (1) applies only if the person making the accessible format of the work or copies of it—
 - (a) has lawful access to the work or copy from which the accessible format of the work is made; and
 - (b) does not make any changes to the work other than those necessary to make the work or copy accessible; and
 - (c) acknowledges the source of the work and the author's name (if it appears in the work); and
 - (d) the copying is not for commercial purposes.
- (3) In this section—

“accessible format”, in relation to a work or a copy of a work, means a format that will allow a person with a disability to access and use the work to substantially the same degree as a person without a disability

“person with a disability” means a person who requires a work or a copy of a work to be manipulated in some way to enable the person to access and use the work to substantially the same degree as a person without the same disability.

25 Circumstances in which a person may circumvent technological protection measures

- (1) This section applies if—
- (a) a person has the right to use or copy a work, or use or copy a copy of a work, in accordance with any of sections 19(2); 20(2) and 24; and
 - (b) some form of technological protection has been applied to the work or the copy of the work.

Division 3 – Moral rights in works

26. Moral rights of author

- (1) The author of a work has the moral rights set out in subsection (5) in relation to the work.
- (2) The moral rights are not transferable by the author during his or her lifetime but may be transferred on the death of the author (by testamentary disposition or operation of law, as the case may be) and exercised by the transferee on the author's behalf.
- (3) The moral rights exist independently of the rights of the owner of the copyright in the work except to the extent that the rights are extinguished at the same time as the copyright in the work expires.
- (4) To avoid doubt, the moral rights exist even if the author of the work is not the owner or no longer the owner of the copyright in the work.
- (5) The moral rights are—
- (a) as far as practicable, to have the author's name indicated prominently on copies of the work and in connection with any public use of the work; and
 - (b) to have the author's name indicated on copies of the work, and in relation to any public use of the work; but instead to use a pseudonym on the copies or in relation to the public use; and
 - (c) to object to any distortion, mutilation, or other modification of the work, or any derogatory action in relation to the work, if it would be prejudicial to the author's honour or reputation.
- (6) However, a work used for the purposes of caricature, parody, or pastiche is not a breach of the moral rights of the author under subsection 5(c).

27. Author may waive moral rights

- (1) An author may waive the moral rights conferred on him under section 26.
- (2) A waiver must—
- (a) be in writing; and
 - (b) specify the right or rights waived; and
 - (c) specify the circumstances in which the waiver applies; and
 - (d) if the waiver relates to a right described in section 26(5)(c), specify the nature and extent of the notification or action in respect of which the right is waived.

- (3) On the death of the author, the person described in section 26(2) may exercise the power to waive the moral rights of the author, and this section applies, with any necessary modifications, as if the person is the author.
- (4) To avoid doubt, a person may rely on a waiver under this section only to the extent that the waiver complies with subsection (2).

PART III

RIGHTS OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND BROADCASTERS

Division 1—Performers' rights

28 Exclusive rights of performers

- (1) A performer shall have the exclusive right to carry out, to authorize or to prohibit any of the following acts -
 - (a) the broadcasting or other communication to the public of his or her 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 or her unfixed performance;
 - (c) the direct or indirect reproduction of a fixation of his or her performance, in any manner or form;
 - (d) the distribution of a fixation of his or her performance, or of copies thereof, to the public;
 - (e) the rental to the public of a fixation of his or her performance, or copies thereof;
 - (f) the making available to the public of his or her 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) The right of distribution under paragraph (d) of subparagraph (1) does not apply to a copy of a fixation of his or her performance that has already been subject to a sale or other transfer of ownership in the national territory authorized by the performer.

29 Moral rights of performers

- (1) A performer has the rights set out in subsection (5) in respect of a live aural performance by him or her or a performance by him or her fixed in a sound recording.
- (2) The rights are not transferable by the performer during his or her lifetime but may be transferred on the death of the performer (by testamentary disposition or operation of law, as the case may be) and exercised by the transferee on the performer's behalf.
- (3) The rights exist independently of the rights that the performer has under section 28, except to the extent that the rights are extinguished at the same

time as the period of protection in the performance expires.

- (4) To avoid doubt, the rights exist even if the performance transfers the rights under that section to another person in accordance with section 38.
- (5) The rights is the right to be identified as the performer, unless the manner of use of the performance is of such a nature that this is not possible.

30 Performer may waive certain rights

- (1) A performer may waive the rights conferred on him or her under section 29.
- (2) A waiver must—
 - (a) be in writing; and
 - (b) specify the right or rights waived; and
 - (c) specify the circumstances in which the waiver applied; and
 - (d) if the waiver relates to a right described in section 29(5)(b), specify the nature and extent of the modification or action in respect of which the right is waived.
- (3) On the death of the performer, the person described in section 29(2) may exercise the power to waive the rights of the performer, and this section applies, with any necessary modifications as if the person is the performer.
- (4) To avoid doubt, a person may rely on a waiver under this section only to the extent that the waiver complies with subsection (2).

31. Duration of rights

- (1) The rights conferred on a performer under sections 28 and 29 exist—
 - (a) in the case of a performance fixed in a sound recording, until the end of the calendar year that is 50 years after the year in which the performance was fixed as a sound recording; and
 - (b) in any other case, until the end of the calendar year that is 50 years after the year the performance took place.

Division 2—Producers' rights

32 Exclusive rights of producers of sound recordings

- (1) A producer of a sound recording has the exclusive right to carry out, or authorise the carrying out of, the following activities -
 - (a) copying the recording in any way or form;
 - (b) importing copies of the recording to Kiribati;
 - (c) issuing or distributing to the public (by sale, rental, or otherwise) the original or copies of the recording, other than copies that have already been subject to a sale or other transfer of ownership authorised by the producer (for example, the exclusive right would not apply to a copy of the recording that was distributed by the producer and that resold in second-hand record store);

- (d) renting to the public a copy of the recording, irrespective of the ownership of the copy rented; and
 - (e) communicating the recording to the public.
- (2) A producer is the owner of the rights described in subsection (1) in respect of the sound recording.

33 Duration of rights

- (1) The rights conferred on a producer under section 32 exist—
 - (a) until the end of the calendar year that is 50 years after the year in which the sound recording is first published; or
 - (b) if the recording has not been published, until the end of the calendar year that is 50 years from the making of the recording.

34 Equitable payment for use of sound recording

- (1) This section applies if a sound recording published for commercial purposes or a copy of a sound recording published for commercial purposes is used in a communication to the public or publicly performed.
- (2) The person using the sound recording must make a single equitable payment to the producer of the recording.
- (3) The producer of the recording must pay half of the amount received to the performers concerned, unless an agreement between the performers and the producer expressly provides otherwise.
- (4) The rights of the producer and performance to be paid under this section exists—
 - (a) until the end of the year that is 50 years after the year in which the recording is first published; or
 - (b) if the recording has not been published, until the end of the calendar year that is 50 years from the making of the recording.

Division 3—Broadcasters' rights

35 Exclusive rights of broadcasters

- (1) A broadcaster has, in respect of a communication to the public by the broadcaster, the exclusive right to—
 - (a) rebroadcast or otherwise communicate it to the public;
 - (b) fix the broadcast;
 - (c) reproduce a fix of the broadcast; and
 - (d) authorise another person to do any act referred to in any of paragraphs (a) to (c).
- (2) The broadcaster is the owner of the rights described in subsection (1) in respect of the broadcast.

36 Duration of rights

The rights conferred on the broadcaster under section 35 exist to the end of the calendar year that is 50 years from the making of broadcast.

Division 4—Miscellaneous matters applying to performers, producers of sound recordings and broadcast

37 Limitations on protection

Despite Sections 28, 29, 32 and 35, it is not a breach of the rights conferred on a performer, a producer of a sound recording, or a broadcaster under any of those sections to do any act in relation to a performance, a sound recording, or a broadcast, which would be permitted under Sections 14 to 25 if it had been done in relation to a literary or artistic work.

38 Transmission and licensing of rights

- (1) The rights conferred on a performer, producer of a sound recording, and broadcaster under sections 28, 32, and 35—
 - (a) are transmissible as personal or movable property by assignment, testamentary disposition, or operation of law; and
 - (b) may be subject to a licensing regime, whereby the owner of the rights authorises another person to exercise 1 or more of the owner's rights in relation to the performance, sound recording or communication to the public.
- (2) A transmission or licensing of a right may be partial or limited so as to apply—
 - (a) to one or more, but not all, of the economic rights conferred on the owner of the rights; or
 - (b) to part, but not the whole, of the period for which the right exists.
- (3) An assignment of a right has no lawful effect unless signed by or on behalf of the assignor and assignee;
- (4) A licence to deal with a right has no lawful effect unless signed by or on behalf of the licensor and licensee;
- (5) Any contractual provision contained in an agreement for the assignment or licensing that is contrary to any of the exceptions set out in sections 14 to 25 has, to the extent that it is inconsistent with the exceptions, no lawful effect; and
- (6) To avoid doubt, an assignment in whole or in part of the rights, or a licence to do an act in respect of rights, does not include, and must not be treated for any purpose as including, the assignment or licensing of any economic right not expressly specified in the assignment or licensing agreement.

PART IV COMPLIANCE

Copyright Enforcement Officers

39. Appointment of Copyright Enforcement Officers -Inspectors

- (1) The Minister may appoint one or more persons suitably qualified to act as Copyright Inspectors for the purposes of this Act, who shall be public servants.
- (2) The Secretary must provide each or every persons appointed as Copyright Inspectors with the following -
 - (a) certificate of appointment; and
 - (b) identification card;as conclusive proof of appointment before he carries out his duties and functions conferred upon him under this Act.
- (3) An Inspector must produce either a certificate of appointment or an identification card whenever he executes his duties and functions under this Act.
- (4) An Inspector must report about the exercise of his powers and functions to the Secretary.
- (5) A person who forges or counterfeits a certificate of appointment or impersonates an inspector commits an offence and shall be liable on conviction to imprisonment of 2 years or a fine of \$500.00.

40. Duties and powers of Inspectors

- (1) An Inspector may, at all reasonable times enter, search and investigate any places, that he believes, on reasonable grounds to be a place where an infringement of copyright occurs and to report to a Police Officer of any infringement for prosecution;
- (2) For the purpose of performing his duties under subsection (1), an Inspector must have regard to the procedures set out under the Police Powers and Duties Act 2008 and Criminal Procedure Code.
- (3) A person who -
 - (a) hinders or obstruct an Inspector to carry out his duties and powers under section 40 in a manner that interferes with the performance of the duties of the Inspector; or
 - (b) assaults an Inspector; or
 - (c) being the occupier or person in charge of any place or premises entered by an Inspector, fails to provide all reasonable assistance for the effective exercise of the powers under this Act;

commits an offence and shall be on conviction liable to a minimum fine of \$1,000.00 but not exceeding \$3,000.00 or to a minimum imprisonment of 5

years but not exceeding 7 years, or both.

41. Liability of Inspectors and the Republic

- (1) An Inspector shall not be liable for any act done or omitted while acting in the performance of his duty in *good faith* and in pursuance of the provisions of this Act.
- (2) The Republic shall not be liable for any act or omission of the part of an Inspector or any authorized officer or officers in relation to the performance of his duties or functions under this Act.

PART V

ENFORCEMENT

Division I—Civil remedies

42 Action for damages

- (1) A person with rights protected under this Act (the plaintiff) may bring an action to the High Court for an infringement or breach of the right against the person responsible for the infringement or breach (the defendant).
- (2) On a successful action, the plaintiff is entitled to—
 - (a) damages from the defendant for the prejudice and loss suffered as a consequence of the infringement or breach; and
 - (b) expenses, including costs, resulting from the infringement or breach.
- (3) The Court must determine the amount of damages and, in doing so, may take into account—
 - (a) the importance of the material and moral prejudice suffered by the plaintiff; and
 - (b) the amount of the defendant's profits attributable to the infringement or breach.
- (4) An exclusive licensee of a right protected under this Act may bring proceedings under this section in respect of the right as if the exclusive licence is an assignment of the right by the owner and the exclusive licensee is the assignee.
- (5) To avoid doubt, an author of a work or a performer may bring an action for damages under this section for breach of his or her moral rights in relation to the work or performance.
- (6) The High Court (Civil Procedure) Rules, 1964 including amendments made under it shall be applied under this division.

43 Powers of Court

- (1) The Court, may exercise one or more of the following powers in proceedings under section 42 -
 - (a) grant an injunction to prohibit the infringement of copyright in any work or breach of any other right protected under this Act;

- (b) order the impounding of any infringing copies and their packaging;
 - (c) order the destruction or other disposition of any infringing copies and their packaging in a way that avoids harm to the owner of the copyright or other right;
 - (d) order the impounding of any implements that could be used for making or packaging infringing copies, and the relevant documents, accounts, or business papers;
 - (e) order the destruction of those implements in a way that minimises the risk of further infringements or breaches;
 - (f) make any other orders that the Court considers necessary in the circumstances.
- (2) However, the Court must not make an order under subsection (1) in relation to any infringing copies and their packaging if they are acquired in good faith.

Division 2—Criminal offences

44. Intentional infringement or breach of protected right for profit-making purpose

- (1) Any person commits an offence who, intentionally and for a profit-making purpose, infringes or breaches a right protected under this Act and is liable on conviction to—
- (a) if an individual a maximum fine of \$50,000 or imprisonment of 7 years or both; or
 - (b) if any other person, a maximum fine of \$100,000.

45. Providing means for making infringing copies

- (1) Any person commits an offence who—
- (a) makes, imports, sells, or lets for hire (whether in the course of business or otherwise) an object specifically designed or adapted for making infringing copies, knowing or having reason to believe that the object is to be used to make infringing copies of a copyright work; or
 - (b) possesses, offers, or exposes for sale or hire an object specifically designed or adapted for making infringing copies, knowing or having reason to believe that the object is to be used to make infringing copies of a copyright work.
- (2) Any person commits an offence who communicates a copyright work or other thing protected under this Act to one or more persons, knowing or having reason to believe that infringing copies of the work or thing will be made by means of the reception of the communication in the Kiribati Islands or elsewhere.
- (3) A person who commits an offence against subsection (1) or (2) is liable on conviction to—
- (a) if an individual, a minimum fine of \$10,000 but not exceeding \$50,000 or imprisonment of maximum of 2 years, or both; or

- (b) if any other person, a minimum fine of \$10,000 but not exceeding \$100,000.
- (4) In this section, "copyright work" means a work in which copyright currently exists.

46* Removal of rights management information

- (1) A person commits an offence who—
 - (a) removes or alters any rights management information in respect of a work, performance, sound recording, or broadcast without the permission of the owner of the copyright or, in the case of a performance, sound recording, or communication to the public, without the permission of the performer, the producer of the sound recording, or the broadcaster; or
 - (b) distributes, imports for distribution, broadcasts, communicates to the public, or makes available to the public a work, performance, sound recording, or communication to the public, knowing any electronic rights management information in respect of the work has been removed or altered without the permission of the owner of the copyright or, in the case of a performance, sound recording, or communication to the public, the permission of the performer, the producer of the sound recording, or the broadcaster.
- (2) A person who commits an offence against subsection (1) is liable on conviction to—
 - (a) if an individual, a minimum fine of \$10,000 but not exceeding \$20,000 or minimum imprisonment of 5 years but not exceeding 10 years or both; or
 - (b) if any other person, a minimum fine \$30,000 but not exceeding \$50,000.
- (3) In this section, rights management information means—
 - (a) information that—
 - (i) identifies the author of a work, a work, a performer, the performance of a performer, the producer of a sound recording, a broadcaster, a communication to the public, owner of the copyright in a work, or the owner of any other right protected under this Act; or
 - (ii) is information about the terms and conditions of use of a work, a performance, a sound recording, or a communication to the public, including any numbers or codes that represent the information; and
 - (b) information that—
 - (i) is attached to a copy of a work, a fixed performance, a sound recording, or a fixed communication to the public; or
 - (ii) appears in connection with the broadcast, communication to the public, or making, available to the public of a work, a fixed performance, a sound recording

or a communication to the public.

47 Abuse of technical means of protection

- (1) A person commits an offence who manufactures or imports for sale or rental any device or means that—
 - (a) is designed or adapted to circumvent any other device or means—
 - (i) intended to prevent or restrict copying of a work, sound recording, or communication to the public; or
 - (ii) intended to impair the quality of any infringing copies of a work, or copies of a sound recording, or communication to the public; or
 - (b) can enable or assist people who are not entitled to receive the program to receive an encrypted program that is broadcast.
- (2) A person who commits an offence against subsection (1) is liable on conviction to—
 - (a) if an individual, a minimum fine of \$30,000 but not exceeding \$50,000 or a maximum imprisonment of 5 years, or both; or
 - (b) if any other person, a maximum fine of \$100,000.

48 Performance or playing in public of infringing work

- (1) A person commits an offence if the person—
 - (a) permits or causes a literary, dramatic, or musical work to be performed in a place of public entertainment, knowing that the performance infringes the copyright in the work; or
 - (b) permits or causes a sound recording to be played in public, knowing that the playing infringes copyright in that sound recording or film.
- (2) A person who commits an offence against subsection (1) or (2) is liable on conviction to—
 - (a) if an individual, a minimum fine of \$10,000 but not exceeding \$20,000 or minimum imprisonment of 5 years but not exceeding 10 years, or both; or
 - (b) if any other person, a minimum fine of \$10,000 but not less than \$50,000.

49 Court may make certain orders

- (1) On conviction for an offence against any of sections 44 to 48, the Court may make any order against the convicted person that the Court may make under section 43.
- (2) Subsection (1) applies only if civil proceedings have not been taken in relation to the same matter as that to which the conviction relates.
- (3) For the purposes of this section, section 43 applies as if—
 - (a) the offences are an infringement of the copyright or a breach of a right

of the owner of the copyright or, as the case may be, the owner of another right protected under this Act; and

(b) the following are infringing copies -

- (i) any work, performance, sound recording or communication to the public from which rights management information has been removed or altered; and
- (ii) any device described in section 47.

PART VI

MISCELLANEOUS PROVISIONS

50 Regulations

(1) The Minister may make regulations for the better carrying out into effect the provisions and purposes of this Act, and in particular and without prejudice to the generality of the foregoing power, such regulations may provide for any or all the following purposes -

- (a) a licensing scheme for works or other rights protected under this Act;
- (b) a copyright registration system; or
- (c) the collection of payments required under section 34.

51 Repeal

The Copyright Ordinance Cap. 16 is repealed, subject to section 19 of the *Interpretation and General Clauses Act* Cap.46.

52 Saving provisions

- (1) All legal proceedings instituted under Copyright Ordinance Cap 16 before the commencement of this Act are to be tried and determined in accordance with this Ordinance.
- (2) All rights protected under the repealed Ordinance continue to be recognised under this Act.

COPYRIGHT RIGHT ACT, 2018

EXPLANATORY MEMORANDUM

Introduction

The Copyright Act 2018 (referred to as "the Act") provides for the protection of copyright works, including the right to control the use and distribution of artistic and literary works and also to protect the moral and economic interests of authors relating to their works, by recognizing exclusive authors' rights and providing for just and reasonable conditions of lawful use of authors' works and regulated access to them.

This Act has been modified and improved to respond to the requirements and obligations of the Government under the Berne Convention to protect, in as effective and uniform a manner as possible the rights of authors in their literary and artistic works. This Act comprises of 6 Parts made up of 52 sections.

Part 1 – Preliminary matters

Sections 1 and 2 provide for the short title and commencement of the Act.

Section 3 defines certain terms, the more important ones are artistic and literary works.

Section 4 contains the objects of the Act.

Section 5 makes the Act binding on the Republic.

The Application of the Act contained in section 6 has three subsections. The first subsection contains works that this Act apply to but are not limited to an architectural work erected in Kiribati; artistic work incorporated in a building or other structure that is protected in Kiribati and others, while in subsection 2 it applies to performers, performances, sound recordings, producers of sound recordings, communications to the public and broadcasters and in subsection 3 it further clarifies the definition of the phrase "an individual resides in Kiribati".

Part II – Copyright and moral rights in works

This part has three divisions -

Division 1 deals with copyright in works comprised of sections 7 to 13.

Section 7 explains the word copyright and also allows for circumstances in which copyright does not exist. Section 8 provides for the economic rights of the owner in a copyright and the exclusive right to carry out or authorise the carrying out of actions set out in (a) to (j) in relation to the work. Section 9 deals with circumstances in which copyright in the work are infringed and further provides that if a copy of a published work are deposited with a library or other cultural institution for the purposes of preserving the Kiribati documentary heritage, it does not amount to an infringement. Section 10 deals with the identifying the original owner of the copyright. Section 11 provides for the manner and formalities in which the copyright is transmitted. Section 12 states presumption of authorship and 13 provides for the duration of copyright in the work is going to last. Division 2 deals with exceptions to

copyright infringement comprised of sections 14 to 24 and section 25 deals with circumstances in which person may circumvent technological protection measures.

The first exception or circumstances in which copyrights are permitted is in section 14, copyright for

research or private study but subsection (2) does not apply if the individual copies (a) to (e).

In section 15, temporary copying does not violate copyright in a work by temporary copying; quoting

from work (section 16); copying for educational purposes (section 17); translations of works (section

18); copying for legal purposes (section 19); copying by cultural institution (section 20); copying to

report current events to the public (section 21); copying and adaptation of computer programs (section

22); public display of works (section 23) and copying of persons with reading disability (section 24).

Division 3 deals with moral rights in works which constituted of sections 26 and 27.

Part III – Rights of Performers, Producers of sound recordings and Broadcasters

This part is divided according to 4 divisions comprises of sections 28 to 38.

The first division concerns with Performers' rights so section 28 deals with exclusive rights of performers; section 29 regulates the rights of performers in relation to live aural performance and those fixed in sound recordings. Section 30 concerns with performer to waive certain rights and section 31 specifies the duration of the rights of performers.

The second part of division 2 deals with Producers' rights. The exclusive rights of producers of sound recordings is stated in section 32 and the duration of rights of producers is mentioned in section 33 and equitable payment for use of sound recording is regulated under section 34.

The third division deals with Broadcasters' rights. As mentioned in section 35 it is the exclusive right of broadcasters and section 36 deals with the lifetime of Broadcasters' rights.

The fourth division is miscellaneous matters applying to performers, producers of sound recordings and broadcast which are limitations on protection as stated in section 37; transmission and licensing of rights is stated in section 38.

Part IV - Compliance

This Part consists of sections 39 to 41.

Section 39 deals with appointment of Copyright Inspectors while section 40 deals with the powers and duties of Copyright Inspectors. In section 41, it states the liability of Inspectors and the Republic especially in vicarious liability.

Part V – Enforcement

There are two divisions under the part of enforcement. The first division deals with civil remedies which are spelled out in section 42 protection of rights and enforcement in terms of actions for damages. The powers of the Court to grant remedies to the person whose rights in copyrights are violated are stated under section 43.

The second division deals with enforcement on criminal sanctions. The offences set out are from sections 44 to 48. The offence stated in section 44 is 'intentional infringement or breach of protected right for profit-making purposes; section 45 is an offence of providing means for making infringement copies; removal of rights management information is another offence under section 46. Abuse of technical means of protection is another offence under section 47. Section 48 is an offence of playing in public of infringing work. In section 49, it gives the additional power of the Court to make additional orders in relation to a convicted person.

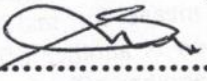
Part V – Miscellaneous provisions.

This is the final part of the Copyright Act and it sets out delegated powers to legislate by subsidiary instrument under section 50; the repeal under section 51 and finally saving provisions under section 52.

Honourable Mr Atarake Natara
Minister for Commerce Industry and Co-operatives

**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

This printed impression of the Copyright Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 21st August 2018 and is found by me to be a true and correctly printed copy of the said Bill.

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Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this day
of 2018.

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Eni Tekanene
Clerk of the Maneaba ni Maungatabu