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SPC  
Secretariat  
of the Pacific  
Community

# Intellectual Property Issues and Arts Festivals: Preparing for the 11<sup>th</sup> Festival of Pacific Arts Solomon Islands 2012



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Written by Terri Janke, Solicitor Director  
Terri Janke and Company Pty Ltd  
[www.terrijanke.com.au](http://www.terrijanke.com.au)

**Written by:** Terri Janke

 Terri Janke & Company Pty Ltd  
PO Box 780  
Rosebery  
New South Wales 1445, Sydney, Australia  
Telephone: 61 2 9693 2577  
Email: [tjc@terrijanke.com.au](mailto:tjc@terrijanke.com.au)  
[www.terrijanke.com.au](http://www.terrijanke.com.au)

**Commission:** Wend Wendland

Acting Director  
Traditional Knowledge Division  
WIPO  
34, Chemin des Colombettes  
1211 Geneva 20  
SWITZERLAND  
Email: [wend.wendland@wipo.int](mailto:wend.wendland@wipo.int)  
[www.wipo.int](http://www.wipo.int)

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**Important legal notice:** The laws and policies cited in this report are current as at May 2009. They are generally discussed for the purposes of providing this report.

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## Executive Summary

The 11<sup>th</sup> Festival of Pacific Arts will be held in the Solomon Islands in 2012. At the request of the Secretariat of the Pacific Community (SPC), the World Intellectual Property Organisation (WIPO) undertook a scoping mission to report on the intellectual property and traditional cultural expression management for the Festival. This report outlines the finding of WIPO consultant, Terri Janke.

The unauthorised recording of Festival performances in sound recordings, film and photography was identified as the main potential intellectual property (IP) issue for Event organizers. Given the ease by which performances can be captured, there is a need for a proactive management strategy for IP protection which includes use of copyright laws, contracts (including performer's releases), protocols and signage.

The Solomon Islands copyright law does not have performer's rights or moral rights. Nor is it generally well known or used. The Solomon Islands Copyright Act should be updated and consideration should also be given to its administration and enforcement. It is recommended that a detailed analysis of the Copyright Act be undertaken by a local Solomon Islands lawyer or the Attorney General.

Another way to control the unauthorised dissemination of traditional cultural expression images and film is to control who can take photographs and film. A media accreditation system should be established so that foreign media is required to register their interest and give details of the proposed use of the art and performance recorded at the Festival. A media fee could also be charged. However, special consideration should be given to media accompanying country delegations. Media guidelines and protocols should be drafted and published widely so that the public and the media are advised of the special considerations for protection of traditional cultural expression and traditional knowledge.

Broadcasting rights can be managed proactively so that licensing and broadcasting revenue can generate an income for both the host country and the Festival Committee.

Research conducted in the Solomon Islands, including research on traditional knowledge is controlled under the *Research Act 1982*.<sup>1</sup> This law requires persons wishing to conduct research in the country to obtain a permit. Filming in the Solomon Islands also requires a permit from the Department of the Prime Minister. Fees apply and there is a review of the system currently being undertaken which may see photography being included.

The Festival organisers should also prepare for the sale of inauthentic arts and craft and misuse of the Festival logo, art and theme. At previous Festivals, the sale of fake craft made overseas was identified as a significant problem. To promote the sale of authentic craft and products, a FOPA logo should be developed as the brand for the Festival. It should be registered as a trade mark and owned by the Council of Pacific Arts. The host

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<sup>1</sup> *Research Act [Cap 152] (SI)*

country should also develop its own trade mark which could also be registered. Both marks could be used as a dual marketing system for future Festivals.

Used with a merchandising policy and the operation of a Festival shop or gallery, the event organizers could promote the sale of authentic arts and craft and generate income streams back to the artists, the host country and the Council of Pacific Arts.

Traditional knowledge and traditional cultural expressions are not protected adequately by copyright laws generally. The use of traditional knowledge notices can warn audience and media that traditional knowledge of performances and displays are not to be copied or adapted without the prior informed consent of the relevant performers and traditional custodians. However, the Solomon Islands should consider developing a law based on the Pacific Model Law for the Protection of Traditional Knowledge and Expression of Culture. This will recognise communal rights to traditional owners of traditional knowledge and expressions of culture. The Model Law recognises the right of traditional owners to give prior informed consent for non-customary reproductions, publication, broadcasts and adaptations of their traditional knowledge or expressions of culture.

Controlling inauthentic imports is another way to stop exploitation of traditional cultural expression. The Solomon Islands should consider adding copyright infringements to its restricted imports as listed in the Customs and Excise Law. Further, to better safeguard the export of cultural heritage, cultural artifacts could be added to the list of restricted imports. To actively protect intellectual property, traditional knowledge and traditional cultural expression at the Festival, cautionary notices asserting rights should be used.

Signage at the events is another measure to put the audience and media on notice that unauthorised recordings are not condoned.

Consultation with artists, musicians, writers and creators is also necessary in the lead up to the Festival. For instance, consultations and workshops should be undertaken in partnership with lead arts and cultural organization. For instance, the Solomon Islands Music Federation should be involved in consultations and workshops on music copyright. Support should be given to strengthen the Solomon Islands Artists Association to represent the interests of its member artists and crafts workers.

The Media Association of the Solomon Islands could assist with educating the general public. Other methods include radio, print media and running a program on *Pacific Way* on intellectual property, traditional knowledge and traditional cultural expression.

In summary, the preparations for the Festival should include the review and management of IP systems with an aim to foster cultural respect, celebrate diversity and create economy opportunities. A range of IP tools such as copyright, performers' rights, trade marks used in association with contracts, protocols, guidelines, notices, accreditation and access conditions can provide a comprehensive framework of protection. However, the development of a special law to protect traditional knowledge and traditional cultural expression should also be considered.

## **Glossary of terms**

FOPA	Festival of Pacific Arts
IP	Intellectual Property
PIFS	Pacific Islands Forum Secretariat
SI	Solomon Islands
SIBC	Solomon Islands Broadcasting Commission
SPC	Secretariat of the Pacific Community
TCE	Traditional cultural expression
TK	Traditional knowledge
UNESCO	United National Educational, Scientific and Cultural Organisation
WIPO	World Intellectual Property Organisation



## Introduction

The 11<sup>th</sup> Festival of Pacific Arts will be held in the Solomon Islands in 2012. The unique cultures of the Pacific will be on public display at the Festival. Intellectual property rights and cultural protection are matters for the Festival organisers to manage. Elise Huffer of the Secretariat of the Pacific Community (SPC) requested World Intellectual Property Organization (WIPO) to undertake a scoping mission to report on the intellectual property and traditional cultural expression management relating to:

- Film, photography and sound recordings at the Festival
- The Media Accreditation and application process
- Performer's contracts
- Options for trade marks and signage as well as warnings including regarding TK/TCE
- Any necessary IP or TK/TCE legislation and/or policies.<sup>2</sup>

Terri Janke, lawyer and consultant to WIPO travelled to Honiara with Rhoda Roberts, Festival logistics consultant to SPC from 18 – 23 January 2009. The visit was hosted by the Solomon Islands Cultural Division and overseen by Robert Au, Director of Culture.

This paper reports on the matters listed in the SPC letter of request:

- **Potential intellectual property issues:** The kinds of intellectual property issues that may arise before, during & after the Festival
- **Legal framework for protection:** The extent to which IP rights and interests are already protected under the IP laws applicable in the Solomon Islands, including in respect of exploitations occurring internationally such as on the internet
- **IP tools, protocols & notices:** Specific tools such as licences, protocols and signage would be needed to fill the gaps in existing coverage/ and or complement existing coverage
- **Legislative and policy actions:** In relation to such gaps, the legislative & policy actions that might be necessary in the Solomon Islands, including the Pacific Model Law
- **Recommendations for creator consultation:** Options and recommendations for how to conduct consultations with performers & artists in the Solomon Islands and the Pacific
- **Capacity building, implementation and compliance:** Options and recommendations for capacity building measures among such performers and

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<sup>2</sup> Elise Huffer (Human Development Program Adviser, Culture, Secretariat of the Pacific Community), letter to Mr Francis Gurry, then Deputy Director of WIPO, 26 August 2008.

artists to facilitate the implementation and compliance with legal and practical tools adopted for the greater respect for their IP rights and interests

- **Moving forward:** Specific suggestions regarding steps, if any, by Solomon Islands, SPC and/or WIPO.

## 1. Potential IP issues

The Festival of Pacific Arts is a cultural festival held every four years alternating between countries who are members of the Council of Pacific Arts. A great range of cultural activities are demonstrated, exhibited and performed:

Contemporary arts, traditional arts, photographic arts, cinematography, body art, weaving, wood, bone and stone carving, tapa making, tattooing, jewellery, beadwork and shell work, costume pageants, pottery, floral arts, traditional medicine and healing crafts, traditional boat building and navigational crafts, traditional culinary arts, philatelic arts and traditional monies, literary arts, traditional and contemporary performing arts (orations and storytelling, musical instruments, song, dance, theatre, drama, fire walking), traditional sports, symposia, debates and workshops.<sup>3</sup>

This section 1 lists the potential IP issues that may arise before, during and after the FOPA.

### 1.1 Unauthorised recordings

There is a risk that the performances will be recorded without the authorisation of the performers. This could be by way of sound recording, film or photograph. Some examples include:

- uploaded footage on YouTube and other internet sites
- inclusion of sound recordings in compilations and world music
- photographs put on postcards without proper attribution or sharing of commercial benefits
- material used in different contexts such as alterations to images, used in other contexts than promotion of culture.

Given the ease by which digital recordings can be made, there is a need for a proactive approach which includes use of copyright laws, contracts, protocols and signage.

During consultations, many people referred to the unauthorised use of the cultural sound recordings appropriated by Deep Forest. Briefly, this case involves the use of an ethnographic sound recording of a Solomon Islander woman performing a well known cultural lullaby chant called *Rorogwela*. The original recording was done in 1969 or 1970 by Hugo Zemp. In 1992, the recording was copied from the UNESCO Paris catalogue without permission from Zemp as the copyright owner.<sup>4</sup> The chant was re-mixed into the

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<sup>3</sup> Secretariat of the Pacific Community, *Organiser's guide to the Festival of Pacific Arts*, Council for the Pacific Arts, New Caledonia, 2003, p. 6.

<sup>4</sup> S Feld, 'A sweet lullaby for world music', *Public Culture*, vol. 12, no. 1, 2000, pp. 145—71.

hit song, *Sweet Lullaby*. According to an article in the *Island Sun*,<sup>5</sup> the original recording was sourced from Malaita. No one from Malaita saw any money from this case.

Although this case was mentioned a number of times, there was confusion about whether an action was taken in court or whether a settlement was reached. People used it as an example to highlight the issues relating to the rights of the performer, the rights of the clan and benefit sharing. It might be beneficial for WIPO to do a case study to illustrate the IP issues.

In contrast, the *Siva Pacifica* album (2004) was mentioned as a more culturally respectful project which involved performers, Pascal Ormitaimae and other Solomon Islanders. This was considered to be a more equitable approach than the Deep Forest example.

By way of background, Anthony Copping arranged and composed an album called *Siva Pacifica* in 1997. There are 14 songs from the South Pacific region. The performers that were involved with the album came from 5 countries; Solomon Islands, Cook Islands, Australia, New Zealand and Hawaii. Inside the cover it says:

All performers are Pacific Islanders. Recorded in the South Pacific. A portion of proceeds from this record will assist in setting up a Music Foundation in the South Pacific.

The Narasirato Are' Are' pan pipes recorded by National Geographic was mentioned as a more culturally appropriate project regarding recording of performances.

These examples highlight the importance of controlling future use of the recording. Once a recording of a performance is made, there is the risk of unauthorised copying. For instance, if the recording is held in a library or archive it could be used in other contexts other than for<sup>6</sup> promoting arts, culture or the FOPA.

To manage the film and sound recordings taken by Solomon Islands national TV station, Dorothy Wickham, General Manager of One TV noted that the One TV policy is to mark all items carefully. Copies of recordings are not given to the general public but if a person requests a copy of their interview, a DVD copy will be given. The technical management of the archive database of film footage is outsourced to an ex-pat IT person so that the risk of copying files is reduced.

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<sup>5</sup> D Tabureguci , 'The Pacific's stolen identity', *Island Sun*, 25 September 2008, p. 6.

<sup>6</sup> *Siva pacifica*, CD compilation (various artists- arranged and composed by Anthony Copping), Aurora Music Pty Ltd/Virgin Records Australia, 1997.

## 1.2 Photographs of performers

Another potential issue relates to photography of performers. Most of the performances will be in public places where members of the audience can take a photograph of the performer or the art. The copyright in a photograph of a performer does not belong to that person in the photograph.<sup>7</sup> Copyright belongs to the photographer who can use the image for any purpose. A concern expressed by the Council of Pacific Arts is that many of Indigenous performers have had their photographs taken whilst performing in public only to find their image used on a postcard or in advertising without their consent. Sometimes their images are used in derogatory ways.

## 1.3 Arts and craft

Photographs of art and craft taken by the audience and visiting photographers can end up in books, on the internet or on postcards without the consent of the artist. Publishing or reproducing a photograph of a copyright protected work can be an infringement of copyright law. However, traditional cultural expressions (TCEs) may not be protectable works if they are not considered to be 'artistic works' or 'works of artistic craftsmanship' under copyright. For instance, a craft item might not be considered original if it is a direct copy of a pre-existing traditional work that is widely produced. Also, some craft items may be old and not protected by copyright law.

It should also be noted that under SI copyright law, it is not an infringement of copyright to make and publish a photograph, drawing or painting etc. of a sculpture or work of artistic craftsmanship that is situated permanently in a public place.<sup>8</sup>

Copying of styles of art and craft is another potential risk. For Pacific Island peoples, traditional methods of art and craft are handed down through the generations. Use of a traditional style or icon is often subject to customary laws. It is not appropriate for someone without connections to a particular region to paint or depict icons from that place without proper authority.

Copyright does not protect the 'style' of the arts and craft. Whilst the copyright owner's rights include the right to authorize or prevent the adaptation of the protected work, this does not prevent creators from being inspired by other works. Copyright allows for artists to innovate and create, drawing from the works of others as long as a substantial part of the protected work is not copied. It is not necessarily undesirable for other artists to be inspired by traditional art and craft as this is part of the artistic process. However, the line between mere inspiration and copying is hard to draw. This is where protocols are useful.

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<sup>7</sup> T Janke, 'Case study on protection of Indigenous dance performances', *Minding cultures: case studies on intellectual property and traditional cultural expressions*, WIPO, Geneva, 2003.

<sup>8</sup> Section 7(7), *Copyright Act [Cap 138](SI)*

Sculpture and craft are also copied and mass produced. A concern raised by Solomon Islander artists is that these items are often given improper sexual connotation.<sup>9</sup> Under SI copyright laws, making a three dimensional object from a two dimensional artistic work does not infringe copyright unless it is obvious that the object is a reproduction of the artistic work.<sup>10</sup>

Another issue that might arise is that artists selling works may be 'haggled' down to low costs. Without retail outlets for the sale of work, artists may be forced to sell work in the street at low cost.

**A Festival retail shop and gallery should be established. Staff and artists will need to be trained about retailing of art, setting costs and copyright issues.**

## 1.4 Copying of broadcast of televised performances

The American Samoan FOPA was the first to be broadcast all over the Pacific. Pago TV had been granted the rights to film by the American Samoan Festival of Pacific Arts Organising Committee. SPC went into partnership with American Samoan television and local stories were produced by American Samoans.

Reports from the media and television sector indicated that the televised broadcasts were copied and sold throughout the Pacific. Dorothy Wickham noted that with the FOPA American Samoa broadcast rights, One TV had paid a licence fees to TV NZ for the rights to the broadcast. However, unauthorised copies were on sale at the retail stores in Honiara. She says that copying occurs quite easily as a TV card can be put in the computer and the broadcast can be copied. Similarly copying occurred in respect of the FIFA Soccer Match. DVDs were being sold for \$20 and they were unauthorised copies of the broadcast. This highlights the problem of enforcing copyright.

If the FOPA Committee wishes to effectively license the broadcast rights to FOPA events, and thereby derive an income towards hosting the Festival, they will need to address the issue of policing infringements. This will also benefit for managing broadcasting rights of other events such as the Miss South Pacific to be held in Honiara in 2010.

Currently under the SI Copyright laws, copyright infringements are actionable by the rights holder and relief sought can include damages, injunction and accounts.<sup>11</sup> In the Solomon Islands, there is no agency to follow up breaches.

**It is recommended that a qualified local Solomon Islands lawyer work on cases. A test case against infringers could also deter copyright piracy.**

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<sup>9</sup> Consultation meeting with Solomon Islands Artists Association, National Museum, Honiara, Solomon Islands, 21 January 2008

<sup>10</sup> Section 7(11), *Copyright Act [Cap 138](SI)*

<sup>11</sup> Section 16(1), *Copyright Act [Cap 138](SI)*

## 1.5 Ambush merchandise

For previous Festivals, there has been no regulation of merchandise bearing the label. At the American Samoan Festival I came across bags with the logo re-printed over the Spiderman logo for instance.

The FOPA logo offers a great opportunity for the SPC and the Solomon Islands Organising Committee to generate income. A registered trade mark could assist with marketing and branding. A registered trade mark for the FOPA is recommended however it would be necessary to work out which entity should apply for and use the mark as well as the necessary legal status.

**The Council for the FOPA should register a trade mark for the FOPA. The legal status of the entity to own and use the mark should be determined. SPC should seek legal advice on this issue and WIPO can assist by providing information on the international trade mark system.**

**To reduce the ambush merchandising an active policy should be put in place whereby a range of products are produced.**

**Printing shops should be briefed about copyright and trade mark infringements. In Honiara, there are approximately 4 shops that print materials.**

**Meetings should be arranged with senior staff, and flyers sent with information about copyright, trade marks, TK and TCE rights.**

## 1.6 Fake art and craft

The sale of fake art and craft, such as the type mass manufactured from Asia, may also occur at the Festival. There are two ways to deal with this - by controlling imports and by promoting the sale of authentic art and craft. Trade marks can assist with branding authentic products. This has been done in Australia with the Label of Authenticity<sup>12</sup> and in New Zealand with the Toi Iho mark.<sup>13</sup>

It would be necessary to work out which entity has the necessary legal status to apply for and use the mark. SPC should seek legal advice; WIPO can provide information on the international trade mark system.

**A public education strategy for raising awareness of bogus items should be developed and implemented.**

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<sup>12</sup> Although this certification trade mark system is no longer operating it is a useful model of how trade marks law can protect Indigenous arts and cultural expression: T Janke, *Minding cultures: case studies on intellectual property and traditional cultural expressions*, op. cit.

<sup>13</sup>toi iho™ is a registered trade mark used to promote and sell authentic, quality Maori arts and crafts toi iho™ has also been designed to authenticate exhibitions and performances of Maori arts by Maori artists. Toi Iho, *toi iho™-Maori made*, viewed 5 May 2009, <<http://www.toiiho.com/>>.

## 1.7 Traditional arts and culture

Many people felt that the Festival offered a chance for Solomon Islands from all provinces to revitalize cultural practices and to share and educate people. In this way, the practice of culture is about protecting it from loss. The need to protect against appropriation from one province to another, and by other countries was also mentioned. For example, the Solomon Islander Artists Association noted that the artists from the Western Province paint the 'head of man' icon, Tematu artists depict bows and arrows and Malaita artists paint the fighting club. Only artists from these regions paint these images. Also, shell money comes from Malaita. Icons in art and craft may come from certain islands and can only be used with people who have heritage associated with that island.

## 1.8 Traditional knowledge appropriation

Traditional knowledge is not protected by intellectual property laws. Knowledge made known to the general public at events, or in cultural tours, for instance, about the healing properties of a plant, could be used by members of the audience to develop new drugs. If commercial gains are made, there are no general rights for the traditional knowledge holder to share in the benefits. Although the risk may be small, it is better to make the delegations aware, and to educate the public about traditional knowledge protection and access and benefit sharing.

**Educate delegations and performers of their rights and raise public awareness about traditional knowledge protection and access and benefit sharing.**

## 1.9 Moveable cultural heritage

The theft, destruction and sale of cultural heritage are other concerns. People spoke of artifacts taken from the museum or looted from taboo sites, ended up in the hands of collectors. Henry Isa, former Head of Culture Division, noted that there are no laws which stop dealers from reselling.



## 2. Legal framework for protection of IP and other related laws

The *Solomon Islands Constitution 1978* includes in its preamble a pledge to ‘cherish and promote the different cultural traditions within Solomon Islands.’<sup>14</sup> The Constitution establishes the National Parliament of Solomon Islands with the power to ‘make laws for the peace, order and good government of Solomon Islands.’<sup>15</sup> There are 9 provincial assemblies (Central, Choiseul, Isabel, Makira - Ulawara, Malaita, Rennell and Bellona, Temotu, Western). Guadalcanal, Honiara is administered by the Honiara City Council. Whilst IP laws come within the power of the National Parliament, the role of provincial assemblies, and Honiara City Council towards implementation of the legal framework should also be considered.

This section notes the limitation of the current legal framework for protection of intellectual property in the Solomon Islands.

**The Solomon Islands should request WIPO to provide policy and legislative advice for amending its intellectual property laws.**

### 2.1 Copyright Act

The Solomon Islands *Copyright Act* was enacted in 1996. The law has a focus on copyright exploitations that occur in the Solomon Islands.

Many people in the Solomon Islands are not aware that there is a copyright law. Those that knew of it said it was out of date and needed to be amended because it didn’t cover a range of important rights. Other criticism included a lack of enforcement.

Generally most people consulted thought that copyright and IP was given a low priority by government.

The following paragraphs contain a general overview.

**A detailed analysis should be undertaken and written as a plain English guide for staff at the Cultural Division, and artists and performers. This could be done by a local Solomon Islands lawyer, with guidance from WIPO.**

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<sup>14</sup>Preamble to the *Constitution of the Solomon Islands 1978*, viewed 23 February 2009, <[http://www.paclii.org/sb/legis/consol\\_act/c1978167/](http://www.paclii.org/sb/legis/consol_act/c1978167/)>.

<sup>15</sup> Article 59 of the *Constitution of the Solomon Islands 1978*

### 2.1.1 Original literary, dramatic, musical and artistic works

Copyright subsists in every original literary, dramatic, musical or artistic work where the author was/is a qualified person at the time the work is created<sup>16</sup>. A qualified person is defined as:

- Solomon Islands citizen, residents and domiciled person and
- bodies incorporated under laws of the Solomon Islands.<sup>17</sup>

The duration of protection in the Solomon Islands for published works is 50 years from author's death.<sup>18</sup> For literary, dramatic, musical works, photographs and engravings, the duration is 50 years from publication, broadcast, performance or offer of sale to public if any of these is done after author's death. For artistic works that are not engravings or photographs it is unclear.

The duration of copyright protection in some countries will differ from this. For example, Australian copyright in works lasts for 70 years from the death of the author.

The author is generally the first owner of copyright except where the work is produced under a contract of employment<sup>19</sup> or where a person commissions a photograph, painting, drawing or engraving the person commissioning the work will own copyright.<sup>20</sup>

It is an infringement of a literary, dramatic, musical and artistic works to do the following acts:

- Reproducing, publishing, broadcasting, causing to be transmitted, adapting, performing, and permitting a place to be used for a copyright infringing performance,<sup>21</sup> and
- importing for non private use, selling or hiring, offering for sale or hire, exhibiting if to his knowledge the making of the article would infringe copyright in the Solomon Islands.<sup>22</sup>

#### Exceptions

The Solomon Islands *Copyright Act* includes a list of exception to copyright infringement including:

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<sup>16</sup> Section 3(1) of the *Copyright Act [Cap 138](SI)*

<sup>17</sup> Section 2(1) of the *Copyright Act [Cap 138](SI)*

<sup>18</sup> Section 3(3) of the *Copyright Act [Cap 138](SI)*

<sup>19</sup> Section 5(2) of the *Copyright Act [Cap 138](SI)*

<sup>20</sup> Section 5(3) of the *Copyright Act [Cap 138](SI)*

<sup>21</sup> Section 6(1) of the *Copyright Act [Cap 138](SI)*

<sup>22</sup> Section 6(2) of the *Copyright Act [Cap 138](SI)*

- Fair dealing for research or private study<sup>23</sup>, and criticism or review (if sufficiently acknowledged).<sup>24</sup>
- Fair dealing for reporting current events (print reproductions should be sufficiently acknowledged).<sup>25</sup>
- Reading or reciting in public of a reasonable extract of a published literary or dramatic work (if sufficiently acknowledged).<sup>26</sup>
- Inclusions of literary and dramatic works in a collection for use by educational institutions under certain circumstances.<sup>27</sup>
- A reproduction can be made for broadcasting where permission has been granted by assignment or licence- but must be destroyed within 28 days from first broadcast (or as agreed between parties).<sup>28</sup>
- Copyright of artistic works (eg sculptures) and architecture that are permanently situated in a public place is not infringed by the making or publication of a photograph, painting, drawing, or a film or TV broadcast including the work.<sup>29</sup>
- Three dimensional copies of two dimensional works do not infringe copyright.<sup>30</sup>
- There are special exceptions for libraries and archives.<sup>31</sup>

There are special exceptions in respect of records of musical works, which allow making records for retail where records of the work have previously been imported to the Solomon Islands with the permission of the copyright owner and the manufacturer informs and pays royalties to the copyright owner.<sup>32</sup>

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<sup>23</sup> Section 7(1)(a) of the *Copyright Act [Cap 138](SI)*

<sup>24</sup> Section 7(1)(b) of the *Copyright Act [Cap 138](SI)*

<sup>25</sup> Section 7(2) of the *Copyright Act [Cap 138](SI)*

<sup>26</sup> Section 7(3) of the *Copyright Act [Cap 138](SI)*

<sup>27</sup> Section 7(4) of the *Copyright Act [Cap 138](SI)*

<sup>28</sup> Sections 7(5) & (6) of the *Copyright Act [Cap 138](SI)*

<sup>29</sup> Sections 7(7) & (8) of the *Copyright Act [Cap 138](SI)*

<sup>30</sup> Section 7(11) of the *Copyright Act [Cap 138](SI)*

<sup>31</sup> Section 8 of the *Copyright Act [Cap 138](SI)*

<sup>32</sup> Section 9 of the *Copyright Act [Cap 138](SI)*

## 2.1.2 Sound recordings, cinematographic films, broadcasts

The Act protects sound recordings and films, where:

- The maker is a qualified person and
- Film or recording is published and
- First publication was in the Solomon Islands<sup>33</sup>

Broadcasts made by licensed broadcasting stations in the Solomon Islands are protected.

The following table outlines the ownership of copyright principles for sound recordings, films and broadcasts under the Solomon Islands Copyright Act:

Subject matter	Owner under general copyright rules	Duration
Broadcast	Licensed broadcasting station <sup>34</sup>	50 years from when it is made <sup>35</sup>
Film	Maker of the film <sup>36</sup>	50 years after the film was first published. <sup>37</sup>
Commissioned films	It is unclear who will be the owner of copyright in commissioned films. Although it is assumed it would be the person who commissioned, the Act seems to be silent on this point.	50 years after the film was first published. <sup>38</sup>
Sound recording	Maker of the sound recording <sup>39</sup>	50 years after the recording was first published. <sup>40</sup>
Commissioned sound recordings	The person who commissioned the sound recording <sup>41</sup>	50 years after the recording was first published. <sup>42</sup>

<sup>33</sup> Section 11 of the *Copyright Act [Cap 138](SI)*

<sup>34</sup> Section 13(1)(b) of the *Copyright Act [Cap 138](SI)*

<sup>35</sup> Section 11(4) of the *Copyright Act [Cap 138] (SI)*

<sup>36</sup> Section 11(3) of the *Copyright Act [Cap 138] (SI)*

<sup>37</sup> Section 11(3) of the *Copyright Act [Cap 138] (SI)*

<sup>38</sup> Section 11(3) of the *Copyright Act [Cap 138] (SI)*

<sup>39</sup> Section 13(1)(a) of the *Copyright Act [Cap 138] (SI)*

<sup>40</sup> Section 11(3) of the *Copyright Act [Cap 138] (SI)*

<sup>41</sup> Section 13(2) of the *Copyright Act [Cap 138] (SI)*

<sup>42</sup> Section 11(3) of the *Copyright Act [Cap 138] (SI)*

## **Infringement of copyright in sound recordings, films, broadcasts and published editions**

Films and sound recordings copyright are infringed by the making of a record or copy, causing it to be seen or heard, broadcasting or transmitting over a re-diffusion system. Broadcast copyright is infringed by the recording, copying, causing to be seen or heard without permission of the copyright owner.

### **Exceptions**

Like copyright in musical works, the usual acts that constitute an infringement of copyright in a sound recording are not considered to be infringements if records embodying the recording have been previously issued to the public in the Solomon Islands if there is no mark indicating the year the recording was first published. This does not apply if the records were originally released without the copyright owner's licence.<sup>43</sup>

Other exceptions include:

- Sound recordings can be publicly played for residents/inmates as part of the amenities where people live or sleep.<sup>44</sup>
- Sound recordings can be played as part of the activities of non-profit clubs, societies and organisations for charitable, religious, education or social welfare.<sup>45</sup>
- Use for judicial proceedings.<sup>46</sup>

### **Remedies**

A range of remedies are available to copyright owners including damages, injunction and account of profits. There are penalties for selling, importing and trading infringing copyright articles, and if found guilty a fine not exceeding \$S11, 000 can be imposed.

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<sup>43</sup> Section 15(1) of the *Copyright Act [Cap 138]* (SI)

<sup>44</sup> Section 15(2)(a) of the *Copyright Act [Cap 138]* (SI)

<sup>45</sup> Section 15(2)(b) of the *Copyright Act [Cap 138]* (SI)

<sup>46</sup> Section 15(4) of the *Copyright Act [Cap 138]* (SI)

### 2.1.3 Protection for other countries

The Solomon Islands is not a signatory to the Berne Convention for the Protection of Literary and Artistic Works and is also not a member of the World Trade Organization (WTO). This may raise issues of reciprocity and application of rights for other nationals to their performances at the Solomon Islands Festival.

Treaty/Convention	Pacific countries that are contracting parties
Berne Convention for the Protection of Literary and Artistic Works	Australia, Fiji, Samoa, New Zealand, Tonga and Federated States of Micronesia.
World Trade Organization	Australia, Fiji, New Zealand and Tonga are full members. Observer status <sup>47</sup> : Samoa, Vanuatu.

Clause 27(1) of the *Copyright Act* allows the Minister to deny copyright protection to citizens of countries that fail to give adequate protection to Solomon Islander's work. Citizens of those countries in the Pacific that have no copyright laws might be denied rights under Solomon Islands copyright law at the Festival.

### 2.1.4 Enforcement

The lack of enforcement and effective administration of the copyright law was raised consistently in consultations. The Act allows for copyright owners to take civil actions in the Magistrates Court. However, no copyright cases were reported in the court reports available on line and none were identified in discussions with the Solicitor General. The Commissioner for Police also reported no use of search warrant powers.<sup>48</sup>

## 2.2 Controlling capturing of images and films

One way to control the unauthorised dissemination of traditional cultural expression images and film is to control who can take photographs and film at the events. This was apparently done for the Melanesian Arts Festival. Photographers were required to enter into agreements with the Melanesian Arts Festival organisers.

One way to promote a culture of respect is to have signage at events.

The following wording are examples, however consideration should be given to developing visual icons and symbols – like the 'no smoking' sign.

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<sup>47</sup> Observers must start accession negotiations within five years of becoming observers.

<sup>48</sup> Police powers under Section 21 of the *Copyright Act [Cap 138](SI)* Meeting with Deputy Commissioner of Police Peter Marshall.

### Examples of notices controlling capture of images and film

No filming, photography or recording devices allowed.

No photography of any kind is permitted.

Please exercise courtesy and sensitivity when taking photographs – seek the permission of the subjects if taking close-ups, or photographs of small groups, particularly in the women’s programs and men’s programs.

**To promote a culture of respect, warnings, notice and signs should be placed at entry points for events. Consideration should be given to the development of visual symbols to educate the audience and the media.**

## 2.3 Trade Marks

A trade mark is a mark, sign, symbol, logo, word, scent or sound used to distinguish goods and services of one trader from another’s goods and services. Trade mark Law can assist with the marketing and branding of the Festival in the following ways:

- authenticity of product and services
- merchandising including t-shirts, bags, souvenir catalogues and stamps<sup>49</sup>
- Sponsorship added value.

The Solomon Islands is not a signatory to the Paris Convention on the Protection of Industrial Property convention. The following Pacific countries are members: Australia, New Zealand and Papua New Guinea.

The Solomon Islands Trade Mark law dates back before independence. The *Registration of United Kingdom Trade Marks Act* provides for the registration of Trade Marks registered in UK to be recognised as protected in the Solomon Islands.<sup>50</sup> A registered owner of a UK Trade Mark can apply to the Registrar of Trade Marks. The Act empowers the Registrar of Trade Marks to keep a book (the ‘Register’). The Register of Trade Marks is kept within the Ministry of Commerce, Employment and Trade.

A dual branding system could be used for FOPA:

- The FOPA mark could be registered by the Council of the Pacific Arts
- The Host Country mark could be registered by the Host Country.

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<sup>49</sup> Pacific Stamps, viewed 5 May 2009, <[http://www.pacificstamps.com.au/islands\\_main.htm](http://www.pacificstamps.com.au/islands_main.htm)>.

<sup>50</sup> *Registration of United Kingdom Trade Marks Act [Cap 180] (SI)*, viewed 18 February 2009, <[http://www.pacii.org/sb/legis/consol\\_act/roukma416/](http://www.pacii.org/sb/legis/consol_act/roukma416/)>.

To protect the trade marks associated with the Solomon Islands FOPA, the SPC and the SI FOPA Organising Committee could register the trade marks in the UK, and then register with the SI Register of Trade Marks.

For protecting trade marks of international performers, artists and others who attend the Festival, unless registered in the UK they will fall out of the scope of SI Trade Marks law, however they would still have common law protection of their marks. If these international trade marks are copied or broadcast outside of the Solomon Islands, this could be an infringement of international trade mark laws.

As the regional strategy and for future FOPA management, the SPC should consider filing the FOPA mark in each Pacific country where the law provides. This could be owned by the Council of Pacific Arts. For instance, a trade mark can be filed in Australia, New Zealand and PNG. In some countries, common law marks would apply and infringements would be actionable under passing off.<sup>51</sup> Passing off refers to the common law action which prevents a person from misrepresenting his or her goods or services as those of another person. Passing off can also be used to stop a person falsely claiming that his or her goods or services have an association or connection which is false.

Initial steps have been taken in the Pacific Islands Forum Secretariat to encourage Pacific nations to review their trade marks laws with a view towards harmonisation and a central regional facility for trade mark administration.<sup>52</sup>

## 2.4 Trade practices

Trade practices laws make it illegal to partake in misleading and deceptive conduct in the market. These law are useful to stop unfair marketing practices, such as promoting art and craft and 'authentic' when in fact, it is a bogus product produced overseas. There is no trade practices legislation in the Solomon Islands, however common law passing off law may apply.

## 2.5 Patent laws

Patents provide rights to the creators of inventions. The patent law for the Solomon Islands is the *Registration of UK Patent Act*. This means that like trade marks, protection is only recognised for marks that have already been registered in the UK. Whilst this area of IP law may not be directly related to artists and performers, there may be traditional knowledge included in performances, art or films that could be used as a basis for new inventions. Within the WIPO Inter Governmental Committee discussions, there have been suggestions for patent disclosure provisions to be added to the filing processes of patents. This would require applicants to note on their filing form whether the source of

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<sup>51</sup>F Fenton & R Naidu, *Managing Intellectual Property, South Pacific Islands move to harmonize rules*, October 2007, viewed 18 February 2009, <<http://www.managingip.com/Article.aspx?ArticleID=1450528>>.

<sup>52</sup> *ibid.*



the patent was traditional knowledge. This would trigger the Access and Benefit Sharing provisions of the *Convention on Biological Diversity*. Environmental laws will also be relevant to consider but are beyond the brief of the terms of reference of this scoping report.

## 2.6 Designs

Designs law protects the design industrially applied to a product, focusing on the overall appearance of the product. For example, a chair or a pattern applied to a bag. Industrial designs laws can protect contemporary Indigenous designs that are mass produced on articles.

The Solomon Islands has the *United Kingdom Designs (Protection) Act [Cap 181]*, first drafted before independence and revised in 1996. The legislation provides that the owner of a registered design in the UK will have their designs rights protected in the Solomon Islands.<sup>53</sup>

## 2.7 Cultural heritage laws

Cultural heritage laws in the Solomon Islands are limited to the *Protection of Wrecks and War Relics Act*<sup>54</sup> which protects the war ships and airplanes left as wrecks in WW2 from being removed.

There is no national law specifically enacted to protect Solomon Islands Indigenous cultural heritage. At least two of the provinces have Cultural Preservation Ordinances – Makira 1977 and Western Province 1989 which include provisions for respecting traditional objects, taboo sites and sacred sites. According to the *Western Province Preservation of Culture Ordinance 1989* it is illegal to buy and sell traditional artifacts.

It was mentioned that there used to be a section of the *Customs and Excise Act* which include cultural objects as restricted items. I was not able to verify this but noted that ‘cultural heritage objects’ are not the listed of Prohibited and Restricted Exports listed in the Third Schedule of the *Customs and Excise Act*.

Some people consulted mentioned the UNESCO *Convention for the Protection of Intangible Cultural Heritage 2003* as a potential international guiding convention for future law and policy. Rather than focusing on the legal rights of the creators of IP, the *UNESCO Convention for the Protection of Intangible Cultural Heritage* seeks to safeguard intangible cultural heritage through a range of measures including ‘identification, documentation, research, preservation, protection, promotion, enhancement,

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<sup>53</sup> *Research Act [Cap 152](SI)*, viewed 18 February 2009, <[http://www.pacii.org/sb/legis/consol\\_act/ukda343/](http://www.pacii.org/sb/legis/consol_act/ukda343/)>.

<sup>54</sup> *Protection of Wrecks and War Relics Act [Cap 150](SI)*, viewed 18 February 2009, <[http://www.pacii.org/sb/legis/consol\\_act/powawra353/](http://www.pacii.org/sb/legis/consol_act/powawra353/)>.

transmission, particularly through... education, as well as the revitalization of the various aspects of such heritage.<sup>55</sup> In documenting intangible cultural heritage, copyright will be created in the resulting documents, films and recordings. Hence, any policies should cover intellectual property relating to traditional knowledge and traditional cultural expression.

**In documenting intangible cultural heritage, policies and procedures should be developed for intellectual property and traditional knowledge and traditional cultural expressions.**

## 2.8 Solomon Islands Research Act

The Solomon Islands has a *Research Act*<sup>56</sup> which requires persons wishing to conduct research in the country to obtain a permit.<sup>57</sup> Research is defined as an ‘an endeavour to discover new facts by careful search or enquiry, scientific study or critical investigation of a subject—

- (a) which will result in the publication of a report thesis, dissertation, academic article, book or manuscript; or
- (b) with the purpose of making audio-visual recordings for academic or commercial purposes.<sup>58</sup>

A researcher must make an application before entry to the country. An application fee is payable. The Research Applications Committee considers the application. The research must be beneficial to the Solomon Islander people. If approved, a research permit is granted. Fees are payable to the province where research is conducted. A condition of the permit is that the research must return copies of their outcomes to the Solomon Islands national library.<sup>59</sup>

At the Festival, there may be people entering for research purposes that may require permits.

**A condition of permit entry could be that the rights of performers and artists are respected, and that protocols are followed.**

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<sup>55</sup> Article 2(3) of the UNESCO *Convention for the Safeguarding of Intangible Cultural Heritage 2003*, viewed 4 May 2009, <<http://www.unesco.org/culture/ich/index.php?pg=00006>>.

<sup>56</sup> *Research Act [Cap 152] (SI)*

<sup>57</sup> Persons involved with research without a permit can be fined up to \$SI 1,000.

<sup>58</sup> Section 2 of the *Research Act [Cap 152] (SI)*, viewed 18 February 2009, <[http://www.pacii.org/sb/legis/consol\\_act/ra90/](http://www.pacii.org/sb/legis/consol_act/ra90/)>.

<sup>59</sup> Dr Lawrence Foa’na’ota, Director of Museum, Solomon Islands, *A Brief Report on the Situation in Solomon Islands regarding the Legal Protection of Traditional Knowledge and Expressions of Indigenous Cultures*, page 2.

## 2.9 Archives, museum law and policy

The Solomon Islands Museum holds cultural objects and archives including photographs and films. Depositors of material include researchers, war veterans depositing photographs and other museum collections.

There is no legislation that establishes the Museum, or deals with its functions. Some other Pacific nations have provided legislatively for the ongoing functioning of their cultural institutions include Vanuatu and New Caledonia. Future directions in cultural policy may want to consider a Museum and Gallery Act to promote and preserve the Solomon Islands cultural record.

Deposited material at the museum includes audio visual materials. There is a written policy for the collection. Film copyright belongs to the filmmakers however many depositors allow copying for educational purposes and not for profit.

One TV deposits copies of its materials in the Museum's National Archives with limited access to the material. If a person wants to view or make copies of materials they must seek consent of the Director and explain the purpose. For example, people may want copies of photographs and films which include their family members. To greater protect misuse of materials, a written form with conditions of use could be adopted.

WIPO has resources specifically to help museums and archive develop IP policies and protocols, which could be consulted. These include a survey on museum/archival experiences in the Pacific with IP.<sup>60</sup> See [www.wipo.int/tk/en/folklore/culturalheritage.museums-archives.html](http://www.wipo.int/tk/en/folklore/culturalheritage.museums-archives.html)

**A national cultural policy for the Solomon Islands should be developed and consideration should be given to enacting a Solomon Islands Museum and Gallery Act to promote and preserve the Solomon Islands cultural record.**

**Processes for depositing and accessing cultural material held at the Museum should be reviewed, and a written form with conditions of use should be adopted.**

## 2.10 Filming in the Solomon Islands

The Department of the Prime Minister has film and media guidelines which govern filming in the Solomon Islands by international film production companies. A form must be completed at least 21 days before entering the country.<sup>61</sup> A filming fee of \$5,000 Solomon Island dollars is paid. (\$1,000 of this is held as a deposit and returned when the film is delivered.) Fees can be waived at the discretion of the department.

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<sup>60</sup> M Talakai, *Intellectual property and safeguarding cultural heritage- a survey of practices and protocols in the South Pacific*, WIPO, 2007, Geneva, viewed 5 May 2009, <[http://www.wipo.int/export/sites/www/tk/en/folklore/culturalheritage/casestudies/talakai\\_report.pdf](http://www.wipo.int/export/sites/www/tk/en/folklore/culturalheritage/casestudies/talakai_report.pdf)>.

<sup>61</sup> See Appendix 2, Government Communications Unit, Film Application Form.

The main types of the films made include tourism and ethnographic films.

The Prime Minister's Communications Department administers applications and final endorsement is given by the Prime Minister. If an application is approved, a permit is granted with conditions that two copies of the completed film be submitted to the Prime Minister's Department. The Department may also make it conditional that a liaison officer accompanies the film crew.

The conditions also require the filmmaker to allow the Government Communications' Division the right to use the materials whenever it chooses, within Solomon Islands, without prior notification.<sup>62</sup>

The Government Communications Unit in the Department of Prime Minister & Cabinet is currently reviewing the film conditions to include photographs. Consideration should also be given to the inclusion of 'broadcasts'.

**The Film and Media Guidelines should be reviewed to include photographs and broadcasts.**

**To cover traditional knowledge (TK) and traditional cultural expression (TCE), the form could include:**

- **No collection of genetic resources and TK at condition 4.**
- **Recommend clearances of TK and TCE, and interviewer and performers releases.**
- **Details of persons appearing on film and performer attribution in end credits.**
- **Acknowledgements to provinces and clans to appear in the end credits.**

## 2.11 Customs law

The Solomon Islands *Customs and Excise Act*<sup>63</sup> prohibits the importation of certain items listed in the Second Schedule of the Act. This includes

All goods of foreign manufacture bearing any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer or trader in Solomon Islands or the United Kingdom, unless such trade name or trade mark is accompanied by a definite indication of the country in which the goods were made or produced.<sup>64</sup>

This would mean that a person cannot bring into the Solomon Islands, any products made overseas that have trade marks or names of businesses in the Solomon Islands, unless that trade mark has a label about the country the goods were produced. This is confusing because if it was about restricting unauthorised trade marks why then allow them to be imported if the trade mark says it was produced overseas. There is no general restriction

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<sup>62</sup> Government Communications Unit, Film Application Form (condition 6), Department of the Prime minister and Cabinet, Honiara.

<sup>63</sup> *Customs and Excise Act [Cap 121] (SI)*

<sup>64</sup> Section 34 and Second Schedule (7) of the *Customs and Excise Act [Cap 121] (SI)*

on trade mark or copyright infringing articles. Neither are there any restrictions on importation of fake traditional arts and craft.

**Consideration should be given to including trade mark and copyright infringing articles and fake imported traditional arts and craft as restricted imports under the Customs and Excise Act.**

## 2.12 Recognition of Customary Laws

There are customary laws for protecting traditional cultural expression. According to Dr Lawrence Foanaota:

...there were strict community, tribal or family regulations with severe punishments or penalties set to safeguard them (cultural material) in the past from being copied or used by others. For example, traditional knowledge about medicinal plants, a stylised motif or design used in a carving, the best fishing and hunting grounds ... were often restricted to certain groups or individual who owned them in a community, tribe or family. If someone else was found to have access or practice them without first seeking and obtaining permission from the true owners of the knowledge.. that person had to pay compensation either of pigs or shell money strands” It was also reported that in serious breaches, the person would be likely to be killed.<sup>65</sup>

Henry Isa also noted that access rights to culture are regulated by customary law. He said, ‘Members of the tribe have certain rights. Access rights are hierarchically controlled. Under cultural law, there is a shared ownership. The chief has an important role.’<sup>66</sup>

Mark Maesimae and Nikamatu’a Hu’aitebai Newman attended the Solomon Islands Artists Association consultation meeting and reinforced that there are customary laws relating to use of traditional knowledge and TCE. According to Mark Maesimae, these customary laws are not reflected in the written law. Mark is researching traditional arts, cultural practice and customary laws. His findings are likely to be of use to the Festival organizers, and could assist the discussions for sui generis law based on the Pacific Model Law for the Protection of Traditional Cultural Expression and Traditional Knowledge.

**Support for research projects examining traditional arts, cultural practice and customary law.**

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<sup>65</sup> L Foa’na’ota (Director of the National Museum of the Solomon Islands), *A brief report on the situation in Solomon Islands regarding the legal protection of traditional knowledge and expressions of Indigenous cultures*, unpublished, paper presented to the Symposium on the protection of traditional knowledge and expressions of Indigenous cultures in the Pacific Islands, Noumea, 15– 19 February 1999, p. 2.

<sup>66</sup> H Isa, meeting with the author, 20 January 2009.

**Support for research projects examining traditional arts, cultural practice and customary law.**

**Workshops and discussion groups between individual artists and elders should be conducted in the lead up to the Festival with representation that reflects provincial diversity.**

### 3. IP tools, protocols and notices

The following intellectual property tools are suggested to fill the gap in existing legal coverage:

#### 3.1 Copyright

Whilst there is a Copyright Act in the Solomon Islands, it is not well known or used. The SI FOPA should promote the practice of using copyright to protect materials, art and performances. This includes asserting rights, using notices and licence agreements.

An information booklet should be created to advise artists and performers of their rights. Also, special attention should be given to where a traditional story is recorded or performed. A policy for attributing artists, performers and cultural communities should also be adopted. For similar booklets, see the Australia Council for the Arts booklets on Writing, Media arts, Visual arts, Music and Performing arts.<sup>67</sup>

The use of copyright to protect materials, art and performance should be promoted including educating and asserting rights, using notices and warning, and using licence agreements and performer's releases.

**A copyright and IP information booklet should be developed with a focus on the protection of traditional arts, craft and performance.**

**An attribution policy for recognition the rights of traditional owners and the regions should be developed.**

#### 3.2 Performers rights release forms

Most international copyright laws include rights to performers to control capture of their performances in sound recordings and films.<sup>68</sup> The Solomon Islands *Copyright Act* does not. To recognise performer's rights, amendments to the law are recommended.

**It is recommended that changes be made to the Act for inclusion of these rights. At the Festival standard performers rights release forms should be used which:**

- **Advise performers of the purpose of the filming**
- **Seek written consent for that use**
- **Advise what the long term use of that film footage will be – for example, where it will be deposited and whether it can be used in a different context.**

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<sup>67</sup>Australia Council for the Arts, *Publications*, Australia Council for the Arts, Sydney, 2007, viewed 7 May 2009, <[www.australiacouncil.gov.au/publications](http://www.australiacouncil.gov.au/publications)>.

<sup>68</sup>T Janke, 'Using intellectual property tools to protect traditional cultural expressions/traditional knowledge related issues at Arts Festivals', Presentation to Council for the Festival of Pacific Arts 31 March - 2 April 2008, World Intellectual Property Organisation, viewed 23 February 2009, <[http://www.wipo.int/export/sites/www/tk/en/folklore/culturalheritage/pdf/janke\\_synopsis.pdf](http://www.wipo.int/export/sites/www/tk/en/folklore/culturalheritage/pdf/janke_synopsis.pdf)>.

### 3.3 IP related notices

Notices displayed at entry points to events and in prominent positions at performance spaces and galleries can assist deliver the message that copying and recording copyright material is illegal. It can also protect traditional knowledge and traditional cultural expression.

**To actively protect intellectual property, TK and TCE at the Festival, cautionary notices asserting rights should be used. The standard of wording should be developed and included in the Festival handbook. This should include standard copyright notices and also recognition of clan or province rights.**

### 3.4 Copyright, TK and TCE notices

Notices that advise of copyright, traditional knowledge and traditional cultural expression protocols should also be used at the Festival. These serve as cautionary notices asserting rights and encouraging ethical conduct.

The standard of wording should be developed and included in the Festival handbook. See for example the suggested wording drafted by Wend Wendland of WIPO:

The Festival of the Pacific Arts comprises the display and performance of cultural expressions and knowledge which embody rich creativity and innovation, such as music, visual arts, dances, stories and poetry, ceremonies, crafts and technical skills, and they may be subject to protection under intellectual property rights. These cultural expressions may also be subject to protection under customary laws and practices of Indigenous and other traditional communities. Some of these cultural expressions may be sacred and/or culturally sensitive.

Therefore, any sound and/or audiovisual recordings, including still photographs, made of the cultural expressions and knowledge may not be made publicly available for any purpose and may be kept for private and personal purposes only. Any making available of such recordings, whether for commercial purposes or not, and any other use of the recordings must first receive the prior, informed and written consent of [performers; communities; Festival organising committee?].<sup>69</sup>

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<sup>69</sup> W Wendland, Recommendations made to FOPA Organising Committee Meeting, Pago Pago, American Samoa, 31 March – 4 April 2008.



### 3.5 Protocols for reproducing and adapting TCE

The FOPA will offer opportunities for Solomon Islander artists, performers and writers to create art and cultural material in celebration of the cultural diversity in the Solomon Islands. Respecting customary laws and cultural source should be encouraged. Many people noted the importance of recognising cultural laws. In drawing from cultural sources, the SI FOPA could develop protocols to guide artists, writers and creators. As noted by Henry Isa, 'You cannot stop culture from changing. Using old for new needs cultural protocols.'

**The Solomon Islands FOPA Committee should develop protocols to guide artists, writers and creators about respecting cultural laws when incorporating traditional knowledge and traditional cultural expression in their new works.**

### 3.6 Media accreditation and guidelines

International media will be visiting the Solomon Islands during the Festival to record events by way of film, sound and photography. These images will be broadcast all over the world and could also be used again in different contexts. To monitor capture of images during the Festival and use of these images afterwards, the SPC recommends that the host country adopt media accreditation processes.<sup>70</sup> The intention on the SI FOPA Organising Committee is to adopt a media accreditation process.

Fees for media accreditation were charged at the last FOPA in Pago Pago. The fee is mostly to assist the host country with process costs and is not a payment to artists for intellectual rights.

A media guide could also be developed to instruct media, and others, about respecting appropriate cultural sites, or cultural dances and knowledge. This is a way of informing the media about representations of culture and appropriate ways of behaving and respecting culture at the Festival of Pacific Arts.

**Media guidelines should be drafted and made publicly available. The application process should be via the website and a deadline for applications should be set.**

**It is recommended that the Solomon Islands Committee set media accreditation processes and guidelines. Further, a media team should be brought together to act as advisors and liaison officers to brief media with background information about the Festival and the Solomon Islands.**

**A media guide should be developed to inform about cultural protocols, caring for appropriate cultural sites, and respecting traditional knowledge.**

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<sup>70</sup> Secretariat of the Pacific Community, *Organisers guide to the Festival of Pacific Arts*, Council for the Pacific Arts, New Caledonia, 2003, p. 23.

### 3.6.1 Delegation media representation

Many of the delegations will bring their own media including photographers and filmmakers and journalists. The media accreditation policy must be flexible to allow countries to document their delegations participation at the Festival.

**Special consideration should be given to media representatives of delegations as countries may want to bring their own photographers or camera crew to record their country participation. However, recording images and performances of other countries should be subject to proper clearance processes, to be developed by the FOPA Committee.**

### 3.6.2 News of the day

Whilst there is the need to respect copyright and performer's rights, there should be some allowance for filming, recording or photographing events to promote the FOPA in the world media. This could be done proactively by identifying certain performances and discussing the IP issues with performers and country delegation heads. A time limit on the capture of the performance should be set. (eg: three minutes)

**Media policy should be flexible to allow for news of the day.**

**A guide for media with limitation for the capture of performance for new of the day should be established.**

## 3.7 Branding and trade marks

By using distinctive trade marks, the SPC and SI FOPA can protect intellectual property associated with the Festival and promote authenticity and sharing of benefits to artists and performers.

### 3.7.1 FOPA Logo

A FOPA logo should be developed as the brand for the Festival. This should be a visual logo device. It should be registered as a trade mark and owned by the Council of Pacific Arts.

To brand the Festival, SPC on behalf of the Council of Pacific Arts should trade mark the FOPA logo, and develop a marketing strategy. This logo is then licensed to the host countries, and to official merchandisers, broadcasters and sponsors. The range of products could include souvenir programs, caps, t-shirts, bags, CD and DVDs, art, craft, books and official first day cover stamps.

**A FOPA logo should be created and registered as a trade mark.**

**A marketing strategy should be developed to promote official merchandise at the Festival.**

### 3.7.2 Host country logo and tag line

The Solomon Islands FOPA Organising Committee should brand the Festival with art, theme and a tag line. If the logo is developed by an artist not employed by government, an assignment agreement giving all rights to the logo should be signed and the artist should be paid a fee. Attribution should be given to the artist and clan.

**The logo should be registered as a trade mark.**

**Promotion of the logo should start immediately with the website should be the main source of promotion. An independent website should be developed with its own domain name along the lines of <www.sifopa.com.sb> or <www.solomonislandsfopa.com.au>.**

**Consideration should be given to the ease by which the address can be found on line.**

## 3.8 Corporate Sponsorship

To attract corporate sponsorship, a package should be developed with the themes and branding of the FOPA. Sponsorship guidelines should be developed by the Organising Committee. The SPC FOPA *Organiser's Guide* has a draft Sponsorship Agreement.<sup>72</sup> This requires updating and adapting for SI FOPA.

Guidelines should be established by the SIFOPA Committee for the sponsorships levels/bands - gold, silver and bronze. Rights to use branding could be included.

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<sup>72</sup> Secretariat of the Pacific Community, *Organisers Guide to the Festival of Pacific Arts*, Council for the Pacific Arts, New Caledonia, 2003. (Model Sponsorship Document appears at the back of the guide).

## 4. Legislative and policy action

In relation to the gaps in legal protection, the legislative and policy actions that might be necessary in the Solomon Islands, including reference to the Pacific Model Law, are as follows:

### 4.1 Amendments to Copyright law

The *Copyright Act* was not known to many people we consulted. Those that did know it, like members of the Solomon Islands Musicians Federation, considered that it needed amendment. Although we have not had the time to analysis the law and suggest amendments, the following highlights some of the shortfalls in the law:

- No performers rights<sup>73</sup>
- Applies to Solomon Island citizens and application to FOPA country performers not clear
- No moral rights of attribution or integrity for individuals (although false attribution of authorship is an offence<sup>74</sup> as is altering artistic works<sup>75</sup>)
- No cultural ownership of images, songs, dances, stories
- No communal moral rights of clan owned cultural material – whilst not covered in copyright this may be better covered in sui generis legislation such as the Pacific Model Law
- No protection of taboo or sacred material.

**The Copyright Act should be updated to address the many of the above shortfalls. The Solomon Islands should request WIPO to provide policy and legislative advice for amending the copyright law, and all IP laws.**

**It is recommended that a more detailed analysis of the Copyright Act be undertaken and suggested amendment be put to the Attorney General for consideration.**

**The administration of copyright laws requires clearer definition of roles and coordination between the different government departments.**

### 4.2 Pacific Model Law for the Protection of TK and Expressions of Culture

The *Model Law for the Protection of Traditional Knowledge and Expressions of Culture* (2002) was endorsed by the First Conference of Ministers of Culture of the Pacific Region at SPC in 2002. The Model Law aims to protect traditional ownership rights to traditional

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<sup>73</sup> The Solomon Islands Music Federation is lobbying for amendments to the *Copyright Act* to include better rights for musicians.

<sup>74</sup> Section 37 of the *Copyright Act [Cap 138] (SI)*

<sup>75</sup> Section 37(a) of the *Copyright Act [Cap 138] (SI)*

knowledge and expressions of culture and to allow tradition-based creativity and innovation including that made for commercial use, subject to the prior and informed consent of traditional owners, and with benefit sharing. Consent is facilitated through a National Cultural Authority.

Some features of the Pacific Model Law that may be of use for protecting rights at the Festival include:

- recognition is given to cultural rights of traditional owners and prior informed consent is required before reproducing, publishing, broadcasting or adapting TK and TCE
- offences where cultural material is treated derogatorily
- provisions for respecting sacred material.
- terms relating to moral rights of attribution and integrity.

Given the shortfalls in the Solomon Islands *Copyright Act*, consideration should be given to enacting a law based on the Pacific Model Law. Henry Isa noted that the Solomon Islands had commenced work on the Pacific Model Law and a previous lawyer at the Solicitor General's office, Mr Francis Waleanisia, had attended meetings and developments about the TK Laws.<sup>76</sup>

**Consideration should be given to enacting a sui generis law based on the Pacific Model Law for the Protection of Traditional Knowledge and Traditional Cultural Expression.**

### 4.3 Customs and Excise Law changes

The sale of imitation handicrafts causes detriment to local art and craft producers. To better safeguard the export of cultural heritage, cultural artifacts could be added to the list of restricted imports along with copyright and trade mark infringing items.

**It is recommended that the following be added to the list of restricted imports under the Customs and Excise Act:**

- items bearing trade mark infringements
- copyright infringing articles and
- fake traditional arts and craft.

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<sup>76</sup> Francis Waleanisia is now working for the private firm, Global Lawyers. We were unable to meet with him on our visit.

#### 4.4 National Cultural Policy

There is no National Cultural Policy for the Solomon Islands although a draft is currently being developed.<sup>77</sup> The working draft is based on the Western Province under the *Western Province Preservation of Culture Ordinance 1989*. Another Province also has a culture ordinance. The working draft proactively includes a paragraph stating the need to prepare and update procedural guides and forms for field recording and consent of informants. It would also be useful to include copyright, traditional knowledge and traditional cultural expression.

The goal for the Cultural Division is to have a national cultural policy like that of Fiji or New Caledonia. A long term question is: Should the Solomon Islands have a National Arts Council?

**Discussion and debate should be encouraged about whether the Solomon Islands should have a National Arts Council.**

#### 4.5 National Museum and Cultural Centre

The Solomon Islands National Museum and Cultural Centre has a collection of cultural materials including photographs and art and crafts. There are a number of cultural items that are no longer produced. A paper entitled 'Solomon Islands National Museum and Cultural Centre Policy' points to the problems associated with the lack of cultural policy:

Technical problems caused by the lack of official cultural policy statements include the performance of certain activities and services on an ad hoc basis, the continuing existence of gaps in the collections, unbalanced representation of items from the different islands or provinces, and unsystematic research work throughout the islands.<sup>78</sup>

A National Art Gallery is proposed for the site of the Melanesian Arts Festival (1989) next to the Mendana Hotel. There is a proposal to bring the Museum and the Gallery together. This amalgamation may assist with the implementation of a national copyright, TK and TCE policy throughout the SI. Further, in terms of the enactment of the Pacific Model Law and the role of the National Cultural Authority, a Museum and Gallery could fulfill this role.

**Discussion and debate about the role of the National Museum and Gallery should be encouraged.**

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<sup>77</sup> Draft provided on 23 January 2009, currently being drafted by Dr Lawrence Foanaota due for completion before his retirement in 2010.

<sup>78</sup> Solomon Islands Museum Draft Policy document, provided to Terri Janke by Cultural Division, p. 3.

## 4.6 Training in IP

As noted above, there is little knowledge of how the existing copyright law applies to arts and culture in the Solomon Islands. The Solomon Islands Cultural Division should partner with artists associations, industry bodies and legal professions to conduct workshops and training sessions to inform rights holders and user groups of copyright and IP laws.

**Copyright and intellectual property training workshops should be conducted in the lead up to the Festival so that staff, technical crew and audiences are well briefed.**

## 4.7 Merchandise policy

The SI FOPA and the SPC should develop a merchandising policy. A product range could be developed to promote the Festivals such as postcards, stamps, cups, t-shirts and CD and DVDs.

Using the trade marks, licensed merchandise could be made to maximize the sharing of benefits to the FOPA organisers and artists and performers.

The policy should also aim to promote a consistent quality. This could be overseen by the appointment of official printers. It is recommended that the Solomon Islands Cultural Division discuss the issues related to unauthorised copying of SPC logo and format and that liaison go with the printing companies in Honiara. To stop the importation of unauthorised merchandise from neighboring countries such as Australia and New Zealand, the customs and excise laws allow customs officers to seize products that bear unauthorised use of the FOPA trade marks.

**The Solomon Islands Cultural Division should develop a merchandising policy.**

**The Festival team should liaise with local printing companies and produce information sheets about copyright, IP, TK and TCE.**

## 5. Recommendations for artists/performers' consultation

To conduct consultations with performers and artists in the Solomon Islands and the Pacific, the following is recommended:

### 5.1 Solomon Islands Music Federation

Placid Walekwate, President, Solomon Islands Music Federation and other musicians reported that they conduct music development activities included a Monthly Marathon that promotes the performance of live original music. This group appeared to have a working knowledge of copyright and reported that they had been lobbying government for changes to the *Copyright Act*. They are also organising workshops on music copyright with the Australasian Performing Rights Association (APRA)<sup>79</sup> for April 2009. Liaison with this group will assist consultations with musicians and performers.

### 5.2 Solomon Islands Artists Association

The Solomon Islands Artists Association aims to represent the interests of its member artists and crafts workers. In the past, the Association has convened workshops and exhibitions. In recent times, the organisation has been less active and member numbers are dwindling. Support to strengthen this group is necessary. To promote their artistic expression, some suggested strategies include:

- production of a catalogue
- foster artistic production through grants, fellowships and cultural exchange
- provide workshop, gallery and retail space
- assisting artists with documenting their work
- promote using positive copyright tools such as notices and licence agreements
- Copyright and arts practice workshops.

This Association should play a fundamental role in assisting with consultations for the SI FOPA regarding arts, craft, gallery retail, authenticity and merchandise policy. The group should also be consulted on TK and TCE issues related to permissions and processes for respecting TCE rights.

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<sup>79</sup>APRA/AMCOS, viewed 23 February 2009, <<http://www.apra-amcos.com.au/>>. (International contact: Matthew Fackrell- Deputy Director, International Relations, Australasian Performing Rights Association Ltd.)



### 5.3 Solomon Islands Writers Association

The Solomon Islands Writers Association published the book *Raetemaot : Creative Writing from Solomon Islands* in 1996.<sup>80</sup> This group, if still existing, should also be consulted on traditional cultural expression and copyright issues related to writing.

### 5.4 Artists and performers discussion paper

To consult all countries in the Pacific on the needs for rights protection at the FOPA, the SPC and WIPO could release a discussion paper and seek formal submissions from artists and delegations. These discussions could be posted on a website.

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<sup>80</sup> J Maka'a Hilda Kii, L Crowl, *Raetemaot : Creative Writing from Solomon Islands*, Solomon Islands Writers Association, University of the South Pacific, 1996.

## 5.5 Website forum

Another way to consult artists and performers is to host an internet site forum which allows artists and performers to discuss issues relating to their rights.

## 5.6 Media consultation

Not all artists and performers will have access to internet or be compelled to read a discussion paper, other methods should be employed such as talkback radio sessions on radio and television.

Dorothy Wickham suggested included copyright and TK awareness in the youth and music programs such as *Fast Forward*.

Intellectual property and TK could be a theme that *The Pacific Way* adopts in programming for the next year.<sup>81</sup> This program is broadcasted by 20 TV stations throughout 19 Pacific Island Countries and Territories.

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<sup>81</sup>Secretariat of the Pacific Community, *The Pacific Way*, Secretariat of the Pacific Community <[http://www.spc.int/rmc/RMC\\_pacway.html](http://www.spc.int/rmc/RMC_pacway.html)>, viewed 20 February 2009.

## 6. Capacity building measures

In preparations for the Festival, it is important to nurture copyright, TK and TCE awareness. Capacity building measures with performers and artists, as well as broadcasters and local media will facilitate the implementation and compliance.

### 6.1 Cultural Division and human resources

The SI FOPA project is being managed by the Cultural Division under the supervision of Robert Au, the Director of Culture. The small team also consists of Denis Marita, Senior Cultural Officer and an administrative support person. To support the IP and TK implementation for the FOPA, it will be necessary to have the following additional team members to undertake the following work:

- Media accreditation and media liaison
- Copyright and TK/TCE education officer
- Contracts/licence and rights management
- Branding and trade mark development
- Sponsorship and marketing.

The team will also need to have access to legal practitioners working in the Solomon Islands. Deanna Easton, Third Secretary of the Australian High Commission noted that the RAMSI Law and Justice Program were working on a Business Law Reform Program including commercial law reform.<sup>82</sup> The RAMSI legal team may be able to provide support to the FOPA on intellectual property and contract drafting. Other avenues for legal assistance with the country include the Solicitor General's Office or private legal firms practicing in the Solomon Islands.

When making submissions for funding assistance to the Australian High Commission, intellectual property workshops and training programs should be included. These FOPA has potential to deliver on a range of objectives outlined in the Australia-Solomon Islands Partnership for Development including economic development, employment, trade and promoting harmony within the region.<sup>83</sup>

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<sup>82</sup> Deanna Easton suggested the following people to contact: Jane Christie, Ausaid Acting Director and Kamal Azmi.

<sup>83</sup> Ausaid, *Australia- Solomon Islands Partnership for development*, Commonwealth of Australia, Canberra, 2009, viewed 22 February 2009, <[http://www.ausaid.gov.au/hottopics/pdf/Australia\\_Solomon\\_Islands\\_Partnership\\_for\\_Development.pdf](http://www.ausaid.gov.au/hottopics/pdf/Australia_Solomon_Islands_Partnership_for_Development.pdf)>.

## 6.2 Workshops on copyright and protocols

In the lead up to the Festival, workshops on copyright, performer's rights and protocols should be conducted. In discussions with One TV<sup>84</sup>, Dorothy Wickham indicated willingness to film and broadcast information material, as did Cornelius Rathamana from the Solomon Islands Broadcasting Commission. These materials could form part of copyright education training kit for staff and crew, but could also be broadcast in Solomon Islands, and on other Pacific countries.

A promo DVD could be produced and made available to delegations prior to attending the Festival. This could be done in association with SPC and broadcast via *The Pacific Way*.

Workshops with radio and television staff could advise them on copyright management practices. Both One TV and SIBC do not have written policies but have adopted practices to respect copyright. For example, both do not make copies of their materials available to the general public, and keep closed libraries of recordings available only with written permission.

There are a number of media entities in the Solomon Islands. Newspapers include the *Solomon Star*, *Island Sun*, *National Express* and *Solomon Times*.<sup>85</sup> A few radio stations include in One FM, Power FM and SIBC<sup>86</sup>. There is only one television station – One TV. Working with the Media Association of the Solomon Islands, SI FOPA could educate the importance of culture and preservation as well as the issues of copyright.

## 6.3 Website development

The Solomon Islands Cultural Division will be setting up a website. It is recommended that a copyright policy, TK and TCE policy be posted on the website. Information about cultural protocols, trade marks, media accreditation and sponsorship could be included on the website. Links from the Solomon Islands Visitor Bureau Website should be included.

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<sup>84</sup>One Television, viewed 22 February 2009, <<http://www.onetelevision.com.sb/index.php/home.html>>.

<sup>85</sup>Solomon Times Online, viewed 22 February 2009, <<http://www.solomontimes.com/default.aspx>>.

<sup>86</sup>Solomon Islands Broadcasting Association, viewed 22 February 2009, <<http://www.sibconline.com.sb/default.htm>>.

## 6.4 Public education campaign

To establish a respectful arts and culture environment, a public education campaign about culture, respect, copyright and protocols is needed. It must address tourists, artists, audiences and the education system through schools, colleges and the university.

The Festival of Pacific Arts will attract a large audience so it is important to educate tourists and visitors to the Festival of copyright and TK and TCE. Thirty-three per cent of respondents to the 2006/07 Solomon Islands International Visitor Survey (IVS) Final Report November 2006 to November 2007, noted that the internet is not only used as an information source, it is seen as the most important information.<sup>87</sup> Therefore, the Solomon Islands Visitor Bureau website could be used to publicly educate visiting tourists.

Already a number of articles about the Festival, traditional knowledge and copyright have been published in the *Island Sun*<sup>88</sup> and the in-flight magazine of Solomon Airlines.<sup>89</sup> It would be beneficial to continue this interest by developing stories about the FOPA and issues relating to recording and photographing at the events. Pamphlets and posters can be placed at the airport entry lounges and at the Solomon Islands Visitor's Bureau and hotels. The logo and merchandise policy can also be promoted.

## 6.5 Festival Media Centre

A Festival Media Centre with a special broadcasting studio should be set up at the Festival. Information about rights, and protocols should be made available at the Centre. Staff will be needed to assist fill in forms and take details.

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<sup>87</sup> Solomon Islands Tourism, *Solomon Islands International Visitors Survey Final Report 2006/07*, Solomon Islands Visitor's Bureau, 2008, viewed 23 February 2009, <[http://www.visitsolomons.com.sb/solomons/export/sites/SVB/Info/IVS\\_2008-Final.pdf](http://www.visitsolomons.com.sb/solomons/export/sites/SVB/Info/IVS_2008-Final.pdf)>.

<sup>88</sup> Dionysia Tabureguci, 'The Pacific's Stolen Identity', *Island Sun*, 25 September 2008, p. 6.

<sup>89</sup> Ragogo, Matelita, 'Men in Tattoo', *Solomon Airlines' Complimentary Inflight Magazine*, issue 48, p. 11, Solomon Airlines, viewed 23 February 2009, <<http://www.flysolomons.com/>>.

## 7. Moving Forward: Recommendations

The 11<sup>th</sup> Festival of Pacific Arts has potential to generate benefits to the Solomon Islands. It will attract participants from approximately 27 countries, as well as bring large numbers of tourists to the region. The Festival includes performances, exhibitions and presentations of the unique and diverse Pacific Island's cultures. Public displays of culture are open to potential exploitation. Intellectual property rights and the management of them are important measures that the Festival organisers must address.

This report addresses the potential risks in Section 1. Section 2 examines the existing legal framework whilst Section 3 outlines some IP tools, protocols and notices that could be put in place to fill the gaps. Section 4 sets out consideration for legal and policy change within the Solomon Islands, and the Pacific region. Section 5 makes recommendations about consultations with artists and performers noting that there already existing support infrastructure with peak organisations such as the Solomon Islander Artists Association, SI Music Federation and the Media Association of the Solomon Islands. Section 6 discusses capacity building measures aimed at information and awareness raising.

In conclusion, the preparations for the Festival should include review and management of IP systems with an aim to foster cultural respect, celebrate diversity and create economy opportunities. The Festival organisers can use a range of IP tools to protect intellectual property at the Festival. IP tools such as copyright, performers rights and trade marks could be effectively used in association with contracts, protocols, guidelines, notices, accreditation and access conditions. A draft action and strategy list is attached.

In summary, the Solomon Islands FOPA should:

- Develop, promote and register a trade mark and official merchandising policy. Licensing of rights to use the FOPA logo and dual branding with the theme host country logo will be a way to generate income to the Festival organisers, and artists but also promotes authenticity.
- Seek to amend the Copyright Act, and advocate the introduction of a new law based on the Pacific Model Law.
- Promote the existing copyright law through a public awareness campaign and through workshops for artists, performers, broadcasters and writers, in both Honiara and the provinces.
- Seek drafting support from local legal advisers to assist with licence agreements and Trade Mark applications.
- Set up a media accreditation program and establish a Media Committee for SI FOPA with representation from the Media Association of Solomon Islands. The purpose of the Media Committee is to advise SI FOPA on media strategies and to operate the Media Centre during the Festival.
- Employ additional staff and expertise to assist the fulfillment of the strategies outlined in the Action plan.

- Identify funding to assist implementation of the strategies outlined in the Action plan.

The SPC could assist with technical support in the following ways:

- Development of the Festival of Pacific Arts logo and trade marks and Festival rights policy including merchandising policy.
- Assisting with workshop on management of arts and cultural material.
- Media Accreditation processes – lessons from past Festivals to be shared.
- Broadcasting licence arrangements and technical support through the Regional Media Centre.
- Promotion of IP rights in *The Pacific Way* and website.

The WIPO can continue to support the legal and policy framework for greater rights recognition by:-

- In consultation with local legal advisers in the Solomon Islands, assist with drafting of model release forms, protocols, IP-related disclaimers, media accreditation guidelines, trade mark registration strategies and other IP related usage guidelines.
- Work with the Festival organisers and SPC towards the preparation of a concise and practical general handbook for arts festival organisers on IP principles and management practices including advice, best practices, and model IP resources such as licence agreements.
- Upon request of SI, reviewing and updating of copyright and trade mark policy and legislation
- Conduct IP sensitization
- IP advice on enactment and implementation of the Pacific Model Law.

## Action List

This action list presents a range of options for establishing priorities in three broad strategies:

1. Legislation
2. Practical tools
3. Training and awareness.

	<b>Actions</b>	<b>Strategy</b>	<b>Start Date</b>	<b>Finish Date</b>
<b>1. Filming and Photography</b>				
1.1	Update copyright law in the Solomon Islands to include performers rights	Legislation	June 2009	Sept 2010
1.2	Encourage use of copyright notices	Practical Tools	FOPA Legal	Sept 2010
1.3	Public education about copyright, performers rights, and TK and TCE via TV broadcast, news paper and case studies	Training & Awareness	June 2009	Sept 2010
1.4	Develop Film and Photography Guidelines for FOPA	Practical Tools Training & Awareness	June 2009	Sept 2010
1.5	Information sheet or pamphlets for photographers/filmmakers and general visitors	Training & Awareness	June 2009	Sept 2010
1.6	Articles about film and photography policy in papers, airline magazines, website etc	Training & Awareness	June 2009	July 2012
1.7	Information sheets for performers and artists about rights	Training & Awareness	June 2009	Sept 2010
1.8	Warning notices displayed at venues and notices included in official program	Practical Tools Training & Awareness	July 2012	July 2012
1.9	Festival photographers to be appointed and trained in copyright	Training & Awareness	July 2009	July 2012
<b>2. Copyright</b>				
2.1	Review Solomon Islands Copyright law	Legislation	Mar 2009	June 2010
2.2	Copyright education and awareness strategy	Training & Awareness	Mar 2009	ongoing
2.3	Information kits on how to use existing law	Practical Tools Training & Awareness	Mar 2009	ongoing



<b>3. Pacific Model Law and TK and TCE rights</b>				
3.1	Prepare information kit on TCE/TK law based on Pacific Model Law	Practical Tools Training & Awareness	September 2009	October 2009
3.2	Consultations with artists, performers and provincial reps and traditional knowledge and TCE custodians	Training & Awareness	October 2009	April 2010
3.3	Draft Bill based on Pacific Model Law	Legislation	April 2010	June 2010
<b>4. Trade Marks</b>				
4.1	Establish brand - tagline, logo and commission art	Practical Tools	February 2009	June 2009
4.2	Review of Trade Marks Law	Legislation Practical Tools	Mar 2009	June 2009
4.3	FOPA mark registration in UK, Aust, NZ and PNG. (common law protect by use of TM)	Practical Tools	Mar 2009	June 2009
4.4	Guidelines for use of brand standard for quality and authenticity	Practical Tools Training & Awareness	July 2010	July 2012
4.5	Develop a standard 'jpeg' for use by Host Countries & licensed users of TM	Practical Tools	July 2010	July 2012
4.6	Local printers liaison	Training & Awareness	July 2010	July 2012
4.7	Advise TM owners on registration	Training & Awareness	July 2010	ongoing
4.8	Support TM harmonisation strategy (Pacific Islands Forum)	Legislation Practical Tools	July 2010	July 2012
4.9	Liaison with IP Australia or PNG Trade marks office	Practical Tools	July 2010	July 2012
4.10	Registrar of TM to develop a database for TMs	Practical Tools	July 2011	ongoing
<b>5. Cultural policy</b>				
5.1	Develop National Cultural Policy to include copyright, TK and TCE	Legislation	February 2009	ongoing
5.2	Museum and Gallery practices for IP and copyright, TK and TCE	Practical Tools	February 2009	ongoing
<b>6. Website</b>				
6.1	Secure distinctive and separate domain name	Practical Tools	February 2009	ongoing
6.2	Copyright and TM protection notices policy displayed	Practical Tools	February 2009	ongoing
6.3	Media accreditation advertised	Practical Tools	July 2009	April 2012
6.4	Film and photography guidelines	Practical Tools Training & Awareness	July 2010	July 2012

<b>7. Broadcasting FOPA</b>				
7.1	Develop broadcasting licence agreement and guidelines	Practical Tools	July 2010	July 2012
7.2	Set fees for licence terms	Practical Tools	July 2010	July 2012
7.3	Update copyright laws	Legislation	July 2010	July 2012
7.4	Enforcement policy for illegal copies of broadcast e.g. increase penalties	Legislation	July 2010	July 2012
7.5	Education and awareness raising	Training & Awareness	July 2010	July 2012
<b>8. Official Solomon Islands FOPA Media Team</b>				
8.1	Establish media committee	Practical Tools Training & Awareness	July 2010	July 2012
8.2	Put together a team of media to officially document FOPA for Solomon Islands	Practical Tools Training & Awareness	July 2010	July 2012
8.3	Training in lead up by attendance at other events e.g. Festival of Dreaming	Practical Tools Training & Awareness	July 2010	July 2012
8.4	Train in Intellectual Property and Copyright	Practical Tools Training and Awareness	July 2010	July 2012
8.5	Develop template agreements	Practical Tools	July 2010	July 2012
8.6	Hold records at Museum and set conditions on access (policy)	Practical Tools	July 2010	July 2012
<b>9. Public Education</b>				
9.1	Newspaper articles in Solomon Islands	Training & Awareness	July 2010	July 2012
9.2	Television programs including One TV programs <i>Fast Forward</i>	Training & Awareness	July 2009	July 2012
9.3	Solomon Island broadcast radio programmes – talk back	Training & Awareness	July 2009	July 2012
9.4	SPC <i>Pacific Way</i>	Training & Awareness	July 2010	July 2012
9.5	Meeting/briefing printing firms	Training & Awareness	July 2010	July 2012
9.6	WIPO case studies on festival recording to include Deep Forrest but also Siva Pacific and performers release	Training & Awareness	September 2009	July 2012
<b>10. Artist/Performer Education</b>				
10.1	Workshops in regions and in Solomon Islands	Training & Awareness	July 2010	July 2012
10.2	Work Solomon Islands Music Federation and APRA re: music rights	Training & Awareness	July 2010	July 2012
10.3	Information booklets for artists	Training & Awareness	July 2010	July 2012

<b>11. Customs and Export</b>				
11.1	Border notices/posters displayed at airport	Practical Tools	July 2010	July 2012
11.2	Education of Staff about restricted cultural items and TM infringing materials	Training & Awareness	July 2010	July 2012
11.3	Restrict cultural heritage export by adding to Restricted Export List	Legislation	July 2010	July 2012
<b>12. Rights Management</b>				
12.1	Add clauses on IP, TCE and TK to country agreement	Practical Tools	July 2010	July 2012
12.2	Develop protocols (standards for clearances and consents of TK and TCE)	Practical Tools Training & Awareness	February 2010	July 2023
12.3	Performers rights template	Practical Tools	July 2010	July 2012
12.4	Signage for venues/visual icon to be developed	Practical Tools Training & Awareness	July 2010	July 2012
<b>13. Merchandise</b>				
13.1	Set licence arrangements between SPC and host country for main logo	Practical Tools	Dec 2009	July 10
13.2	Develop merchandise policy for sale of official products with main logo and host country themed logo	Practical Tools	July 2010	July 2012
13.3	Licence agreements drafted	Practical Tools	July 2010	July 2012
13.4	Marketing strategy	Practical Tools	July 2010	July 2012
13.5	Meetings with local printing companies to warn against ambush marketing	Training & Awareness	July 2010	July 2012
<b>14. Capacity building – artists and performer consultation</b>				
14.1	Events and workshops with Solomon Islands Music Federation	Practical Tools Training & Awareness	Feb 2009	2012
14.2	Solomon Islands Arts Association – support for copyright and licensing arrangement, gallery and retail sales, copyright and art management	Practical Tools Training & Awareness	Feb 2009	2012
14.3	Writers, traditional storyteller groups – copyright and TK and TCE workshops	Training & Awareness	2010	1012
14.4	Media Association of Solomon Islands – copyright awareness workshops and protocols	Practical Tools Training & Awareness	2010	2012
14.5	Host a one day TCE and TK conference in the lead up to the FOPA	Training & Awareness	November 2010	November 2010

## Appendix 1 – List of people consulted

Terri Janke would like to acknowledge and thank the following people for taking their time to meet and provide information:

- Robert Au, Director of Culture, Culture Division, Ministry of Culture and Tourism
- Dennis Marita, Senior Cultural Officer, Culture Division, Ministry of Culture and Tourism
- James Osimaro, Chief Accountant, Ministry of Culture and Tourism
- Dorothy Wickham, General Manager, One News TV and Lorna
- Lawrence Foanaota, Director of Museum, Ministry of Culture and Tourism
- John Tahinao, Assistant Director of Museum, Ministry of Culture and Tourism
- Jeffrey Wickham, Permanent Secretary, Ministry of Commerce, Industry and Employment
- Cornelius Ratamana, General Manager, Solomon Islands Broadcasting Corporation and Joseph Inomae
- Hon. Seth Gukuna, Minister of Culture and Tourism, Ministry of Culture and Tourism
- John Lamani, General Secretary, Media Association of Solomon Islands and Managing Director of Solomon Star
- Supervising Permanent Secretary of Health and team
- Ron Sum Sum, Managing Director, Solomon Airlines
- Deanna Easton, Third Secretary, Australian High Commission
- Deputy Commissioner Peter Marshall, Solomon Islands Police Force
- George Herming, Director of Communications Unit, Prime Minister's Office
- Solomon Islands Artists Association including Brian Afia - Curator National Art Gallery, Mark Maesimae -National Museum, Nikamatu'a Hu'aitebai Newman, Frank Meninga – artist, Fred Hotary – artist.
- Steven Woods, Solicitor General, Attorney General's Chamber
- Placid Walekwate, President, Solomon Islands Music Federation and Robert Lulumani and Leonard.
- Heinze Vaekesa, Director External Trade, Ministry of Foreign Affairs and External Trade
- Henry Isa (member of Organising Committee for FOPA 2008), Previous Cultural Officer, from Shortlands
- Brian Pogotapu (member of Organising Committee for FOPA 2008), Delta Company
- Barnabas Anga, Permanent Secretary, Ministry of Foreign Affairs and External Trade

## Appendix 2 – Film application form



### Government Communications Unit

P O Box G1, Honiara

DEPARTMENT OF THE  
PRIME MINISTER & CABINET

Solomon Islands

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#### FILM APPLICATION FORM

*FORM PRO/10*

1. NAME OF FILMING  
GROUP/COMPANY.....

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2. TENTATIVE ITINERY AND DESCRIPTION OF THE PROPOSE FILM .....

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3. AREAS OR PROVINCES WHERE FILMING WILL TAKE PLACE .....

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4. LIST OF EQUIPMENT, BRANDS AND THEIR VALUES .....

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*(If more space is needed, use a separate sheet and attached to this page)*

5. NAMES OF FILM CREW AND THEIR PASSPORT NUMBERS

6. DO YOU AGREE TO PAY A FILMING FEE OF **SI\$5,000.00** AND A DEPOSIT OF **\$1,000.00**? .....
  
7. ARE YOU PREPARED TO MEET THE CONDITIONS FOR A FILMING PERMIT AS ATTACHED? .....
  
8. IF YOU AGREE TO FOLLOW THE REQUIREMENTS AND MEET THE CONDITIONS, PLEASE SIGN BELOW.

I (Name): .....Title:.....

AGREE TO FOLLOW THE REQUIREMENTS AND MEET THE FILMING CONDITIONS.

Signed: ..... Date: .....

*(Please use separate sheet to answer each question if you need to)*

2.

**FILM APPLICATION INFORMATION**

FORM PRO/10

**REQUIREMENT FOR FILM PRODUCTION IN SOLOMON ISLANDS**

Any group, individual or company wishing to enter Solomon Islands to engage in making films, video recording and television programmes must fulfil the followings:

- A. A formal application for a permit must be made to the Solomon Islands Government, address to the Director of Government Communications Division, not less than 12 weeks in advance of arrival.
- B. A tentative or confirmed travel plans with descriptions of the proposed film must be submitted with the application.
- C. Areas or Provinces involved in the filming must be identified in the application form.
- D. Names and brands of each filming equipment with their values must be supplied together with the application.
- E. Also supply the names of those who are going to be involved in the filming project (filming crew).

## **CONDITIONS**

If approval is granted, you must be prepared to meet the following conditions:

- 1. The applicant(s) will be required to pay a filming fee of SI\$5,000.00, with a refundable deposit fee of SI\$1,000.00. The fees must be paid to the Government Communications Division on arrival or in advance but must be prior to filming. Also any fees charged by provinces or resource owners must be paid accordingly.
- 2. Must be prepared to pay Customs Bond on the filming equipment at the Airport.
- 3. Local customs and way of life of the people in the areas permitted to film must be respected.
- 4. There must be no collection of traditional artifacts.
- 5. On completion of the project, you must present to the Government Communications Division:
  - a. One copy of raw footage taken before leaving the country.



- b. Three copies of the edited film shot during the period by this permit on VHS/VCD/DVD within six months of completion of filming. All copies must be in English.
  
- 6. The Government Communications Division reserves the right to use footage or materials whenever it chooses, within Solomon Islands, without prior notification.
  
- 7. The Government Communications Division also reserves the right to attach an assistant to your team at your expense.
  
- 8. Local employees employed during the filming should be paid not less than the Government's minimum wage level.
  
- 9. You are required to provide the Government Communications Division with inter-field reports and a terminal report before leaving the country.

2.

**ADDITIONAL INFORMATION**

For the convenience of a filming group, it is hereby advised that we may not process any application with short notice of less than 14 days.

Any person or agent who submit an application on behalf of any overseas organisation or individual must bear in mind that it may take sometime to process the application. Remember that when we receive an application, we will make a request for approval from the Prime Minister. This will take several days, depending on the availability of the Prime Minister when the file is sent to his office.

There are several things that may happen if there is not enough time between the arrival of the group and the time the application has been lodged. Customs may confiscate equipment from the group upon arrival at the airport; Immigration may impose restrictions on any overseas group on arrival without any supporting document.

Fees must be paid before the arrival of the group or before the actual shooting begins.

Failure to return 3 copies to the Government Communications Division within the stated period as above may result in the forfeiture of any refundable deposit held.

## Appendix 3 – Solomon Islands Copyright Act

### LAWS OF SOLOMON ISLANDS

[Revised Edition 1996]

#### CHAPTER 138

#### COPYRIGHT

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#### SECTION

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**CHAPTER 138**

**COPYRIGHT**

*28 of 1987*

AN ACT TO REPEAL THE COPYRIGHT ACT 1911, (OF THE UNITED KINGDOM)  
IN SO FAR AS IT FORMS PART OF THE LAW OF SOLOMON ISLANDS, TO MAKE  
NEW PROVISIONS IN RESPECT OF COPYRIGHT AND RELATED MATTERS,  
AND FOR PURPOSES CONNECTED THEREWITH OR INCIDENTAL THERETO

*[1st June 1988]*

**PART I  
PRELIMINARY**

**Short title**

1. This Act may be cited as the Copyright Act.

**Interpretation**

- 2.-(1) In this Act, unless the context otherwise requires -

"adaptation" means -

(a) in relation to a literary work in a dramatic form, a version of the work (whether in its original language or in a different language) in a non-dramatic form;

(b) in relation to a literary work in a non-dramatic form, a version of the work (whether in its original language or in a different language) in a dramatic form:

(c) in relation to a literary work (whether in a dramatic form or in a non-dramatic form)-

(i) a translation of the work; or

(ii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures;

(d) in relation to a musical work, an arrangement or transcription of the work;

(e) in relation to a computer program, includes a version of the program in which it is converted into or out of a computer language or code or into a different computer language or code;

"artistic work" means -

(a) any painting, sculpture, drawing, engraving or photograph irrespective of the artistic quality of the work;

(b) any building or any model for or of any building;

(c) any work of artistic craftsmanship not referred to in paragraph (a) or paragraph (b);

"broadcast" or "broadcasting" means the transmitting, for reception by the general public, by wireless or by means of wire, of sounds or images and sounds;

"cinematograph film" means the aggregate of the visual images embodied in material of any description so as to be capable, by the use of that material-

(a) of being shown as a moving picture; or

(b) of being embodied in other material by the use of which it can be shown,

together with the aggregate of the sounds embodied in any sound-track associated with those visual images;

"copyright" in relation to a work or other subject-matter means the exclusive right, by virtue and subject to the provisions of this Act, to do, and to authorise other persons to do, in relation to that work or other subject-matter, those acts which under the provisions of this Act constitute an infringement of copyright in that work or other subject-matter, as the case may be, if done by a person other than the owner of the copyright and without his licence;

"dramatic work" includes-

(a) a choreographic show or other dumb show if described in writing in the form in which the show is to be presented;

(b) a scenario or script for a cinematograph film;

but does not include a cinematograph film as distinct from the scenario or script for a cinematograph film;

"drawing" includes any diagram, map, plan or chart;

"engraving" includes any etching, lithograph, wood carving, print or similar work, not being a photograph;

"literary work" means any work which is written, spoken or sung irrespective of quality and includes any written table, compilation or computer program;

"manuscript" in relation to a work means the original document embodying the work, whether written by hand or not;

"photograph" means any product of photography or any process akin to photography, but does not include any part of a cinematograph film;

"publication" means-

(a) in relation to a literary, dramatic, or musical work, or an edition of such a work, or an artistic work, means the supplying to the public (whether by sale or otherwise) of reproductions of the work or edition;

(b) in relation to a cinematograph film means the selling, or the letting on hire or the offering or exposing for sale or hire, of copies of the film;

(c) in relation to a sound recording, means the supplying to the public (whether by sale or otherwise) of records embodying the recording or part of the recording;

"qualified person" means a person who-

(a) in the case of an individual, is a citizen of Solomon Islands or (not being a citizen of Solomon Islands) is domiciled or resident in Solomon Islands; and

(b) in the case of a body corporate, is incorporated by, or under, the laws of Solomon Islands;

"record" means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom;

"re-diffusion system" means a system for the transmitting and receiving over wires or cables of sound or visual images;

"reproduction" means-

(a) in the case of a literary, dramatic or musical work, includes a reproduction in the form of a record or of a cinematograph film;

(b) in the case of an artistic work, includes a version produced by converting the work into a three dimensional form, or, if it is in three dimensions, by converting it into a two-dimensional form;

(c) in the case of sound recording, means a record of that sound recording and references to reproducing a work or sound recording shall be construed accordingly;

and in the case of an artistic work, includes a version produced by converting the work into a three-dimensional form, or, if it is in three dimensions, by converting it into two dimensional form, and references to reproducing a work or sound recording shall be construed accordingly;

"sculpture" includes any cast or model for purposes of sculpture;

"sound broadcast" means sound broadcast otherwise than as part of a television broadcast;

"sound recording" means the aggregate of the sounds embodied in, and capable of being reproduced by means of, a record of any description, other than a sound-track associated with a cinematograph film;

"television broadcast" means visual images broadcast by way of television, together with any sounds, broadcast for reception along with those images;

"writing" means any mode of representing or reproducing words, figures or symbols in a visible form.

(2) References in this Act to the time at which, or the period during which, a literary, dramatic, musical or artistic work was made are references to the time or period at or during which it was first reduced to writing or some other material form.

(3) References in this Act to the doing of any act in relation to a literary, dramatic or musical work include references to the doing of that act or in relation to an adaptation of the work.

(4) Where a literary, dramatic or musical work is performed, or sounds or visual images are caused to be heard or seen, by the operation of any receiving apparatus-

(a) to which those sounds are conveyed by the transmission of electromagnetic energy; and

(b) which is provided by, or with the consent of, the occupier of the premises where the apparatus is situated,

the occupier of those premises shall, for the purposes of this Act, be taken to be the person giving the performance or causing the sounds or images to be heard or seen, whether he is the person operating the apparatus or not.



(5) For the purposes of this Act, the performance, the supplying to the public (whether by sale or otherwise) of records, of a literary, dramatic or musical work, the exhibition of an artistic work, the construction of a building or of a model of a building, and the supplying to the public (whether by sale or otherwise) of photographs or engravings of a building or of a model of a building, or of photographs or engravings of a sculpture, do not constitute publication of the work.

(6) A publication which is merely colourable and is not intended to satisfy the reasonable requirements of the public shall, except for the purposes of section 37 or in so far as it may constitute an infringement of copyright, be disregarded.

(7) For the purposes of this Act, a publication in Solomon Islands shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

(8) In determining, for the purposes of any provisions of this Act-

(a) whether a work or other subject-matter has been published; or

(b) whether a publication of a work or other subject-matter was the first publication of the work or other subject-matter; or

(c) whether a work or other subject-matter was published or otherwise dealt with in the life-time of a person,

any unauthorised publication or the doing of any other unauthorised act shall be disregarded.

(9) Subject to the provisions of section 8(3) a publication or other act shall, for the purposes of subsection (8) of this section be taken to have been unauthorised-

(a) if copyright subsisted in the work or other subject-matter and the publication or other act was done otherwise than by, or with the licence of the owner of the copyright; or

(b) if copyright did not subsist in the work or other subject-matter and the publication or other act was done otherwise than by, or with the licence of-

(i) the author or, in the case of a sound recording or a cinematograph film or an edition of a literary, dramatic or musical work, the maker or publisher, as the case may be, or

(ii) persons claiming under the author, maker or publisher.

(10) Nothing in subsections (8) or (9) shall affect any provisions of this Act relating to the acts constituting infringements of copyright, or the provisions of section 37.

**PART II**  
**COPYRIGHT IN LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS**

**Copyright in literary, dramatic, musical and artistic works**

3.-(1) Copyright shall subsist, subject to the provisions of this Act, in every original-

- (a) literary work; or
- (b) dramatic work; or
- (c) musical work; or
- (d) artistic work,

which is unpublished, and of which the author was a qualified person, at the time at which the work was made, or if the making of the work extended over a period, was a qualified person for a substantial part of that period.

(2) Where an original literary, dramatic, musical or artistic work has been published, then, subject to the provisions of this Act, copyright shall subsist in the work, or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist-

- (a) if the first publication of the work took place in Solomon Islands; or
- (b) if the author of the work was a qualified person at the time at which the work was first published; or
- (c) if the author had died before that time, but he was a qualified person immediately before his death.

(3) Subject to the provisions of subsection (2) copyright subsisting in a work by virtue of this section shall, except in the cases for which provisions are made by subsections (4) and (6) and by section 4, continue to subsist until the end of the period of fifty years from the end of the calendar year in which the author died, and shall then expire.

(4) Where none of the acts specified in subsection (5) is done before the death of the author of a literary, dramatic or musical work in which copyright subsists by virtue of this section, the copyright shall, except in the case for which provision is made in section 4, continue to subsist until the end of the period of fifty years from the end of the calendar year in which any of those acts is done for the first time, and shall then expire.

(5) The acts referred to in subsection (4) are-

- (a) the publication of the work;
- (b) the performance of the work in public;
- (c) the offer for sale to the public of records of the work;

(d) the broadcasting of the work.

(6) Where copyright subsists in an artistic work by virtue of this section-

(a) if the work is an engraving which is not published before the death of the author, the copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the engraving is first published, and shall then expire;

(b) if the work is a photograph, the copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the photograph is first published, and shall then expire.

(7) Where a work is produced by the collaboration of two or more authors in such a manner that the contribution of each author is not separate from the contribution of the other author or authors-

(a) references to the author in subsections (1) and (2) shall be construed as references to any one or more of the authors;

(b) the reference to the author in subsection (3) shall be construed as a reference to the author who died last.

#### **Duration of copyright in anonymous and pseudonymous publications**

4.-(1) Where the first publication of a literary, dramatic or musical work, or of an artistic work other than a photograph, is anonymous or pseudonymous, any copyright subsisting in the work by virtue of section 3 shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the work was first published, and shall then expire.

(2) A publication of work under two or more names shall not be taken to be pseudonymous unless all those names are pseudonymous.

(3) Subsection (1) shall not apply if, before the end of fifty years mentioned in that subsection, the identity of the author, or, in the case of a work of joint authorship, the identity of any of the authors, is generally known or can be ascertained by reasonable inquiry.

(4) In subsection (3) "a work of joint authorship" means a work produced by the collaboration of two or more authors in such a manner that the contribution of each author is not separate from the contribution of the other author or authors.

#### **Ownership of copyright in literary, dramatic, musical and artistic works**

5.-(1) Subject to the provisions of subsections (2), (3) and (4), the author of a literary, dramatic, musical or artistic work shall be entitled to any copyright subsisting in the work by virtue of this Part.

(2) Where a literary, dramatic or artistic work is made by the author-

(a) in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship; and

(b) for the purpose of publication in a newspaper, magazine or similar periodical,

that proprietor shall be entitled to the copyright in the work in so far as the copyright relates to -publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published; but in all other respects the author shall be entitled to any copyright subsisting in the work by virtue of this Part.

(3) Subject to the provisions of subsection (2) where a person commissions the taking of a photograph, or the painting or drawing of a portrait, or the making of an engraving, and pays or agrees to pay for it in money or monies worth, and the work is made in pursuance of that commission, the person who so commissions the work shall be entitled to any copyright subsisting therein by virtue of this Part.

(4) Where, in a case not falling within subsection (2) or subsection (3), a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be entitled to any copyright subsisting in the work by virtue of this Part.

(5) Subsections (2), (3) and (4) shall have effect subject to any agreement excluding the application of any of those subsections to any particular case.

### **Infringements of copyright in literary, dramatic, musical and artistic works**

6.-(1) The copyright in a literary, dramatic, musical or artistic work is infringed by any person who, not being the owner of the copyright, and without the licence of the owner thereof-

(a) reproduces the work in any material form; or

(b) publishes the work; or

(c) broadcasts the work; or

(d) causes the work to be transmitted over a re-diffusion system; or

(e) makes an adaptation of the work; or

(f) in the cases of a literary, dramatic or musical work -

(i) performs the work in public; or

(ii) permits a place of public entertainment to be used for a performance in public of the work where the performance constitutes an infringement of the copyright in the work.

(2) The copyright in a literary, dramatic, musical or artistic work is also infringed by any person who, not being the owner of the copyright, and without the licence of the owner thereof-

(a) imports an article into Solomon Islands for any purpose other than his private and domestic use; or

(b) sells or lets for hire any article; or

(c) by way of trade -

(i) offers or exposes for sale or hire any article; or

(ii) exhibits any article in public,

if to his knowledge the making of that article constituted an infringement of the copyright or (in the case of an imported article) would have constituted an infringement of the copyright if the article had been made in Solomon Islands.

(3) Subsection (2) shall apply in relation to the distribution of any article-

(a) for purposes of trade; or

(b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright in question, as it applies in relation to the sale of the article.

(4) Sub-paragraph (ii) of paragraph (f) of subsection (1) shall not apply in a case where the person who permits the place to be used in the manner mentioned in that sub-paragraph-

(a) was not aware, and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright; or

(b) gave the permission gratuitously, or for a consideration which was nominal or (if more than nominal) did not exceed a reasonable estimate of the expenses to be incurred by him in consequence of the use of the place for the performance.

### **General exceptions**

7.-(1) The copyright subsisting in any literary, dramatic, musical or artistic work by virtue of this Part is not infringed by-

(a) any fair dealing with the work for purposes of research or private study; or

(b) any fair dealing with the work for purposes of criticism or review whether of that work or of another work, if that dealing is accompanied by a sufficient acknowledgement; or

(c) reproducing the work for the purposes of a judicial proceeding, or for the purposes of a report of a judicial proceeding.

(2) The copyright subsisting in any literary, dramatic or musical work by virtue of this Part is not infringed by -

(a) any fair dealing with the work for the purpose of reporting current events in a newspaper, magazine or similar periodical, if that dealing is accompanied by a sufficient acknowledgement; or

(b) any fair dealing with the work for the purpose of reporting current events by means of broadcasting, or in a cinematograph film.

(3) The reading or recitation in public by one person of any reasonable extract from a published literary or dramatic work, if accompanied by a sufficient acknowledgement, shall not constitute an infringement of copyright in the work; but this sub-section shall not apply to anything done for the purposes of broadcasting.

(4) The copyright in a published literary or dramatic work is not infringed by the inclusion of a short passage therefrom in a collection intended for the use of educational institutions, if-

(a) that collection is described in its title, and in any advertisements thereof issued by or on behalf of the publisher, as being so intended; and

(b) that work was not itself published for the use of educational institutions; and

(c) that collection consists mainly of material in which no copyright subsists; and

(d) the inclusion of the passage is accompanied by a sufficient acknowledgement; and

(e) that collection, whether alone or taken together with any similar collection published by the same publisher within the period of five years immediately preceding the publication of that collection, contains no more than one other passage from the works of the author in which copyright subsists at the time of publication of that collection.

(5) Subject to the provisions of subsection (6), where by virtue of an assignment or a licence a person is authorised to broadcast a literary, dramatic or musical work from any place in Solomon Islands but would not (except by virtue of this subsection) be entitled to make reproductions of it in the form of a record or of a cinematograph film the copyright in the work is not infringed by his making such a reproduction solely for the purpose of broadcasting the work.

(6) Subsection (5) shall not apply if the reproduction referred to in that subsection-

(a) is used for making any further reproduction therefrom, or for any other purpose except that of broadcasting in accordance with the assignment or licence; or

(b) is not destroyed before the end of the period of twenty-eight days beginning with the day on which it is first used for broadcasting the work in pursuance of the assignment or licence, or before the end of such extended period (if any) as may be agreed between the person who made the reproduction and the person who, in relation to the making of reproductions of that description, is the owner of the copyright.

(7) The copyright in-

(a) any sculpture; or

(b) any work of artistic craftsmanship of the kind described in the definition of "artistic work" in subsection (1) of section 2,

which is permanently situated in a public place, or in premises open to the public, is not infringed by the making of a painting, drawing, engraving or photograph of the work, or the inclusion of the work in a cinematograph film or in a television broadcast.

(8) The copyright in a work of architecture is not infringed by the making of a painting, drawing, engraving or photograph of the work, or the inclusion of the work in a cinematograph film or in a television broadcast.

(9) Without prejudice to the provisions of subsections (7) and (8), the copyright in an artistic work is not infringed by the inclusion of the work in a cinematograph film or in a television broadcast, if that inclusion is only by way of background or is otherwise only incidental to the principal matters represented in the film or broadcast.

(10) The copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film, if by virtue of subsections (7) or (8) or (9) the making of that painting, drawing, engraving, photograph or film did not constitute an infringement of the copyright.

(11) The making of an object of any description which is in three dimensions shall not be taken to infringe the copyright in an artistic work in two dimensions if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work.

(12) The copyright in an artistic work is not infringed by the making of a subsequent artistic work by the same author, notwithstanding that part of the earlier work is reproduced in the subsequent work by the use of a mould, cast, sketch, plan, model or study made for the purpose of the earlier work, if in making the subsequent work the author does not repeat or imitate the main design of the earlier work.

(13) Where copyright subsists in a building as a work of architecture, the copyright is not infringed by any reconstruction of that building; and where a building has been constructed in accordance with architectural drawing or plans in which copyright subsists, and has been so constructed by, or with the licence of, the owner of that copyright, any subsequent reconstruction of the building by reference to those drawings or plans shall not constitute an infringement of that copyright.

(14) The provisions of this section shall apply in relation to transmission over a re-diffusion system of a work as they apply in relation to broadcasting of the work.

(15) In this section "sufficient acknowledgement" means an acknowledgement identifying the work in question by its title or other description and, unless the work is anonymous or the author has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

### **Special exceptions in respect of libraries and archives**

**8.**-(1) The copyright in a published literary, dramatic or musical work is not infringed by the making or supplying of a reproduction of the work by or on behalf of the person in charge of a library to which this subsection applies if -

(a) at the time when the reproduction is made, the person in charge of the library does not know the name and address of a person entitled to authorise the marking of the reproduction, and could not, by reasonable inquiry, ascertain the name and address of such a person; and

(b) the reproduction is supplied to such persons or institutions, and in accordance with such conditions, as may be prescribed.

(2) Where, at a time more than fifty years from the end of the calendar year in which the author of a literary, dramatic or musical work died, and more than one hundred years after the time, or the end of the period, at or during which the work was made-

(a) copyright subsists in the work, but the work has not been published; and

(b) the manuscript or a copy of the work is kept in a library, museum or other institution where (subject to any provisions regulating that library, museum or other institution) it is open to public inspection,

the copyright in the work is not infringed by a person who reproduces the work for purposes of research or private study, or with a view to publication.

(3) The publication of any literary, dramatic or musical work (in this subsection and subsection (4) referred to as "the new work") which incorporates the whole or any part of a work (in this subsection and subsection (4) referred to as "the old work") in respect of which the circumstances specified in subsection (2) existed immediately before that publication shall in so far as it constitutes a publication of the old work, not be treated as an infringement of the copyright in the old work or as an unauthorised publication of the old work, if-



(a) such notice as may be prescribed was given before the new work was published; and

(b) immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publisher of the new work.

(4) Subsection (3) shall apply to any subsequent publication of the new work, either in an altered or in an unaltered form, as it applies to the first publication if-

(a) that subsequent publication does not incorporate any part of the old work which was not incorporated in the first publication, or

(b) the circumstances specified in subsection (2) and in paragraphs (a) and (b) of subsection (3) existed immediately before that subsequent publication.

(5) In so far as the publication of a work, or of part of a work, is, by virtue of subsection (3), not to be treated as an infringement of the copyright in the work, a person who, after the publication of the work or of that part thereof, as the case may be, broadcasts the work or that part thereof, or causes it to be transmitted over a re-diffusion system, or performs it in public, or makes a record of it, does not thereby infringe the copyright in the work.

(6) In relation to any work which is accompanied by one or more artistic works provided for explaining or illustrating it (in this subsection referred to as "illustrations"), the preceding provisions of this section shall apply as if-

(a) wherever they provide that the copyright in the work is not infringed, the reference to that copyright included a reference to any copyright in any of the illustrations;

(b) in subsection (1) references to a reproduction of the work included references to a reproduction of the work together with a copy of the illustrations or any of them, and references to a reproduction of part of the work included references to a reproduction of that part of the work together with a copy of any of the illustrations which were provided for explaining or illustrating that part;

(c) in subsections (2) and (3) references to the doing of any act in relation to the work included references to the doing of that act in relation to the work together with any of the illustrations.

### **Special exception in respect of records of musical works**

9.-(1) The copyright in a musical work is not infringed by a person (in this section referred to as "the manufacturer") who makes a record of the work or of an adaptation thereof in Solomon Islands, if -

(a) records of the work, or as the case may be, of a similar adaptation of the work, have previously been made in or imported into Solomon Islands for the purposes of

retail sale, and were so made or imported by, or with the licence of, the owner of the copyright in the work; and

(b) before making the record, the manufacturer gave to the owner of the copyright such notice of his intention to make it as may be prescribed; and

(c) the manufacturer intends to sell the record by retail, or to supply it for the purpose of its being sold by retail by another person, or intends to use it for making other records which are to be sold by retail or supplied for that purpose; and

(d) in the case of a record which is sold by retail, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, a royalty of an amount ascertained in accordance with the provisions of regulations made under this Act.

(2) Where a record comprises (with or without other material) a performance of a musical work, or of an adaptation of a musical work, in which words are sung, or are spoken incidentally to or in association with the music and either no copyright subsists in that work or if such copyright subsists, the conditions specified in subsection (1) are fulfilled in relation to that copyright, then if-

(a) the words constitute or form part of a literary or dramatic work in which copyright subsists; and

(b) such previous records as are referred to in paragraph (a) of subsections (1) were made or imported by, or with the licence of the owner of the copyright in that literary or dramatic work; and

(c) the conditions specified in paragraphs (b) and (d) of subsection (1) are fulfilled in relation to the owner of the copyright,

the making of the record shall not constitute an infringement of the copyright in the literary or dramatic work.

(3) For the purposes of this section an adaptation of a work shall be taken to be similar to an adaptation thereof contained in previous records if the two adaptations do not substantially differ in their treatment of the work, either in respect of style or (apart from any difference in numbers) in respect of the performers required for performing them.

(4) Where, for the purposes of paragraph (a) of subsection (1), the manufacturer requires to know whether such records as are mentioned in that paragraph were made or imported as mentioned therein, the manufacturer may make such inquiries as may be prescribed; and if the owner of the copyright fails to reply to those inquiries within the prescribed period, the records which were previously made or imported shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

(5) Subsections (1), (2), (3) and (4) shall apply in relation to records of a part of a work as they apply in relation to records of the whole of it, but subsection (1) shall not apply-

(a) to a record of the whole of a work or adaptation unless the previous records referred to in paragraph (a) of that subsection were records of the whole of the work or of a similar adaptation; or

(b) to a record of part of a work or adaptation unless those previous records were records of or comprising that part of the work or of a similar adaptation.

(6) In relation to musical works published before the commencement of this Act, subsections (1), (2), (3), (4) and (5) shall apply as if paragraph (a) of subsection (1), paragraph (b) of subsection (2), subsections (3) and (4) and all the words appearing after the words "the whole of it" in subsection (5) were omitted.

(7) Nothing in this section shall be construed as authorising the importation of records which are prohibited by or under any Act from importation.

### **Special exception in respect of designs**

**10.**-(1) Subject to the provisions of subsection (2), where copyright subsists in an artistic work, and a corresponding design is registered under the United Kingdom Designs (Protection) Act, it shall not be an infringement of the copyright in the work-  
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(a) to do anything, during the subsistence of the copyright in the registered design under the United Kingdom Designs (Protection) Act, which is within the scope of the copyright in the design;

(b) to do anything, after the copyright in the registered design has come to an end, which, if it had been done while the copyright in one design subsisted, would have been within the scope of that copyright as extended to all associated designs and articles.

(2) Where -

(a) copyright subsists in an artistic work, and proceedings are brought under this Act relating to that work; and

(b) a corresponding design has been registered under the United Kingdom Designs (Protection) Act, and the copyright in the design subsisting by virtue of that registration has not expired by effluxion of time before the commencement of those proceedings; and

(c) it is proved or admitted in the proceedings that the person registered as the proprietor of the design as not the proprietor thereof for the purposes of the United Kingdom Designs (Protection) Act and was so registered without the knowledge of the owner of the copyright in the artistic work, the registration shall, for the purposes of those proceedings, and subject to the provisions of subsection (3), be treated as if it was never effected, and accordingly, in relation to that registration, subsection (1) shall not apply, and nothing in the United Kingdom Designs

(Protection) Act Cap. 181 shall be construed as affording any defence to those proceedings.

(3) Notwithstanding anything in subsection (2), if in the proceedings it is proved or admitted that any act to which the proceedings relate-

(a) was done in pursuance of an assignment made by the person registered as proprietor of the design; and

(b) was so done in good faith in reliance upon the registration, and without notice of any proceedings for the cancellation of the registration or for rectifying the entry in the register of designs relating thereto,

this shall be a good defence to those proceedings.

(4) In this section "corresponding design", in relation to an artistic work, means a design which, when applied to an article, results in a reproduction of that work.

### **PART III COPYRIGHT IN SOUND RECORDINGS, CINEMATOGRAPH FILMS, BROADCASTS, ETC**

#### **Copyright in sound recordings, cinematograph films and broadcasts**

**11.**-(1) Copyright subsists, subject to the provisions of this Act, in-

- (a) every sound recording;
- (b) every cinematograph film;
- (c) every broadcast,

in respect of which the conditions specified in subsection (2) have been satisfied.

(2) The conditions referred to in subsection (1) are -

- (a) in the case of a sound recording -
  - (i) that the maker thereof must have been a qualified person at the time when the recording was made; and
  - (ii) that the recording must have been published; and
  - (iii) that the first publication of the recording must have taken place in Solomon Islands;

(b) in the case of a cinematograph film -

(i) that the maker thereof must have been a qualified person for the whole or a substantial part of the period during which the film was made; and

(ii) that the film must have been published; and

(iii) that the first publication of the film must have taken place in Solomon Islands;

(c) in the case of a broadcast, that it must have been made from a licensed broadcasting station in Solomon Islands.

(3) Copyright subsisting in a sound recording or a cinematograph film by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the recording or the film, as the case may be, is first published, and shall then expire.

(4) Copyright subsisting in a broadcast by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the broadcast is made, and shall then expire.

(5) In so far as a broadcast is a repetition (whether the first or any subsequent repetition) of a broadcast previously made as mentioned in paragraph (b) of subsection (2), and is made by broadcasting material recorded on film, records or otherwise-

(a) copyright shall not subsist therein by virtue of this section if it is made after the end of the period of fifty years from the end of the calendar year in which the previous broadcast was made; and

(b) if it is made before the end of that period any copyright subsisting therein by virtue of this section shall expire at the end of that period.

### **Copyright in published editions of works**

**12.-**(1) Copyright shall subsist, subject to the provisions of this Act, in every published edition of any literary, dramatic or musical work in the case of which -

(a) the first publication of the edition took place in Solomon Islands; or

(b) the publisher of the edition was a qualified person at the date of the first publication thereof.

(2) Subsection (1) does not apply to an edition which reproduces the typographical arrangement of a previous edition of the same work.

(3) Subject to the provisions of this Act, the publisher of an edition shall be entitled to any copyright subsisting in the edition by virtue of this section.

(4) Copyright subsisting in an edition by virtue of this section shall continue to subsist until the end of the period of twenty-five years from the end of the calendar year in which the edition was first published, and shall then expire.

### **Ownership of copyright in sound recordings, cinematograph films and broadcasts**

**13.**-(1) Subject to the provisions of this Act -

(a) the maker of a sound recording or of a cinematograph film shall be entitled to any copyright subsisting in the recording or the film, as the case may be, by virtue of this Part;

(b) the operator of the licensed broadcasting station from which a broadcast is made shall be entitled to any copyright subsisting in the broadcast by virtue of this Part.

(2) Where a person commissions the making of a sound recording, and pays or agrees to pay for it in money or money's worth and the recording is made in pursuance of that commission, that person, in the absence of any agreement to the contrary, shall, subject to the provisions of this Act, be entitled to any copyright subsisting in the recording by virtue of this Part.

(3) For the purposes of this Act -

(a) a sound recording shall be taken to be made at the time when the first record embodying the recording is produced, and the maker of a sound recording is the person who owns that record at the time when the recording is made;

(b) a cinematograph film shall be taken to include the sound embodied in any sound-track associated with the film and references to a copy of a cinematograph film shall be construed accordingly.

### **Infringements of copyright in sound recordings, cinematograph films, broadcasts and published editions**

**14.**-(1) The copyright in a sound recording is infringed by any person who, not being the maker of the recording and without the licence of the maker-

(a) makes a record embodying the recording; or

(b) causes the recording to be heard in public; or

(c) broadcasts the recording; or

(d) cause the recording to be transmitted over a re-diffusion system.

(2) The copyright in a cinematograph film is infringed by any person who, not being the maker of the film, and without the licence of the maker-

(a) makes a copy of the films; or

(b) causes the film, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public; or

(c) broadcasts the film; or

(d) causes the film to be transmitted over a re-diffusion system.

(3) The copyright in a broadcast is infringed by any person who, not being the owner of the copyright, and without the licence of the owner-

(a) in the case of a television broadcast in so far as it consists of visual images, makes, for purposes other than private purposes, a cinematograph film of it or a copy of such a film; or

(b) in the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds, makes, for purposes other than private purposes, a sound recording of it or a record embodying such a recording; or

(c) in the case of a television broadcast, causes it -

(i) in so far as it consists of visual images, to be seen in public; or

(ii) in so far as it consists of sounds, to be heard in public,

if it is seen or heard by a paying audience; or

(d) re-broadcasts it,

whether any of the acts specified in this subsection is done by the reception of the broadcast or by making use of any record, print, negative, tape or other article on which the broadcast has been recorded.

(4) In relation to television broadcasts, in so far as they consist of visual images, subsection (3) shall apply to any sequence of images sufficient to be seen as a moving picture, and accordingly, for the purpose of establishing an infringement of copyright in a television broadcast, it shall not be necessary to prove that any act referred to in paragraphs (a) or (c) or (d) of subsection (3) extended to more than one sequence of images sufficient to be seen as a moving picture.

(5) The copyright in a published edition of any literary, dramatic or musical work in infringed by any person who, not being the publisher of the edition, and without the licence of the publisher, makes by any photographic or similar process, a reproduction of the typographical arrangement of the edition.

(6) The copyright in any sound recording or in any cinematography film, or in any broadcast, or in any published edition of a literary, dramatic or musical work is infringed

by any person who, not being the owner of the copyright, and without the licence of the owner thereof-

- (a) imports an article into Solomon Islands for any purpose other than his private and domestic use; or
- (b) sells or lets for hire any article; or
- (c) by way of trade-
  - (i) offers or exposes for sale or hire any article; or
  - (ii) exhibits any article in public,

if to his knowledge the making of that article constituted an infringement of the copyright or (in the case of an imported article) would have constituted an infringement of the copyright if the article had been made in Solomon Islands.

(7) Subsection (6) shall apply in relation to the distribution of any article-

- (a) for the purposes of trade; or
- (b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright in question,

as it applies in relation to the sale of the article.

(8) For the purposes of subsection (3) a cinematograph film or a copy thereof, or a sound recording or a record embodying a recording, shall be taken to be made for purposes other than private purposes if it is made for-

- (a) the sale or letting for hire of any copy of the film, or, as the case may be, of any record embodying the recording;
- (b) broadcasting the film or recording; or
- (c) causing the film or recording to be seen or heard in public.

(9) For the purposes of paragraph (c) of subsection (3) a television broadcast shall be taken to be seen or heard by a paying audience if it is seen or heard by persons who-

- (a) have been admitted for payment to the place where the broadcast is seen or heard or have been admitted for payment of a place of which that place forms a part; or
- (b) have been admitted to the place where the broadcast is seen or heard in circumstances where goods or services are supplied there at prices which exceed the prices usually charged at that place and are partly attributable to the facilities afforded for seeing or hearing the broadcast.



(10) For the purposes of paragraph (a) of subsection (9) no account shall be taken-

(a) of persons admitted to the place where the broadcast is seen or heard as residents or inmates of that place; or

(b) of persons admitted to that place as members of a club or society, where the payment is for membership of the club or society and the provision of facilities for seeing or hearing television broadcasts is only incidental to the main purposes of the club or society.

(11) Subject to the provisions of subsection (5) of section 15, where by the virtue of this Part copyright subsists in a sound recording, cinematograph film, broadcast or other subject-matter, nothing in this Part shall be construed as affecting the operation of Part II in relation to any literary, dramatic, musical or artistic work from which that sound recording, cinematograph film, broadcast or other subject-matter is wholly or partly derived; and copyright subsisting by virtue of this Part shall be additional to, and independent of, any copyright subsisting by virtue of Part II.

(12) The subsistence of copyright under any provision of this Part shall not affect the operation of any other provision of this Part under which copyright can subsist.

### **General exceptions**

**15.-**(1) The copyright subsisting in a sound recording is not infringed by a person who does in Solomon Islands any of the acts specified in subsection (1) of section 14, if-

(a) records embodying that recording, or that part of the recording, as the case may be, have previously been issued to the public in Solomon Islands; and

(b) at the time when those records were so issued, neither the records nor the container in which they were so issued bore a label or other mark indicating the year in which the recording was first published,

but this subsection shall not apply if it is shown that the records were not issued by or with the licence of the owner of the copyright, or that the owner of the copyright had taken all reasonable steps for securing that records embodying the recording or part thereof would not be issued to the public in Solomon Islands without such a label or mark either on the records themselves or on their containers.

(2) Where a sound recording is heard in public -

(a) at any premises where persons reside or sleep, as part of the amenities provided wholly or mainly for residents or inmates of the premises; or

(b) as part of the activities of, or for the benefit of, a club, society or other organisation which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare,

the act of causing the recording to be so heard shall not constitute an infringement of the copyright therein.

(3) Subsection (2) shall not apply -

(a) in the case of such premises as are mentioned in paragraph (a) of that subsection, if a special charge is made for admission to the part of the premises where the recording is to be heard; or

(b) in the case of such an organisation as is mentioned in paragraph (b) of that subsection, if a charge is made for admission to the place where the recording is to be heard, and any of the proceeds of the charge are applied otherwise than for the purposes of the organisation.

(4) The copyright subsisting in a sound recording, or in a cinematograph film or in a broadcast is not infringed by doing anything in relation to the recording or the film or the broadcast, as the case may be, for the purposes of a judicial proceeding.

(5) Where by virtue of this Part copyright has subsisted in a cinematograph film, a person who, after that copyright has expired, causes the film to be seen or to be seen and heard, in public, does not thereby infringe any copyright subsisting by virtue of Part II in any literary, dramatic, musical or artistic work.

(6) Where the sounds embodied in any sound-track associated with a cinematograph film are also embodied in a record, other than such a sound-track or a record derived (directly or indirectly) from such a sound-track, the copyright in the film is not infringed by any use made of that record.

(7) The copyright in a published edition of any literary, dramatic or musical work is not infringed by the making, by or on behalf of the person in charge of a library, of a reproduction of the typographical arrangement of the edition, if that library-

(a) is not established or conducted for profit; and

(b) is in a class declared by the Minister by order to be public library for the purposes of this Act.

## **PART IV REMEDIES FOR INFRINGEMENTS OF COPYRIGHT**

### **Action by owner of copyright for infringement**

**16.-**(1) Subject to the provisions of this Act, an infringement of copyright shall be actionable at the suit of the owner of the 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) Where in an action for infringement of copyright it is proved or admitted -

(a) that an infringement was committed; but

(b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates,

the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

(3) Where in an action under this section an infringement of copyright is proved or admitted, and the court, having regard (in addition to all other material considerations) to -

(a) the flagrancy of the infringement; and

(b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(4) In an action for infringement of copyright 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.

(5) In this Part "action" includes a counterclaim, and references to the plaintiff and the defendant in an action shall be construed accordingly.

### **Rights of owner of copyright in respect of infringing copies, etc**

**17.**-(1) Subject to the provisions of this Act, the owner of any copyright shall be entitled to all such rights and remedies, in respect of the conversion or detention by any person of any infringing copy, or of any plate used or intended to be used for making infringing copies, as he would be entitled to if he were the owner of every such copy or plate and had been the owner thereof since the time when it was made.

(2) A plaintiff shall not be entitled by virtue of this section to any damages or to any other pecuniary remedy (except costs) if it is proved or admitted that, at the time of the conversion or detention referred to in subsection (1)-

(a) the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates, or

(b) where the articles converted or detained were infringing copies, the defendant believed, and had reasonable grounds for believing, that they were not infringing copies; or

(c) where the article converted or detained was a plate used or intended to be used for making any articles, the defendant believed, and had reasonable grounds for believing, that the articles so made or intended to be made were not, or, as the case may be, would not be, infringing copies.

(3) In this Part "infringing copy"-

(a) in relation to a literary, dramatic, musical or artistic work, or to a published edition of any literary, dramatic or musical work referred to in section 12, means a reproduction in a form other than that of a cinematograph film;

(b) in relation to a sound recording, means a record embodying that recording;

(c) in relation to a cinematograph film, means a copy of the film;

(d) in relation to a broadcast, means a copy of a cinematograph film of it or a record embodying a sound recording of it,

being (in any such case) an article the making of which constituted an infringement of the copyright in the work, edition, recording film or broadcast, or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in Solomon Islands; and "plate" includes any stereotype, stone, block, mould, matrix, transfer negative or other appliance.

### **Proceedings in the case of copyright subject to exclusive licence**

**18.**-(1) The provisions of this section shall have effect as to proceedings in the case of any copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

(2) Subject to the provisions of subsections (3), (4), (5), (6), (7), and (8) -

(a) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section 16 as if the licence had been an assignment, with those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section;

(b) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, by virtue of section 17 as if the licence had been an assignment;

(c) the owner of the copyright shall not have any rights of action, or be entitled to any remedies, by virtue of section 17 which he would not have had or been entitled to if the licence had been an assignment.

(3) Where an action is brought by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 16, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant; but this subsection shall not affect the granting of an interlocutory injunction on the application of either of them.

(4) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a defendant in the action, if this section had not been enacted and the action had been brought by the owner of the copyright, shall be available to that defendant as against the exclusive licensee.

(5) Where an action is brought in the circumstances mentioned in subsection (3), and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court, in assessing damages in respect of any such infringement as is mentioned in that subsection-

(a) if the plaintiff is the exclusive licensee, shall take into account any liabilities, in respect of royalties or otherwise, to which the licence is subject; and

(b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 16 in respect of the infringement, or, as the case may require, any right of action exercisable by the other party under that section in respect thereof.

(6) Where an action, in so far as it is brought under section 16 relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action, whether they are both parties to it or not an amount of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the court is aware, whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them as the court may consider just, and shall give such directions as the court may consider appropriate for giving effect to that apportionment.

(7) In an action brought by the owner of the copyright or by the exclusive licensee-

(a) no judgment or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 16 if a final judgment or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and

(b) no judgment or order for an account of profits in respect of an infringement of copyright shall be given or made under that section if a final judgment or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

(8) Where, in an action brought in the circumstances mentioned in subsection (3), whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or subsequently), but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(9) In this section -

"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 grantor of the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of the copyright, and "exclusive licensee" shall be construed accordingly;

"the other party" in relation to the owner of the copyright, means the exclusive licensee, and, in relation to the exclusive licensee, means the owner of the copyright;

"if the licence had been an assignment" means if, instead of the licence there had been granted, subject to terms and conditions corresponding as nearly as may be with those subject to which the licence was granted, an assignment of the copyright in respect of its application to the doing, at the places and times authorised by the licence, of the acts as authorised.

### **Presumptions in copyright actions**

**19.-(1)** In any action brought by virtue of this Part -

(a) copyright shall be presumed to subsist in the work or other subject-matter to which the action relates if the defendant does not put in issue the question whether copyright subsists therein; and

(b) where the subsistence of the copyright is proved or admitted, or is presumed in pursuance of paragraph (a), the plaintiff shall be presumed to be the owner of the copyright if he claims to be the owner of the copyright and the defendant does not put in issue the question of the ownership thereof.

(2) Subject to the provisions of subsection (1), where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author appeared on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared (if it was his true name or a name by which he was commonly known) shall, in any action brought by virtue of this Part, be presumed, unless the contrary is proved-

(a) to be the author of the work; and

(b) to have made the work in circumstances not falling within subsection (2), subsection (3) or subsection (4) of section 5.

(3) In the case of a work alleged to be a work of joint authorship, subsection (2) shall apply in relation to each person alleged to be one of the authors of the work as if references in that subsection to the author were references to one of the authors.

(4) Where, in an action brought by virtue of this Part in relation to a literary, dramatic, musical or artistic work, subsection (2) does not apply but it is established-

(a) that the work was first published in Solomon Islands, and was so published within the period of fifty years ending with the beginning of the calendar year in which the action was brought; and

(b) that a name purporting to be that of publisher appeared on copies of the work as first published,

then, unless the contrary is shown, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of the copyright at the time of the publication.

(5) Where in an action brought by virtue of this Part in relation to a literary, dramatic, musical or artistic work it is proved or admitted that the author of the work is dead-

(a) the work shall be presumed to be an original work unless the contrary is proved; and

(b) if it is alleged by the plaintiff that a publication specified in the allegation was the first publication of the work and that it took place in a country and on a date so specified, that publication shall be presumed, unless the contrary is proved, to have been the first publication of the work, and to have taken place in that country and on that date.

(6) Paragraphs (a) and (b) of subsection (5) shall apply where a work has been published and-

(a) the publication was anonymous, or was under a name alleged by the plaintiff to have been a pseudonym; and

(b) it is not shown that the work has ever been published under the true name of the author, or under the name by which he was commonly known, or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry,

as those paragraphs apply in a case where it is proved that the author is dead.

(7) In any action brought by virtue of this Part in relation to copyright in a sound recording, if records embodying that recording or part thereof have been issued to the public, and at the time when those records were so issued they bore a label or other mark containing a statement-

- (a) that a person named on the label or mark was the maker of the sound recording; or
- (b) that the recording was first published in a year specified on the label or mark; or
- (c) that the recording was first published in a country specified on the label or mark,

that label or mark shall be sufficient evidence of the facts so stated except in so far as the contrary is proved.

(8) For the purposes of subsection (4) a fact shall be taken to be established if it is proved or admitted, or if it is presumed pursuant to the provisions of this section.

#### **Penalties in respect of dealings which infringe copyright**

**20.**-(1) Any person who, at a time when copyright subsists, by virtue of this Act, in a work or other subject-matter-

- (a) makes for sale or hire; or
- (b) sells or lets for hire, or by way of trade offers or exposes for sale or hire; or
- (c) by way of trade exhibits in public; or
- (d) imports into Solomon Islands for imposes other than his private and domestic use,

any article which he knows or has reason to believe is an infringing copy of that work or subject-matter, shall be guilty of an offence.

(2) Any person who, at a time when copyright subsists, by virtue of this Act, in a work or other subject-matter, distributes-

- (a) for purposes of trade, or
- (b) for other purposes, -but to such an extent as to affect prejudicially the owner of the copyright,

articles which that person knows or has reason to believe to be infringing copies of that work or subject-matter, shall be guilty of an offence.

(3) Any person who at a time when copyright subsists, by virtue of this Act, in a work or other subject-matter, makes or has in his possession a plate, knowing or having reason to



believe that it is to be used for making infringing copies of that work or subject-matter, shall be guilty of an offence.

(4) Any person who causes a literary, dramatic or musical work to be performed in public, knowing or having reason to believe that copyright subsists in the work and that the performance constitutes an infringement of the copyright, shall be guilty of an offence.

(5) Any person who at a time when copyright subsists in a sound recording or in a cinematograph film, by way of trade has in his possession any article which he knows or has reason to believe to be an infringing copy of the sound recording or cinematograph film, as the case may be, shall be guilty of an offence.

(6) Any person who is guilty of an offence under subsection (1) or subsection (2), shall be liable on summary conviction before a Magistrate in the case of a first conviction, to a fine not exceeding one hundred dollars for each article to which the offence relates, and in the case of conviction, to such a fine, or to imprisonment for a term not exceeding twelve months:

Provided that a fine imposed by virtue of this subsection shall not exceed four thousand dollars in respect of articles comprised in the same transaction.

(7) Any person who is guilty of an offence under subsections (3), (4) or (5) shall be liable on summary conviction before a Magistrate, in the case of a first conviction, to a fine not exceeding one thousand dollars, and in the case of any subsequent conviction, to such a fine, or to imprisonment for a term not exceeding twelve months.

(8) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to be an infringing copy, or to be a plate used or intended to be used for making infringing copies, shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.

### **Search warrants etc**

**21.**-(1) Where, on information on oath given by a police officer, a Magistrate is satisfied that there are reasonable grounds for believing-

(a) that an offence under subsections (1)(a) or (d) or (2) of section 20 relating to an infringing copy of a sound recording or a cinematograph film has been or is about to be committed in any premises; and

(b) that evidence that the offence has been or is about to be committed is in those premises,

he may issue a warrant authorising a police officer to enter and search the premises, using such reasonable force as is necessary.

(2) In executing a warrant issued under this section a police officer may seize any article if he reasonably believes that it is evidence that an offence under subsections (1), (2) or (5)

of section 20 relating to an infringing copy of a sound recording or a cinematograph film has been or is about to be committed.

(3) In this section "premises" includes land, buildings, movable structures, vehicles, vessels, aircraft and hovercraft.

### **Obstruction of police officer**

**22.** Without prejudice to any other law, any person who-

(a) wilfully obstructs a police officer in the exercise of his powers or the performance of his duties under section 21; or

(b) wilfully fails to comply with any requirement properly made to him by a 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 section 21,

shall be guilty of an offence and shall be liable on conviction to a fine of five hundred dollars or to imprisonment for three months.

### **Offences in connection with infringing copies**

**23.-(1)** Without prejudice to the provisions of section 20, any person who for purposes of trade or business has in his possession-

(a) any infringing copy of a work; or

(b) any other subject-matter in which copyright subsists under this Act,

shall, unless he proves to the satisfaction of the court that he did not know and that he had no reason to believe that it was an infringing copy of any such work or other subject-matter, be guilty of an offence and shall be liable on conviction to a fine of two hundred dollars in respect of each such infringing copy or to imprisonment for three months.

(2) Without prejudice to the provisions of section 20, any person who for the purposes of trade or business has in his possession any plate used or intended to be used for making an infringing copy of any work or other subject-matter in which copyright subsists under this Act shall, unless he proves to the satisfaction of the court that he did not know and that he had no reason to believe that the plate was used or intended to be used for making an infringing copy of any such work or other subject-matter, be guilty of an offence and shall be liable on conviction to a fine of one thousand dollars or to imprisonment for one year.

### **Provision for restricting importation of copies**

**24.**-(1) This section applies, in the case of a work, to any copy made outside Solomon Islands which would, if it has been made in Solomon Islands, be an infringing copy of the work.

(2) The owner of the copyright in any published literary, dramatic or musical work may give notice in writing to the Comptroller of Customs and Excise-

(a) that he is the owner of the copyright in the work; and

(b) that he requests the Comptroller of Customs and Excise to treat as prohibited goods, during a period specified in the notice, copies of the work to which this section applies.

(3) The period specified in a notice given under subsection (2) shall not exceed five years and shall not extend beyond the end of the period for which the copyright is to subsist.

(4) Subject to the provisions of subsections (5) and (6), where a notice has been given under subsection (2) in respect of a work and has not, been withdrawn, the importation into Solomon Islands, at a time before the end of the period specified in the notice, of any copy of the work to which this section applies shall be prohibited.

(5) The importation of any article by a person for his private or domestic use shall not be prohibited under subsection (4).

(6) Any person giving a notice under subsection (2) shall satisfy such requirements relating to-

(a) the form of the notice;

(b) the furnishing of such evidence;

(c) the payment of such fees;

(d) the giving of such security;

(e) the indemnification of the Comptroller of Customs and Excise;

(f) such incidental or supplementary matters,

as may be prescribed.

(7) Notwithstanding anything in the Customs and Excise Act, a person shall not be liable to any penalty under that Act, other than forfeiture of the goods, by reason of the fact that any goods are treated as prohibited goods in accordance with this section.

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**PART V**  
**APPLICATION IN RELATION TO OTHER COUNTRIES AND TO**  
**INTERNATIONAL ORGANISATIONS**

**Power to apply provisions of this Act in relation to other countries**

**25.**-(1) Subject to the provisions of subsection (3) the Minister may by order provide that, in relation to any country specified in the order, any of the provisions of this Act so specified shall apply-

(a) in relation to literary, dramatic, musical or artistic works, sound recordings, cinematograph films or editions first published in that country as they apply in relation to literary, dramatic, musical or artistic works, sound recordings, cinematograph films or editions first published in Solomon Islands;

(b) in relation to persons who, at a material time, are citizens or subjects of that country as they apply in relation to persons who, at such a time, are citizens of Solomon Islands;

(c) in relation to persons who, at a material time, are domiciled or resident in that country as they apply in relation to persons who, at such a time, are domiciled or resident in Solomon Islands;

(d) in relation to bodies incorporated by or under the laws of that country as they apply in relation to bodies incorporated by or under the laws of Solomon Islands;

(e) in relation to broadcasts made from places in that country by persons permitted or authorised by or under the laws of that country to make those broadcasts, as they apply in relation to broadcasts made from places in Solomon Islands by persons permitted or authorised by or under the laws of Solomon Islands to make those broadcasts.

(2) An order made under this section applying any provision of this Act in relation to any country other than Solomon Islands may apply that provision-

(a) without exception or modification or subject to such exceptions and modifications as may be specified in the order;

(b) generally or in relation to such classes of works or other subject-matter or such other classes of cases, as may be so specified.

(3) An order shall not be made under this section applying any provision of this Act in relation to any country which is not a party to a Convention relating to copyright to which Solomon Islands is also a party, unless the Minister is satisfied that in respect of the class of works or other subject-matter to which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyrights under this Act.

## **International organisations**

**26.-(1)** Where it appears to the Minister that it is expedient that the provisions of this section should apply to any organisation of which two or more sovereign Powers, or the governments thereof, are members, he may by order declare that organisation to be an organisation to which this section applies.

(2) Where an original literary, dramatic, musical or artistic work is made by or under the direction or control of an organisation to which this section applies in such circumstances that-

(a) copyright would not, except by virtue of this subsection subsist in the work; but

(b) if the author of the work had been a citizen of Solomon Islands at the time-when it was made, copyright would have subsisted in the work immediately after it was made and would thereupon have vested in the organisation,

copyright shall subsist in the work as if the author had been a citizen of Solomon Islands when it was made, that copyright shall continue to subsist so long as the work remains unpublished, and the organisation shall, subject to the provisions of this Act, be entitled to the copyright.

(3) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an organisation to which this section applies in such circumstances that copyright would not, except by virtue of this subsection, subsist in the work immediately after the first publication thereof, and-

(a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright, if any, in the work; or

(b) the work was made in such circumstances that if it had been first published in Solomon Islands, the organisation would have been entitled to the copyright in the work,

copyright shall subsist in the work (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) as if it had been first published in Solomon Islands, that copyright shall subsist until the end of the period of fifty years from the end of the calendar year in which the work was first published, and the organisation shall, subject to the provisions of this Act, be entitled to that copyright.

(4) The provisions of Part II, except those provisions thereof relating to the subsistence, duration of ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section as they apply in relation to copyright subsisting by virtue of Part II.

(5) An organisation to which this section applies which otherwise has not or at some material time otherwise had not, the legal capacities of a body corporate shall have, and shall be deemed at all material times to have had, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

## **Denial of copyright to citizens of countries not giving adequate protection to Solomon Islanders' works**

**27.**-(1) If it appears to the Minister that the laws of a country fail to give adequate protection to Solomon Islanders' works to which this section applies, or fail to give adequate protection in the case of one or more classes of such works, whether the lack of protection relates to the nature of the work or the country of its author or both, the Minister may by order provide, in relation to the country first mentioned, that either generally or in such cases as are specified in the order, copyright under this Act shall not subsist in works to which this section applies which were first published after a date specified in the order if at the time of their first publication the authors thereof were-

(a) citizens or subjects of that country, not being at that time persons domiciled or resident in Solomon Islands; or

(b) bodies incorporated under the laws of that country.

(2) The Minister shall, in making an order under this section have regard to the nature and extent of the lack of protection for Solomon Islanders' works in consequence of which the order is being made.

(3) This section applies to literary, dramatic, musical, artistic works, sound recordings and cinematograph films.

(4) In this section-

"author", in relation to a sound recording or a cinematograph film, means the maker of the recording or film;

"Solomon Islander's work" means a work of which the author was, at the time when it was made, a qualified person for the purposes of this Act.

## **PART VI TRANSMISSION OF COPYRIGHT**

### **Transmission of copyright**

**28.**-(1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition, or by operation of law, as personal or movable property.

(2) An assignment of copyright may be limited-

(a) so as to apply to one or more, but not all, of the classes of acts which, by virtue of this Act the owner of the copyright has the exclusive right to do;

(b) so as to apply to any one or more, but not all, of the countries in relation to which the owner of the copyright has by virtue of this Act the exclusive right;

(c) so as to apply to part, but not the whole, of the period for which the copyright is to subsist,

and references in this Act to a partial assignment are references to an assignment so limited.

(3) No assignment of copyright, whether total or partial, shall have effect unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates is the owner of the copyright shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act in relation to any copyright, to the doing of anything with, or, as the case may be without, the licence of the owner of the copyright shall be construed accordingly.

### **Copyright to pass under will with unpublished work**

**29.** Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

### **Prospective ownership of copyright**

**30.**-(1) Where by an agreement in relation to any future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright totally or partially, to another person (in this subsection referred to as "the assignee"), then if, on the coming into existence of the copyright, the assignee or a person claiming under him would, apart from this subsection, be entitled as against all other persons to require the copyright to be vested in him, totally or partially, as the case may be, the copyright shall, on its coming into existence, vest in the assignee or his successor in title accordingly by virtue of this subsection and without further assurance.

(2) Where at the time when any copyright comes into existence, the person who, if he were then living, would be entitled to the copyright is dead, the copyright shall devolve as if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) Subsection (4) of section 28 shall apply in relation to a licence granted by a prospective owner of any copyright as it applies in relation to a licence granted by the owner of a subsisting copyright, as if any reference in that subsection to the owner's interest in the copyright included a reference to his prospective interest therein.

(4) In this Act "future copyright" means copyright which will or may come into existence in respect of any future work or class of works or other subject-matter, or in any future event and "prospective owner" shall be construed accordingly and, in relation to any such copyright, includes a person prospectively entitled thereto by virtue of such an agreement as is mentioned in subsection (1).

**PART VII**  
**WORKS, RECORDINGS AND FILMS MADE BY OR UNDER THE**  
**DIRECTION OF THE GOVERNMENT**

**Copyright in original works, etc., made or first published by or under direction of the Government**

**31.**-(1) Where an original literary, dramatic, musical or artistic work is made by or under the direction or control of the Government copyright shall subsist in the work by virtue of this section if copyright would not, but for this section, subsist in the work.

(2) The Government shall be the owner of the copyright in an original literary, dramatic, musical or artistic work first published in Solomon Islands if first published by or under the direction or control of the Government.

(3) Copyright in a literary, dramatic or musical work of which the Government is owner by virtue of this section shall-

(a) where the work is unpublished, continue to subsist so long as the work remains unpublished; and

(b) where the work is published, subsist, or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist, until the end of the period of fifty years from the end of the calendar year in which the work is first published, and shall then expire.

(4) Copyright in an artistic work of which the Government is the owner by virtue of this section shall continue to subsist-

(a) where the work is an engraving or a photo graph, until the end of the period of fifty years from the end of the calendar year in which the engraving or photograph is first published;

(b) in the case of any other artistic work, until the end of the period of fifty years from the end of the calendar year in which the work was made,

and shall then expire.

(5) Where a sound recording or cinematograph film is made by or under the direction or control of the Government, copyright shall subsist in the recording or film by virtue of this section if copyright would not, but for this section, subsist therein, and the Government shall be the owner of the copyright.



(6) Copyright in a sound recording or cinematograph film of which the Government is the owner by virtue of this section shall subsist until the end of the period of fifty years from the end of the calendar year in which the recording or film is first published and shall then expire.

(7) Subsections (1), (2), (3), (4), (5) and (6) shall have effect subject to any agreement made by or on behalf of the Government with the author of the work or the maker of the sound recording or cinematograph film, as the case may be, by which it is agreed that the copyright in the work, recording or film shall vest in the author or maker, or in another person specified in the agreement.

(8) Part II with the exception of the provisions thereof relating to the subsistence, duration and ownership of copyright shall apply in relation to copyright subsisting by virtue of this section in a literary, dramatic, musical or artistic work as it applies in relation to copyright subsisting by virtue of that Part in such a work.

(9) Part III, with the exception of the provisions thereof relating to the subsistence and ownership of copyright shall apply in relation to copyright subsisting by virtue of this section in a sound recording or cinematograph film as it applies in relation to copyright subsisting by virtue of that Part in a sound recording or cinematograph film.

## **PART VIII REGISTRATION OF COPYRIGHT**

### **Registrar and Register of Copyright**

**32.**-(1) For the purposes of this Act there shall be a Registrar of Copyright, whose office shall be a public office.

(2) The Registrar of Copyright shall keep a book to be called the Register of Copyright.

### **Application for registration**

**33.**-(1) The person entitled to the copyright in any work or other subject-matter by virtue of this Act or any person acting on his behalf may, at any time before the expiration of the copyright, apply to the Registrar of Copyright for registration of the copyright.

(2) Every application for registration of copyright shall be made in such form and be accompanied by such documents and by evidence of the payment of such fee, as may be prescribed.

(3) The Registrar of Copyright may, upon receipt of any application, request the applicant to furnish such additional information as the Registrar may consider to be relevant to the application.

## **Registration of copyright and the effect thereof**

**34.**-(1) Where, as respects an application for registration of the copyright in any work or other subject-matter, the Registrar of Copyright is satisfied that-

(a) there has been compliance with the requirements this Act and any regulations made thereunder; and

(b) the person by whom, or on whose behalf, the application is made is entitled to copyright subsisting, in the work or other subject-matter by virtue of this Act,

the Registrar shall register the copyright by entering the particulars thereof in the Register of Copyright, and shall issue to the applicant a certificate of registration in the prescribed form.

(2) In any legal proceedings relating to copyright in any work or other subject-matter, a certificate of registration issued under this section shall be prima facie evidence of the facts stated in the certificate.

## **PART IX MISCELLANEOUS**

### **Use of copyright material for educational instruction**

**35.**-(1) The copyright in a literary, dramatic, musical or artistic work is not infringed by reason only that the work is reproduced, or an adaptation of the work is made or reproduced-

(a) in the course of educational instruction, where the work is reproduced or the adaptation is made or reproduced by a teacher or student otherwise than by the use of an appliance designed for the production of the multiple copies; or

(b) as part of the questions to be answered in an examination, or in an answer to such a question.

(2) For the purposes of sections 6(2) and 14(6), in determining whether the making of an article constituted an infringement of copyright, subsection (1) shall be disregarded.

### **Public records**

**36.** Where any work in which copyright subsists, or a reproduction of any such work, is comprised in any public records which are under the charge of the Government Archivist and are open to public inspection, the copyright in the work is not infringed by the making, or the supplying to any person, of any reproduction of the work by or under the direction of the Government Archivist.

## **False attribution of authorship**

**37.-(1)** A person (in this section referred to as "the offended person") may, by civil action, recover damages and be granted other relief against any other person (in this section referred to as "the offender") who, without the authority in writing of the offended person-

(a) inserts or affixes the name of the offended person in or on a literary, dramatic, musical or artistic work of which he is not the author, or in or on a reproduction of the in such a way as to imply that the offended person is the author of the work; or

(b) publishes, or sells, or lets for hire, or way of trade exhibits in public, a literary, dramatic, musical or artistic work in or on which the offended persons' name has been inserted to affixed, if to the offender's knowledge the offended person is not the author of the work; or

(c) does any of the acts mentioned in paragraph (b) in relation to, or distributes, reproductions of a literary, dramatic, musical or artistic work, being reproductions in or on which the offended person's name has been so inserted or affixed, if to the offender's knowledge the offended person is not the author of the work; or

(d) performs in public, or broadcasts, a literary, dramatic or musical work of which the offended person is not the author, as being a work of which he is the author, if to the offender's knowledge the offended person is not the author of the work.

(2) Subsection (1) shall apply where, contrary to the fact, a literary, dramatic, musical or artistic work is represented as being an adaptation of the work of any person as it applies where a work is so represented as being the work of that person.

(3) The author of an artistic work which has been altered after he parted with the possession of it may, by civil action, recover damages and be granted other relief against any person who, without the authority in writing of the author-

(a) publishes, sells or lets for hire, or by way of trade offers or exposes for sale or hire the work so altered, as being the unaltered work of the author; or

(b) publishes, sells or lets for hire, or by way of trade offers or exposes for sale or hire a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author,

if to the knowledge of that person it is not the unaltered work or a reproduction of the unaltered work, as the case may be of the author.

(4) The author of an artistic work in which copyright subsists may, by civil action, recover damages and be granted other relief against any person who-

(a) publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, reproductions of the work, as being reproductions made by the author of the work; or

(b) distributes reproductions of the work as being reproductions made by the author of the work,

if, in any such case, the reproductions were to his knowledge not made by the author.

(5) Any damages recovered under this section by personal representatives, in respect of anything done in relation to a person after his death, shall devolve as part of his estate as if the right of action had subsisted and had been vested in him immediately before his death.

(6) Nothing in this section shall derogate from any right of action or other remedy, whether civil or criminal, in proceedings instituted otherwise than by virtue of this section, but this section shall not be construed as requiring any damages recovered by virtue of this section to be disregarded in assessing damages in any proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

(7) Subsections (1), (2) and (3) shall apply in respect of anything done, in relation to a person after his death as if any reference to the authority in writing of that person were a reference to authority in writing given by him or by his personal representatives, but nothing in those subsections shall apply to anything done in relation to a person more than twenty years after his death.

(8) Subsections (1), (2), (3) and (4) do not apply to any acts mentioned in those subsections which were done outside Solomon Islands.

(9) In this section "name" includes initials or a monogram.

## **Regulations**

**38.**-(1) The Minister may make regulations generally for giving effect to the provisions of this Act, and in particular, but without prejudice to the generality of the foregoing, may make regulations-

(a) prescribing the rate of royalty which shall be paid to the owners of copyright, and the manner of ascertaining the amount of royalty payable to any of those owners;

(b) prescribing anything which may be, or is required this Act to be, prescribed.

(2) The Minister may also make regulations prescribing, in respect of any work of other subject-matter in which copyright subsisted by virtue of the Copyright Act 1911 (of the United Kingdom) and continues to subsist after the commencement of this Act, new rates or amounts of royalty instead of any rates or amounts prescribed for that work or other subject-matter by or under the said Copyright Act, 1911.

## **Repeals and Savings**

**39.**-(1) The Copyright Regulations (Cap. 92 of the 1961 Revised Edition) are hereby repealed.

(2) The Copyright Act, 1911 (of the United Kingdom), (applied by Order in Council dated 24th June, 1912) in so far as it is part of the law of Solomon Islands, is hereby repealed.

(3) Notwithstanding the repeal of the Copyright Act, 1911, the importation of copies in any work which is prohibited under section 14 of the repealed Act, which is in force on the date of commencement of this Act, shall continue in force until such time as the Minister by order revokes, amends, or rescinds such prohibition.

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*(No Subsidiary Legislation)*

## Appendix 4 – Pacific Model Law

### MODEL LAW FOR THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF CULTURE

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**MODEL LAW FOR THE  
PROTECTION OF TRADITIONAL KNOWLEDGE  
AND EXPRESSIONS OF CULTURE**

**PART 1 – PRELIMINARY**

**1 Short title**

This Act may be cited as the Protection of Traditional Knowledge and Expressions of Culture Act *[Enacting country to insert year of enactment]*.

**2 Commencement**

This Act commences on *[Enacting country to complete]*.

**3 Application**

- (1) This Act applies to traditional knowledge and expressions of culture that:
  - (a) were in existence before the commencement of this Act; or
  - (b) are created on or after that commencement.
- (2) This Act does not affect or apply to rights that exist immediately before the commencement of this Act, including intellectual property rights.
- (3) This Act does not affect or apply to contracts, licences or other agreements entered into by traditional owners before the commencement of this Act in relation to the use of traditional knowledge or expressions of culture.

**4 Definitions**

In this Act, unless the contrary intention appears:

**authorised user agreement** means a written agreement entered into under Division 3 or 4 of Part 4.

**customary use** means the use of the traditional knowledge or expressions of culture in accordance with the customary laws and practices of the traditional owners.

**derivative work** means any intellectual creation or innovation based upon or derived from traditional knowledge or expressions of culture.

**derogatory treatment**, in relation to traditional knowledge or expressions of culture, includes any act or omission that results in a material distortion, mutilation or alteration of the traditional knowledge or expressions of culture that is prejudicial to the honour or reputation of the traditional owners, or the integrity of the traditional knowledge or expressions of culture.

**expressions of culture** mean any way in which traditional knowledge appears or is manifested, irrespective of content, quality or purpose, whether tangible or intangible, and, without limiting the preceding words, includes:

- (a) names, stories, chants, riddles, histories and songs in oral narratives; and



- (b) art and craft, musical instruments, sculpture, painting, carving, pottery, terra-cotta mosaic, woodwork, metalware, painting, jewelry, weaving, needlework, shell work, rugs, costumes and textiles; and
- (c) music, dances, theatre, literature, ceremonies, ritual performances and cultural practices; and
- (d) the delineated forms, parts and details of designs and visual compositions; and
- (e) architectural forms.

**Minister** means the Minister responsible for this Act.

**moral rights** are the rights mentioned in section 13.

**prescribed** means prescribed by the regulations made under this Act.

**sacred-secret** means any traditional knowledge or expressions of culture that have a secret or sacred significance according to the customary law and practices of the traditional owners concerned.

**traditional cultural rights** are the rights mentioned in sections 7(2) and (3).

**traditional knowledge** includes any knowledge that generally:

- (a) is or has been created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes; and
- (b) is or has been transmitted from generation to generation; and
- (c) is regarded as pertaining to a particular traditional group, clan or community of people in [*Enacting country*]; and
- (d) is collectively originated and held.

**traditional owners** of traditional knowledge or expressions of culture means:

- (a) the group, clan or community of people; or
- (b) the individual who is recognized by a group, clan or community of people as the individual;

in whom the custody or protection of the traditional knowledge or expressions of culture are entrusted in accordance with the customary law and practices of that group, clan or community.

## **5 Customary use**

The customary use of traditional knowledge or expressions of culture does not give rise to any criminal or civil liability under this Act.

## **PART 2 – TRADITIONAL CULTURAL RIGHTS**

### **6 Holders of traditional cultural rights**

The traditional owners of traditional knowledge or expressions of culture are the holders of the traditional cultural rights in the traditional knowledge or expressions of culture.

### **7 Meaning of traditional cultural rights**

- (1) Traditional cultural rights are the rights set out in subsections (2) and (3).
- (2) The following uses of traditional knowledge or expressions of culture require the prior and informed consent of the traditional owners in accordance with section 23(1) or 25(5):
  - (a) to reproduce the traditional knowledge or expressions of culture;
  - (b) to publish the traditional knowledge or expressions of culture;
  - (c) to perform or display the traditional knowledge or expressions of culture in public;
  - (d) to broadcast the traditional knowledge or expressions of culture to the public by radio, television, satellite, cable or any other means of communication;
  - (e) to translate, adapt, arrange, transform or modify the traditional knowledge or expressions of culture;
  - (f) to fixate the traditional knowledge or expressions of culture through any process such as making a photograph, film or sound recording;
  - (g) to make available online or electronically transmit to the public (whether over a path or a combination of paths, or both) traditional knowledge or expressions of culture;
  - (h) to create derivative works;
  - (i) to make, use, offer for sale, sell, import or export traditional knowledge or expressions of culture or products derived therefrom;
  - (j) to use the traditional knowledge or expressions of culture in any other material form;if such use is a non-customary use (whether or not of a commercial nature).
- (3) To avoid doubt, the traditional owners are entitled to use traditional knowledge or expressions of culture in the ways mentioned in subsection (2) in the exercise of their traditional cultural rights.
- (4) Subsection (2) does not apply to the use of traditional knowledge or expressions of culture for any of the following:

- (a) face to face teaching;
  - (b) criticism or review;
  - (c) reporting news or current events;
  - (d) judicial proceedings;
  - (e) incidental use.
- (5) A user of traditional knowledge or expressions of culture mentioned in paragraphs (4)(a) to (d) must make sufficient acknowledgement of the traditional owners by mentioning them and/or the geographical place from which the traditional knowledge or expressions of culture originated.

## **8 Material form not required**

Traditional cultural rights exist in traditional knowledge and expressions of culture whether or not that traditional knowledge or those expressions of culture are in material form.

## **9 Duration**

Traditional cultural rights continue in force in perpetuity.

## **10 Traditional cultural rights inalienable**

Traditional cultural rights are inalienable.

## **11 Additional rights**

The traditional cultural rights in traditional knowledge or expressions of culture are in addition to, and do not affect, any rights that may subsist under any law relating to copyright, trademarks, patents, designs or other intellectual property.

## **12 Derivative works**

- (1) Any copyright, trademark, patent, design or other intellectual property right that exists in relation to a derivative work vests in the creator of the work or as otherwise provided by the relevant intellectual property law.
- (2) If a derivative work, traditional knowledge or expressions of culture are to be used for a commercial purpose, the authorised user agreement must:
  - (a) contain a benefit sharing arrangement providing for equitable monetary or non-monetary compensation to the traditional owners; and
  - (b) provide for identification of the traditional knowledge or expressions of culture on which the derivative work is based in an appropriate manner in connection with the exploitation of the derivative work by mentioning the traditional owners and/or the geographical place from which it originated; and
  - (c) provide that the traditional knowledge or expressions of culture in the derived work will not be subject to derogatory treatment.

### **PART 3 – MORAL RIGHTS**

#### 13 Meaning of moral rights

- (1) The traditional owners of traditional knowledge or expressions of culture are the holders of the moral rights in the traditional knowledge or expressions of culture.
- (2) The moral rights of the traditional owners of traditional knowledge and expressions of culture are:
  - (a) the right of attribution of ownership in relation to their traditional knowledge and expressions of culture; and
  - (b) the right not to have ownership of traditional knowledge or expressions of culture falsely attributed to them; and
  - (c) the right not to have their traditional knowledge and expressions of culture subject to derogatory treatment.
- (3) The moral rights of traditional owners in their traditional knowledge and expressions of culture exist independently of their traditional cultural rights.
- (4) Moral rights continue in force in perpetuity and are inalienable, and cannot be waived or transferred.

## **PART 4 – OBTAINING PRIOR AND INFORMED CONSENT FROM TRADITIONAL OWNERS**

### **Division 1 – General**

#### **14 Overview**

This Part sets out the procedure for obtaining the prior and informed consent of the traditional owners to use their traditional knowledge or expressions of culture for a non-customary use (whether or not of a commercial nature).

### **Division 2 – Applications for use and identifying traditional owners**

#### **15 Application**

- (1) A prospective user of traditional knowledge or expression of culture for a non-customary use (whether or not of a commercial nature) may apply to the Cultural Authority to obtain the prior and informed consent of the traditional owners to use the traditional knowledge or expressions of culture.
- (2) The application must:
  - (a) be in the prescribed form; and
  - (b) specify the way in which the applicant proposes to use the traditional knowledge or expressions of culture; and
  - (c) state clearly the purpose for which that use is intended; and
  - (d) be accompanied by the prescribed fee.
- (3) The Cultural Authority must finalise the application in accordance with this Part within [*Enacting country to insert time period*].
- (4) If the Cultural Authority does not finalise the application within the period mentioned in subsection (3), the traditional owners are deemed not to have consented to the proposed use.

#### **16 Public notification**

- (1) The Cultural Authority must:
  - (a) give a copy of the application to those persons (if any) who it is satisfied are the traditional owners of the traditional knowledge or expressions of culture to which the application relates; and
  - (b) publish a copy of the application in a newspaper having national circulation stating how interested persons may obtain a copy of the application; and

- (c) if appropriate, broadcast details of the application on radio or television stating how interested persons may obtain a copy of the application.
- (2) Any person who claims to be a traditional owner of the traditional knowledge or expressions of culture to which the application relates must advise the Cultural Authority within 28 days after the application is published or broadcasted (whichever is the later). The advice may be given orally or in writing.
- (3) The Cultural Authority must record in writing the details of any oral or written advice given under subsection (2).

#### **17 Identification of traditional owners**

- (1) If the Cultural Authority is satisfied that it has identified all of the traditional owners it must make a written determination containing such details as to identify the traditional owners.
- (2) The Cultural Authority must:
  - (a) publish a copy of the determination in a newspaper having national circulation; and
  - (b) if appropriate, broadcast details of the determination on radio or television.

#### **18 Uncertainty or dispute about ownership**

- (1) If the Cultural Authority is not satisfied that it has identified all of the traditional owners or that there is a dispute about ownership, the Cultural Authority must refer the matter to the persons concerned to be resolved according to customary law and practice or such other means as are agreed to by the parties.
- (2) When all of the traditional owners have been identified in accordance with customary law and practice or such means as have been agreed to, the traditional owners must advise the Cultural Authority, and the Cultural Authority must make a written determination containing such details as to identify the traditional owners.
- (3) The Cultural Authority must:
  - (a) publish a copy of the determination in a newspaper having national circulation; and
  - (b) if appropriate, broadcast details of the determination on radio or television.

#### **19 No traditional owners or no agreement about ownership**

- (1) If the Cultural Authority is satisfied that:
  - (a) no traditional owners can be identified; or
  - (b) no agreement has been reached on ownership within the period mentioned in section 15(3) after the application was made;

the Cultural Authority may, after consultation with the Minister, make a determination that the Cultural Authority is the traditional owner of the traditional knowledge or expressions of culture concerned for the purposes of this Act.

(2) If the Cultural Authority enters into an authorised user agreement, any monetary or non-monetary benefits arising under the agreement must be used for traditional cultural development purposes.

### **Division 3 – Authorised user agreements**

#### **20 Application to be rejected or negotiations for agreement**

- (1) The traditional owners must decide whether:
  - (a) to reject the application; or
  - (b) to accept the application and to enter into negotiations for a written authorised user agreement in relation to the application.
- (2) The traditional owners must advise the Cultural Authority of their decision. The advice may be given orally or in writing.
- (3) The Cultural Authority must advise the applicant in writing of the traditional owners' decision.

#### **21 Proposed agreement to be referred to Cultural Authority**

- (1) Before entering into an authorised user agreement, the traditional owners must refer the proposed agreement to the Cultural Authority for its comments on the proposed terms and conditions of the agreement.
- (2) The Cultural Authority may request the applicant and the traditional owners to meet with it to discuss the proposed agreement if the Cultural Authority is, after reviewing the proposed agreement, satisfied that:
  - (a) the traditional owners do not have sufficient information to make a full and informed decision about the proposed terms and conditions of the agreement; or
  - (b) the proposed terms and conditions of the agreement do not adequately protect the traditional knowledge or expressions of culture of the traditional owners.
- (3) The traditional owners may accept, reject or modify any comments made by the Cultural Authority in relation to the proposed agreement.

#### **22 Terms and conditions**

An authorised user agreement should include terms and conditions about the following:

- (a) sharing of financial and other benefits arising from the use of the traditional knowledge or expressions of culture;
- (b) compensation, fees, royalties or other payments for the use;

- (c) whether the use will be exclusive or non-exclusive;
- (d) duration of the use to be allowed and rights of renewal;
- (e) disclosure requirements in relation to the use;
- (f) the possible sharing by the traditional owners of any intellectual property rights arising from the use of the traditional knowledge or expressions of culture;
- (g) access arrangements for the traditional owners;
- (h) education and training requirements for the applicant;
- (i) controls on publication;
- (j) specify whether the rights arising under the agreement can be assigned;
- (k) choice of law in relation to disputes under the agreement;
- (l) respect for moral rights of the traditional owners.

**23 Authorised user agreement and prior and informed consent**

- (1) If a prospective user and the traditional owners enter into an authorised user agreement, the traditional owners are deemed to have given their prior and informed consent to the proposed use.
- (2) The traditional owners must advise the Cultural Authority and forward to it a copy of the final agreement.
- (3) The Cultural Authority is to keep a register of authorised user agreements. The register is to be in such form and contain such information as the Cultural Authority determines.

**24 No authorised user agreement reached**

- (1) If the traditional owners and the applicant cannot agree on the terms and conditions of an agreement in relation to the application, the traditional owners must advise the Cultural Authority. The advice may be given orally or in writing.
- (2) The Cultural Authority must advise the applicant in writing that the traditional owners have rejected the proposed authorised user agreement.
- (3) The Cultural Authority must record in writing the details of any oral or written advice given under subsection (1).

**Division 4 – Applications not made under this Part**

**25 Procedure for applications**

- (1) Nothing prevents a prospective user of traditional knowledge or expressions of culture from obtaining the prior and informed consent of the traditional owners without applying to the Cultural Authority under section 15.



- (2) The prospective user must advise the Cultural Authority that the prospective user has sought the prior and informed consent of the traditional owners.
- (3) The prospective user must provide the Cultural Authority with a copy of the proposed authorised user agreement between the prospective user and the traditional owners for comment, and advice about other prospective traditional owners.
- (4) The prospective user must provide a copy of the signed authorised user agreement to the Cultural Authority to be entered in the register (refer subsection 23(3)) within 28 days after the agreement comes into force.
- (5) If a prospective user and the traditional owners enter into an authorised user agreement, the traditional owners are deemed to have given their prior and informed consent to the proposed use.
- (6) The prospective user cannot contract out of the obligation under subsection (3). If a copy is not provided under subsection (3), the authorised user agreement is null and void.

## **PART 5 – ENFORCEMENT**

### **Division 1 – Offences**

#### **26 Offence in relation to traditional cultural rights**

If:

- (a) a person makes a non-customary use of traditional knowledge or an expressions of culture (whether or not such use is of a commercial nature); and
- (b) the traditional owners have not given their prior and informed consent to that use;

the person is guilty of an offence punishable on conviction by a fine not exceeding an amount equivalent to [*Enacting country to determine*] or a term of imprisonment not exceeding [*Enacting country to determine*] years, or both.

#### **27 Offence in relation to moral rights**

If:

- (a) a person does an act or makes an omission in relation to traditional knowledge or an expression of culture that is inconsistent with the moral rights of the traditional owners of that traditional knowledge or expression of culture; and
- (b) the traditional owners have not given their prior and informed consent to the act or omission;

the person is guilty of an offence punishable on conviction by a fine not exceeding an amount equivalent to [*Enacting country to determine*] or a term of imprisonment not exceeding [*Enacting country to determine*] years, or both.

#### **28 Offence in relation to sacred-secret material**

If a person uses sacred–secret traditional knowledge or an expression of culture other than in accordance with a customary use, the person is guilty of an offence punishable on conviction by a fine not exceeding an amount equivalent to [*Enacting country to determine*] or a term of imprisonment not exceeding [*Enacting country to determine*] years, or both.

#### **29 Offences in relation to importation and exportation**

(1) If:

- (a) a person imports an article or other thing into [*Enacting country*] that relates to traditional knowledge or expressions of culture of that country; and
- (b) the person knew, or ought reasonably to have known, that the article or thing would have contravened the traditional cultural rights or the moral rights of the traditional owners had it been created in [*Enacting country*];

the person is guilty of an offence punishable on conviction by a fine not exceeding an amount equivalent to [*Enacting country to determine*] or a term of imprisonment not exceeding [*Enacting country to determine*] years, or both.

(2) If:

- (a) a person exports traditional knowledge or an expression of culture and the export is a non-customary use (whether or not such use is of a commercial nature); and
- (b) the traditional owners have not given their prior and informed consent to the export of the traditional knowledge or expressions of culture;

the person is guilty of an offence punishable on conviction by a fine not exceeding an amount equivalent to *[Enacting country to determine]* or a term of imprisonment not exceeding *[Enacting country to determine]* years, or both.

## **Division 2 – Civil actions**

### **30 Civil claims**

(1) If:

- (a) a person makes a non-customary use of traditional knowledge or an expression of culture (whether or not such use is of a commercial nature); and
- (b) the traditional owners have not given their prior and informed consent to that use;

the traditional owners may institute proceedings against the person in the [ ] Court seeking all or any of the relief set out in section 31.

(2) If:

- (a) a person does an act or makes an omission in relation to traditional knowledge or an expression of culture that is inconsistent with the moral rights of the traditional owners of that traditional knowledge or expression of culture; and
- (b) the traditional owners have not given their prior and informed consent to the act or omission;

the traditional owner may institute proceedings against the person in the [ ] Court seeking all or any of the relief set out in section 31.

### **31 Remedies**

(1) The [ ] Court may grant all or any of the following in relation to proceeding instituted under section 30:

- (a) an injunction;
- (b) damages for loss resulting from the unauthorised use;
- (c) a declaration that the traditional cultural rights of the traditional owners have been contravened;
- (d) an order that the defendant make a public apology for the contravention;

- (e) an order that any false attribution of ownership, or derogatory treatment, of the traditional knowledge or expression of culture cease or be reversed;
- (f) an order for an account for profits;
- (g) an order for the seizure of any object made, imported or exported contrary to this Act;
- (h) such other orders as the Court considers appropriate in the circumstances.

(2) The [ ] Court in deciding what relief is to be granted may take into account all or any of the following:

- (a) whether the defendant was aware or ought reasonably to have been aware of the traditional cultural rights and moral rights of the traditional owners;
- (b) the effect on the honour or reputation of the traditional owners resulting from the unauthorised use;
- (c) any thing done by the defendant to mitigate the effects of the unauthorised use;
- (d) any cost or difficulty that may have been associated with identifying the traditional owners;
- (e) any cost or difficulty in ceasing or reversing any false attribution of ownership, or derogatory treatment, of the traditional knowledge or expression of culture;
- (f) whether the parties have undertaken any other action to resolve the dispute.

### **Division 3 – Defences and other matters**

#### **32 Defences**

It is a defence to an offence against section 26 or 27, or an action under subsection 30(1) or (2), if a determination has been published under section 17 and the traditional owners specified in that determination have given their prior and informed consent to the use in question.

#### **33 Other mechanisms to resolve disputes**

Nothing in this Part prevents the traditional owner or the other person concerned from attempting to resolve a dispute using all or any of the following:

- (a) mediation;
- (b) alternative dispute resolution procedures;
- (c) customary law and practices.

#### **34 Other rights of action and remedies**

This Part does not affect any rights of action or other remedies, whether civil or criminal, provided for under other Acts or laws.

## **PART 6 –TRANSITIONAL ARRANGEMENTS**

### **35 Procedure for transitional arrangements**

- (1) Subject to subsections 3(2) and (3), this section applies to a person if, immediately before the commencement of this Act, the person was making a non-customary use of traditional knowledge or an expression of culture.
  
- (2) The provisions of this Act do not apply to the person during the period of 60 days (“the application period”) starting on the commencement of this Act.
  
- (3) During the application period, the person must apply under Part 4 to the Cultural Authority to obtain prior and informed consent from the traditional owners to continue to use the traditional knowledge or expression of culture.
  
- (4) If the person does not apply to the Cultural Authority in accordance with subsection (3), the Act applies to the person on and after the end of the application period.
  
- (5) If a person has applied to the Cultural Authority in accordance with subsection (3), the Act continues not to apply to the person until the traditional owners reject the application or enter into an authorised user agreement with the person, whichever first occurs.

## **PART 7 – CULTURAL AUTHORITY**

### **36 Designation of Cultural Authority**

The Minister may designate an existing [*or new*] body to perform the functions of the Cultural Authority in section 37.

### **37 Functions of the Cultural Authority**

The functions of the Cultural Authority may include the following:

- (a) to receive and process applications under Part 4;
- (b) to monitor compliance with authorised user agreements and to advise traditional owners of any breaches of such agreements;
- (c) to develop standard terms and conditions for authorised user agreements;
- (d) to provide training and education programs for traditional owners and users of traditional knowledge or expressions of culture;
- (e) to develop a Code of Ethics in relation to use of traditional knowledge and expressions of culture;
- (f) to issue advisory guidelines for the purposes of this Act;
- (g) to liaise with regional bodies in relation to matters under this Act;
- (h) to maintain a record of traditional owners and/or knowledge and expressions of culture;
- (i) if requested to do so to provide guidance on the meaning of customary use in specific cases;
- (j) such other functions as are conferred on it by this Act.

## **PART 8 – MISCELLANEOUS**

### **38 Regulations**

The Minister may make regulations prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### **39 Recognition of other laws**

In accordance with reciprocal arrangements, this Act may provide the same protection to traditional knowledge and expressions of culture originating in other countries or territories as is provided to traditional knowledge and expressions of culture originating in the [Enacting country].



**EXPLANATORY MEMORANDUM  
FOR THE  
MODEL LAW FOR THE  
PROTECTION OF TRADITIONAL KNOWLEDGE  
AND EXPRESSIONS OF CULTURE**

**Introduction**

The *Model Law for the Protection of Traditional Knowledge and Expressions of Culture* is a draft model law establishing a new range of statutory rights for traditional owners of traditional knowledge and expressions of culture. The model law provides a basis for Pacific Island countries wishing to enact legislation for the protection of traditional knowledge and expressions of culture.

If an individual country wishes to enact the model law, it is free to adopt and/or adapt the provisions as it sees fit in accordance with national needs, the wishes of its traditional communities, legal drafting traditions and so on. Matters of detail or implementation are left to be determined by national laws and systems.

For example, the rights created in the model law are termed ‘traditional cultural rights’ but enacting countries may choose another term to describe the rights, as they consider appropriate. The notes on the clauses below also indicate other legal and policy issues an enacting country might want to consider if enacting the model law. These notes are not intended to be exhaustive of the issues that might require consideration by an enacting country.

It should be noted that the model law is to be regarded as a starting point and will continue to be modified consequent on members’ experiences in enacting and administering the law and in accordance with further international developments.

National laws that enact the model law could also be read with and complemented by cultural heritage legislation.

**Outline of model law**

The policy objective of the model law is to protect the rights of traditional owners in their traditional knowledge and expressions of culture and permit tradition-based creativity and innovation, including commercialisation thereof, subject to prior and informed consent and benefit-sharing. The model law also reflects the policy that it should complement and not undermine intellectual property rights.

The development of the model law has been guided by responding to a range of questions posed in the document *Elements of a sui generis system for the protection of traditional knowledge* created by the World Intellectual Property Organisation for consideration by the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. These questions include: what is the policy objective of the protection?; what is the subject matter?; who owns the rights?; what are the rights? how are the rights administered and enforced? how are the rights lost or how do they expire etc. These questions are relevant to the development of any effective legal system for the protection of property rights, and not just to the particular approach taken in this model law.

The approach taken in the model law is to create new rights in traditional knowledge and expressions of culture which previously might have been regarded, for the purposes of intellectual property law, as part of the public domain. The rights created by the model law essentially fall into two categories: traditional cultural rights and moral rights. The existence of these rights do not depend upon registration or other formalities.

Traditional cultural rights grant traditional owners exclusive rights in respect of a range of uses of traditional knowledge and expressions of culture that are of a non-customary nature, irrespective of whether they are for commercial or non-commercial purposes. This includes the use of traditional knowledge and cultural expressions for the making of new creations and innovations based thereon ('derivative works').

The moral rights created for traditional owners are the right of attribution, the right against false attribution and the right against derogatory treatment in respect of traditional knowledge and expressions of culture.

The model law establishes procedures whereby consent can be obtained for the non-customary use of traditional knowledge and cultural expressions, including the making of derivative works. If a derivative work is created, the intellectual property rights in the work vest in the creator, or as otherwise provided for by intellectual property rights. In other words, intellectual property rights are fully respected, and the model makes it clear that the rights it creates are in addition to and do not affect intellectual property rights. However, should a derivative work or traditional knowledge and cultural expressions be used for commercial purposes, the user must share benefits with the traditional owners, provide acknowledgement of the source of the traditional knowledge or expressions of culture and respect the traditional owners' moral rights.

The model law provides two avenues by which a prospective user of traditional knowledge or expressions of culture for non-customary purposes can seek the prior and informed consent of the traditional owners for the use of the traditional knowledge or expressions of culture. These avenues are:

- applying to a 'Cultural Authority' which has functions in relation to identifying traditional owners and acting as a liaison between prospective users and traditional owners; or
- dealing directly with the traditional owners.

In both cases, the prior and informed consent of the traditional owners is to be evidence by an 'authorised user agreement'. And in both cases, the Cultural Authority has a role in providing advice to traditional owners about the terms and conditions of authorised user agreements and maintaining a record of finalised authorised user agreements.

The model law also creates offences and civil actions for contraventions of traditional cultural rights and moral rights.

## NOTES ON CLAUSES

### Part 1 - Preliminary

#### Clause 1 - Short title

This clause provides that the short title of this Act is the *Protection of Traditional Knowledge and Expressions of Culture [enacting country to insert year of enactment]*. The date is left blank for insertion by the enacting country.

#### Clause 2 - Commencement

This clause provides for the commencement of the Act. The commencement date will depend on the relevant law of the enacting country.

#### Clause 3 - Application

Clause 3(1) provides that the Act applies to traditional knowledge and expressions of culture that were in existence before the commencement of the Act, as well as traditional knowledge and expressions of culture that are created on or after the commencement of the Act.

Clause 3(2) provides that the Act does not affect or apply to rights that exist immediately before the commencement of the Act, including intellectual property rights. This clause, however, does not prevent a person who holds rights in respect of traditional knowledge or expressions of culture which came into effect prior to the commencement of the Act, from subsequently transferring those rights by contract or entering into benefit sharing contractual arrangements etc, even retrospectively, with the traditional owners.

Clause 3(2) implements a policy position that the Act does not have retrospective application. It is matter for an enacting country to determine whether it is appropriate to provide for the retrospective application of the Act.

Clause 3(3) provides that the Act does not affect or apply to contracts, licences or other agreements entered into by traditional owners before the commencement of the Act in relation to the use of traditional knowledge or expressions of culture.

#### Clause 4 - Definitions

This clause defines various terms used in the Act.

#### Clause 5 - Customary use

This clause provides that customary use of traditional knowledge or expressions of culture does not give rise to any criminal or civil liability under the Act. Customary use, as defined by clause 4, means the use of traditional knowledge or expressions of culture in accordance with the customary laws and practices of the traditional owners. In other words, the Act does not regulate the use of traditional knowledge or expressions of culture where they are used in accordance with customary laws and practices.

## **Part 2 – Traditional cultural rights**

### **Clause 6 - Holders of traditional cultural rights**

This clause confers traditional cultural rights on owners of traditional knowledge or expressions of culture. Enacting countries may use a different term to describe the rights established by the Act if so desired.

Traditional owners of traditional knowledge or expressions of culture, as defined in Clause 4, are:

- (a) the group, clan or community of people; or
- (b) the individual who is recognised by a group, clan or community of people as the individual;

in whom the custody or protection of the traditional knowledge or expressions of culture are entrusted in accordance with the customary law and practices of that group, clan or community.

Traditional knowledge, as defined in clause 4, includes any knowledge that generally:

- is or has been created, acquired or inspired for traditional economic, spiritual, ritual, narrative, decorative or recreational purposes;
- is or has been transmitted from generation to generation;
- is regarded as pertaining to a particular traditional group, clan or community of people in [Enacting country]; and
- is collectively originated and held.

Expressions of culture, as defined in clause 4, is any way in which traditional knowledge appears or is manifested, irrespective of content, quality or purpose, whether tangible or intangible. A non-exhaustive list of examples of expression of culture includes:

- names, stories, chants, riddles, histories and songs in oral narratives;
- art and craft, musical instruments, sculpture, painting, carving, pottery, terra-cotta mosaic, woodwork, metalware, painting, jewelry, weaving, needlework, shell work, rugs, costumes and textiles;
- music, dances, theatre, literature, ceremonies, ritual performances and cultural practices;
- the delineated forms, parts and details of designs and visual compositions; and
- architectural forms.

### **Clause 7 - Meaning of traditional cultural rights**

This clause describes what traditional cultural rights are. Traditional cultural rights essentially comprise two rights:

- the right of traditional owners to give their prior and informed consent (or not) to a range of non-customary uses of their traditional knowledge or expressions of culture

(clause 7(2)); and

- the right of traditional owners to use their traditional knowledge or expressions of culture in the ways listed in clause 7(2) in the exercise of their traditional cultural rights (clause 7(3)).

Clause 7(2) lists the types of uses of traditional knowledge or expressions of culture for which the prior and informed consent of traditional owners is required, when the use is non-customary. The process for obtaining prior and informed consent of traditional owners is set out in Part 4 of the Act. Non-customary use of traditional knowledge or expressions of culture means use which is not in accordance with the customary laws or practices of the traditional owners. A non-customary use may be for a commercial or non-commercial purpose.

A person must obtain the prior and informed consent of traditional owners if he or she wishes to use, in a non-customary way, traditional knowledge or expressions of culture in one or more of the following ways:

- reproducing the traditional knowledge or expressions of culture. For example, copying a motif onto a T-shirt;
- publishing the traditional knowledge or expressions of culture. For example, transcribing a story in an information brochure for distribution to the public;
- performing or displaying the traditional knowledge or expressions of culture in public. For example, displaying drawings in an exhibition, or performing a dance or a play;
- broadcasting the traditional knowledge or expressions of culture to the public by radio, television, satellite, cable or any other means of communication. For example, broadcasting a live performance of a ceremony;
- translating, adapting, arranging, transforming or modifying the traditional knowledge or expressions of culture. For example, adapting a story into a play;
- fixating the traditional knowledge or expressions of culture through any process such as making a photograph, film or sound recording. For example, making a sound recording of music;
- making traditional knowledge or expressions of culture available online or electronically transmitting it to the public. For example, putting photographs of paintings on the internet;
- creating derivative works. For example, creating an artwork based upon or derived from traditional art. See also the discussion of clause 12 below;
- making, using, offering for sale, selling, importing or exporting traditional knowledge or expressions of culture or products derived therefrom. For example, exporting T-shirts bearing a motif; and
- using the traditional knowledge or expressions of culture in any other material form.

As provided by clause 5, a person who uses traditional knowledge or expressions of culture in accordance with customary laws and practices does not need to obtain the prior and informed consent of the traditional owners in the manner set out by the Act. Of course, the person may still need to obtain permission under the customary laws or practices followed by that person. For example, a person who intends to perform a dance in accordance with his or her custom does not need to follow the process set out in Part 4 for obtaining the prior and informed consent of the traditional owners of the dance. However, if the person intends to perform the dance in a non-customary way, for example performing the dance in non-customary costumes and with non-customary music, the person must obtain the prior and informed consent of the traditional owners

as set out in Part 4. The person would need to obtain this consent whether or not the non-customary performance of the dance was for a commercial purpose.

Clause 7(4) provides that traditional cultural rights do not apply to specific non-customary uses of traditional knowledge or expressions of culture. These specific non-customary uses are:

- face to face teaching;
- criticism or review;
- reporting news or current events;
- judicial proceedings; and
- incidental use.

An example of incidental use of traditional knowledge or expressions of culture would be where a person takes a photograph of another person which incidentally includes in the background the image of a sculpture which is an expression of culture.

Clause 7(5) provides that a person who uses traditional knowledge or expressions of culture in the ways listed in clause 7(4) must make sufficient acknowledgement of the traditional owners by mentioning them and/or the geographical place from which the traditional knowledge or expressions of culture originated. For example, a teacher who is presenting traditional knowledge information to his or her class is not required to obtain the prior and informed consent of the traditional owners. However, the teacher must make sufficient acknowledgement of the traditional owners when presenting that information to the class.

The list of exceptions is only an example of areas of activity which may be exempted from the exercise of traditional cultural rights. Exceptions may be varied, added or deleted according to an enacting country's view as to what areas of activity are appropriate for exemption. For example, the provision for face-to face teaching may require further qualification or definition in view of the particular teaching practices, such as teaching via video-conferencing, which occur in the enacting country.

### **Clause 8 - Material form not required**

This clause provides that traditional cultural rights exist in traditional knowledge and expressions of culture whether or not that traditional knowledge or those expressions of traditional culture are in material form. For example, traditional cultural rights may exist in relation to a song, whether or not that song has been written down or recorded.

### **Clause 9 - Duration**

This clause provides that traditional cultural rights continue in force in perpetuity, that is, they do not expire.

The model law does not currently contain any provisions about how traditional cultural rights or moral rights (see Part 3) are to be dealt with when a traditional owner dies. This is mainly due to an assumption that the death of a traditional owner does not affect the existence of traditional knowledge or expressions of culture or customary rights in relation to the traditional knowledge or expressions of culture. However, depending on particular customary practices etc, an enacting country may consider specifying what happens to traditional cultural rights and moral rights

following the death of a traditional owner. For example, a clause may be inserted to provide that the traditional cultural rights and moral rights of a traditional owner who has died are to be dealt with in accordance with the customary laws and practices of the traditional owners.

#### **Clause 10 - Traditional cultural rights inalienable**

This clause provides that traditional cultural rights are inalienable, that is, they cannot be sold or otherwise transferred.

#### **Clause 11 - Additional rights**

This clause provides that traditional cultural rights are in addition to, and do not affect, any rights that may subsist under any law relating to copyright, trademarks, patents, designs or other intellectual property. For example, a song may be an expression of culture and so traditional cultural rights will arise in relation to the song, that is, the traditional owners will have the right to consent (or not) to non-customary uses of the song. The existence of the traditional cultural rights will not prevent or affect the actual or potential subsistence of copyright in the song (if the song meets the subsistence requirements of the relevant jurisdiction's copyright law). This clause implements the policy that the new rights established by the model law supplement and do not override intellectual property rights.

#### **Clause 12 - Derivative works**

This clause deals with rights in relation to derivative works. The clause also deals with the use of traditional knowledge, expressions of culture and derivative works for a commercial purpose. As defined in clause 4, derivative works are any intellectual creation or innovation that is based upon or derived from traditional knowledge or expressions of culture.

Pursuant to clause 7(2)(h), a person who wishes to create a derivative work must seek the prior and informed consent of the traditional owners to use their traditional knowledge or expressions of culture in the derivative work.

Clause 12(1) provides that the intellectual property rights in a derivative work vest in the creator of the work, or as otherwise provided by the relevant intellectual property laws. (For example, intellectual property laws generally provide that an employer is the owner of intellectual property rights arising from material created by the employees of the employer in the course of their employment). By way of example, an artist who paints a picture which is based upon a community's particular design will own the copyright in the painting he or she creates. However, the traditional owners will continue to hold traditional cultural rights in respect of the pre-existing expression of culture from which the picture was derived.

Clause 12(2) provides that where traditional owners have given their prior and informed consent to the making of a derivative work for a commercial purpose or to the use of traditional knowledge or expressions of culture for a commercial purpose, the user must:

- share benefits with the traditional owners. The benefits can be monetary and/or non-monetary;
- provide for the appropriate identification of the traditional owners of the traditional knowledge or expressions of culture on which the derivative work is based; and

- ensure that the traditional knowledge and expressions of culture in the derivative work will not be subject to derogatory treatment.

### **Part 3 – Moral Rights**

#### **Clause 13 - Meaning of moral rights**

This clause confers moral rights on traditional owners in relation to their traditional knowledge or expressions of culture.

Clause 13(2) sets out the moral rights of traditional owners. They are:

- the right of attribution of ownership in relation to the traditional knowledge and expressions of culture. In other words, traditional owners have the right to be named as the owners of their traditional knowledge and expressions of culture;
- the right not to have ownership of traditional knowledge or expressions of culture falsely attributed to them. In other words, traditional owners have the right to not be named as the owners of traditional knowledge and expressions of culture which they do not own; and
- the right not to have the traditional knowledge and expressions of culture subject to derogatory treatment. (In the context of moral rights for copyright creators, some jurisdictions term this right the ‘right of integrity’.) As defined in clause 4, derogatory treatment in relation to traditional knowledge or expressions of culture means any act or omission that results in a material distortion, mutilation or alteration of the traditional knowledge or expressions of culture that is prejudicial to the honour or reputation of the traditional owners.

Clause 13(3) provides that the moral rights of traditional owners exist independently of their traditional cultural rights. As such, moral rights exist irrespective of whether or not a person uses the traditional knowledge or expressions of culture in one of the ways listed in clause 7(2). Furthermore, moral rights are not subject to the exceptions listed in clause 7(4).

Clause 13(4) provides that moral rights continue in force in perpetuity and are inalienable, and cannot be waived or transferred. In other words, moral rights do not expire, and cannot be sold or otherwise transferred.

### **Part 4 – Obtaining prior and informed consent from traditional owners**

Part 4 provides two avenues by which a prospective user of traditional knowledge or expressions of culture for non-customary purposes can seek the prior and informed consent of the traditional owners. The prospective user may:



- apply to the Cultural Authority who then identifies the relevant traditional owners and liaises between the prospective user and the traditional owners; or
- deal directly with the traditional owners

In both cases, the prior and informed consent of the traditional owners is to be evidenced in the form of an ‘authorised user agreement’.

## **Division 1 - General**

### **Clause 14 - Overview**

This clause explains that Part 4 sets out the procedure for obtaining the prior and informed consent of traditional owners to use their traditional knowledge or expressions of culture for a non-customary purpose, whether it is of a commercial or non-commercial nature.

## **Division 2 – Applications for use and identifying traditional owners**

### **Clause 15 - Application**

This clause provides that a person who wishes to use traditional knowledge or expressions of culture for a non-customary use may apply to the ‘Cultural Authority’ to obtain the prior and informed consent of the traditional owners. The Cultural Authority is discussed further in the notes on Part 7.

Clause 15(2) provides mandatory requirements for the making of an application. An application must:

- be in the prescribed form;
- specify the way in which the applicant proposes to use the traditional knowledge or expression of culture;
- state clearly the purpose for which that use is intended; and
- be accompanied by the prescribed fee.

The enacting country will need to make regulations to prescribe the form of the application and the amount of the application fee.

Clause 15(3) provides that the Cultural Authority must finalise the application in accordance with Part 4 within a specified time. The time is left blank for insertion by the enacting country.

Clause 15(4) provides that if the Cultural Authority does not finalise the application within the specified time, the traditional owners are deemed not to have consented to the proposed use.

### **Clause 16 - Public notification**

This clause describes what steps the Cultural Authority must take upon receipt of an application, to ensure that interested persons are informed of the application.

Clause 16(1) provides that the Cultural Authority must:

- give a copy of the application to those persons (if any) who it is satisfied are the traditional owners of the traditional knowledge or expressions of culture to which the application relates; and
- publish a copy of the application in a nationally circulated newspaper and if appropriate, broadcast details of the application on radio or television. Whether publishing or broadcasting, the Cultural Authority must specify how interested persons can obtain a copy of the application.

A person who claims to be a traditional owner must, pursuant to clause 16(2), advise the Cultural Authority within 28 days after the application is published or broadcast. This advice can be given either orally or in writing. The Cultural Authority must then record this advice in writing (clause 16(3)).

### **Clause 17 - Identification of traditional owners**

This clause provides that if the Cultural Authority is satisfied that it has identified all of the traditional owners, it must make a written determination containing such details as would identify the traditional owners.

Clause 17(2) requires the Cultural Authority to publish a copy of this determination in a nationally circulated newspaper and, if appropriate, broadcast details of the determination on radio or television.

The determination may subsequently be used as a defence by a person in respect of certain offences or civil actions under the Act. This defence is discussed further in the notes on clause 32.

### **Clause 18 - Uncertainty or dispute about ownership**

This clause deals with situations where there is uncertainty or a dispute about the ownership of traditional knowledge or expressions of culture.

Clause 18(1) provides that where the Cultural Authority is not satisfied that it has identified all of the traditional owners or where there is a dispute about ownership, it must refer the matter to the parties concerned to resolve the matter according to customary law and practice or such other means as is agreed to by the parties.

Once the traditional owners have been identified in accordance with customary law or practice or such means as have been agreed to, clause 18(2) requires the traditional owners to advise the Cultural Authority. The Cultural Authority must then make a written determination containing such details as to identify the traditional owners.

Clause 18(3) requires the Cultural Authority to publish a copy of this determination in a nationally circulated newspaper and, if appropriate, broadcast details of the determination on radio or television.

### **Clause 19 - No traditional owners or no agreement about ownership**

This clause deals with situations where traditional owners cannot be identified or where agreement on traditional owners cannot be reached.

Clause 19(1) enables the Cultural Authority to make a determination that the Cultural Authority is, for the purposes of the Act, the owner of the traditional knowledge or expressions of culture concerned if it is satisfied that:

- no traditional owners can be identified; or
- no agreement about ownership has been reached within a certain time period, ie the time specified in clause 15(3).

Such a determination can only be made following consultation with the Minister responsible for the administration of the Act.

If the Cultural Authority subsequently enters into an authorised user agreement with the applicant, clause 19(2) provides that any resulting benefits, either monetary or non-monetary, must be used for traditional cultural development purposes.

Clause 19 represents a particular policy position, ie that the State can assume ownership of traditional knowledge or expressions of culture in certain situations, which may not be appropriate in some countries. It is a matter for the enacting country to determine the most appropriate way of dealing with applications for use of traditional knowledge or expressions of culture where its owners cannot be identified or where its ownership cannot be clarified.

### Division 3 – Authorised user agreements

This division deals with the processing of an application once the issue of ownership of traditional knowledge or expressions of culture has been dealt with under Division 2.

#### **Clause 20 - Application to be rejected or negotiations for agreement**

This clause provides that traditional owners must either:

- reject the application to use their traditional knowledge or expressions of culture; or
- accept the application and enter into negotiations for a written ‘authorised user agreement’. The requirements of an authorised user agreement are set out in clause 22.

Clause 20(2) requires the traditional owners to notify the Cultural Authority of their decision, either orally or in writing. The Cultural Authority must then advise the applicant in writing of that decision (clause 20(3)).

#### **Clause 21 - Proposed agreement to be referred to Cultural Authority**

This clause describes what the traditional owners must do before entering into an authorised user agreement. The clause provides a mechanism for ensuring that traditional owners do not enter into a proposed authorised user agreement that may not be in their interests.

Clause 21(1) provides that traditional owners must refer a proposed authorised user agreement to the Cultural Authority for its comment on the proposed terms and conditions of the agreement.

Clause 21(2) enables the Cultural Authority to request a meeting between the applicant and the traditional owners to discuss the proposed agreement if the Cultural Authority is satisfied that:

- the traditional owners do not have sufficient information to make a full and informed decision about the proposal; or
- the proposed terms and conditions do not adequately protect the traditional knowledge and expressions of culture of the traditional owners.

The model law recognises that it is the prerogative of traditional owners to make a final determination on the proposed agreement and, accordingly, clause 23(3) provides that the traditional owners may accept, reject or modify any comments made by the Cultural Authority in relation to the proposed agreement.

#### **Clause 22 - Terms and conditions**

This clause sets out a list of terms and conditions which should be included in an authorised user agreement.

#### **Clause 23 - Authorised user agreement and prior and informed consent**

Clause 23(1) provides that if a prospective user and the traditional owners enter into an authorised user agreement the traditional owners are deemed to have given their prior and informed consent to the proposed use.

Clause 23(2) provides that the traditional owners must advise the Cultural Authority and provide it with a copy of the final agreement. Clause 23(3) requires the Cultural Authority to keep a register of final authorised user agreements. The form and content of the register is a matter for the Cultural Authority to determine. The register ensures that there is a record of authorised use. The register may also assist in future identification of the ownership of traditional knowledge and expressions of culture.

#### **Clause 24 - No authorised user agreement reached**

This clause deals with situations where the applicant and traditional owners cannot reach agreement on the terms of an authorised user agreement.

Clause 24(1) provides that the traditional owners must advise the Cultural Authority, either orally or in writing, if they cannot agree on the terms and conditions of a proposed authorised user agreement. Clause 24(3) requires the Cultural Authority to record this advice in writing. The Cultural Authority must also advise the applicant in writing that the traditional owners have rejected the proposed authorised user agreement (clause 24(2)).

## **Division 4 – Applications not made under this Part**

### **Clause 25 - Procedure for applications**

Clause 25(1) makes it clear that a prospective user can directly contact the relevant traditional owners to obtain their prior and informed consent without applying to the Cultural Authority. However, the clause also provides a role for the Cultural Authority in such situations, so as to ensure that the Cultural Authority is informed of all proposals for use of traditional knowledge or expressions of culture made under the Act and to provide certain safeguards for traditional owners.

Where a prospective user deals directly with traditional owners, he or she must:

- advise the Cultural Authority that he or she has sought the prior and informed consent of the traditional owners;
- provide the Cultural Authority with a copy of the authorised user agreement between the prospective user and the traditional owners for comment and advice about other traditional owners. This requirement cannot be contracted out of. Furthermore, if a copy of the agreement is not provided to the Cultural Authority, clause 25(6) renders the agreement null and void; and
- provide the Cultural Authority with a copy of the signed authorised user agreement, for entry in the register within 28 days after the agreement comes into force.

Clause 25(5) provides that traditional owners are deemed to have given their prior and informed consent to the proposed use if they enter into an authorised user agreement with a prospective user.

## **Part 5 – Enforcement**

### **Division 1 – Offences**

This Division creates certain offences in relation to the use of traditional knowledge and expressions of culture. The clauses leave blank the maximum amount of the fines and the maximum terms of imprisonment for insertion by the enacting country.

#### **Clause 26 - Offence in relation to traditional cultural rights**

This clause creates an offence where a person uses traditional knowledge or expressions of culture in a non-customary way without the prior and informed consent of the traditional owners. The offence is punishable on conviction by a fine and/or imprisonment.

A defence to this offence is provided in clause 32.

#### **Clause 27 - Offence in relation to moral rights**

This clause creates an offence where a person either acts or makes an omission that is inconsistent with the moral rights of the traditional owners in relation to traditional knowledge or expressions of culture. The act or omission must have been done without the prior and informed consent of the traditional owners. The offence is punishable on conviction by a fine and/or imprisonment.

A defence to this offence is provided in clause 32.

### **Clause 28 - Offence in relation to sacred-secret material**

This clause creates an offence where a person uses ‘sacred-secret’ traditional knowledge or expressions of culture in a non-customary way. ‘Sacred-secret’, as defined by clause 4, means any traditional knowledge or expressions of culture that have a secret or sacred significance according to the customary laws and practices of the traditional owners concerned. The offence is punishable on conviction by a fine and/or imprisonment.

### **Clause 29 - Offences in relation to importation and exportation**

Clause 29(1) creates an offence where:

- (a) a person imports into the enacting country an article or other thing that relates to traditional knowledge or expression of culture of that country;

and

- (b) the person knew, or ought reasonably to have known, that the item would have contravened the traditional cultural or moral rights of the traditional owners had it been created in the enacting country.

For example, it would be an offence for a person to import from country ‘B’ into country ‘A’ T-shirts bearing a motif, being an expression of culture from ‘A’, if the person knew or ought reasonably to have known that, had the T-shirts been made in ‘A’, the reproduction of the motif would have required the prior and informed consent of the traditional owners under the Act.

Clause 29(2) creates an offence where a person exports, without the prior and informed consent of the traditional owners, traditional knowledge or expressions of culture and the export is a non-customary use.

The offences created by clause 29(1) and 29(2) are punishable on conviction by a fine and/or imprisonment.

## **Division 2 – Civil actions**

This Division sets out the civil claims which may be instituted by traditional owners in respect of breaches of their traditional cultural rights and moral rights and the available remedies. The clauses leave blank the name of the court in which the claim may be instituted for insertion by the enacting country.

### **Clause 30 - Civil claims**

Clause 30(1) provides that traditional owners may institute court proceedings against a person who makes a non-customary use of their traditional knowledge or expressions of culture where the traditional owners have not given their prior and informed consent to that use.

Clause 30(2) provides that traditional owners may institute court proceedings against a person who does an act or makes an omission in relation to traditional knowledge or expressions of culture that is inconsistent with the owners’ moral rights and without the prior and informed consent of the owners.

In each case, traditional owners may seek all or any of the relief set out in clause 31. A defence to

both types of claim is provided in clause 32.

### **Clause 31 - Remedies**

This clause sets out the range of remedies that a court may grant in relation to civil proceedings for contravention of traditional cultural rights or moral rights. These remedies include injunctions, damages for loss resulting from unauthorised use and declarations that the traditional cultural rights of the traditional owners have been contravened.

Clause 31(2) sets out a list of factors which the court may take into account in deciding the appropriate relief. As such, this clause provides a court flexibility in deciding the most appropriate remedy or remedies taking into account the particular circumstances of a case, including the nature of any unauthorised use and its subsequent effect, the costs involved and any actions taken by the defendant to mitigate any negative effects of the contravening acts or omissions. For example, in relation to contraventions of moral rights, a public apology by the defendant to the traditional owners may, in some circumstances, be a more appropriate and meaningful remedy than an award of damages.

## **Division 3 – Defences and other matters**

### **Clause 32 - Defences**

This clause provides a defence to criminal offences under clauses 26 or 27 and civil actions under clauses 30(1) or 30(2). It is a defence if a determination has been published under clause 17 and the traditional owners specified in that determination have given their prior and informed consent to the use in question. The determination is that made by the Cultural Authority which identifies and contains the details of all the traditional owners in respect of traditional knowledge or expressions of culture for which an application by a prospective user has been made.

For example, traditional owner ‘A’ may initiate proceedings against a person pursuant to clause 30(1), alleging that the person has used an expression of culture owned by ‘A’ without its prior and informed consent. If the person had applied to the Cultural Authority under Part 4 and received a determination stating that the expression of culture was owned by traditional owners ‘B’ and ‘C’ and if the person had subsequently obtained the prior and informed consent of ‘B’ and ‘C’, the person could accordingly plead that determination by way of defence against the claim by ‘A’.

### **Clause 33 - Other mechanisms to resolve disputes**

Clause 33 provides that nothing in Part 5 prevents the traditional owner or the other party concerned from attempting to resolve a dispute using mechanisms other than court proceedings. The clause refers specifically to mediation, alternative dispute resolution procedures and customary law and practices. This clause recognises that there are appropriate and effective means for resolving a dispute outside of the court process.

### **Clause 34 - Other rights of action and remedies**

This clause provides that Part 5 does not affect any rights of action or other remedies, whether civil or criminal, provided for under other Acts or laws. This clause makes clear that the offences and rights of action created by the Act are in addition to other offences and rights of action that might

arise in respect of dealings with traditional knowledge and expressions of culture. For example, traditional owners could also sue for breach of contract if a person breached the terms of an authorised user agreement which he or she had entered into with the traditional owners.

## **Part 6 – Transitional arrangements**

### **Clause 35 - Procedure for transitional arrangements**

This clause deals with the situation of a person who is making a non-customary use of traditional knowledge or an expression of culture at the time the Act commences.

Clause 35(2) provides that the Act does not apply to the person during the period of 60 days following the commencement of the Act. The 60 day period is termed the ‘application period’. Clause 35(3) requires the person who wants to continue to use traditional knowledge or an expression of culture in a non-customary way to apply to the Cultural Authority within the application period to obtain the prior and informed consent of the traditional owners.

If the person does not apply to the Cultural Authority, clause 35(4) provides that the Act applies to the person on and after the end of the application period. If the person has applied to the Cultural Authority, clause 35(5) provides that the Act will not apply to the person until either the traditional owners reject the application or enter into an authorised user agreement with the person.

## **Part 7 – Cultural Authority**

Part 7 deals with the Cultural Authority which is the body referred to in Part 4. The model law does not include provisions for creating a new statutory body as enacting countries may have existing legislation that they can use to form a new statutory body or to assign an existing body if needed.

### **Clause 36 – Designation of Cultural Authority**

This clause empowers the Minister responsible for the Act to designate an existing or new body to perform the functions of the Cultural Authority. It is a decision for the enacting country whether to establish a new statutory body or use an existing body as its Cultural Authority.

### **Clause 37 – Functions of the Cultural Authority**

Clause 37 sets out possible functions of the Cultural Authority. Enacting countries are able to adopt, adapt or amend the list of functions to suit their particular circumstances.

## **Part 8 – Miscellaneous**

### **Clause 38 - Regulations**

This clause provides that the Minister responsible for the Act may make regulations as required or permitted by the Act for carrying out or giving effect to the Act. For example, regulations are



necessary to prescribe the form of the application which prospective users submit to the Cultural Authority and the amount of the fee to accompany the application.

**Clause 39 - Recognition of other laws**

This clause provides that, in accordance with reciprocal arrangements, the Act may provide the same protection to traditional knowledge and expressions of culture which originate in other countries as is provided to traditional knowledge and expressions of culture originating in the enacting country.

In other words, country 'A' may enter into a reciprocal arrangement with country 'B' whereby 'A' agrees to extend the same protection to traditional knowledge and expressions of culture originating from 'B' (but present in 'A') as is provided by the Act to traditional knowledge and expressions of culture originating in 'A', and vice versa. For example, under such an arrangement, an expression of culture, such as a sculpture, which was brought from 'B' into 'A' for an exhibition, would be protected while in 'A' in the same way as a sculpture, being an expression of culture of 'A', is protected under the Act in 'A'.





For more information contact the:  
**World Intellectual Property Organization (WIPO)** at

**Address:**

34, chemin des Colombettes  
P.O. Box 18  
CH-1211 Geneva 20  
Switzerland

**Telephone:**

+41 22 338 91 11

**Fax:**

+41 22 740 54 28

Visit the WIPO website at:

<http://www.wipo.int>

and order from the WIPO Electronic Bookshop at:

[www.wipo.int/ebookshop](http://www.wipo.int/ebookshop)

## **Secretariat of the Pacific Community**

**Address:**

BP D5  
Noumea Cedex  
New Caledonia  
98848

**Telephone:**

+687 262000

**Fax:**

+687 263818

**E-mail:**

[spc@spc.int](mailto:spc@spc.int)