



PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

INTELLECTUAL PROPERTY ACT, No. 36 OF 2003

[Certified on 12th November, 2003]

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L.D.—O. 54/2002.

AN ACT TO PROVIDE FOR THE LAW RELATING TO INTELLECTUAL PROPERTY AND FOR AN EFFICIENT PROCEDURE FOR THE REGISTRATION, CONTROL AND ADMINISTRATION THERE OF ; TO AMEND THE CUSTOMS ORDINANCE (CHAPTER 235) AND THE HIGH COURT OF THE PROVINCES (SPECIAL) PROVISIONS ACT, NO. 10 OF 1996 ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Intellectual Property Act, No. 36 of 2003. Short title.

PART I

ADMINISTRATION

2. (1) There shall be a person to be or to act as the Director-General of Intellectual Property of Sri Lanka (hereinafter referred to as the “Director-General”). Appointment and powers of the Director-General.

(2) The Director-General shall—

- (a) be vested with the power of implementation of the provisions of this Act, the control and superintendence of the registration and administration of Industrial Designs, Patents, Marks and of any other matter as provided by the Act, and the supervision and control of all persons appointed for, or engaged in, the implementation of the provisions of this Act ; and
- (b) take all necessary steps to promote and encourage national awareness of the subject of Intellectual Property including copyright and related rights by organisation of exhibitions, contests, seminars and publications and by promoting and encouraging the establishment and proper functioning of organisations or societies to protect and administer copyright and related rights under Part II of the Act.

(3) The Director-General shall comply with the general policy of the government with respect to subject of intellectual property and with any general or special directions issued by the Minister in relation to such policy.

Director and
Deputy Directors.

3. (1) There may from time to time be appointed a fit and proper person or persons, to be or to act as Director of Intellectual Property and such other Deputy Directors for the proper implementation and administration of the provisions of this Act.

(2) Any person so appointed may exercise, perform and discharge any power, duty or function expressly conferred or imposed upon the Director or the Deputy directors, as the case may be, and may, subject to the directions of the Minister and under the authority and control of the Director-General, exercise, perform and discharge any powder, duty or function conferred or imposed upon the Director-General by or under this Act.

(3) There shall be appointed such other officers and servants as may be necessary for the administration of the Act.

Office and
maintenance of
registers.

4. (1) There shall be an office called the National Intellectual Property Office of Sri Lanka (hereinafter referred to as the "Office"). Such office shall be the sole office in Sri Lanka for the registration and administration of Industrial designs, patents, marks and any other matter as provided by the Act.

(2) All registers required to be kept and maintained under the provisions of this Act shall be kept and maintained under the supervision of the Director-General at the Office and such registers shall be the only legally recognized registers in Sri Lanka for the registration of industrial designs, patents, marks and any other matter as provided by the Act.

PART II

CHAPTER I

COPYRIGHT

5. For the purposes of this Part—

Interpretation.

“audiovisual work” means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds susceptible of being made audible ;

“author” means the physical person who has created the work ;

“broadcasting” means the communication of a work, a performance or a sound recording to the public by wireless transmission, including transmission by satellite ;

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

“communication to the public” means the transmission to the public by wire or without wire of the images or sounds, or both, of a work, a performance or a sound recording including the making available to the public of a work, performance or sound recording in such a way that members of the public may access them from a place and at a time individually chosen by them ;

“computer” means an electronic or similar device having information processing capabilities ;

“computer program” is a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result ;

“economic rights” means the rights referred to in section 9 ;

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

- (a) folktales, folk poetry, and folk riddles ;
- (b) folk songs and instrumental folk music ;
- (c) folk dances and folk plays ;
- (d) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, handicrafts, costumes, and indigenous textiles ;

“infringement” means an act that violated any right protected under this Part ;

“moral rights” means rights referred to in section 10 ;

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

“photographic work” means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made, a still picture extracted from an audiovisual work shall not be considered a “photographic work” but a part of the audiovisual work concerned ;

“producer” of an audiovisual work or a sound recording means the physical person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording ;

“public display” means the showing of the original or a copy of a work—

- (a) directly ;
- (b) by means of a film, slide, television image or otherwise on screen ;
- (c) by means of any other device or process ; or
- (d) in the case of an audiovisual work, the showing of individual images nonsequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time or at different places or times, and where the work can be displayed without communication to the public within the meaning of the definition of the expression “Communication to the Public”;

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

“public performance” means—

- (a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work in public either directly or by means of any device or process ;
- (b) in the case of an audiovisual work, the showing of images in sequence or the making of accompanying sound audible in public ; and
- (c) in the case of a sound recording, making the recording sounds audible at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the performance can be perceived without the need for communication to the public within the meaning of the definition of the expression “communication to the public” ;

“published” means a work or a sound recording—

- (a) copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for transfer of the ownership or the possession of the copies ; or
- (b) which has been made available to the public by means of an electronic system :

Provided that, in the case of a work, the making available to the public took place with the consent of the owner of the copyright, and in the case of a sound recording, with the consent of, the producer of the sound recording or his successor in title ;

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

“reproduction” means the making of one or more copies of a work or sound recording in any material form, including any permanent or temporary storage of a work or sound recording in electronic form ;

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

“work” means any literary, artistic or scientific work referred to in section 6 ;

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

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

6. (1) The following works shall be protected as literary, artistic or scientific work (hereinafter referred to as “works”) which are original intellectual creations in the literary, artistic and scientific domain, including and in particular—

Works protected.

- (a) books, pamphlets, articles, computer programs and other writings ;
- (b) speeches, lectures, addresses, sermons and other oral works ;

- (c) dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions ;
- (d) stage production of works specified in paragraph (c) and expressions of folklore that are apt for such productions ;
- (e) musical works, with or without accompanying words ;
- (f) audiovisual works ;
- (g) works of architecture ;
- (h) works of drawing, painting, sculpture, engraving, litho-graphy, tapestry and other works of fine art ;
- (j) photographic works ;
- (k) works of applied art ;
- (l) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

(2) The works specified in subsection (1) of this section shall be protected by the sole fact of their creation and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Derivative works.

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

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

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

8. Notwithstanding the provisions of sections 6 and 7, no protection shall be extended under this Part —

Works not protected.

- (a) to any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work ;
- (b) to any official text of a legislative, administrative or legal nature, as well as any official translation thereof ;
- (c) to news of the day published, broadcast, or publicly communicated by any other means.

9. (1) Subject to the provisions of sections 11 to 13 the owner of copyright of a work shall have the exclusive right to carry out or to authorize the following acts in relation to the work —

Economic rights.

- (a) reproduction of the work ;
- (b) translation of the work ;
- (c) adaptation, arrangement or other transformation of the work ;
- (d) the public distribution of the original and each copy of the work by sale, rental, export or otherwise ;
- (e) rental of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned ;

- (f) importation of copies of the work, (even where the imported copies were made with the authorization of the owner of the copyright) ;
- (g) public display of the original or a copy of the work ;
- (h) public performance of the work ;
- (j) broadcasting of the work ; and
- (k) other communication to the public of the work.

(2) The provisions of subsection (1) of this section shall apply to both the entire work and a substantial part thereof.

(3) The rights of rental in terms of paragraph (e) of subsection (1) shall not apply to rental of computer programs where the program itself is not the essential object of the rental.

(4) Notwithstanding the provisions of paragraph (d) of subsection (1), the owner of a work or a copy of a work lawfully made or any person authorized in that behalf by such owner, is entitled without the authority of the owner of the copyright, to sell or otherwise dispose of that copy.

Moral Rights.

10. (1) The author of a work shall independently of his economic rights and even where he is no longer the owner of those economic rights, have the following rights :—

- (a) to have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable ;
- (b) the right to use a pseudonym and not have his name indicated on the copies and in connection with any public use of his work ;
- (c) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honour or reputation.

(2) No right mentioned in subsection (1) shall be transmissible during the life time of the author, however on the death of the author, the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances to which the waiver applies :

Provided that where any waiver of the rights under paragraph (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived, subsequent to the death of the author, the physical person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

11. (1) Notwithstanding the provisions of subsection (1) of section 9, the fair use of a work, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, shall not be an infringement of copyright.

Fair use.

(2) The following factors shall be considered in determining whether the use made of a work in any particular case is fair use :—

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes ;
- (b) the nature of the copyrighted work ;
- (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole ; and
- (d) the effect of the use upon the potential market for, or value of, the copyrighted work.

(3) The acts of fair use shall include the circumstances specified in section 12.

Act of fair use.

12. (1) Notwithstanding anything contained in paragraph (a) of subsection (1) of section 9 and subject to the provisions of subsection (2) of this section, the private reproduction of a published work in a single copy shall be permitted without the authorization of the owner of the copyright, where the reproduction is made by a physical person from a lawful copy of such work exclusively for his own personal purposes.

(2) The permission under subsection (1) of this section shall not be extended to the reproduction—

- (a) of a work of architecture in the form of a building or other constructions ;
- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notations ;
- (c) of the whole or a substantial part of a data base ;
- (d) of a computer program, except as provided in subsection (7) ; and
- (e) of any work, in case the reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the owner of the copyright.

(3) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, the reproduction, in the form of a quotation, of a short part of a published work shall be permitted without authorization of the owner of copyright :

Provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction. The quotation shall be accompanied by an indication of the source and the name of the author, if his name appears in the work from which the quotation is taken.

(4) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, the following acts shall be permitted without the authorization of the owner of the copyright :—

- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction;
- (b) the reprographic reproduction for face to face teaching in any educational institution the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions :

Provided however the source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under this subsection.

(5) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, any library or archives, whose activities do not serve any direct or indirect commercial gain may, without the authorization of the owner of copyright, make a single copy of the work by reprographic reproduction—

- (a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a physical person :

Provided that—

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

- (ii) the act of reproduction is an isolated occurrence, occurring if repeated, on separate and unrelated occasions ;
- (b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archives :

Provided that it is not possible to obtain such a copy under reasonable conditions ; and

Provided further, that the act of reprographic reproduction is an isolated occurrence occurring if repeated, on separate and unrelated occasions.

(6) Notwithstanding the provisions of paragraphs (a), (h) and (j) of subsection (1) of section 9, and subject to the condition that the source and the name of the author is indicated as far as practicable, the following acts shall be permitted in respect of a work without the authorization of the owner of copyright—

- (a) the reproduction in a newspaper or periodical, manner of broadcasting or other manner of communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast or communication relating to the same, and such permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies, by the owner of copyright, or in connection with broadcasting or other communication to the public of the work ;
- (b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a

work seen or heard in the course of such events, to the extent that it is justified by the purpose of such reproduction;

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

(7) (a) Notwithstanding anything contained in paragraphs(a) and (c) of subsection (1) of section 9, reproduction in a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer programme, shall be permitted without the authorization of the owner of copyright provided that the copy or adaptation is necessary—

- (i) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained ;
- (ii) for archival purposes and for replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

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

(8) Notwithstanding the provisions of paragraph (f) of subsection (1) of section 9, the importation of a copy of a work by a physical person for his own personal purposes shall be permitted without the authorization of the owner of copyright.

(9) Notwithstanding anything contained in paragraph (g) of subsection (1) of section 9, the public display of originals or copies of works shall be permitted without the authorization of the owner of copyright :

Provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process :

Provided further, the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

(10) Notwithstanding anything contained in this Part, the following shall not be an infringement of copyright :—

- (a) the performance or display of a work for educational or teaching purposes by government or non profit educational institutions, in classrooms or similar places set aside for education :

Provided that, in the case of an audiovisual work, the performance or the display of individual images, is given by means of a lawfully made copy, or the person responsible for the performance did not know or had no reason to believe that the copy was not lawfully made.

- (b) the communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus, of a kind commonly used in private homes, unless —
 - (i) a direct charge is made to see or hear the transmission ; or
 - (ii) the transmission thus received is further transmitted to the public.

13. (1) Subject to the provisions of subsections (2), (3), (4) and (5), the economic and moral rights shall be protected during the life time of the author and for a further period of seventy years from the date of his death.

Duration of
copyright.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for a further period of seventy years from the date of the death of the last surviving author.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights shall be protected for seventy years from the date on which the work was first published, or failing publication within seventy years from the making of the work.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for seventy years from the date on which the work was first published :

Provided that, where the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2) shall apply, as the case may require.

(5) In the case of work of applied art, the economic and moral rights shall be protected for twenty-five years from the date of the making of the work.

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

14. (1) Subject to the provisions of subsections (2), (3), (4) and (5), of this section, the author who created the work shall be the original owner of economic rights.

Original
ownership of
economic rights.

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

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

(4) In respect of a work created by an author employed by a physical person or legal entity in the course of his employment, the original owner of the economic rights shall, unless provided otherwise by way of a contract, be the employer. If the work is created pursuant to a commission, the original owner of economic rights shall be, unless otherwise provided in a contract, the person who commissioned the work.

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

Presumption of authorship and of representation of the author.

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

(2) The physical person or legal entity whose name appears on an audio-visual work shall, in the absence of proof to the contrary, be presumed to be the producer of the said work.

16. (1) The owner of a copyright may -

Assignment or
licence of
author's rights.

- (a) grant licence to a physical person or legal entity to carry out all or any of the acts relating to the economic rights referred to in section 9 ;
- (b) assign or transfer in whole or any part of the economic rights referred to in section 9.

(2) Any assignment or transfer of an economic right, and any licence to do such an act subject to authorization by the owner of the copyright, shall be in writing signed by the assignor and the assignee, transferor and the transferee or by the licensor and the licensee, as the case may be.

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

CHAPTER II

RELATED RIGHTS

[PROTECTION OF RIGHTS OF PERFORMERS, PRODUCERS OF SOUND
RECORDING AND BROADCASTING ORGANIZATION]

17. (1) Subject to the provisions of section 21, a performer shall have exclusive right to carry out or to authorize any of the following acts :—

Rights requiring
authorization of
performers.

- (a) the broadcasting or other communication to the public of his performance or a substantial part thereof, except where the broadcasting, or the other communication—
 - (i) is made from a fixation of the performance, other than a fixation made in terms of section 21 ; or