

The Copyright Act, 2059 (2002)

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1. Amendment by Some Nepal Acts relating to Export and Import and Intellectual Property Act, 2063 2063.8.8

Act number 8 of the year 2059 (2002)

An Act Made to Provide for Copyright

Preamble: Whereas, it is expedient to update the legal provisions relating to copyright;
Now, therefore, be it enacted by Parliament in the first year of reign of His Majesty the King Gyanendra Bir Bikram Shah Dev.

Chapter - 1

Preliminary

1. **Short title and commencement:** (1) This Act may be called as the "Copyright Act, 2059 (2002).
(2) This act shall come into force immediately.
2. **Definitions:** Unless the subject or the context otherwise require, in this Act,-

- (8) Work of applied art,
- (9) Illustration, map, plan, three-dimensional work relating to geography, and scientific article and work,
- (10) Computer program.
- (b) "Author" means a person who creates a work as referred to in clause (a) above.
- (c) "Audio-visual work" means a cinematographic work that can be viewed in screen, with or without sound.
- (d) "Photographic work" means a work produced by using light or any other radiation recorded in the surface in such a manner that the image (picture) of any thing can be set in the surface or that the image (picture) can be created from such surface with the help of chemical, electrical or any other technology.

Provided, however, that a still photography taken from any audio-visual work shall not be considered as a photographic work but as a part of the concerned audio-visual work.

- (e) "Sound recording" means the act of recording of sound of any performance recorded in any manner and with any method whatsoever for the purpose of hearing, except the act of recording sound and image at the same time.
- (f) "Performance" means,-
 - (1) In the case of work other than the audio-visual work, performance made through recitation, playing music, dancing, acting or any other manner, directly or with the help of any other device or method,
 - (2) In the case of the audio-visual work, sequential video clipping of the scene contained in such a work, along with sound for hearing purpose,

- (3) In the case of the sound recording, act of performance made outside the family circle, neighbors, friends or relatives or made in such manner that it can be heard publicly despite the presence of such persons.
- (g) "Economic right" means the rights conferred on the copyright owner pursuant to Section 7.
- (h) "Copyright owner" means the author of a work in cases where the economic right of that work is vested in that author, a person or organization in cases where the economic right of the work is primarily vested in the person or organization other than the author, and a person or organization, in cases where the economic right of the work is transferred to that person or organization.
- (i) "Broadcasting" means communication or exhibition of a work for public information or broadcasting of audio or audio-visual work through wireless equipment or satellite.
- (j) "Communication to the public" means the act of broadcasting and audio or visual broadcasting or both either by wire or wireless equipment in such a manner that it can be heard or viewed staying near or far from the place of broadcasting.
- (k) "Moral right" means the right to be conferred to the author or his successor or any person authorized by the author pursuant to Section 8.
- (l) "Performer" means any actor, singer, musician, dancer and other person who performs a literary or artistic work or folklore expression to the general public through acting, singing, music and dancing.
- (m) "Publication" means:
- (1) In the case of a work of drama, motion picture, or work performed in any other manner, the shows, sale or rental of such a work publicly with or without translating or altering it,
 - (2) In the case of any other work, the work which has been publicly sold, distributed or utilized or so brought out as to be sold and

distributed or utilized publicly, with or without translating or altering it; and, in the case of a work that can be exhibited through acting, this term includes its exhibition in a public manner with or without translating or altering it.

- (n) "Registrar" means the person specified pursuant to Sub-section (1) of Section 30.
- (o) "Royalty collecting body" means the body formed pursuant to Section 39.
- (p) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

Chapter-2

Acquisition and Protection of Copyright

3. **Protection of copyright:** (1) Copyright protection shall be extended to any work.

(2) Any translation, arrangement, sequential arrangement of work or collection of works presented as original from viewpoint of presentation, collection or expression, data or database readable with or without support of machine, any proverb, folktale, folk song falling under folk expression or any other derivate works based on folk expression shall be protected as original work, without prejudice to the copyright of the original work.
4. **Non-availability of copyright protection:** Notwithstanding anything contained in Section 3, copyright protection under this Act shall not be extended to any thought, religion, news, method of operation, concept, principle, court judgment, administrative decision, folksong, folktale, proverb and general data despite the fact that such matters are expressed or explained or interpreted or included in any work.
5. **Registration not compulsory:** (1) Registration of a work, sound recording, performance or broadcasting shall not be required to acquire the right under this Act.

(2) Notwithstanding anything contained in sub-section (1), in cases where any person intends to get any work, sound recording, performance or broadcasting registered voluntarily, that person may make an application to the Registrar and get the same registered; and the procedures on registration shall be as prescribed.

6. **Owner of economic right of work:** (1) The author of a work shall be the first owner of the economic right of that work.

(2) Notwithstanding anything contained in Sub-section (1), the economic right of a work shall vest in the following person or organization in the following circumstances:-

(a) Co-author in the case of a joint work;

Provided, however, that where such a joint work is divided in different parts and each part can be identified as of different authors and the work can be used separately, the economic right shall vest in the concerned author in respect of each part created by that author.

(b) In cases where a joint work is prepared at the initiation or direction of any person or organization, that person or organization at whose direction or initiation such a work has been so prepared,

(c) In case where a work is prepared on payment of remuneration by any person or organization, that person or organization who has paid such remuneration,

(d) In the case of an anonymous work, the publisher of that work, until the authorship of such a work is proved.

Provided, however, that in cases where the real author of such a work presents his/her identity subsequently, the economic right of that work shall vest in that author from the date of presentation of his/her identity.

- (e) In the case of an audio-visual work, the producer of such a work except as otherwise provided for in the contract.

Provided, however, that in case where the work of the co-author of an audio-visual work or a pre-existing work is incorporated or adapted in making the audio-visual work, their economic right shall be according to their respective contribution.

7. **Economic Right:** Subject to provisions of Chapter-4, only the author or the owner of copyright shall have the exclusive right to carry out the following acts in respect of the work:

- (a) To reproduce the work,
- (b) To translate the work,
- (c) To revise or amend the work,
- (d) To make arrangement and other transformation in the work,
- (e) To sell, distribute or rent the original and copy of the work for the general public,
- (f) To transfer or rent the right of audiovisual work, work embodied in sound recording, computer program or musical work in graphic form conferred to that author or owner,
- (g) To import copies of the work,
- (h) To have public exhibition of the original or copy of the work,
- (i) To perform the work in public,
- (j) To broadcast the work,
- (k) To communicate the work to the general public.

8. **Moral right:** (1) The author of a work shall have the following moral rights, irrespective of whether that author has the economic right to that work:

- (a) To get his/her name mentioned in copies of the work or in his/her work where it is used publicly,

- (b) In cases where, instead of his/her real name, a pseudonym is mentioned in his work, then to get that pseudonym mentioned while using such a work publicly,
- (c) To prevent such acts as undermining the reputation or goodwill earned by him/her, by mutilating his/her work or presenting it in a distorting manner,
- (d) To make necessary amendment or revision in the work.

(2) The right referred to in sub-section (1) shall not be transferable during the life of the author.

Provided, however, that where the author has nominated any one whom such right is to be transferred after the death of the author, such right shall devolve on the person or organization so nominated, and on the nearest heir, failing such nomination.

9. Rights of performer: (1) The performer shall have the right to perform the following acts:-

- (a) To take one's performance to the general public through broadcasting or communication,
- (b) To determine modality or medium of making one's performance and reproduce it,
- (c) To take one's performance to the general public for the first time by making performance or selling or transferring copies thereof or changing ownership,
- (d) To rent copies of one's performance,
- (e) To take the performance produced through the determined modality or medium to the general public in an easily available manner, through wire or wireless equipment,
- (f) To amend or revise one's performance.

(2) The performer shall not be allowed to re-exercise the rights mentioned in Sub-section (1) once he/she has authorized his/her performance to be incorporated in audio-visual medium.

(3) Notwithstanding anything contained in Sub-section (2), the performer shall have the right to have his/her identity maintained as the performer of direct audio performance as well as of the performance incorporated in the sound recording and to make a claim for the same, and, where any person has so mutilated or distorted his/her performance or otherwise deformed his performance by mutilating the meaning as to prejudice his/her reputation or goodwill, to prevent such acts.

(4) Nothing mentioned in this Section shall be deemed to have any effect on the right of a performer to enter into, or to be agreed on, an agreement with such terms as may yield much more benefits or facilities to him/her from the performance.

(5) The right conferred to the performer pursuant to this Section shall be protected for a period of fifty years from the year of incorporation of performance in sound recording device, and for a period of fifty years from the year of such performance where such incorporation has not been made.

10. Right of sound recording producer: (1) The sound recording producer shall have the following rights:-

- (a) To reproduce the sound recording, directly or indirectly, in any manner or in any form,
- (b) To import copies of the sound recording,
- (c) To make the sound recording easily available by way of sale or ownership transfer or otherwise of the original or copies of the sound recording,
- (d) To rent or lease the sound recording publicly,
- (e) To make the sound recording capable of being heard with wire or wireless equipment from any specific place or from the place of one's own choice or by the general public.

(2) The term of the right referred to in sub-section (1) shall be of fifty years from the year of publication of such a sound recording.

11. **Reasonable remuneration for the use of sound recording:** (1) In cases where a sound recording published for commercial purpose or a reproduced copy of such sound recording is directly used for broadcasting or other communications and is so performed to the people publicly, the producer shall get a reasonable remuneration from the user of the same.

(2) The performer shall get the remuneration as per the agreement, in any, made between the performer and the producer on the remuneration referred to in Sub-section (1), and half the amount received by the producer where no such agreement is made.

(3) The term of the right to receive reasonable remuneration under Sub-section (1) shall be for fifty years from the year of publication of such a sound recording or from the year of adjustment of such a sound recording.

12. **Right of broadcasting organization:** (1) The broadcasting organization shall have the right to carry out the following act:-

(a) To re-broadcast the subject it has broadcast,

(b) To so communicate its broadcast as to make it easily available to the general public,

(c) To make adjustment of its own broadcast,

(d) To reproduce the adjustment of its broadcast.

(2) The term of the right referred to in sub-section (1) shall be for fifty years from the year of commencement of such broadcast.

*13. **Protection of work, performer, sound recording producer or broadcasting organization** : (1) A work of the following author shall enjoy protection under this Act:

* Amendment by the Act Made to Amend Some Nepal Acts relating to Export and Import and Intellectual Property

- (a) A work created by the author residing in Nepal or in a member country of the World Trade Organization and published in the Nepal or in that country,
- (b) An audio-visual work produced by a producer residing in Nepal or in a member country of the World Trade Organization,
- (c) An architectural design of a building made in the Nepal or in a member country of the World Trade Organization or other kind of artistic work used in a building or any other structure,
- (d) A work published in Nepal by an author residing in a country other than Nepal or a member country of the World Trade Organization or an audio-visual work produced in the Nepal by a producer of such other country.

(2) The following performer shall be entitled to the rights relating to performer as referred to in this Act:

- (a) A performer of Nepal or a member country of the World Trade Organization,
- (b) A performer of the performance made in Nepal or in a member country of the World Trade Organization or of the performance contained in the sound recording protected under this Act or of the performance contained in a broadcast even though it is not contained in the sound recording.

(3) The following sound recording producer shall be entitled to the rights relating to sound recording producer as referred to in this Act:

- (a) A sound recording produced by a person in Nepal or a member country of the World Trade Organization,
- (b) A sound recording published in Nepal or in a member country of the World Trade Organization.

(4) The following broadcasting organization shall be entitled to the rights relating to broadcasting organization as referred to in this Act:

- (a) A broadcast by a broadcasting organization with its office in Nepal or in a member country of the World Trade Organization,
- (b) A Broadcast by a broadcasting station situated in Nepal or in a member country of the World Trade Organization.

Chapter: 3

Term of protection of Copyright

14. Term of protection of copyright: (1) The economic and moral rights available to the author under this Act shall be protected throughout the life of the author and in the case of his/her death until fifty years computed from the year of his death.

(2) The economic and moral rights over the work prepared jointly shall be protected for fifty years computed from the year of death of the last surviving author.

(3) The economic and moral right of the work prepared pursuant to Clauses (b) and (c) or Sub-section (2) of Section 6 shall be protected until fifty years from the date of first publication of such work or the date on which the work is made public, whichever is earlier.

(4) The economic and moral right of the work published anonymously or with pseudonym name shall be protected until fifty years from the date of first publication of such work or the date on which the work is made public, whichever is earlier.

Provided, however, that in cases where the name of author is published within that period of time, the protection referred to in Sub-section (1) or (5) shall be available depending on the case.

(5) The economic and moral right of a work relating to applied art and photographic work shall be protected until twenty-five years from the year of preparation of such work.

15. Term of protection of work published after the death of author: Notwithstanding anything contained in Section 14, the work published after the

death of the author where there is only one author of such work and after the death of one of the authors where there are two or more authors shall be protected until fifty years from the year of publication of that work.

Chapter-4

Circumstances where the copyrighted materials can be used without authorization

16. Reproduction allowed for personal purpose: (1) Notwithstanding anything contained in Clause (a) of Section 7, no authorization shall be required from the author or the copyright owner to reproduce some portions of any published work for personal use.

(2) Notwithstanding anything contained in Sub-section (1), no reproduction of an architectural design erected as a building and other construction related design or a significant portion of any book or of a musical work as notation of all or significant portion of a database through digital transmission shall be allowed in a manner to be prejudicial to the economic right of the author or the copyright owner.

17. Citation allowed: Notwithstanding anything contained in Clause (a) of Section 7, some portions of a published work can be cited for fair use without authorization of the author or the copyright owner in a manner not to be prejudicial to the economic right of such author or owner. In making such citation, its source and the author's name, in cases where it appears, shall also be mentioned.

18. Reproduction allowed for teaching and learning: (1) Notwithstanding anything contained in Clause (a) of Section 7, the following acts may be done for teaching and learning activities without authorization of the author or the copyright owner in a manner not to be prejudicial to the economic right of such author or owner:-

(a) To reproduce a small portion of any published work by way of citation, writing or audio-visual aid,

(b) To reproduce, broadcast and exhibit some portions of the work for purposes of educational activities to be performed in the classroom.

(2) All copies reproduced pursuant to Sub-section (1) have to indicate the source and the author's name.

19. Reproduction by library and archives: Notwithstanding anything contained in Clause (a) of Section 7, in cases where a public library or archives, which makes available the work stored in it at the request of a person doing research or study without deriving economic profits directly or indirectly, loses any work with it or such work is destroyed or is old or is incapable of being obtained, it may reproduce one copy of such a work without authorization of the author or the copyright owner of such work.

20. Reproduction, broadcast and other communication allowed for purposes of information to the general public: (1) Notwithstanding anything contained in clauses (a), (i) and (j) of Section 7, the following acts can be done, by mentioning the sources and name of the author of any work, without authorization of the author or the copyright owner of such work.

(a) To print in any newspaper or journal or to make broadcast or other communication to public of any article, article under political or religious topics or similar other broadcasts published in any newspaper or journal.

Provided, however, that such act shall not be prejudicial to the economic right of the author or the copyright owner.

(b) To reproduce, broadcast or otherwise communicate or justify any event with a view to informing the general public about any current event.

(c) To reproduce, broadcast or to make communication to public some portions of any regular newspaper or journal regularly publishing information for communication to the general public or pleadings made on court proceedings with a view to disseminating current information.

(2) Notwithstanding anything contained in Sub-section (1), in cases where the author himself/herself has indicated that his/her work is prohibited from being reproduced, broadcast and other kinds of communications, no reproduction, broadcasting and other communication shall be allowed.

21. **Reproduction of computer program:** Notwithstanding anything contained in Clauses (a) and (c) of Section 7, in cases where the objectives for which a computer program was acquired could not be achieved or with a view to maintaining records or where the computer program acquired legally is lost or destroyed or is incapable of being used, one copy of the computer program can be reproduced without authorization of its author or copyright owner.
22. **Importation allowed for personal purposes:** Notwithstanding anything contained in Clauses (g) of Section 7, one copy of any work can be imported for personal purpose, without authorization of its author or copyright owner.
23. **Public exhibition allowed:** Notwithstanding anything contained in clauses (h) of Section 7, in cases where any person intends to have public display of any work or copy of the work, he may do so without authorization of its author or copyright owner.

Provided, however, that such public display has to be made without the help of film, slide, television image or otherwise using the screen or device of other kind.

Chapter-5

Transfer of Copyright

24. **Transfer of Copyright:** (1) The copyright owner may transfer all or any of the economic rights conferred on him/her to any one by making a written agreement or authorize any one to use the same with or without specifying any terms.

(2) The person entitled to moral rights may, for the protection of moral rights, transfer his moral rights to any one, with effect after his/her death, by making a written agreement, with the terms and conditions that his/her name shall not be removed from the work.

(3) The person to whom the rights are transferred by the copyright owner pursuant to this Section shall not carry out any other activities except the rights so transferred.

Chapter-6

Infringement of Protected Right and Punishment

25. Infringement of protected right: (1) Any one who carries out the following act shall be considered to have infringed the right protected under this Act:-

- (a) To reproduce copies of a work or sound recording and sell and distribute them or publicly communicate or rent them with commercial or any other motive with or without deriving economic benefits without authorization of the author or the copyright owner or by infringing the terms contained in the agreement or license notwithstanding that such authorization has been obtained,
- (b) To do advertisement or publicize by copying a work belonging to another person with a motive of taking advantage of the reputation gained by that work,
- (c) To make work of another subject or nature by changing the form and language of a work belonging to another person with a motive of deriving economic benefit,
- (d) To make an attempt to take benefit by adapting any work directly or indirectly with intention of making the viewer, listener or reader believe it to be another work through advertisement or by any other means,
- (e) To import, produce or rent any equipment or device prepared with intention of circumventing any device designed to discourage the unauthorized reproduction,
- (f) To produce or import, with intent to sell, any equipment facilitating unauthorized reception of a program broadcast by encrypting it in a code language,

- (g) To import, sell, distribute and use a mechanical device prepared with a sole object of infringing the copyright, except those mentioned in Clauses (e) and (f).

(2) No one shall, with knowledge of publication of any work or sound recording or where there is adequate ground to believe it, sell and distribute and rent copies of work or sound recording so published, in contravention of subsection (1).

26. Restriction on the importation of unauthorized copies: Importation of copies of work or sound recording, either made in a foreign country or sourced otherwise, into Nepal for business purpose shall not be permitted if preparation of such copies would be considered illegal if they were prepared in Nepal.

27. Punishment on infringement of protected right: (1) In cases where any person infringes Section 25, such a person shall be punished with a fine of a sum from ten thousand to one hundred thousand rupees or with imprisonment for a term not exceeding six months or both and with a fine of a sum from twenty thousand to two hundred thousand rupees or with imprisonment for a term not exceeding one year or with both for each instance from the second time. The materials so published or reproduced or distributed or devices used to reproduce such materials shall be seized.

(2) Compensation for the loss caused to the copyright owner by the infringer of the protected right shall also be realized and provided to the copyright owner.

28. Punishment for importation of unauthorized copy: In cases where any person imports unauthorized copies of any work in violation of Section 26, such a person shall be punished with a fine of a sum from ten thousand to one hundred thousand rupees according to the gravity of the offense, and such copies shall be seized; and compensation for the loss caused to the copyright owner from such importation shall also be realized from the importer and provided to the copyright owner.

29. **Other punishment:** In cases where any person infringes any other matter contained in this Act or the Rules framed under this Act, such a person shall be punished with a fine of a sum from five thousand to fifty thousand rupees according to the gravity of the offense.

Chapter-7

Miscellaneous

30. **Registrar and his functions, duties and powers:** (1) Government of Nepal may, by a notification in the Nepal Gazette, designate any officer of at least Gazetted second class to act as the Registrar pursuant to this Act.

(2) In addition to those mentioned elsewhere in this Act, the functions, duties and powers of the Registrar shall be as follows:

- (a) To monitor and control the royalty collecting body,
 - (b) To hear complain as prescribed made by any party who is not satisfied with the royalty fixed by the royalty collecting body,
 - (c) To perform, or cause to be performed such other functions as prescribed for the accomplishment of the objective of this Act.
31. **Appeal against order and decision of Registrar:** An party who is not satisfied with any order or decision made by the Registrar may make an appeal in the Appellate Court in the area where the Office of the Registrar is situated, within thirty-five days.
32. **Power to seize copies of work, sound recording or other materials:** (1) In cases where any person doubt that any one has published or reproduced or is about to publish or reproduce any work or sound recording contrary to Section 25 and makes a complaint before the police who has a duty of investigating the offense under this Act, the police shall make necessary arrangements for preventing the copies of such work or sound recording from being sold and distributed and may, in cases where required, search the copies of such work or sound recording and seize the same pursuant to the law in force.

(2) In conducting search and seizure pursuant to Sub-section (1), the machine including materials used to publish and reproduce the copies of such work or sound recording may also be seized.

33. To destroy copies of work, sound recording or other materials: In cases where the copies of the work or sound recording seized pursuant to Section 32 are held by the court liable to be seized, they shall be destroyed in presence of the representatives of the District Administration Office and the Local body.

34. Power of Customs Officer to stop importation of unauthorized copies:

(1) In cases where any person suspects that any other person is importing copyrighted materials into Nepal in an unauthorized manner, such a person may make an application, accompanied by the evidence, to the Custom Officer to prevent the importation of such material.

(2) In cases where, in conducting necessary investigation upon receipt of an application pursuant to Sub-section (1), the demand of the applicant appears reasonable, the Customs Officer may prevent the materials to be imported for a maximum of twenty working days at the rate of ten working days at a time.

(3) Notwithstanding anything contained in Sub-sections (1) and (2), in cases where the Customs Officer learns or suspects that any one is importing copyright reserved materials into in an unauthorized manner, he/she may prevent such materials for a maximum of twenty working days at the rate of ten working days at a time.

(4) Other procedures on the prevention of importation of unauthorized copies shall be as prescribed.

35. To try and settle cases: (1) The concerned District Court shall have the powers to try and settle cases punishable under this Act.

(2) In trying and settling cases under this Act, the procedures referred to in the Summary Procedures Act, 2028 (1971) shall be followed.

36. Power to order for withholding: In cases where, in the course of trying and settling a compliant pursuant to this Act, the District Court, at the request of the

concerned party, thinks it reasonable to stop any activity contrary to this Act, it may order the concerned person or body to stop such activity.

37. **To be state cases:** (1) The cases punishable under Sections 27 and 28 shall be state cases and those cases shall be considered to be included in Schedule-1 of the State Cases Act, 2049 (1992).

(2) A police officer of at least the rank of police inspector shall investigate and inquire into the cases under this Act.

38. **Limitation:** In cases where any right under this Act is infringed, a case has to be filed within three months of the knowledge of such infringement.

39. **Provisions relating to royalty collecting body:** (1) Generally, one royalty collecting body shall be formed as prescribed in one discipline for the purposes of fixing, collecting and distributing royalty of the works relating to copyright.

(2) The royalty collecting body formed pursuant to Sub-section (1) has to be registered with the Registrar in the manner as prescribed.

(3) The royalty collecting body shall be an autonomous body corporate with perpetual succession.

(4) The royalty collecting body shall have a seal of its own for all of its activities.

(5) The royalty collecting body may, like an individual, acquire, use, sell and dispose of or otherwise manage movable and immovable property and may, like an individual, sue and be sued by its name.

(6) Government of Nepal may specify the terms to be followed by the royalty collecting body; and it shall be the duty of the royalty collecting body to abide by such terms.

40. **Copyright Government of Nepal:** (1) Government of Nepal shall have the copyright over the work prepared by Government of Nepal.

(2) Government of Nepal may rent or sell the right accrued to it pursuant to sub-section (1) to any person or organization or give authorization to use the same in any other manner.

41. **Calculation of year:** In calculating a year pursuant to this Act, it shall be calculated from the New year as per *Bikram Sambat* that starts from the end of the year on which the work was published or communicated publicly or sound recording was produced.
42. **Powers to frame rules:** Government of Nepal may frame necessary Rules in order to carry out the objectives of this Act.
43. **Repeal and saving:** (1) The Copyright Act, 2022 (1965) is hereby repealed.
- (2) The remaining term of protection of the copyright of a work published publicly prior to the commencement of this Act shall be deemed to have been protected pursuant to this Act.
- (3) The acts and actions done and taken under the Copyright Act, 2022 (1965) shall be deemed to have been done and taken under this Act.