



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

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House: Senate

Minister: Attorney General and
Minister of Legal Affairs

Senate Bill No: 9 of 2019

Links: The links to the Bill, and its progress can be found on the Bill's home page through the Parliament's website, www.ttparliament.org

BILL ESSENTIALS

BILL ESSENTIALS NO.33, 2019–2020




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The Copyright (Amendment) Bill, 2019

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BACKGROUND

1. The **Copyright (Amendment) Bill, 2019**¹ (“the Bill”) was introduced in the Senate by the Attorney General and Minister of Legal Affairs on November 12, 2019. The Bill seeks to amend the **Copyright Act Chap. 82:80**² (“the Act”) to incorporate the **Marrakesh Treaty (2013)**³ which was acceded to on October 4, 2019 and the **Beijing Treaty on Audio-visual Performances (2012)**⁴ which was also acceded to on October 4, 2019, into domestic law and to ensure:-
 -  compliance with the **Marrakesh Treaty (2013)**⁵ to facilitate access to published works for persons who are blind, visually impaired or otherwise print disabled. It proposes to introduce a set of limitations or exceptions to copyright rules into domestic copyright law, to facilitate reproduction, distribution and for available copies of books and other published materials to be accessible in formats to beneficiary persons, without the right-holder’s permission;
 -  compliance with the **Beijing Treaty on Audio-visual Performances (2012)**⁶ to facilitate the expansion of limited protections currently afforded to performers inclusive of actors, comedians, dancers and those expressing folklore as performers. It proposes to improve the legal status of audio-visual performers (via videos, television and film) by protecting such performers for unfixed (live) performances and audio-visual fixations of their performances. It also supports the economic and moral rights of performers for live and audio-visual performances; and
 -  adequate legal protection and effective legal remedies against the evasion of certain technological protection measures by breaching copyright or neighbouring rights. It allows for limited circumvention of such acts that may be authorized by limitations or exceptions in the Act.
2. The Bill is inconsistent with **Sections 4 and 5** of the **Constitution of the Republic of Trinidad and Tobago** and would therefore be required to be passed by a special majority of three-fifths of the Members of each House.

KEY FEATURES OF THE BILL

Interpretation

3. **Clause 3** of the Bill seeks to amend the existing **Section 3** of the Act by:-

¹ <http://www.ttparliament.org/legislations/b2019s09g.pdf>












² https://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/82.80.pdf

³ https://www.wipo.int/edocs/mdocs/copyright/en/vip_dc/vip_dc_8_rev.pdf

⁴ https://www.wipo.int/edocs/mdocs/copyright/en/avp_dc/avp_dc_20.pdf

⁵ https://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_flyer.pdf







⁶ https://www.wipo.int/treaties/en/ip/beijing/summary_beijing.html

-  repealing and substituting the existing definition of “broadcasting” to include the communication of visual images, sounds or a combination of both to the public in any jurisdiction by wireless transmission including satellite and even encrypted transmission where decoding such transmission is provided by/with the authority of the maker of such transmission;
-  amending the existing definition of “communication to the public” to allow for images, sounds or both of any work/performance/sound-recording to be made available;
-  amending the existing definition of “infringing copies” to provide for the inclusion of audio-visual fixation in the definition;
-  amending the existing definition of “performers” to comprehensively provide for actors, comedians, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in, interpret, improvise or otherwise perform literary, artistic, dramatic/musical works or works of mas or expressions of folklore;
-  inserting nine (9) new definitions *inter alia*:
 -  “audio-visual fixation” – moving images which may or may not be accompanied by sounds or representations thereof to allow the moving images to be perceived, reproduced or communicated through a device;
 -  “beneficiary person” – any person, regardless of another disability who may be blind or has a visual impairment or a perceptual or reading disability which is incapable of improvement for visual function or a person who has no such impairment or disability but is unable to read printed works to such degree as a person with such impairment or disability or any person who has a print disability;
 -  “circumventing technological protection measures” – avoiding, bypassing, removing, deactivating or impairing existing technological protection measures in place by descrambling a scrambled work or decrypting an encrypted work;
 -  “print disability” – the inability through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would normally be acceptable for reading;
 -  “rebroadcasting” – unaltered and simultaneous retransmission of any broadcast by wireless transmission; and
 -  “technological protection measures” – any technology, device or component which when operated normally is designed to prevent or restrict acts, relating to works or objects of neighbouring rights, which have not been authorised by the owner of the rights or permitted by any law.

Copyright and Copyright Works





4. **Clause 4** of the Bill seeks to amend Section 5(1) of the Act to expand the existing scope of original and intellectual literary and artistic works/creations to include audio-visual fixations and audio books, which would be subjected to copyright.

Authorised Entity⁷

5. **Clause 5** of the Bill seeks to insert one new **Section 12A** after the existing Section 12 of the Act to allow for an exception to existing copyright law by granting authorised entities certain privileges relating to specific activities without needing to seek authorisation from the right-holder once certain conditions are satisfied and specific circumstances are met.
6. The Minister by Order, is empowered to select any authorised entity to provide education, instructional training, adaptive reading and information access to beneficiary persons, as its primary/institutional obligation and on a non-profit basis.
7. **Section 12A** prescribes that such authorised entity must satisfy the following conditions to facilitate the availability of works in accessible format copies:-
-  the authorised entity must have lawful access to the work or copy of the work used to create an accessible format copy⁸;
 -  the accessible format copy must respect the original integrity of the work taking into account any changes needed to make such work accessible in the alternative format and the accessibility needs of any beneficiary person;
 -  such work being converted to an accessible format copy would include any means necessary to navigate information in the accessible format, but no changes shall be introduced other than those needed to make the work accessible to the beneficiary person;
 -  such activity must operate as a non-profit and any fee charged by an authorised entity for supplying an accessible format copy must not exceed the total cost of making/supplying the copy which would constitute a reasonable contribution to the authorised entity's general expenses with no generation of profits;
 -  the source of the reproduced work and the name of the author shall be indicated on all accessible format copies; and
 -  accessible format copies must be supplied exclusively to be used by beneficiary persons or other authorised entities.

⁷ The National Library and Information System Authority or other entity designated by the Minister.

⁸ The copy of any work in an alternative manner/form to give a beneficiary person access to such work.

8. Additionally, **Section 12A** also provides that an authorised entity can do the following without needing authorisation from the author or other copyright owner without infringing any copyright in such works (subject to the copyright owner having the exclusive right to do, authorise, or prohibit certain acts in relation to their work⁹):-
-  undertake the necessary changes which includes adapting/transforming the work to create an accessible format copy;
 -  reproduce, distribute, communicate to the public by any means, or lend/supply an accessible format copy to another authorised entity or to a beneficiary person;
 -  export an accessible format copy to an authorised entity or beneficiary person located in any country which is a party to the Marrakesh Treaty; and
 -  obtain/import an accessible format copy from another authorised entity.
9. Moreover, **Section 12A** requires an authorised entity to establish procedures to ensure that such accessible format copies are only utilised by beneficiary persons and to avoid any unauthorised reproduction/distribution/communication to the public or any public lending of the works or the accessible format copies.
10. Finally, in carrying out any permitted exception cited, **Section 12A** establishes that the usage of any circumventing technological protection measures/circumvention device shall not be deemed to be an offence or infringement of any copyright.

Moral Rights¹⁰

11. **Clause 6** of the Bill seeks to amend the existing Section 18(4) of the Act to expand the scope of existing moral rights to include protections for live performances, performances fixed in sound recordings and audio-visual fixations of their performances.

Duration of Moral Rights of Performers

12. **Clause 7** of the Bill seeks to amend the existing Section 19(A) of the Act to establish the protection of the performers' moral rights for all fixed performances instead of only applying to those fixed in a sound recording.

Acts requiring authorisation of Performers

13. **Clause 8** of the Bill seeks to amend Section 21 of the Act to extend the existing economic rights of performers to include both direct/indirect and fixed/unfixed performances including those performances fixed in audio-visual fixations.

⁹ Section 8 Copyright Act, Chap. 82:80

¹⁰ Section 18 (Part III) Copyright Act, Chap. 82:80

14. **Clause 8** also seeks to provide for the transfer of rights by the performer to an audio-visual fixation producer provided that the performer has consented to fixation of his performance in an audio-visual fixation. Such exclusive rights of authorisation would be transferred to and also owned/exercisable by the producer of the audio-visual fixation, subject to any existing contract to the contrary which must be in writing and signed by both parties or their duly authorised representatives.
15. Lastly, **Clause 8** also provides that the term of protection for such rights for performers extends to all fixed performances until the end of a period of fifty (50) years which commences from the end of the year in which the performance was fixed.

Measures, Remedies and Sanctions against acts constituting infringements of Copyright and Neighbouring Rights

16. **Clause 9** of the Bill seeks to amend the existing Section 34A of the Act to establish that the circumvention of technological protection measures and the commercial use (manufacture/importation for sale/rental) of any technological protection measures circumvention device would constitute infringements of copyright and/or neighbouring rights.

Exceptions to Offences

17. **Clause 10** of the Bill seeks to insert one new **Section 34C** after the existing Section 34B of the Act to allow for an exception to the prohibition of circumvention of technological protection measures for any act permitted under the limitations or exceptions contained herein.

Penalties in respect of infringing copies of a work, performance, sound recording or broadcast

18. **Clause 11** of the Bill seeks to amend the existing Section 41(2) of the Act to create a new offence for the manufacture and commercial usage (which includes the importation, sale, distribution, rental or advertisement) of any technological protection measure circumvention device.

Penalties in respect of unauthorised public performance

19. **Clause 12** of the Bill seeks to amend Section 41A (1) of the Act to expand the scope of the existing offence for a person to have knowledge or reason to believe that copyright or neighbouring rights would also be infringed.


REFERENCES


KEY LEGISLATION

 **The Copyright (Amendment) Bill, 2019**
<http://www.ttparliament.org/legislations/b2019s09g.pdf>

 **The Copyright Act Chap. 82:80**
https://rgd.legalaffairs.gov.tt/Laws2/Alphabetical_List/lawspdfs/82.80.pdf

KEY TREATIES

 **Marrakesh Treaty to Facilitate Access to Published Works for Persons who are Blind, Visually Impaired, or otherwise Print Disabled (2013)**
https://www.wipo.int/edocs/mdocs/copyright/en/vip_dc/vip_dc_8_rev.pdf
https://www.wipo.int/edocs/pubdocs/en/wipo_pub_marrakesh_flyer.pdf

 **Beijing Treaty on Audio-visual Performances (2012)**
https://www.wipo.int/edocs/mdocs/copyright/en/avp_dc/avp_dc_20.pdf
https://www.wipo.int/treaties/en/ip/beijing/summary_beijing.html



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<http://www.ttparliament.org/publications.php?mid=28&id=867>