

# COPYRIGHT (AMENDMENT) BILL, 2023

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## **COPYRIGHT (AMENDMENT) BILL, 2023**

### **A BILL FOR AN ACT TO AMEND THE COPYRIGHT ACT**

#### **Enacted by the Parliament of The Bahamas**

#### **1. Short title and commencement.**

- (1) This Act, which amends the Copyright Act<sup>1</sup>, may be cited as the Copyright (Amendment) Act, 2023.
- (2) This Act shall come into operation on such day as the Minister may by notice published in the Gazette, appoint.

#### **2. Amendment of section 2 of the principal Act.**

The principal Act is amended by the deletion and substitution of the following definition —

“**Registrar**” means the Registrar of the Intellectual Property Office and any reference to the Registrar shall be construed as including a reference to any officer discharging the functions of the Registrar;”.

#### **3. Insertion of new section 3A into the principal Act.**

The principal Act is amended by the insertion immediately after section 3 of the following new section —

“**3A. Paris Convention, etc. to apply in respect of industrial designs.**

The provisions of the Paris Convention and any other international treaty in respect of industrial designs to which The Bahamas is a party shall apply to matters dealt with by this Act and in case of conflict with the provisions of this Act, the provisions of the relevant treaty shall prevail.”.

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<sup>1</sup>Ch. 323, Vol. VII, p. 1

**4. Insertion of new section 56A into the principal Act.**

The principal Act is amended by the insertion immediately after section 56 of the following new section 56A—

**“ 56A. Application to Court for appropriate measures for dissemination of information.**

Any person whose rights are infringed pursuant to this Part or Part XII may apply to the court for an order that appropriate measures for the dissemination of information concerning the finding of infringement be taken at the expense of the infringing party.”.

**5. Insertion of new section 100A into the principal Act.**

The principal Act is amended by the insertion immediately after section 101 of the following new section—

**“100A. Infringement of performer's rights.**

A performer's right is infringed by any person who, without his consent, broadcast by wireless means or communicates to the public, a live performance of the performer.”.

**6. Repeal and replacement of section 116 of the principal Act.**

Section 116 of the principal Act is repealed and replaced as follows —

**“116. Infringement actionable as breach of statutory duty.**

An infringement of any of the rights conferred by this Part is actionable as a breach of statutory duty by —

- (a) the person entitled to the right;
- (b) a licensee,
- (c) a collective right management body; or
- (d) a professional defence body.”.

**7. Insertion of new section 123A into the principal Act.**

The principal Act is amended by the insertion immediately after section 123 of the following new section —

**“123A. Power of Court to order certain information.**

- (1) Where legal proceedings have been instituted by an interested party against an opposing party that is alleged to have engaged in acts which infringe an intellectual property right granted under this Act on a commercial scale, the Court may, on the application of the interested party, order the opposing party a financial services provider or any other

person within the jurisdiction of the court, to disclose to the interested party or the Court, the banking or other commercial information the opposing party.

- (2) Where in any case the court has adjudged that one or more persons have engaged in conduct which infringes an intellectual property right granted under this Act, the Court may order any of or all such persons to provide to an interested party or the Court, information, on the origin and distribution of networks of the goods in issue.”.

## **8. Insertion of new section 134 and Part XII into the principal Act.**

The principal Act is amended by the insertion immediately after section 133, of the following new section and Part XII —

### **“134. Transitional Provisions.**

Where immediately prior to the appointed day for the coming into operation of this Act, design copyright subsisted in The Bahamas in any original design applied for or registered under the Industrial Property Act (*Ch. 324*), such design copyright shall continue to subsist and the person entitled thereto by virtue of that Act shall be the owner thereof under and subject to this Act and in particular —

- (a) duration of design copyright protection for a registered design copyright shall subsist for a period of five years from the date of registration;
- (b) the Registrar shall extend the period of design copyright for a second period of five years from the expiration of the original period if an application for extension of the period of design copyright protection was made before the expiration of the original period and the prescribed fee is paid before expiration of the original period, or within six months of the expiry of the relevant period upon payment of an additional fee;
- (c) the acts comprised within the exclusive rights of the owner of design copyright shall subsist and shall be governed by this Act under the Provision for the Creation of Industrial Designs in Part XII;
- (d) any pending applications for design copyright shall be converted to applications for industrial designs and shall be governed by this Act under the Provision for the Creation of Industrial Designs in Part XII;
- (e) all design copyright materials, including specimens, deposited or submitted to the Deposit List shall be transferred and maintained on the Register maintained

by the Intellectual Property Office in respect of industrial designs as provided for in section 150 of the Act;

- (f) any proceedings for infringement or any proceedings that could have been taken before the appointed day may be taken or proceed as if this Act had not been passed or taken in accordance with the provisions applicable to protection of industrial designs under section 153 of the Act.

## **PART XII - INDUSTRIAL DESIGNS**

### *Provision for the Creation of Industrial Designs*

#### **135. Industrial design protection.**

Subject to the provisions of this Act, industrial design protection, formerly known as design copyright, shall be obtainable in every original design by the person claiming to be the proprietor thereof by seeking registration for an industrial design at the Intellectual Property Office.

#### **136. Originality requirement.**

- (1) A design shall be deemed to be original in so far only as it is the original work of the author.
- (2) A design shall not be deemed to be original if it is the same as a design of any other article which has been previously published in The Bahamas or elsewhere, or which has been registered under this Act by or on behalf of or with the consent of the author or any proprietor thereof or which differs from such design in modifications or variations not sufficient to alter the character or substantially affect the identity thereof.

#### **137. Author of industrial design.**

- (1) Subject to the provisions of this section, the author of an original design shall be treated for the purposes of this Act as the proprietor of the industrial design.
- (2) Where a design is executed by the author for another person for good consideration, that other person shall be treated for the purposes of this Act as the proprietor.
- (3) Where a design or the right to apply an industrial design to any article becomes vested, whether by assignment, transmission or operation of law, in any person other than the original proprietor either alone or jointly with the original

proprietor, that other person or, as the case may be, that other person and the proprietor shall be treated for the purposes of this Act as the proprietor of the industrial design in relation to that article.

**138. Application formalities.**

Every application for industrial design protection in a design shall be accompanied by a representation or, at the Registrar's option, a specimen of the design and shall include —

- (a) the name and address of the proprietor;
- (b) the name of the article which is the subject of the design or the article to which the design is to be applied; and
- (c) a statement of originality referring to the representation or specimen and indicating whether industrial design protection is claimed in the whole or part of the design shown in the representation or specimen and if in part, indicating which part or parts, and also whether industrial design is claimed in shape, configuration, pattern or ornament.

**139. Priority filings.**

An application for registration of an industrial design may include a request for a priority filing date based on a prior pending application filed in a convention country, provided such claim is made within six months after the filing date of the previously filed application in respect of the same design, in accordance with the Convention of the Union of Paris.

**140. Examination by Registrar.**

The Registrar shall conduct an evaluation as to whether the proposed design meets the requirements of this Act for registration.

**141. Objections to registration.**

Where the Registrar finds that the design does not meet the requirements for registration, the Registrar shall send the applicant a report setting out the objections to registration and setting out a period for reply.

**142. Approval and publication.**

Any application approved for registration of an industrial design shall be published by the Registrar in the Gazette to inform the public.

**143. Duration of protection.**

Industrial design protection in a design shall commence from the date of registration recognizing industrial design protection under this Act.

**144. Invalidation.**

Industrial design protection in a design shall not be invalidated by reason only —

- (a) that a representation of the design, or any article to which the design has been applied, has been displayed, with the consent of the proprietor of the design, at an exhibition certified by the Registrar for the purposes of this subsection;
- (b) that after any such display as aforesaid, and during the period of the exhibition, a representation of the design or any such article as aforesaid has been displayed by any person without the consent of the proprietor; or
- (c) that a representation of the design has been published in consequence of any such display as is mentioned in paragraph (a) of this section,

if the application for the industrial design is filed not later than six months after the opening of the exhibition.

**145. Acts of infringement.**

- (1) Industrial design protection in a design is infringed by any person who, without the consent of the proprietor —
  - (a) copies the design directly or indirectly, makes in The Bahamas in accordance with the design, or a design not substantially different therefrom, an article for which the design is deposited or applies the design, or a design not substantially different therefrom, to an article for which the design is registered;
  - (b) imports for sale or for use for the purposes of any trade or business, sells, hires, offers or exposes for sale an article in The Bahamas, with knowledge that the article was produced or had a design applied to it, that would be an infringement of the industrial design if the production or application of the design had taken place in The Bahamas.
- (2) Industrial design registration shall give no rights in any features of an article in so far as these are dictated solely by the function which the article is intended to perform or in any method or principle of construction.

**146. Term of protection.**

- (1) Industrial design protection in a design shall, subject to the provisions of this Act, subsist for a period of five years from the date of registration.
- (2) The Registrar shall extend the period of industrial design protection for a period of five years from the expiration of

the original period if an application for extension of the period of industrial design protection for the second period is made before the expiration of the original period in a request made to the Registrar and accompanied by the prescribed fee.

**147. Damages limitations.**

In proceedings claiming infringement of an industrial design damages shall not be awarded against a defendant who proves that, at the date of the infringement, the defendant was not aware and had no reasonable ground for supposing that the design was the subject of an industrial design registration.

**148. Cancellation.**

The Registrar may, upon a request made by the proprietor, cancel the registration for an industrial design.

**149. Procedure for cancellation.**

- (1) At any time after a registration for an industrial design has issued, any person interested may apply to the Court for cancellation of the registration on any one or more of the following grounds, that is to say —
  - (a) that the registration was obtained by or in the name of a person not entitled thereto;
  - (b) that the design or a representation thereof was published before the priority date of the claim by, on behalf of, or with the consent of, any proprietor thereof;
  - (c) that the design was not an original work in respect of the feature stated in the registration to be original;
  - (d) that the design is the same as a design of, or for, the same or any other article by the same author which has been previously applied for or registered by, on behalf of or with the consent of the author or any proprietor thereof, or differs from such design in modifications or variations not sufficient to alter the character or substantially affect the identity thereof.
- (2) Where the registration of an industrial design has been cancelled by virtue of the provisions of this section, the said registration shall be regarded for all purposes as never having been issued.
- (3) Every ground on which a design may be cancelled under this section shall be available as a ground of defence in any proceeding for the infringement of the industrial design.

**150. Register.**



- (1) There shall be kept at the Intellectual Property Office a Register in which there shall be entered the names and addresses of the proprietors of industrial designs, and applications which have been filed under the provisions of this Act, notices of assignments and of transfers of the industrial design protection in such designs and such other matters as the Registrar may think fit.
- (2) The Register shall be *prima facie* evidence of any matters required or authorised by this Act to be entered therein.
- (3) The Registrar shall not register an industrial design that is contrary to public order or morality or alternate formulation.

**151. Certificate of registration.**

The Registrar shall grant a certificate of registration in the prescribed form to the proprietor of an industrial design when the application to register the design is approved and payment of registration fee received.

**152. Specimens.**

The representation or specimen of a design in respect of which a claim for industrial design protection has been filed under this Act shall be open to inspection at the Intellectual Property Office on and after the twenty-eighth day after the application for industrial design protection has been filed.

**153. Infringement.**

- (1) The provisions of this Act with regard to the remedies available for copyright infringement and the powers of the Court in relation to cases of copyright infringement shall apply *mutatis mutandis* in the case of industrial designs in like manner as they apply in the case of copyright.
- (2) Notwithstanding subsection (1), the owner of a registered industrial design or someone duly appointed to act on the owner's behalf, may make application for the suspension by the Comptroller of Customs of the release into free circulation or the retention of goods which may infringe intellectual property rights.”.

## **OBJECTS AND REASONS**

This Bill seeks to amend the Copyright Act.

Clause 2 of the Bill seeks to amend the principal Act to provide for the substitution of the definition of Registrar.

Clause 3 of the Bill seeks to provide for the provision of the Paris Convention and any other international treaty to apply to matters dealt with by this Act.

Clause 4 of the Bill seeks to amend the principal Act to provide for an application to the Court for appropriate measures for dissemination of information, where a person's rights have been infringed.

Clause 5 of the Bill seeks to provide for a new section 101A to make clear when a performer's right is infringed.

Clause 6 of the Bill seeks to repeal and replace section 116 of the Act to provide for by whom an infringement is actionable.

Clause 7 of the Bill seeks to provide for a new section into the principal Act to provide for power of the Court to order certain information.

Clause 8 of the Bill seeks to provide for a new Part XII into the principal Act which addresses industrial design protection and the infringement of same.