

Annex | *Relevant Laws*

Proposed Bill on the Protection of Traditional Knowledge and Expressions of Culture

SEVENTH OLBIIL ERA KELULAU

First Regular Session, January 2005

Senate Bill No. _____

A BILL FOR AN ACT

To establish a *sui generis* system for the protection and promotion of Traditional Knowledge and Expressions of Culture for the people of the Republic of Palau.

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THE PEOPLE OF PALAU REPRESENTED IN THE OLBIL ERA KELULAU DO ENACT AS FOLLOWS:

Chapter 1 – PRELIMINARY

Section 1. Short title. This Act may be cited as the “Protection and Promotion of Traditional Knowledge and Expressions of Culture Act of 2005”.

Section 2. Findings and purpose. Palauan culture is adversely affected by the noncustomary use of Palauan traditional knowledge and expressions of culture such as the commercial exploitation of wood carvings, woven works, dances, architectural forms, and other art and symbols that are uniquely Palauan. Non-customary commercial exploitation of Palauan traditional knowledge or expressions of culture, especially commercial exploitation by non-Palauans, has in several instances produced and is continuing to produce inaccurate and inappropriate representations of Palauan culture to tourists and the world community generally, representations that also have the potential of changing Palauan culture itself in a manner inconsistent with traditional ways. Additionally, when these cultural resources are exploited commercially, there is typically little if any compensation to traditional leaders, and most often the community receives only minimal financial benefit through the sale and taxation of any revenues generated when such goods or performances are sold or conducted locally.

The purpose of this Act is to establish a new form of intellectual property identified as “traditional knowledge and expressions of culture,” to vest ownership of this new property in the appropriate traditional groups, clans, and communities, and to provide a means to allow the owners to transfer certain ownership rights for non-customary use in a manner that will assist in the preservation of Palau’s cultural heritage, allow for appropriate promotion of Palauan culture, and provide compensation to Palauan owners for the use of these cultural resources.

Section 3. Application.

- (a) This Act applies to traditional knowledge and expressions of culture that:
 - (1) were in existence before the effective date of this Act; or

- (2) are created on or after the effective date of this Act.
- (b) This Act shall not affect or apply to customary use.
- (c) Except as set forth in Chapter 4, Subchapter 4, this Act shall not affect or apply to rights that exist immediately before the effective date of this Act including intellectual property rights.

Section 4. Definitions. In this Act, unless specifically stated otherwise:

- (a) “authorized user agreement” means an agreement entered into under Chapter 4, Subchapter 3 of this Act;
- (b) “customary use” means the use of traditional knowledge or expressions of culture in accordance with traditional law;
- (c) “derivative work” means any intellectual creation or innovation based upon or derived from traditional knowledge or expressions of culture;
- (d) “derogatory treatment” means any act or omission that results in a material distortion, mutilation, or alteration of the traditional knowledge or expression of culture that is prejudicial to the honor or reputation of the traditional owner, or the integrity of the traditional knowledge or expression of culture;
- (e) “expression of culture” means any way in which traditional knowledge appears or is manifested, irrespective of content, quality or purpose, whether tangible or intangible, and, without limiting the precedent words, includes:
 - (1) names, stories, chants, riddles, histories, and songs in oral narratives;
 - (2) works of art, crafts, musical instruments, sculptures, paintings, carvings, items of pottery and terra cotta mosaic, woodwork, metalwork, jewelry, woven works, needlework, shell work, rugs, costumes, and textiles;
 - (3) music, dance, theater, literature, ceremony, ritual performance, and cultural practices;
 - (4) the delineated forms, parts and details of designs, and visual compositions; and
 - (5) architectural forms;
- (f) “Minister” means the Minister of Community and Cultural Affairs;
- (g) “Ministry” means the Ministry of Community and Cultural Affairs;
- (h) “moral rights” are the rights described in Section 13;
- (i) “official owner” means the group, clan, or community finally determined in accordance with this Act to be the owner of a particular item of traditional knowledge or expression of culture;

- (j) “owner” means, depending on the context:
 - (1) the Republic of Palau;
 - (2) the Palauan group, clan, or community determined by Palauan tradition and provisions of this Act to be the unique source or sole custodian of a particular item or traditional knowledge or expression of culture; or
 - (3) the individual official recognized as the representative of the Palauan group, clan or community for purposes of taking actions under this Act;
- (k) “ownership” means the manner of collective property control recognized in traditional law and does not create or imply non-traditional proprietary interests for individual members of the owner;
- (l) “ownership rights” means the particular rights set forth in Section 7(a) that may be exercised by or on behalf of the owner for non-customary use;
- (m) “traditional knowledge” means any knowledge that has been or is created, acquired, or inspired for traditional purposes including economic, spiritual, ritual, narrative, decorative, or recreational purposes;

Section 5. Exceptions.

- (a) The customary use of traditional knowledge or expressions of culture shall not constitute a violation of this Act.
- (b) The non-customary use of traditional knowledge and expressions of culture shall not constitute a violation of this Act when the use is made in:
 - (1) face-to-face teaching;
 - (2) criticism or review;
 - (3) reporting news or current events;
 - (4) judicial proceedings; or
 - (5) a manner deemed incidental.
- (c) Traditional knowledge or expressions of culture submitted to non-customary use pursuant to an authorized user agreement or preexisting rights registered in accordance with Section 23 or Section 25 of this Act shall not constitute a violation of this Act.

Chapter 2 - OWNERSHIP RIGHTS

Section 6. Holder of ownership rights. The owner is the holder of all ownership rights in the particular traditional knowledge or expression of culture owned as specified and limited by this Act.

Section 7. Specific ownership rights.

- (a) The owner holds the following exclusive rights for non-customary use of the particular traditional knowledge or expression of culture owned, specifically the right to:
 - (1) produce or reproduce in any material form;
 - (2) publish;
 - (3) perform or to display in public;
 - (4) broadcast by any means of communication including radio, television, satellite, or cable;
 - (5) translate, adapt, arrange, transform, or modify;
 - (6) fixate through any process including photography or sound recording whether by film, tape, or digital recording;
 - (7) transmit, electronically or digitally, including the right to transmit by email or to allow access by website;
 - (8) create derivative work; and
 - (9) make, use, offer for sale, sell, import, or export in any material form whether the form is an original, a reproduction or a derivative work.
- (b) The rights described in Section 7(a) are the only rights in traditional knowledge or expressions of culture that may be transferred to another for non-customary use.
- (c) The rights described in Section 7(a) may be transferred only in accordance with the law and procedures set forth in Chapter 4, Subchapter 3.

Section 8. Material form not required. Ownership shall exist in all traditional knowledge and expressions of culture whether or not said property is in material form.

Section 9. Duration. Ownership, ownership rights, and moral rights shall exist in perpetuity.

Section 10. Property inalienable. The ownership of traditional knowledge and expressions of culture is inalienable; use rights in traditional knowledge and expressions of culture may be transferred only in accordance with Chapter 4, Subchapter 3 of this Act.

Section 11. Additional rights. Ownership rights in traditional knowledge and expressions of culture are in addition to, and do not affect, any rights that may exist under any law relating to copyright, trademarks, patents, designs or other intellectual property law, except traditional knowledge and expressions of culture considered prior to the effective date of this Act to be in the public domain under intellectual property laws, and the requirements specified in Chapter 4, Subchapter 4 of this Act.

Section 12. Derivative works. Any copyrights, trademark, patent, design, or other intellectual property right in a derivative work produced in accordance with this Act vests in the creator of the work or as otherwise provided by relevant intellectual property law.

Chapter 3 - MORAL RIGHTS

Section 13. Moral rights defined.

- (a) The owner is the holder of all moral rights in its particular traditional knowledge or expression of culture as identified and limited by this Act.
- (b) The moral rights of the owner are:
 - (1) the right of attribution of ownership;
 - (2) the right not to have ownership falsely attributed; and
 - (3) the right not to have its traditional knowledge or expressions of culture subject to derogatory treatment.
- (c) The moral rights of the owner exist independently of the owner's ownership rights.
- (d) Moral rights shall exist in perpetuity and may not be waived or transferred.

Chapter 4 - OBTAINING OWNER'S PRIOR INFORMED CONSENT

Subchapter 1 - General Mandate

Section 14. Consent required. Except for uses allowed pursuant to Section 5 of this Act, prior and informed consent of the owner shall be obtained for all non-customary uses of traditional knowledge and expressions of culture.

Subchapter 2 - Application and Negotiation Process

Section 15. Application.

- (a) A prospective user of traditional knowledge or expressions of culture for a non customary use shall apply to the Ministry to obtain the prior and informed consent of the owners for such use.
- (b) The application shall:
 - (1) be in form prescribed by the Minister;
 - (2) specify in sufficient detail the way in which the prospective user proposes to use the traditional knowledge or expressions of culture;
 - (3) state clearly the purpose for which the proposed use is intended; and
 - (4) be accompanied by a fee to be established by the Minister.
- (c) The Ministry shall complete the initial application process within 90 days of submission.

Section 16. Initial ownership; Ministry duties; creation of trust.

- (a) Commencing on the effective date of this Act, the Ministry of Community and Cultural Affairs shall be the owner of all Palauan traditional knowledge and expressions of culture unless and until official ownership is awarded to a traditional group, clan, or community in accordance with this section.
- (b) The Ministry shall take the steps necessary to identify Palauan traditional knowledge and expressions of culture and those groups, clans or communities who may qualify as owners. Until such time that a determination of official ownership is made:
 - (1) the Ministry may enter into authorized user agreements in accordance with the provisions of the Act; and

- (2) all royalties and other 1 compensation or benefits from the authorized user agreement shall be the property of the Republic of Palau.
- (c) Upon the award of official ownership of a particular item of traditional knowledge or expression of culture, a trust is automatically created for the benefit of the official owner in which the Ministry becomes trustee, and:
 - (1) all subsequent royalties, other compensation and benefits from an authorized user agreement shall be provided to the official owner; and
 - (2) the official owner shall have the unilateral right to dissolve the trust and assume all rights and responsibilities of the owner under the authorized user agreement.
- (d) The rights and responsibilities of the user as specified in an authorized user agreement shall not be affected by this section.
- (e) Whenever an application for non-customary use is submitted, the Ministry shall:
 - (1) give a copy of the application to the official owner and facilitate the acceptance or rejection of the application by the official owner and other procedures specified in Subchapter 4 of this Chapter.
 - (2) in the event no official owner has been finally determined,
 - (A) provide a copy of the application to those persons, groups, clans or community members who the Ministry has reason to believe could assert a legitimate claim of ownership to the traditional knowledge or expression of culture identified in the application;
 - (B) publish a copy of the application in a newspaper of national circulation to appear in four consecutive publications stating how interested persons may obtain a copy of the application;
 - (C) broadcast once a day for at least 14 days on television and radio a general description of the application with information on how interested persons may obtain a copy of the application; and
 - (D) include notice of the deadline stated in subsection (f), below, for advising the Ministry of a claim.
- (f) Any persons, group, clan, or community who claims to be an owner of the traditional knowledge or expression of culture to which the application relates, shall advise the Ministry within 30

days after the application is first published or first broadcast, whichever is later.

Section 17. Determination of undisputed ownership. In the event that no prior determination of ownership has been made, and when there is no dispute as to the ownership of the traditional knowledge or expression of culture claimed, the Ministry shall issue a determination stating such and identify the owner, and shall deliver a copy of the determination to all claimants. Any claimants adversely affected by the determination may within 30 days of receipt of the determination file suit against the group, clan or community determined to be the owner by the Ministry. The Trial Division of the Supreme Court shall hear the case de novo. The party filing suit shall provide notice of the suit to the Ministry. Determinations not challenged by the filing of a lawsuit in accordance with this section shall be final, and the determined owner shall be thereafter recognized as the official owner. The Ministry shall register official ownership of items of traditional knowledge and expressions of culture in accordance with any final order, judgment, or decree of the Supreme Court.

Section 18. Ownership disputed. In the event that ownership of a particular item of traditional knowledge or expression of culture is disputed, the Ministry shall advise all claimants that a determination shall not be made and inform the claimants of the provisions of Section 19.

Section 19. Authority to accept application and proceed with negotiations. In the event that a determination of ownership cannot be made by the Ministry or such determination is challenged pursuant to Section 17 of this Act, the Ministry shall, after the expiration of the 30-day deadline in Section 17 and after providing notice to all claimants of the inability to determine ownership, have the authority as owner to accept or reject the application, and if accepted, negotiate for the transfer of appropriate use rights to the prospective user. The Ministry shall not accept an application if all claimants agree that the application should be rejected. If the application is accepted, the Ministry shall have a general fiduciary duty to obtain a reasonable user agreement and shall advise all claimants of the terms of the proposed user agreement. The Ministry shall review and consider, but not be bound by, all

comments submitted by claimants on the terms of the proposed user agreement.

Subchapter 3 - Authorized user agreements

Section 20. Application acceptance or rejection; negotiations.

- (a) The owner, official owner, or trustee shall within 90 days of an application's submission decide whether to:
 - (1) reject the application; or
 - (2) accept the application and enter into negotiations for a written authorized user agreement.
- (b) An official owner acting in its own capacity after lawful dissolution of the trust shall inform the Ministry of the decision to accept or reject the application.
- (c) The Ministry shall inform the applicant in writing of the decision of the owner or trustee.

Section 21. Proposed agreement to be reviewed by the Ministry. In the event that negotiations have been undertaken with an official owner acting in its own capacity after lawful dissolution of the trust:

- (a) before entering into a user agreement, the official owner shall submit the proposed agreement to the Ministry for its comments on the terms and conditions of the proposed agreement.
- (b) The Ministry shall have the authority to require the applicant and the official owner to meet with it to discuss the proposed agreement if, after reviewing the proposed agreement, the Ministry is satisfied that:
 - (1) the official owner does not have sufficient information to make a full and informed decision about the proposed terms and conditions of the agreement; or
 - (2) the proposed terms and conditions of the agreement do not adequately protect the traditional knowledge or expression of culture.
- (c) Except as required in Section 22, the owner and applicant may accept, reject, or modify any comments made by the Ministry in relation to the proposed agreement.

Section 22. Required 1 terms and conditions of an authorized user agreement. An authorized user agreement shall address whether each right set forth in Section 7(a) is to be transferred and if so,

under what conditions, if any. A form agreement shall be drafted by the Attorney General which shall address each item in Section 7(a) and any additional terms or conditions the Attorney General finds necessary and appropriate. The agreement shall also include terms and conditions allowing the parties to specify:

- (a) the sharing of financial and other benefits arising from the use of the traditional knowledge or expression of culture;
- (b) the compensation, fees, royalties or other payments to the owner or its designee for the use;
- (c) whether the use is exclusive as to potential other non-customary uses. A sentence shall be included informing the applicant that customary use cannot be restricted by agreement;
- (d) the duration of the use and any rights of renewal;
- (e) the disclosure requirements for each separate use;
- (f) whether ownership rights transferred are to be shared with the owner;
- (g) reasonable access of the owner to the applicant's business records and inventory involving the traditional knowledge or expression of culture identified in the agreement;
- (h) education or training requirements for the applicant;
- (i) any controls or limitations on the ownership rights transferred;
- (j) whether assignment of the rights to a third party is prohibited or permitted only with the consent of the owner;
- (k) whether original or derivative works from the rights transferred may be imported or exported;
- (l) choice of law and venue for the resolution of any disputes under the agreement; and
- (m) respect for moral rights of the owner including the method of attribution and any specifics of the use which the owner identifies as acceptable or unacceptable.

Section 23. Authorized user agreement register.

- (a) Users shall file a copy of all authorized user agreements with the Ministry.
- (b) An authorized user agreement shall not be enforceable and may not constitute a defense unless it is registered with the Ministry.
- (c) The Ministry is to keep a register of all authorized user agreements. The register is to be in such form and contain such information the Minister finds appropriate. The register filing

system shall be established in a manner that accommodates appropriate public access and notice of each owner and the items identified as traditional knowledge or expressions of culture.

Section 24. No authorized user agreement reached.

- (a) If an official owner acting in its own capacity after lawful dissolution of the trust cannot agree with the applicant as to the terms and conditions of use, the official owner shall notify the Ministry.
- (b) Whenever the parties are unable to agree as to the terms and conditions of an authorized user agreement, the Ministry shall advise the applicant in writing that the proposed agreement has been rejected.
- (c) The Ministry shall record in writing the specific reasons for the rejection.

Subchapter 4 - Registration of prior licenses and contract; eminent domain

Section 25. Registration of preexisting rights. All non-customary uses of traditional knowledge and expressions of culture established prior to the effective date of this Act and which uses are intended to be continued after the effective date of this Act shall be registered with the Ministry. Any preexisting, non-customary use which is not filed with the Ministry within 180 days of the effective date of this Act shall be deemed abandoned and no longer enforceable by contract, intellectual property, or other law.

Section 26. Public notice of use under registered preexisting rights.

Commencing one year after the effective date of this Act, all products, performances, and display making non²⁴ customary uses of traditional knowledge or expressions of culture pursuant to registered pre-existing rights shall include the following notices.

- (a) Goods shall include a label or tag approved by the Ministry stating: "This product includes elements of Palauan traditional knowledge or expressions of culture which have been used without the express guidance or approval of the traditional owner."
- (b) Performances and public displays shall include an announcement or written program note stating: "This performance or display includes elements of Palauan

traditional knowledge or expressions of culture which have been used without the express guidance or approval of the traditional owner.”

Section 27. Eminent domain. The Ministry as owner or trustee and on behalf of any official owner, shall have the authority to exercise the power of eminent domain to recover properly registered preexisting rights to non-customary use of traditional knowledge or expression of culture. The power of eminent domain shall only be exercised for a public purpose, provide the holder of preexisting rights appropriate compensation, and be implemented with procedures consistent with the eminent domain statute for the acquisition of land (Chapter 3 of Title 35 of the Palau National Code), including negotiations with the right holder prior to exercising eminent domain.

Chapter 5 - ENFORCEMENT

Subchapter 1 - Customs

Section 28. Import and export declarations; seizure of unauthorized goods.

The Bureau of Revenue, Customs and Taxation shall promulgate regulations pursuant to the Administrative Procedures Act, 6 PNC Chapter 1, which shall require the submission of a declaration form for every import and export of goods involving Palauan traditional knowledge or an expression of culture. Each person importing or exporting goods which include elements of Palauan traditional knowledge or expressions of culture shall so declare and state whether the goods were produced and sold under an authorized user agreement or preexisting rights registered in accordance with section 23 or Section 25 of this Act. Any goods imported or exported or attempted to be imported or exported in violation of this Act shall be seized and disposed of in accordance with normal procedures for handling contraband.

Subchapter 2 - Criminal enforcement

Section 29. Criminal infringement. Every person who makes a non-customary use of traditional knowledge or an expression of culture in violation of this Act shall be guilty of criminal infringement and upon

conviction thereof shall be fined not more than \$10,000.00 or imprisoned not more than one year, or both.

Section 30. Criminal derogation. Every person who knowingly and intentionally engages in the act of derogatory treatment of traditional knowledge or expressions of culture in violation of this Act shall be guilty of criminal derogation and upon conviction thereof shall be fined not more than \$5,000.00 or imprisoned not more than one year, or both.

Section 31. Criminal commerce in traditional knowledge or expressions of culture. Every person who knowingly and intentionally buys, sells, distributes, imports or exports or attempts to buy, sell, distribute or import or export traditional knowledge or expressions of culture when such commercial activity is a non-customary use in violation of this Act shall be guilty of criminal commerce in traditional knowledge or expressions of culture and upon conviction thereof shall be fined three times the gross revenue received or up to \$10,000.00, whichever is greater, or imprisoned not more than one year, or both.

Section 32. Restitution. In accordance with Article IV, Section 8 of the Constitution and 17 PNC § 3105, the owner, official owner, or trust beneficiary of traditional knowledge or expressions of culture who have been financially harmed by any criminal violation specified in this Act shall be entitled restitution in the amount of the financial harm proved in addition to any other penalties imposed.

Subchapter 3 - Civil enforcement

Section 33. Civil action authorized. The Attorney General on behalf of the Ministry (as owner or as trustee on behalf of a trust beneficiary) or any official owner who has dissolved the trust in accordance with this Act may file a civil action for infringement in the Trial Division of the Supreme Court against any person engaged in the unauthorized, non-customary use of traditional knowledge or expressions of culture in violation of this Act.

Section 34. Civil remedies. Upon proof that the traditional knowledge or expressions of culture belonging to the plaintiff was subject to

unauthorized, on-customary use by the defendant, the Trial Division may grant any or all of the following remedies:

- (a) injunctive relief;
- (b) an award of damages proved for losses resulting from the unauthorized use;
- (c) an award of punitive damages;
- (d) a declaration that the plaintiff's rights were contravened;
- (e) an order that the defendant issue a public apology for the contravention;
- (f) an order requiring the defendant to undertake the steps necessary to correct any false attribution or derogatory treatment of the traditional knowledge or expression of culture owned;
- (g) an order requiring the defendant to account for profits;
- (h) an order to seize unauthorized goods produced or imported or exported or attempted to be imported or exported in violation of this Act; and
- (i) such other relief the Court deems equitable or just.

Chapter 6 - MISCELLANEOUS

Section 35. Regulations. The Minister may promulgate regulations in accordance with the Administrative Procedures Act codified in Title 6 of the Palau National Code prescribing all matters required or permitted by this Act or necessary or convenient or for carrying out or giving effect to the Act.

Section 36. Unilateral declaration. The ownership rights in traditional knowledge or expressions of culture recognized by law in other Pacific island jurisdictions may be enforced in the courts of the Republic of Palau.

Section 37. Effective date. This Act shall take effect upon its approval by the President, or upon its becoming law without such approval.

Date: _____

Introduced by: _____

Yukiwo P. Dengokl, Senator

Republic of Palau Copyright Act of 2003

SIXTH OLBIIL ERA KELULAU

RPPL NO. 6-38

First Regular Session, January 2001 (Intro. as HB No. 6-2-1S, HD1, SD3, CD1)

AN ACT

To provide for copyright protection of original works and for protection of performers' rights; and for related purposes.

THE PEOPLE OF PALAU REPRESENTED IN THE OLBIIL ERA KELULAU DO ENACT AS FOLLOWS:

Section 1. Purpose; short title. The purpose of this Act is to protect the owners and creators of original works, including literary works, musical works, dramatic works, choreographic works, graphic works, architectural works, audiovisual works, computer programs, and sound recordings. This Act has the further purpose of protecting the rights of performers in their performances. This Act shall be known as the "Republic of Palau Copyright Act of 2003."

Section 2. Definitions. As used in this Act:

- (a) "Anonymous work" means a work for which no natural person is identified as the author.
- (b) "Audiovisual work" means a work that consists of a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the work is embodied.
- (c) "Author" means the natural person who created the work.
- (d) "Collective work" means a work, such as a periodical, anthology, or encyclopedia, in which a number of contributions, constituting separate and independent works in themselves, are assembled into a collective whole.

- (e) "Compilation" means a work formed by the collection and assembling of pre existing materials or of data that are selected, coordinated, or arranged in such a way that the resulting work as a whole constitutes an original work of authorship. "Compilation" includes collective works.
- (f) "Copies" means material objects, including but not limited to phonorecords, in which a work is fixed by any method and from which a work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a device. The term "copies" includes the material object in which the work is first fixed.
- (g) " Copyright owner" with respect to any one of the exclusive rights comprised in a copyright, means the owner of that particular right.
- (h) "Created" means fixed in a copy or phonorecord for the first time. Where a work is prepared over a period of time, the portion of it that has been fixed at any particular time constitutes the work as of that time, and where the work has been prepared in different versions, each version constitutes a separate work.
- (i) "Derivative work" means a work based upon one or more preexisting works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications, which, as a whole, represent an original work of authorship, is a derivative work.
- (j) "Display" means to show a copy of a work, either directly or by means of a film. slide, television image, or any other device.
- (k) "Fixed": A work is "fixed" in a tangible medium of expression when its embodiment in a copy or phonorecord is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.
- (l) "Joint work" means a work that is prepared by two or more authors whose contributions are merged into inseparable or interdependent parts of a unitary whole.
- (m) "Literary work" means a work, other than an audiovisual work, that is expressed in words, numbers, or other verbal or numerical symbols or indicia, regardless of the nature of the material object,

such as a book, periodical, manuscript, phonorecord, film, tape, or card, in which it is embodied.

- (n) "Minister" means the Minister of Community and Cultural Affairs of the Republic of Palau.
- (o) To "perform" or "display" a work "publicly" means to recite, render, play, dance, or act, either directly or through the means of any device or, in the case of a motion picture or other audiovisual work, to show its images in any sequence or to make the sounds accompanying it audible, at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or to transmit or otherwise communicate a performance or display of the work to a place specified in the foregoing or to the public, by means of any device or process, whether the members of the public capable of receiving the performance or display receive it in the same place or in separate places and at the same time or at different times.
- (p) "Phonorecord" means a material object in which the sounds, other than those accompanying an audiovisual work, are fixed by any method, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. A Phonorecord includes the material object in which the sounds are first fixed.
- (q) "Pictorial, graphic, and sculptural works" mean two-dimensional and three dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models.
- (r) "Pseudonymous work" means a work for which the author is identified under a fictitious name.
- (s) "Publication" means the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership or by rental or lease. The distribution of copies or phonorecords to a person or group of persons for public performance or public display constitutes publication.
- (t) "Residence" means the legal residence of a natural person and the domicile or jurisdiction of incorporation of a legal entity.
- (u) "Sound recording" means a work that results from the fixation of a series of musical, spoken, or other sounds, but not including the sounds accompanying a motion picture or other audiovisual work,

regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

- (v) "Transfer of copyright ownership" means an assignment, mortgage, exclusive license, or any other conveyance, alienation, or hypothecation of a copyright or of any of the exclusive rights comprised in copyright, whether or not it is limited in time or place or effect, but not including a nonexclusive license.
- (w) "Work" means any form of creative expression.
- (x) "Work made for hire" means (1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for a particular use if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

PART II- COPYRIGHT

Section 3. Subject matter of copyright; generally.

- (a) Copyright protection arises, in accordance with this Act, in original works of authorship fixed in any tangible medium of expression from which those works can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a device including:
 - (1) literary works;
 - (2) musical works, including any accompanying words;
 - (3) dramatic works, including any accompanying music;
 - (4) pantomimes and choreographic works;
 - (5) pictorial, graphic, and sculptural works;
 - (6) architectural works;
 - (7) motion pictures and other audiovisual works;
 - (8) computer programs;
 - (9) sound recordings;
 - (10) speeches, lectures, addresses, and other oral works;
 - (11) illustrations, maps, plans, sketches, and three-dimensional works relative to geography, topography, architecture, or science; and
 - (12) works of applied art.
- (b) In no case does copyright protection for an original work of authorship extend to the following:

- (1) any idea, procedure, process, system, method of operation, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work;
- (2) official public legislative, administrative or legal texts, or any official translations thereof, and
- (3) speeches, lectures, addresses, and other oral works given by a government official in his or her official capacity.

Section 4. Same; compilations and derivative works.

- (a) The subject matter of copyright as specified by Section 3 includes compilations and derivative works, but protection for a work employing preexisting material in which copyright exists does not extend to any part of the work in which such material has been used unlawfully.
- (b) The copyright in a compilation or derivative work extends only to the material contributed by the author of such work, as distinguished from the preexisting material employed in the work, and does not imply any exclusive right in the preexisting material. The copyright in such work is independent of, and does not affect or enlarge the scope, duration, ownership, or existence of any copyright protection in the preexisting material.

Section 5. Same, national origin.

- (a) Unpublished works. The works specified by Sections 3 and 4, while unpublished, are subject to protection under this Act without regard to the nationality or citizenship of the author.
- (b) Published works. The works specified by Sections 3 and 4, when published, are subject to protection under this chapter if:
 - (1) on the date of first publication, one or more of the authors is a national or resident of the Republic;
 - (2) the work is initially published in the Republic of Palau;
 - (3) the work is initially published in another country and also published in the Republic of Palau within 30 days thereafter, irrespective of the nationality or residence of the author;
 - (4) the work is an audiovisual work, the producer of which is a resident of Palau; or
 - (5) the work is an architectural work erected in the Republic of Palau or is an artistic work incorporated into a building or other structure located in Palau.

- (c) Any copyright owner who is the bona fide owner of a copyright, or the owner of a transferred copyright as described under section (2)(w) of this Act, which is not subject to the protections and limitations of section 5(b) herein, shall be subject to the same protections provided the owner thereof, provided he or she registers the work or works with the Office of the Attorney General and pays the requisite fee. The Attorney General shall charge a fee of \$200.00 per work registered, or \$ 2,000.00 for 10 or more works registered to the same owner. For persons or businesses registering 10 or more works, additional works may be added at no charge during the same calendar year. For registration of new copyright in future calendar years, the same fees shall apply. The Attorney General shall promulgate rules and regulations pursuant to the Administrative Procedure Act, 6 PNC Chapter 1, for the administration of this section.
- (d) Protection under this chapter shall also apply to works that are eligible for protection in the Republic of Palau by virtue of and in accordance with any international convention or other international agreement to which the Republic of Palau is a party.

Section 6. Exclusive rights in copyrighted works.

- (a) Economic rights. Subject to the provisions of this Act, the owner of a copyright under this Act has the exclusive right to do, and to authorize another or others to do, any of the following:
 - (1) reproduce the copyrighted work;
 - (2) prepare derivative works based upon the copyrighted work;
 - (3) distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental or lease;
 - (4) perform the copyrighted work publicly;
 - (5) display the copyrighted work publicly;
 - (6) have the copyrighted work translated;
 - (7) adapt, arrange, or otherwise transform the copyrighted work; and
 - (8) broadcast the copyrighted work and otherwise communicate the copyrighted work to the public.
- (b) Moral rights. Independent of economic rights, and even where the author is no longer the owner of the economic rights to a copyrighted work, the author of the work shall have the right:

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

None of the foregoing moral rights shall be transferrable during the life of the author, but shall be transferrable by testamentary disposition or by operation of law following the death of the author. The author may waive any of the moral rights enumerated in this section.

Section 7. Private reproduction for personal purposes.

- (a) Notwithstanding the provisions of section 6, the private reproduction of a single copy of a published work shall be permitted without the authorization of the author or copyright owner, where the reproduction is made by a natural person for his or her own personal purposes.
- (b) The permission provided in subsection (a) shall not extend to reproduction:
 - (1) of a work of architecture in the form of a building or other construction;
 - (2) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notation;
 - (3) of the whole or a substantial part of a database in digital form;
 - (4) of a computer program, except as otherwise provided in this Act; and
 - (5) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or owner of the copyright.

Section 8. Quotation. Notwithstanding the provisions of section 6, the reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorization of the author or copyright owner; provided, that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose. The quotation shall be accompanied by an indication of the source

and name of the author, if his or her name appears in the work from which the quotation is taken.

Section 9. Reproduction for teaching. Notwithstanding the provisions of section 6, the following acts shall be permitted without authorization of the author or copyright owner:

- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings, provided that such reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;
- (b) the reprographic reproduction, for face-to-face teaching in educational institutions, 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:
 - (1) the act of reproduction is an isolated act occurring, if repeated, on separate and unrelated occasions, and
 - (2) there is no collective license offered by a collective copyright management organization of which the education institution is or should be aware, under which such reproduction can be authorized.
- (c) 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 section.

Section 10. Reprographic reproduction by libraries and archives.

Notwithstanding the provisions of section 6, any library or archive whose activities are not for commercial gain may, without the authorization of the author or copyright owner, make a single copy of a work by reprographic reproduction under the following circumstances:

- (a) where the work reproduced is a published article, other short work, or a short extract of a work, and where the purpose of the reproduction is to satisfy the request of a natural person, provided that:
 - (1) the director of the library or archive, or his or her authorized agent, is satisfied that the copy will be used solely for the purposes of study, scholarship, or private research;

- (2) the act of reproduction is an isolated act occurring, if repeated, on separate and unrelated occasions; and
 - (3) there is no collective license offered by a collective administrative organization of which the management of the library or archive is or should be aware, under which such reproduction can be authorized; or
- (b) where the copy is made in order to preserve and, if necessary, to replace a copy that has been lost, destroyed, or rendered unusable in the permanent collection of another similar library or archive, provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

Section 11. Reproduction broadcasting, and other communication to the public for information purposes. Notwithstanding the provisions of section 6, the following acts shall be permitted in respect to a work without the authorization of the author or copyright owner, subject to the obligation to indicate the source and the name of the author so far as practicable:

- (a) the reproduction in a newspaper or periodical, or the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political, or religious topics or of a broadcast work of the same character; this 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 author or copyright owner, 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 justified by the purpose; and
- (c) the reproduction in a newspaper or periodical, the broadcasting, or other 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 justified by the purpose of providing current information.

Section 12. Reproduction and adaptation of computer programs.

- (a) Notwithstanding the provisions of section 6, the reproduction, in a single copy, or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorization of the author or copyright owner, provided that the copy or adaptation is necessary:
- (1) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained; or
 - (2) for archival purposes and for the replacement of the lawfully owned copy of the computer program if the lawfully owned copy of the computer program is lost, destroyed, or otherwise rendered unusable.
- (b) No copy or adaptation of a computer program may be used for any purpose other than those specified in subsection (a), and any such copy or adaptation shall be destroyed if continued possession of the copy of the computer program ceases to be lawful.

Section 13. Display of works. Notwithstanding the provisions of section 6, the public display of originals or copies of works shall be permitted without the authorization of the author or copyright owner, provided that the display is made other than by means of a film, slide, television image or otherwise on screen and provided further that 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, copyright owner, or their successors in title.

Section 14. Ownership of copyright.

- (a) Initial ownership. Copyright in a work protected under this Act vests initially in the author or authors of the work. The authors of a joint work are co-owners of copyright in the work.
- (b) Works made for hire. In the case of a work made for hire, the employer is the author for purposes of this Act and, unless the parties have expressly agreed otherwise in a written instrument signed by them, the employer owns all of the rights comprised in the copyright. In the case considered in section 2(y)(2), the person who has ordered or commissioned the work is the copyright owner.

- (c) Contributions to compilations. Copyright in each separate contribution to a compilation is distinct from copyright in the compilation as a whole, and vests initially in the author of the contribution. In the absence of an express transfer of the copyright or of any rights under it, the owner of copyright in the compilation is presumed to have acquired only the privilege of reproducing, distributing, or communicating to the public the contribution as part of that particular compilation, any revision of that compilation, and any later compilation in the same series.
- (d) Audiovisual works and sound recordings. Copyright in an audiovisual work or sound recording vests initially in the producer of such work, unless otherwise specified by contract. The co-producers of an audiovisual work or sound recording and the authors of the pre-existing works included in or adapted for the audiovisual work or sound recording shall maintain their copyrights in the contributions or pre-existing works, to the extent those contributions or pre-existing works can be subject to copyright protection separately from the audiovisual work or sound recording.
- (e) Anonymous and pseudonymous works. Copyright in an anonymous or pseudonymous work vests initially in the publisher whose name appears on the work, who shall be presumed to represent the author. This presumption ceases to apply when the author reveals his or her identity.
- (f) Transfer of ownership.
- (1) The ownership of a copyright may be transferred in whole or in part by any means of conveyance or by operation of law or may be bequeathed by will; provided, that in the absence of the foregoing means of transfer, ownership of a copyright shall pass as personal property under the laws and customs of the jurisdiction where the owner resides.
 - (2) Any of the exclusive rights comprised in a copyright, including any subdivision of any of the rights specified by Section 6 of this Act, may be transferred as provided by paragraph (1) of this subsection and owned separately. The owner of any particular exclusive right is entitled, to the extent of that right, to all of the protection and remedies accorded to the copyright owner by this Act.
- (g) The natural 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. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

Section 15. Ownership of copyrights as distinct from ownership of material object. Ownership of a copyright, or of any of the exclusive rights under a copyright, is distinct from ownership of any material object in which the work is embodied. Transfer of ownership of any material object, including the copy or phonorecord in which the work is first fixed, does not of itself convey any rights in the copyrighted work embodied in the object; nor, in the absence of an agreement, does transfer of ownership of a copyright or of any exclusive rights under a copyright convey property rights in any material object.

Section 16. Duration of copyright.

- (a) Copyright in a work created on or after the effective date of this Act exists from its creation and, except as provided by the following subsections, endures for a term consisting of the life of the author and 50 years after the author's death. Copyright in a work created before the effective date of this Act shall begin on the effective date of this Act and, except as provided by the following subsections, endures for a term consisting of the life of the author and 50 years after the author's death.
- (b) In the case of a joint work prepared by two or more authors who did not work for hire, the copyright endures for a term consisting of the life of the last surviving author and 50 years after such last surviving author's death.
- (c) In the case of an anonymous work, a pseudonymous work, or a work made for hire, the copyright endures for a term of 75 years from the year of its first publication, or a term of 100 years from the year of its creation, whichever expires first. If, before the end of such term, the identity of one or more of the authors of an anonymous or pseudonymous work is revealed the copyright in the work endures for the term specified by subsections (a) and (b) of this section.
- (d) In the case of an audiovisual work or collective work, the copyright endures for a term of 75 years from the year of its first publication, or 100 years from the year of its creation, whichever expires first.

PART III- PROTECTION OF PERFORMERS

Section 17. Scope of application.

- (a) The provisions of this Part shall apply to:
 - (1) performers who are nationals or residents of the Republic of Palau; and
 - (2) performers whose performances take place in the territory of the Republic of Palau or are incorporated in sound recordings that are protected under this Act.
- (b) The provisions of this Part shall also apply to performers that are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which the Republic of Palau is a party.

Section 18. Acts requiring authorization of performers.

- (a) Subject to the provisions of subsection (e), a performer shall have the exclusive right to carry out or to authorize any of the following acts:
 - (1) the broadcasting or other communication to the public of his or her performance, except where the broadcasting or the other communication is made from a fixation of the performance or is a rebroadcasting made or authorized by the organization initially broadcasting the performance; provided, that a fixation made pursuant to subsection (e) or otherwise made without the authorization of the performer may not be broadcast or communicated to the public without the express authorization of the performer;
 - (2) the fixation of his or her unfixed performance;
 - (3) the direct or indirect reproduction of a fixation of his or her performance,
 - (4) the distribution to the public by sale or other transfer of ownership, of a fixation of his or her performance, or copies thereof, that have not already been subject to a distribution authorized by the performer;
 - (5) the rental to the public of a fixation of his or her performance, or copies thereof; irrespective of the ownership of the copy rented or lent; and
 - (6) the making available to the public of his or her fixed performance, by wire or wireless means, in such a way that

members of the public may access them from a place or at a time individually chosen by them.

- (b) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his or her performance, have the right to be identified as the performer of his or her performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation, or other modification of his or her performance that would be prejudicial to his or her reputation. The provisions of subsection 6(b) shall apply to the rights granted under this subsection.
- (c) Nothing in this section shall be construed to deprive performers of the right to agree by contract on terms and conditions more favorable for them with respect to their performances.
- (d) The rights under this section shall be protected until the end of the 50th calendar year following the year in which the performance was fixed in a phonogram, or in the absence of such fixation, from the end of the year in which the performance took place.
- (e) Subsection (a) shall not apply in cases where, under Part I of this Act, a work can be used without the authorization of the author or copyright holder.
- (f) Once the performer has authorized the incorporation of his or her performance in an audiovisual fixation, the provisions concerning his exclusive rights shall have no further application.

PART IV - ENFORCEMENT OF RIGHTS

Section 19. Infringement; civil remedies.

Anyone who violates any of the exclusive rights of the copyright or the rights of performers provided under this Act is an infringer of copyright or performers' rights, as the case may be, and shall be liable:

- (a) to an injunction restraining such infringement;
- (b) to pay the copyright owner or performer the greater of:
 - (1) statutory damages of \$1,000; or
 - (2) the actual damages suffered by the owner or performer and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages;

- (c) to pay the copyright owner or performer punitive damages, if imposed by the court;
- (d) to be subject to a court order for the disposal or destruction of the infringing goods; and
- (e) to pay the copyright owner or performer reasonable costs associated with enforcement, including attorneys' fees.

Section 20. Infringement; criminal offense; fraud.

- (a) Every person who intentionally or recklessly infringes a copyright or the rights of a performer for the purpose of commercial advantage or private financial gain shall be fined not less than \$5,000 nor more than \$25,000.
- (b) When any person is convicted of any violation under subsection (a) the court in its judgment of conviction, in addition to the penalty therein prescribed, may order the forfeiture and destruction or other disposition of all infringing copies or phonorecords and devices used in the manufacture of such infringing copies or phonorecords.
- (c) Every person who, with fraudulent intent, places on any article a notice of copyright or words of the same purpose that such person knows to be false, or who, with fraudulent intent, publicly distributes or imports for public distribution any article bearing such notice or works that such person knows to be false, shall be fined not more than \$2,500.
- (d) Every person who, with fraudulent intent, removes or alters any notice of copyright appearing on a copy of a copyrighted work shall be fined not more than \$2,500.
- (e) Every person who is convicted of violating any of the provisions of this section for a second time shall be fined not more than \$30,000, imprisoned for not more than one year, or both. Any subsequent conviction shall subject the violator to a fine of not more than \$50,000, imprisonment for not more than two years, or both, for each subsequent offense.

Section 21. Infringement; provisional and preventative measures.

In addition to any other penalty or remedy provided by this Act, the Supreme Court shall have the authority, in accordance with applicable laws, regulations, and rules of the Republic, and on such terms as it may deem reasonable:

- (a) to grant injunctions to prohibit the committing, or continuation of committing, of infringement of any right protected under this Act; and
- (b) to order the impounding of copies of works or sound recordings upon a showing that the copies were made or imported without the authorization of the owner of any right protected under this Act where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts, or business papers referring to such copies.

Section 22. Infringement; circumvention of copyright protection devices

- (a) The following acts shall be unlawful and, in the application of sections through 21 of this Act, shall be considered infringements of the rights protected under this Act:
 - (1) the manufacture or importation for sale or rental of any device or means designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or performance or to impair the quality of the copies made;
 - (2) the manufacture or importation for sale or rental of any device or means that enables or assists in the reception of any encrypted program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program;
 - (3) the removal or alteration of any electronic rights management information without authority; and
 - (4) the distribution, import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, knowing or having reason to know that electronic rights management information has been removed or altered without authority.
- (b) In the application of sections through 21, any illicit device or means mentioned in subsection (a) and any copy from which rights management information has been removed, or in which such information has been altered, shall be considered infringing copies of works, and any illicit act referred to in subsection (a) shall be treated as an infringement of copyright

or neighboring rights to which the civil and criminal sanctions provided under this Act are applicable.

PART V - TRANSITIONAL AND FINAL PROVISIONS

Section 23. Regulations. The Attorney General shall promulgate regulations pursuant to the Administrative Procedure Act, 6 PNC Chapter 1, to carry out the purposes of this Act.

Section 24. Public education and awareness. Within 180 days from the effective date of this Act, the Ministry of Community and Cultural Affairs, in conjunction with the Attorney General, shall, through a combination of written materials and oral presentations, educate the public about the requirements and restrictions of this Act.

Section 25. Existing subject matter of protection. The provisions of this Act shall not apply to works created and first published and performances first fixed before the effective date of this Act. The Act shall not affect contracts on works and performances concluded before the effective date of this Act.

Section 26. Effective date. This Act shall take effect upon its approval by the President of the Republic, or upon its becoming law without such approval, except as otherwise provided by law.

PASSED: November 07, 2003

Approved this 26th day of November 2003.

Tommy E. Remengesau, Jr., President