



REPUBLIC OF FIJI ISLANDS GOVERNMENT GAZETTE
PUBLISHED BY AUTHORITY OF THE FIJI GOVERNMENT

Vol. 10

MONDAY, 22nd JUNE 2009

No. 39

[340]

GOVERNMENT OF FIJI
 (DECREE NO. 18)

COPYRIGHT (AMENDMENT) DECREE 2009

IN exercise of the powers conferred upon me as President and as Commander of the Republic of Fiji Military Forces, I hereby make the following Decree—

TO AMEND THE COPYRIGHT ACT 1999

Short title and commencement

- 1.—(1) This Decree may be cited as the Copyright (Amendment) Decree 2009.
- (2) This Decree comes into force on a date appointed by the Minister by notice in the *Gazette*.

Sections 121A and 121B added

2. The Copyright Act 1999 (11 of 1999) (in this Decree referred to as “the Act”) is amended by adding—

“Presumption arising from label or mark

121A. For the purposes of any proceedings for an offence against section 121 in relation to a work or other subject matter—

- (a) if a copy of the work or other subject matter, or the packaging or container in which the copy is packaged or contained, bears a label or mark stating the year and place of the first publication, or of the making, of the work or other subject matter, then that year and place are presumed to be as stated on the label or mark, unless the contrary is established; and
- (b) if a copy of the work or other subject matter, or the packaging or container in which the copy is packaged or contained, bears a label or mark stating that a person was the owner of copyright in the work or other subject matter at a particular time, then the person is presumed to have been the owner of the copyright at the time, unless the contrary is established.

Presumption arising from foreign certificate

121B.—(1) For the purposes of any proceedings for an offence against section 121 in relation to a work or other subject matter—

- (a) if a certificate or other document issued in a qualifying country in accordance with a law of that country states the year and place of the first publication, or of the making, of the work or other subject matter, then that year and place are presumed to be as stated in the certificate or document, unless the contrary is established; and
- (b) if a certificate or other document issued in a qualifying country in accordance with a law of that country states that a person was the owner of copyright in the work or other subject matter at a particular time, then the person is presumed to have been the owner of the copyright at the time, unless the contrary is established.

(2) For the purposes of this section, a document purporting to be a certificate or document referred to in subsection (1)(a) or (b) is, unless the contrary intention is established, taken to be such a certificate or document.

- (3) In this section, “qualifying country” means—
- (a) a country that is a party to the International Convention for the Protection of Literary and Artistic Works concluded at Berne on 9 September 1886 as revised from time to time; or
- (b) a country that is a member of the World Trade Organization established by the Marrakesh Agreement done at Marrakesh on 15 April 1994 and has a law that provides consistently with the Agreement on Trade-Related Aspects of Intellectual Property Rights set out in Annex 1C to that Agreement for:
- (i) the ownership and duration of copyright or a related right in works, sound recordings and cinematograph films; and
- (ii) the owner of the copyright or related right to have rights relating to the reproduction of the work, sound recording or cinematograph film”

Section 126(1)(a) amended

3. Section 126(1)(a) of the Act is amended by deleting “of”.

Section 132 amended

4. Section 132 of the Act is amended by deleting “notice of proceedings” and substituting “notice directed to the Comptroller”.

Section 133 amended

- 5.—(1) Section 133(3) and (4) of the Act is repealed and the following substituted—

“(3) Where an item is the subject of a determination under section 129(3), any person may by notice in writing directed to the Comptroller and served on the Comptroller ask the Comptroller to refer the matter to a court for a decision on whether or not the item is a pirated copy that has been imported other than for private and domestic use and, where such a request is made—

- (a) the Comptroller must refer the matter to a court; and
- (b) the court must make such a decision accordingly.

- (4) Where a matter is so referred to a court by the Comptroller, the Registrar of the court must—

- (a) cause there to be commenced proceedings as between—
- (i) the person who gave the notice to the Comptroller, as plaintiff; and
- (ii) either or both of the claimant and the importer or consignee (not being the person who gave the notice) and any other person named in the referral as a person appearing to the Comptroller to have an interest in the item, as defendant; and
- (b) cause notice of the proceedings to be sent to the parties and to the Comptroller.”.

- (2) Section 133(5) of the Act is amended by repealing “must court” and substituting “court must”.

Given under my hand this 19th day of June 2009.

JOSEFA ILOILOVATU ULUIVUDA
President and Commander in Chief of
the Republic of Fiji Military Forces

EXPLANATORY NOTE

(This Note is not part of the Decree and is intended only to indicate its general effect)

1.0 Background

- 1.1 Section 121 of the Copyright Act 1999 (“the Act”) creates a number of offences relating to the making or selling of infringing copies of copyright works. However, prosecutions for offences under this section in relation to overseas copyrighted works have generally not succeeded due to the difficulty of proving that the defendant had no licensing rights in the work.
- 1.2 Under Part 8 of the Act (“Border Protection Measures”), the Comptroller of Customs is authorised to seize incoming copies of works that appear to be pirated copies. The onus is then on the local licensee of the work to bring proceedings in the High Court under section 133(3) of the Act seeking a decision that the goods are in fact pirated and are not for private or domestic use, in order to avoid the items being returned to the importer.
- 1.3 There are typographical errors in sections 126(1)(a) and 133(5) of the Act.

2.0 The Decree

- 2.1 Section 2 of the Decree adds new sections 121A and 121B to the Act. These sections provide for certain presumptions to have effect in the prosecution of offences under section 121 of the Act. The presumptions (which are modelled on presumptions introduced into the corresponding Australian legislation) will allow the prosecution to rely on (a) data contained on the label of a genuine copy of the work, and (b) information contained in a certificate issued in a foreign country, to prove that the licensee in Fiji (if any) is a person other than the defendant.
- 2.2 Sections 4 and 5(1) of the Decree amend sections 132 and 133 of the Act to provide for the Comptroller, if so requested by any person, to refer the matter of items seized under the Part 8 of the Act to the High Court, and for the Registrar to cause there to be commenced proceedings in the name of the person requesting the referral.
- 2.3 Sections 3 and 5(2) of the Decree provide for rectification of errors in the text of sections 126(1)(a) and 133(5) of the Act.

A. S. KHAIYUM
Attorney-General and Minister for Justice
Attorney-General’s Office
Suvavou House
Suva
June 2009