

# **WEBINAR ON EDUCATIONAL LICENSING FOR THE CARIBBEAN REGION**

**Legal framework for educational licensing in the Caribbean  
region: Trinidad and Tobago**



**Presented by the Trinidad and Tobago Intellectual Property Office,  
Office of the Attorney General and Ministry of Legal Affairs**

**March 21, 2022**

# Overview



- Legal framework for copyright and neighbouring rights.
- Role of the National Library and Information Systems Authority (“NALIS”).
- Works protected by copyright.
- Works not protected by copyright.
- Neighbouring rights.
- Economic rights.
- Moral rights.
- Fair dealing.
- Use of copyrighted material for educational purposes in Trinidad and Tobago.
- Educational licensing in Trinidad and Tobago.

# Legal framework for copyright and neighbouring rights



- The governing law in relation to copyright and neighbouring rights is:
  - The Copyright Act No. 8 of 1997 Chap 82:80 ([https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/82.80.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/82.80.pdf)) &
  - Act No. 14 of 2020 (<http://www.ttparliament.org/legislations/a2020-14.pdf>)
- The Copyright Act Chap. 82:80 was amended by Act No. 14 of 2020 to give effect to the following treaties:
  - Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (October 4, 2019).
  - Beijing Treaty on Audiovisual Performances (October 4, 2019).
  - Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (December 9, 2019).

# Role of the National Library and Information Systems Authority ("NALIS")



- **N.B.** The **Copyright (Amendment) Act No. 14 of 2020** seeks to improve the availability of printed materials in accessible formats so that these persons can enjoy equal access to education and to facilitate greater inclusiveness and participation in the cultural and social life of their communities.

The **National Library and Information Systems Authority ("NALIS")** is the authorised entity permitted to create and/or disseminate accessible format copies for use by persons who are blind, visually impaired, or otherwise print disabled. This constitutes an exception to copyright for these persons.

**Section 5 of the Copyright (Amendment) Act No. 14 of 2020** amended the Copyright Act by inserting Section 12A which identifies NALIS as said authorised entity: <http://www.ttparliament.org/legislations/a2020-14.pdf>

# Works protected by copyright

## Section 5(1) of the Copyright Act



Copyright is vested in the following works by **Section 5(1) of the Copyright Act**:

- (a) books, pamphlets, articles, computer programs and other writings;*
- (b) speeches, lectures, addresses, sermons and other works of the same nature;*
- (c) dramatic works, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;*
- (d) stage productions of works mentioned in paragraph (c);*
- (e) musical works, with or without accompanying words;*
- (f) audio-visual works;*

# Works protected by copyright

## Section 5(1) of the Copyright Act



*(g) works of architecture;*

*(h) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;*

*(i) photographic works;*

*(j) works of applied art;*

*(k) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.*

**N.B. Pursuant to Section 4 of the Copyright Amendment Act NO. 14 of 2020**, Section 5(1) of the Act is amended by—

(a) deleting the full stop at the end of paragraph (k) and substituting a semicolon; and

(b) inserting after paragraph (k), the following paragraphs: **“(l) audio-visual fixations; and (m) audio-books.”**.

# Works not protected by copyright

## Section 7 of the Copyright Act



Copyright does not protect the following (**Section 7(1) of the Copyright Act**):

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work;*
- (b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof; or*
- (c) political speeches and speeches delivered in the course of legal proceedings.*

**However,** *Collections of texts or speeches referred to in subsection (1)(b) or (c), whether in machine readable or other form, shall be protected as works provided that such collections are original by reason of the selection, coordination or arrangement of their contents (**Section 7(2) of the Copyright Act**).*

# Neighbouring Rights



## Part V of the Copyright Act

Neighbouring rights are property rights that subsist in:

- Performances
- Sound Recordings and
- Broadcasts





# Economic Rights

## Section 8 of the Copyright Act



- **Section 8(1) of the Copyright Act** sets out the nature of copyright and the rights comprised therein:

*8. (1) Subject to the provisions of sections 9 to 17, the owner of copyright shall have the exclusive right to do, authorise, or prohibit the following acts in relation to the work:*

*(a) reproduction of the work;*

*(b) translation of the work;*

*(c) adaptation, arrangement or other transformation of the work;*

*(d) the first public distribution of the original and each copy of the work by sale, rental or otherwise;*

# Economic Rights

## Section 8 of the Copyright Act



- (e) rental or public lending of the original or a copy of an audio-visual work, a work embodied in a sound recording, a computer program, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;*
- (f) importation of copies of the work, even where the imported copies were made with the authorisation of the owner of copyright;*
- (g) public display of the original or a copy of the work;*
- (h) public performance of the work;*
- (i) broadcasting of the work; or*
- (j) communication to the public of the work.*

# Economic Rights

## Section 8 of the Copyright Act



- Sections 8(1) (a), (c) and (j) of the Copyright Act Chap 82:80 are of particular importance with regard to the uploading of works on virtual platforms.
- Taking print material and disseminating same in print and/or virtually amounts to an adaptation, reproduction, and/or communication of the work to the public.
- Furthermore, sharing virtual works either in print or virtually, amounts to an adaptation, reproduction, and/or communication of the work to the public. All of these acts require the permission of the rights holders.



# Moral Rights

## Section 18 of the Copyright Act

Moral rights are the rights of personality of the author. The author has the right:

- (a) To be identified prominently as the author of his work;
- (b) Not to have his name indicated on his work, if he so desires;
- (c) To use a pseudonym (alias); and
- (d) To object to any derogatory treatment of his work.



# Fair Dealing

In the United Kingdom the concept of 'fair dealing' is similar. Sections 29 and 30 of the Copyright, Designs and Patent Act 1988 of the United Kingdom<sup>9</sup> (UK CDPA) outline the various exceptions as falling into categories very similar to those of the US, namely: non-commercial research and private study; criticism, review and reporting events; teaching in educational establishments; helping visually impaired people; and time-shifting. Although not actually defined as a fair dealing in the UK CDPA, incidental inclusion of a copyrighted work in an artistic work, sound recording, film, broadcast or cable programme is not viewed as infringing copyright. Since there is no strict statutory definition in the UK CDPA on what fair dealing means, it has largely been interpreted by the courts by looking at the economic impact on the copyright owner. Nevertheless, it has been noted that the tendency has been for the UK courts to interpret the fair dealing provisions strictly, with the burden falling on the defendant to show that the actions complained of fall within the exceptions, and there have only been a few cases where the defendant has been able to discharge this burden.<sup>10</sup>

In Trinidad and Tobago, the Act only refers to 'fair dealing' in the restrictive limitation which permits the reproduction of a short part of a published work, in the form of a quotation, and even then the Act does not provide any definition of fair dealing in this context. Apart from the incorporation of concepts of the Continental European author's rights system, the Act also has other distinctive provisions. Provision is made for the concept of a 'collective work' (defined in Section 3 of the Act),<sup>11</sup> which is to be distinguished from the concept of 'collections of works' (a category of derivative works in Section 6 (1), examples of which include anthologies). The importance of the concept of collective works pertains to the issue of first ownership of copyright. Given that one of the aims of copyright law is to protect literary and artistic creativity, it follows that protection in the first instance is granted to those who carry out the creative act, namely the authors/creators. This general rule is reflected in Section 26 of the Act. However, like other common law jurisdictions, in keeping with the Anglo-American approach to protecting not only creators but investors in creativity, the Act provides for exceptions to this general rule. Consequently, in relation to works created under a contract of employment or a contract of service (as distinct from a contract for services), the first owner of copyright is the employer (unless otherwise provided for in the contract). Under US copyright law this is known as the 'work for hire doctrine'.<sup>12</sup> Trinidad and Tobago's Copyright Act goes further, by making express provision for the possibility of corporate ownership in the first instance in the case of collective works (see Section 26 (3)).<sup>13</sup>

Adapted from page 16 of "The Economic Contribution of Copyright-Based Industries in Trinidad and Tobago" available online at [http://ipo.gov.tt/downloads/Relevant\\_Studies/econ\\_contribution\\_cr\\_tt.pdf](http://ipo.gov.tt/downloads/Relevant_Studies/econ_contribution_cr_tt.pdf)



# Fair Dealing

- **CCH Canadian Ltd. V Law Society of Upper Canada**- *“the Supreme Court held that it was **fair dealing for a library to photocopy extracts from copyrighted legal publications** in its collection for delivery to legal researchers. “Research,” the Court said, “must be given a large and liberal interpretation in order to ensure that users’ rights are not unduly constrained”; research “is not limited to non-commercial or private contexts.” The Court also interpreted the second element of the exception, “fairness” to mirror the factors applied by American Courts under that country’s fair use doctrine:*



# Fair Dealing

- **Purpose of the dealing** (“research done for commercial purposes may not be as fair as research done for charitable purposes”);
- **Character of the dealing** (a single copy is fairer than multiple copies);
- **Amount of dealing** (lesser is fairer than more);
- **Alternatives** (“If there is a non-copyrighted equivalent of the work that could have been used instead of the copyrighted work, this should be considered by the Court;”
- **The nature of the work** (confidential works get greater protection than others); and
- **Effect of the dealing on the work** (market harm).”

Extracted from: (International Copyright Principles, Law and Practice (2013) (3<sup>rd</sup> ed.) by Paul Goldstein and Bernt Hugenholtz page 381).

# Fair Dealing

## Sections 9-17 of the Copyright Act



### Private reproduction for personal purpose (Section 9 of the Copyright Act):

- A **single copy** of a published work may be made for **one's private personal purposes**.
- However, under **section 9(2)(b)**, it is expressly stated that this exception **does not** extend to the reprographic reproduction of the **whole or a substantial part of a book** or of a musical work in the form of notation.
- In all other circumstances, the copyright owner's permission is required.



# Fair Dealing

## Sections 9-17 of the Copyright Act



### Reprographic reproduction for teaching (Section 11 of the Copyright Act):

- Reproduction of a ***short part*** of a published work for teaching by way of illustration, in writing or sound or visual recording provided that such reproduction is compatible with fair dealing and does not exceed the extent justified by the purpose.
- Reprographic reproduction for face to face teaching in educational institutions ***short extracts*** provided that: the act of reproduction is an isolated one or if repeated, on separate and unrelated occasions and that there is *no collective licence available*.
- The source of the work reproduced and author shall be indicated as far as practicable on all copies.

# Fair Dealing

## Sections 9-17 of the Copyright Act



### Reprographic reproduction for library and archives (Section 12 of the Copyright Act):

- Reproduction of a **single copy** of the work where purpose is for study, scholarship, private research.
- The act of reproduction is an isolated one or if repeated, on separate and unrelated occasions and that there is **no collective licence** available.

# Fair Dealing

## Sections 9-17 of the Copyright Act



### Importation of works (Section 15 of the Copyright Act):

- The importation of works for personal use of no more than **three (3) copies** of the work is permitted without the authorization of the copyright owner.

# Fair Dealing

## Sections 9-17 of the Copyright Act



### **Permitted use of artistic works situated in public places (Section 17 of the Copyright Act).**

- The inclusion of an artistic work in a work, broadcast or communication to the public shall not be considered an infringement if the artistic work –
  - (a) is permanently situated in a public place or in premises open to the public; or
  - (b) is included in the work, broadcast or communication to the public by way only of background or as incidental to the essential matters represented.

# Fair Dealing

## Sections 9-17 of the Copyright Act



- News reporting (Section 13 of the Copyright Act)
- Quotation (Section 10 of the Copyright Act)
- Computer programmes (Section 14 of the Copyright Act)
  - Reproduction of a single copy of a computer programme

**The foregoing exceptions are also replicated in some jurisdictions:**

[https://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_38/sccr\\_38\\_education\\_typology\\_presentation.pdf](https://www.wipo.int/edocs/mdocs/copyright/en/sccr_38/sccr_38_education_typology_presentation.pdf)

# Use of copyrighted material for educational purposes in Trinidad and Tobago



- **Note:** There is an exception to copyright under **section 11 of the Copyright Act Chap 82:80** for teaching purposes ***however this exception is qualified in numerous ways, including by the principle of fair dealing and the availability of a collective licence.***
- There is a balancing act which needs to be undertaken between the need to adapt to the virtual environment to ensure the continuation of education in our country, and the authors' rights to exploit their works (For further information: <http://ipo.gov.tt/ipo-news/use-of-copyrighted-material-for-educational-purposes-in-trinidad-and-tobago/> )
- National laws provide for exceptions and limitations for teaching and research  
([https://www.wipo.int/edocs/mdocs/copyright/en/sccr\\_38/sccr\\_38\\_digital\\_education\\_study\\_presentation.pdf](https://www.wipo.int/edocs/mdocs/copyright/en/sccr_38/sccr_38_digital_education_study_presentation.pdf))

# Educational licensing in Trinidad and Tobago



- An efficient and effective collective licensing sector is an integral part of the copyright system in every country, particularly for the use of text and images in education.
- TTRRO has, in the past, negotiated licenses with tertiary institutions.
- IFRRO members, including the TTRRO, are responsive to the needs of the users and are developing solutions, such as multi territory licences, that include foreign campuses in the main national licence, or regional licences for universities that operate in many different countries (such as UWI) and by agreeing that overseas students no matter where in the world they are, are covered by the licence issued by the RRO in the country where their university is located.

# Educational licensing in Trinidad and Tobago



- Educational licensing solutions can and do include libraries and research institutes, and RROs offer document delivery licences, that permit cross border document supply. Publishers also offer licensing solutions directly which enable these uses.
- TTRRO licences exempt blind and visually impaired persons from being required to pay for the copying of printed materials in braille, large print or other accessible formats.
- Licences are available from TTRRO for reprography (physical copies), electronic copies or a combination of both.





Intellectual Property Office  
Inspiring Innovation Protecting Creations

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