

Are there any exceptions to the author's right to control use of his work?

Yes. The law allows a limited degree of reproduction of protected works without the permission of their creators. The exceptions to infringement include :

- copy and/or supply of part of a literary, dramatic or musical work by a librarian or archivist.
- "fair dealing" with a literary, dramatic, musical or artistic work for research or private study, criticism, review or reporting current events.
- incidental inclusion in an artistic work, sound recording, film, broadcast or cable programme.
- where it is not possible by reasonable inquiry to ascertain the identity of the author and it is reasonable to assume that the copyright has expired or that the author died 75 years or more before the beginning of the year of use.
- where a direct record of spoken words is made with the authority of a person lawfully in possession of the record, for the purpose of reporting current events or for broadcasting or inclusion in a cable programme service and the making of the record was not prohibited by the speaker or copyright owner .
- recording a broadcast or cable programme solely for the purpose of viewing at a more convenient time.
- use of sound recordings by a charitable organisation for charitable purposes.
- reporting of parliamentary or judicial proceedings.
- statutory licences.
- reading or recitation of a literary work in public with sufficient acknowledgement of the author.
- graphic or photographic representations or visual images of buildings, models of buildings, sculptures and works of artistic craftsmanship works on display to the public.

What about the enforcement of copyright?

The Copyright Act strengthens the ability of the Courts, the police and customs officials to enforce the rights of copyright owners. Its enforcement provisions include:

- Provision for a police officer of the rank of Sergeant or above under warrant to forcibly enter and search premises where there are reasonable grounds to suspect infringement, with power to seize, remove and detain any infringing copy or illicit recording found in such premises or any article intended for use in making such illicit recordings. (s.138)

· Provision for copyright owners to give notice to the Comptroller of Customs to restrict the importation of infringing copies of protected works (s.48)
· Liability to a fine of \$1,500.00 on summary conviction for a first offence of possession of an article designed or adapted for making infringing copies for sale, hire or use in the course of business and in the case of a subsequent offence, liability to a fine of \$1,500.00 or imprisonment for a maximum term of 12 months (s.44(2),(5)).
· Liability to a fine of \$1,500.00 on summary conviction for a first offence of causing an infringing public performance or showing of protected work, and in the case of a subsequent offence, liability to a fine of \$1,500.00 or imprisonment for a maximum term of 12 months (s.44(3))
· Liability on summary conviction for a first offence of making for sale or hire, selling, hiring, importing for commercial use or prejudicially distributing infringing copies of protected works to a fine of \$5,500.00 for each article to which the offence relates, and in the case of any subsequent offence, liability to such fine as may be determined by the Court or imprisonment for a maximum term of 2 years (s.44(1) and (4)).
· Liability on <i>summary conviction</i> to a penalty of \$2,500.00 or a term of imprisonment not exceeding 12 months for the manufacture for sale or hire, importation for commercial use or possession, distribution, sale, hire or offer of illicit recordings in the course of a business or for causing a recording to be shown or played in public or broadcast without the consent of the performer or holder of the recording rights. Liability <i>on conviction on indictment</i> , to a fine not exceeding \$50,000.00 or imprisonment for a maximum term of 5 years or both.
· In cases where there is a danger of continuing infringement, in addition to any penalty imposed, a fine of EC\$500.00 for each day on which the infringement is continued.

Copyright: the big picture!

It is a common misconception that copyright is of lesser relevance to developing countries than to developed nations. It must however be remembered that since the recording industry and other copyright-based industries are driven by the limitless resource of human creativity, they are apt to be more sustainable than industries that depend on limited physical resources. Creative industries are therefore a viable option for economic diversification in developing nations. Copyright protection has also been seen to have a positive effect on cultural development as the ability to obtain legal protection for creative work serves as a stimulus to further creativity.

*This brochure offers an introduction to copyright.
It is not intended to serve as a definitive guide and should be read
together with the applicable legislation.*

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Copyright and Related Rights



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What is copyright?

Copyright is the right given by law to the author of a literary, dramatic, musical or artistic work to control the copying and other use of his work.

What are related rights?

Related rights, also termed neighbouring rights, are rights akin to copyright that are enjoyed by broadcasters, performers and producers of sound recordings.

What kinds of works benefit from protection?

Protected works include poems, books, plays, typographical arrangements of published editions, computer software, films, video recordings, photographs, drawings, paintings, sculpture, engravings, tapestry, handicraft, maps, plans, architectural designs, music, lyrics, sound recordings, broadcasts and performances.

How does a work qualify for protection?

To qualify for protection, a work must first be original. Secondly, it must have passed the “idea stage” and have been fixed in some tangible form (e.g. put in writing).

Who benefits from protection?

To benefit from protection, a work must have been created by one or more citizens or residents of Saint Vincent and the Grenadines, or in the case of published works, the first publication must have taken place in St. Vincent and the Grenadines or in another country that has been specified in subsidiary legislation. All performances taking place within the State are protected.

How do I get protection for my work?

In Saint Vincent and the Grenadines, copyright arises by operation of law and subsists in all works which meet the legal prerequisites. The applicable law is the *Copyright Act, CAP. 311*, which came into operation on 30th November 2004. Registration of works is not required and there is no system of voluntary registration.

How do I give notice that I am the owner of a work?

To signify ownership of a work, it is usual to place a copyright notice on the work, consisting of the copyright symbol ©, the name of right holder and the date of creation of the work. In addition, for the purpose of being able to prove ownership of a work, you should keep as much of the formative material as you can, e.g. lyric sheets, musical scores, demo tapes and rough recordings, working documents, sketches and drafts. It is also helpful to include unique “signatures” such as watermarks and comments in electronic image files.

What are the specific rights that come with copyright?

The author of a protected work enjoys both commercial rights and moral rights.

The **commercial rights** include the exclusive right to authorise or prohibit the reproduction of the work in any form, its public performance, broadcasting or other means of communication to the public, distribution by sale, rental or public lending, translation into other languages and adaptation, arrangement or other transformation. The author is entitled to assign or license these rights if he so desires.

The **moral rights** consists of the right to be identified as the author of the work and to oppose any alteration or distortion of the work that could harm the author’s reputation. Unlike economic rights, moral rights cannot be sold or transferred.

How are the commercial rights managed?

Because it is burdensome for persons wishing to use protected works in large quantities (e.g. radio stations, nightclubs) to approach each artist individually and conclude separate agreements for the payment of royalties, copyright is commonly administered by collective management societies. This often involves the artist assigning his work to a society which monitors its use and pays him a sum based on the degree of use. Collecting societies typically have reciprocal agreements with corresponding foreign societies, which monitor use of their repertoire in other countries, in return for them monitoring the use of foreign works in their own jurisdiction. Under the Copyright Act, a collective management society is required to register with the Commerce and Intellectual Property Office (CIPO) and

to submit annual returns to CIPO detailing the distribution of royalties.

How long does copyright protection last?

The term of copyright protection varies according to the category of work. After the statutory period of protection ends, the work enters the public domain and everyone is free to use it without obtaining permission from its creator.

Category of work	Period of protection
Literary, dramatic, musical or artistic works of known authorship	Remaining life of author after creation of the work plus 75 years from the end of the year in which the author dies
Literary, dramatic, musical or artistic works of unknown authorship	50 years from the end of the year in which the work is first made available to the public
Computer generated works (no human author)	50 years from the end of the year in which the work is made
Sound recordings and films	50 years from the end of the calendar year in which the recording or film was made or 75 years from the year in which it was made available to the public
Broadcasts and cable programmes	50 years from the end of the year in which the broadcast was made or the programme included in a cable programme service
Typographical arrangements of published editions	25 years from first publication
Performances	75 years from the end of the year in which the performance first takes place
Designs derived from artistic work contained in marketed articles	50 years from the end of the year in which the articles was first marketed
Literary, dramatic, musical or artistic works first published by/ under the direction or control of a prescribed int’l organisation	50 years from the end of the calendar year in which the work was made or such longer period as the Minister may specify by Order