

J460

A BILL FOR AN ACT

To provide a copyright law for the Federated States of Micronesia, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 CHAPTER I - IN GENERAL

2 Section 101. Definitions.

3 (1) "Anonymous work" is a work on the copies or phonorecords of which  
4 no natural person is identified as the author.

5 (2) The "Attorney General's Office" means the Office of the Attorney  
6 General of the National Government of the Federated States of Micronesia.

7 (3) "Audiovisual works" are works that consist of a series of related  
8 images which are intrinsically intended to be shown by the use of machines or  
9 devices such as projectors, viewers, or electronic equipment, together with  
10 accompanying sounds, if any, regardless of the nature of the material objects,  
11 such as films or tapes, in which the works are embodied.

12 (4) "Collective work" is a work, such as a periodical issue,  
13 anthology, or encyclopedia, in which a number of contributions, constituting  
14 separate and independent works in themselves, are assembled into a collective  
15 whole.

16 (5) A "compilation" is a work formed by the collection and assembling  
17 of preexisting materials or of data that are selected, coordinated, or arranged  
18 in such a way that the resulting work as a whole constitutes an original work  
19 of authorship. The term "compilation" includes collective works.

20 (6) "Copies" are material objects, other than phonorecords, in which  
21 a work is fixed by any method and from which can be perceived, reproduced, or  
22 otherwise communicated, either directly or with the aid of a device. The term  
23 "copies" includes the material object, other than a phonorecord, in which the  
24 work is first fixed.

25 (7) "Court" means the trial or appellate division of the Supreme Court

Jx 90

1 of the Federated States of Micronesia.

2 (8) A work is "created" when it is fixed in a copy or phonorecord  
3 for the first time. Where a work is prepared over a period of time, the  
4 portion of it that has been fixed at any particular time constitutes the  
5 work as of that time, and where the work has been prepared in different  
6 versions, each version constitutes a separate work.

7 (9) A "derivative work" is a work based upon one or more preex-  
8 isting works, such as a translation, musical arrangement, dramatization,  
9 fictionalization, motion picture version, sound recording, art reproduction,  
10 abridgement, condensation, or any other form in which a work may be recast,  
11 transformed, or adapted. A work consisting of editorial revisions, annotations  
12 elaborations, or other modifications which, as a whole, represent an original  
13 work of authorship, is a "derivative work."

14 (10) To "display" a work means to show a copy of it, either  
15 directly or by means of a film, slide, television image, or any other device.

16 (11) A work is "fixed" in a tangible medium of expression when its  
17 embodiment in a copy or phonorecord, by or under the authority of the author,  
18 is sufficiently permanent or stable to permit it to be perceived, reproduced,  
19 or otherwise communicated for a period of more than transitory duration.

20 (12) "Literary works" are works, other than audiovisual works,  
21 expressed in words, numbers, or other verbal or numerical symbols or indicia,  
22 regardless of the nature of the material objects, such as books, periodicals,  
23 manuscripts, phonorecords, film, tapes, or cards, in which they are embodied.

24 (13) To "perform" a work means to recite, render, play, dance, or  
25 act, either directly or by means of any device or, in the case of a motion

J + G O

1 picture or other audiovisual work, to show its images in any sequence or to  
2 make the sounds accompanying it audible.

3 (14) "Pictorial, graphic, and sculptural works" include two-  
4 dimensional and three-dimensional works of fine, graphic, and applied art,  
5 photographs, prints and art reproductions, maps, globes, charts, technical  
6 drawings, diagrams, and models.

7 (15) "Publication" is the distribution of copies or phonorecords  
8 of a work to the public by sale or other transfer of ownership or by rental,  
9 lease, or lending. The offering to distribute copies or phonorecords to a  
10 group of persons, for purposes of further distribution, public performance,  
11 or public display, constitutes publication.

12 Section 102. Subject matter of copyright.

13 (1) Copyright protection subsists, in accordance with this act, in  
14 original works of authorship fixed in any tangible medium of expression  
15 from which they can be perceived, reproduced, or otherwise communicated,  
16 either directly or with the aid of a device. Works of authorship include the  
17 following categories:

- 18 (a) Literary works;  
19 (b) Musical works, including any accompanying words;  
20 (c) Dramatic works, including any accompanying music;  
21 (d) Pantomimes and choreographic works;  
22 (e) Pictorial, graphic, and sculptural works;  
23 (f) Motion pictures and other audiovisual works; and  
24 (g) Sound recordings.

25 (2) In no case does copyright protection for an original work of

JY 60

1 authorship extend to any idea, procedure, process, system, method of operation,  
2 concept, principle, or discovery, regardless of the form in which it is  
3 described, explained, illustrated, or embodied in such work.

4 Section 103. Subject matter of copyright-- compilations and derivative  
5 works.

6 (1) The subject matter of copyright as specified by section 102  
7 includes compilations and derivative works, but protection for a work em-  
8 ploying preexisting material in which copyright subsists does not extend to  
9 any part of the work in which such material has been used unlawfully.

10 (2) The copyright in a compilation or derivative work extends  
11 only to the material contributed by the author of such work, as distinguished  
12 from the preexisting material employed in the work, and does not imply any  
13 exclusive right in the preexisting material. The copyright in such work is  
14 independent of, and does not affect or enlarge the scope, duration, ownership,  
15 or subsistence of any copyright protection in the preexisting material.

16 Section 104. Subject matter of copyright--national origin.

17 (1) Unpublished works. The works specified by sections 102 and  
18 103, while unpublished, are subject to protection under this act without  
19 regard to the nationality or citizenship of the author.

20 (2) Published works. The works specified by sections 102 and 103,  
21 when published, are subject to protection under this act if:

22 (a) On the date of first publication, one or more of the  
23 authors is a national or domiciliary of the Federated States of Micronesia, or  
24 is a national or a domiciliary of a country that is a party to a copyright  
25 treaty to which the Federated States of Micronesia is also a party, or

JH 670

(b) The work comes within the scope of a Presidential proclamation. Whenever the President of the Federated States of Micronesia finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the Federated States of Micronesia or to works that are first published in the Federated States of Micronesia, copyright protection on substantially the same basis as that on which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this act to works of which one or more of the authors are, on the date of first publication, a national or domiciliary of that nation. The President may revise, suspend, or revoke any such proclamation, or impose any conditions or limitations on protection under a proclamation.

Section 105. Subject matter of copyright--Federated States of Micronesia Government works. Copyright protection under this act is not available for any work of the Federated States of Micronesia Government, but the Federated States of Micronesia is not precluded from receiving and holding copyrights transferred to it by assignment, or otherwise.

Section 106. Exclusive rights in copyrighted works. Subject to sections 107, 108, and 109, the owner of copyright under this act has the exclusive rights to do and to authorize any of the following:

- (1) To reproduce the copyrighted work in copies or phonorecords;
- (2) To prepare derivative works based upon the copyrighted work;
- (3) To distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;

TV 60

1 (4) In the case of literary, musical, dramatic, and choreographic  
2 works, pantomimes, and motion pictures and other audiovisual works, to perform  
3 the copyrighted work publicly; and

4 (5) In the case of literary, musical, dramatic, and choreographic  
5 works, pantomimes, and pictorial, graphic, or sculptural works, including the  
6 individual images of a motion picture or other audiovisual work, to display  
7 the copyrighted work publicly.

9 Section 107. Limitation on exclusive rights-- fair use. Notwithstanding  
10 the provisions of section 106, the fair use of a copyrighted work, including  
11 such use by reproduction in copies or phonorecords or by any other means  
12 specified by that section, for purposes such as criticism, comment, news  
13 reporting, teaching (including multiple copies for classroom use), scholar-  
14 ship, or research, is not an infringement of copyright. In determining  
15 whether the use made of a work in any particular case is a fair use the  
16 factors to be considered shall include:

17 (1) The purpose and character of the use, including whether such  
18 use is of a commercial nature or is for nonprofit educational purposes;

19 (2) The nature of the copyrighted work;

20 (3) The amount and substantiality of the portion used in relation  
21 to the copyrighted work as a whole; and

22 (4) The effect of the use upon the potential market for or value  
23 of the copyrighted work.

24 Section 108. Limitations on exclusive rights: reproduction by libraries  
25 and archives. Notwithstanding the provisions of section 106, it is not an

JV 60

1 infringement of copyright for a library or archives to reproduce no more than  
2 one copy or phonorecord, under the conditions specified by this section, if:

3 (1) The reproduction or distribution is made without any purpose  
4 of direct or indirect commercial advantage;

5 (2) The collections of the library or archives are open to the  
6 public; and

7 (3) The reproduction or distribution of the work includes a notice  
8 of copyright.

9 Section 109. Other limitations on exclusive rights of specific works.

10 Other limitations on exclusive rights of specific works or exemptions of  
11 certain performances and displays may be prescribed by the Attorney  
12 General in rules and regulations consistent with sections 107 and 108.

13 CHAPTER 2 - COPYRIGHT OWNERSHIP AND TRANSFER

14 Section 201. Ownership of copyright.

15 (1) Initial ownership. Copyright in a work protected under this  
16 act vests initially in the author or authors of the work. The authors of a  
17 joint work are co-owners of copyright in the work.

18 (2) Works made for hire. In the case of a work made for hire,  
19 the employer is considered the author for purposes of this act and, unless  
20 the parties have expressly agreed otherwise in a written instrument signed  
21 by them, owns all of the rights comprised in the copyright.

22 (3) Contributions to collective works. Copyright in each separate  
23 contribution to a collective work is distinct from copyright in the collective  
24 work as a whole, and vests initially in the author of the contribution. In  
25 the absence of an express transfer of the copyright or of any rights under

1060

1 it, the owner of copyright in the collective work is presumed to have  
2 acquired only the privilege of reproducing and distributing the contribution  
3 as part of that particular collective work, any revision of that collective  
4 work, and any later collective work in the same series.

5 (4) Transfer of ownership.

6 (a) The ownership of a copyright may be transferred in whole  
7 or in part by any means of conveyance or by operation of law or may be  
8 bequeathed by will; PROVIDED, that in the absence of the aforesaid means of  
9 transfer, ownership of a copyright shall pass as personal property by the  
10 customs of the State where the owner is domiciled.

11 (b) Any of the exclusive rights comprised in a copyright, in-  
12 cluding any subdivision of any of the rights specified by Section 106, may be  
13 transferred as provided by paragraph (a) and owned separately. The owner of  
14 any particular exclusive right is entitled, to the extent of that right, to  
15 all of the protection and remedies accorded to the copyright owner by this act.

16 Section 202. Ownership of copyright as distinct from ownership of  
17 material object. Ownership of a copyright, or of any of the exclusive rights  
18 under a copyright, is distinct from ownership of any material object in which  
19 the work is embodied. Transfer of ownership of any material object, including  
20 the copy or phonorecord in which the work is first fixed, does not of itself  
21 convey any rights in the copyrighted work embodied in the object; nor, in the  
22 absence of an agreement, does transfer of ownership of a copyright or of any  
23 exclusive rights under a copyright convey property rights in any material  
24 object.

25 Section 203. Recordation of transfer.



Jx 60

1 (1) Any transfer of copyright ownership or other document  
2 pertaining to a copyright may be recorded in the Office of the Attorney  
3 General if the document filed for recordation bears the actual signature of  
4 the person who executed it, or if it is accompanied by a sworn or official  
5 certification that it is a true copy of the original, signed document.

6 (2) Recordation of a document in the Office of the Attorney General  
7 gives all persons constructive notice of the facts stated in the recorded  
8 document, but only if:

9 (a) The document, or material attached to it, specifically  
10 identifies the work to which it pertains so that, after the document is  
11 indexed by the Office of Attorney General, it would be revealed by a reasonable  
12 search under the title or registration number of the work; and

13 (b) Registration has been made for the work.

14 CHAPTER 3 - DURATION OF COPYRIGHT

15 Section 301. Duration of copyright--works created on or after the  
16 effective date of this act.

17 (1) Copyright in a work created on or after the effective date of  
18 this act subsists from its creation and, except as provided by the following  
19 subsections, endures for a term consisting of the life of the author and fifty  
20 years after the author's death.

21 (2) In the case of a joint work prepared by two or more authors  
22 who did not work for hire, the copyright endures for a term consisting of the  
23 life of the last surviving author and fifty years after such last surviving  
24 author's death.

25 (3) In the case of an anonymous work, a pseudonymous work, or a

JV 60

1 work made for hire, the copyright endures for a term of seventy-five years  
2 from the year of its first publication, or a term of one hundred years from  
3 the year of its creation, whichever expires first. If, before the end of  
4 such term, the identity of one or more of the authors of an anonymous or  
5 pseudonymous work is revealed in the records of a registration made for  
6 that work, the copyright in the work endures for the term specified by  
7 subsections (1) and (2) of this section.

8 Section 302. Duration of copyright--works created but not published  
9 or copyrighted before effective date of this act. Copyright in a work  
10 created before the effective date of this act, but not theretofore in the  
11 public domain or copyrighted, subsists beginning on the effective date of  
12 this act and endures for the term provided by section 301.

13 CHAPTER 4 - COPYRIGHT NOTICE, DEPOSIT, AND REGISTRATION

14 Section 401. Notice of copyright--visually perceptible copies.

15 (1) Whenever a work protected under this act is published in the  
16 Federated States of Micronesia or elsewhere by authority of the copyright  
17 owner, a notice of copyright as provided by this section shall be placed on  
18 all publicly distributed copies from which the work can be visually perceived.

19 (2) The notice appearing on the copies shall consist of the  
20 following three elements:

21 (a) The symbol © (the letter C in a circle), or the word  
22 "Copyright", or the abbreviation "Copr.";

23 (b) The year of first publication of the work; in the case  
24 of compilations or derivative works incorporating previously published material,  
25 the year date of first publication of the compilation or derivative work is

J & Co

1 sufficient. The year date may be omitted where a pictorial, graphic, or  
2 sculptural work, with accompanying text matter, if any, is reproduced in or  
3 on greeting cards, postcards, or any useful articles; and

4 (c) The name of the owner of copyright in the work, or an  
5 abbreviation by which the name can be recognized, or a generally known  
6 alternative designation of the owner.

7 (3) The notice shall be affixed to the copies in such manner and  
8 location as to give reasonable notice of the claim of copyright.

9 Section 402. Notice of copyright--phonorecords of sound recordings.

10 (1) Wherever a sound recording protected under this act is  
11 published in the Federated States of Micronesia or elsewhere by authority of  
12 the copyright owner, a notice of copyright as provided by this section shall  
13 be placed on all publicly distributed phonorecords of the sound recording.

14 (2) The notice appearing on the phonorecords shall consist of the  
15 following three elements:

16 (a) The symbol © (the letter P in a circle);

17 (b) The year of first publication of the sound recordings; and

18 (c) The name of the owner of copyright in the sound recording.

19 (3) The notice shall be placed on the surface of the phonorecord,  
20 or on the phonorecord label or container, in such manner and location as to  
21 give reasonable notice of the claim of copyright.

22 Section 403. Notice of copyright--contributions to collective works.

23 A single notice applicable to the collective work as a whole is sufficient to  
24 satisfy the requirements of sections 401 and 402, regardless of the ownership  
25 of copyright in the contributions and whether or not they have been

1 previously published; PROVIDED, that the copyright of the owner in a separate  
2 contribution that does not bear its own notice is not affected.

3 Section 404. Deposit of copies or phonorecords for the Library of the  
4 Congress of the Federated States of Micronesia.

5 (1) Subject to exceptions under this section, the owner of copy-  
6 right or of the exclusive right of publication in a work published with  
7 notice of copyright in the Federated States of Micronesia shall deposit,  
8 within four months after the date of such publication:

9 (a) Two complete copies of the best edition; or

10 (b) If the work is a sound recording, two complete phono-  
11 records of the best edition.

12 (2) The required copies or phonorecords shall be deposited in the  
13 Attorney General's Office for the use or disposition of the Library of the  
14 Congress of the Federated States of Micronesia.

15 (3) The Attorney General may by regulation exempt any categories  
16 of material from the deposit requirements of this section or require deposit  
17 of only one copy or phonorecord with respect to any categories.

18 Section 405. Copyright registration in general. At any time during the  
19 subsistence of copyright in any published or unpublished work, the owner of  
20 copyright or of any exclusive right in the work may obtain registration of  
21 the copyright claim by delivering to the Attorney General's Office the deposit  
22 required and upon payment of fee as prescribed in regulations. The Attorney  
23 General shall by rules and regulations prescribe the material deposited for  
24 registration.

25 Section 406. Application for copyright registration. The application

JY 60

1 for copyright registration shall be made on a form prescribed by the  
2 Attorney General and shall include all information as prescribed by rules  
3 and regulations.

4 Section 407. Registration of claim and issuance of certificate.

5 (1) When, after examination, the Attorney General determines  
6 that, in accordance with the provisions of this act, the material deposited  
7 constitutes copyrightable subject matter and that the legal requirements of  
8 this act have been met, he shall register the claim and issue to the  
9 applicant a certificate of registration under the seal of the Attorney  
10 General's Office. The certificate shall contain the information given  
11 in the application, together with the number and effective date of the  
12 registration.

13 (2) In any case in which the Attorney General determines that,  
14 in accordance with the provisions of this act, the material deposited does  
15 not constitute copyrightable subject matter or that the claim is invalid  
16 for any other reason, he shall refuse registration and notify the applicant  
17 in writing of the reasons for such refusal.

18 CHAPTER 5 - INFRINGEMENT AND REMEDIES

19 Section 501. Infringement and remedies. Anyone who violates any of  
20 the exclusive rights of the copyright as provided under this act is an  
21 infringer of copyright and shall be liable:

22 (1) To an injunction restraining such infringement;

23 (2) To pay the copyright owner the actual damages suffered by  
24 the owner and any profits of the infringer that are attributable to the  
25 infringement and are not taken into account in computing the actual damages;

J &amp; G

1 and

2 (3) To pay the copyright owner punitive damages, if imposed by  
3 the court.

4 Section 502. Criminal offense.

5 (1) Any person who infringes a copyright willfully and for purpose  
6 of commercial advantage or private gain shall be fined \$10,000 or imprisoned  
7 for not more than one year, or both.

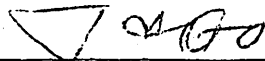
8 (2) When any person is convicted of any violation under sub-  
9 section (1) of this section, the court in its judgement of conviction, in  
10 addition to the penalty therein prescribed, may order the forfeiture and  
11 destruction or other disposition of all infringing copies or phonorecords  
12 and devices used in the manufacture of such infringing copies or phonorecords.

13 (3) Any person who, with fraudulent intent, places on any article  
14 a notice of copyright or words of the same purport that such person knows  
15 to be false, or who, with fraudulent intent, publicly distributes or imports  
16 for public distribution any article bearing such notice or words that such  
17 person knows to be false, shall be fined not more than \$2,500.

18 (4) Any person who, with fraudulent intent, removes or alters  
19 any notice of copyright appearing on a copy of a copyrighted work shall be  
20 fined not more than \$2,500.

21 (5) Any person who knowingly makes a false representation of a  
22 material fact in the application for copyright registration or in any written  
23 statement filed in connection with the application, shall be fined not more  
24 than \$2,500.

25 CHAPTER 6 - ATTORNEY GENERAL'S OFFICE



1       Section 601. Responsibilities and duties of the Office of the  
2 Attorney General.

3           (1) Until the President of the Federated States of Micronesia,  
4 through administrative directives, establishes a separate Copyright Office,  
5 within or without the Attorney General's Office, the Office of the Attorney  
6 General shall exercise all administrative functions and duties under this act.

7           (2) The Office of the Attorney General shall adopt a seal to be  
8 used to authenticate all certified documents issued by it.

9           (3) The Office of the Attorney General shall provide and keep  
10 records of all deposits, registration, recordation and other activities as  
11 required by this act or rules and regulations later issued.

12          (4) The Office of the Attorney General shall compile and publish  
13 annually catalogs of all copyright registration.

14       Section 602. Regulations. The Attorney General is authorized to  
15 establish regulations not inconsistent with this act.

16       Section 603. Fees.

17           (1) Fees for registration, recordation, issuance of certificate  
18 and other services shall be prescribed in regulations issued by the  
19 Attorney General.

20

21

22

23

24

25

C. B. No.

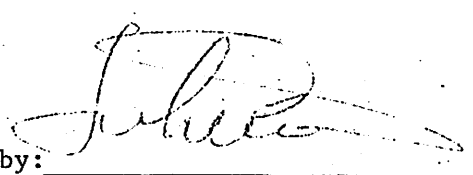
2-162

J460

1 (2) The Attorney General shall deposit all fees in the General  
2 Fund of the Federated States of Micronesia.

3 Section 604. Effective date. This act shall become law upon approval  
4 by the President of the Federated States of Micronesia or upon its becoming  
5 law without such approval.

6  
7 Date: 10/26/81

Introduced by: 

Luke M. Tman

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25