
**Council for Trade-Related Aspects of
Intellectual Property Rights**

Original: English/
anglais/
inglés

**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

SRI LANKA

The present document reproduces the text¹ of the Proposed Act to Amend the Code of Intellectual Property Act N° 52 of 1979, as notified by Sri Lanka under Article 63.2 of the Agreement (see document IP/N/1/LKA/1).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

SRI LANKA

Le présent document contient le texte¹ du projet de Loi portant modification de la Loi n° 52 de 1979 sur le Code de la propriété intellectuelle, notifié par Sri Lanka au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/LKA/1).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

SRI LANKA

En el presente documento se reproduce el texto¹ del proyecto de Ley por la que se modifica la Ley N° 52 de 1979, relativa al Código de la Propiedad Intelectual, que Sri Lanka notificó de conformidad con lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/LKA/1).

¹ In English only. /En anglais seulement./En inglés solamente.

SRI LANKA

AN ACT TO AMEND
THE CODE OF INTELLECTUAL PROPERTY ACT
NO. 52 OF 1979 *

* This Document to be referred in conjunction with The Code of Intellectual Property Act No. 52 of 1979 (as amended by Act No. 30 of 1980, No.2 of 1983, No. 17 of 1990, No. 13 of 1997 and No. 40 of 2000) as notified by Sri Lanka under Article 63.2 of the TRIPS Agreement

L.D.O 18/99

An Act to Amend the Code of Intellectual
Property Act, No. 52 of 1979.

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows -

Short title. 1. This Act may be cited as the Code of Intellectual Property (Amendment) Act, No. of 2001.

Amendment
of section 2
of Act, No. 52
of 1979.

2. Section 2 of Act, No. 52 of 1979 (hereinafter referred to as the "principal enactment") is hereby amended by the repeal of paragraph (b) of subsection (3) of that section and the substitution therefor of the following paragraph

“(b) take all necessary steps to promote and encourage national awareness of the subject of copyright and related rights by the organisation of exhibitions, contests, seminars and publications and by promoting and encouraging the establishment and proper functioning of organisations or societies to protect and administer copyright and related rights under Part II of the Code.”.

Replacement
of Part II of
the principal
enactment.

3. Part II of the principal enactment is hereby repealed and the following new Part is substituted therefor -

"Part II

Copyright and Related Rights

CHAPTER II

Interpretation

6. For the purposes of this Part -

"**audiovisual work**" means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds, susceptible of being made audible;

"**author**" means the physical person who has created the work;

"**broadcasting**" means the communication of a work, a performance or a sound recording to the public by wireless transmission, including transmission by satellite;

"**collective work**" means a work created by two or more physical persons at the initiative and under the direction of a physical person or legal entity, with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing physical persons will not be indicated;

"**communication to the public**" means the transmission by wire or without wire of the images or sounds, or both, of a work, a performance or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so

distant from the place where the transmission originates that, without the transmission, the images or sounds would not be perceivable and irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places or times;

"computer" means an electronic or similar device having information processing capabilities;

"computer program" is a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

"economic rights" mean the rights mentioned in section 10;

"expression of folklore" means a group oriented and tradition based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including:

- (a) folktales, folk poetry, and folk riddles;
- (b) folk songs and instrumental folk music;
- (c) folk dances and folk plays;
- (d) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terra- cotta,

mosaic, woodwork, metalware, jewellery, handicrafts, costumes, and indigenous textiles.

"Infringement" means an act that violates any right protected under this Part.

"moral rights" means rights mentioned in section 11;

"owner of copyright" means -

- (a) where the economic rights are vested in the author, the author;
- (b) where the economic rights are originally vested in a physical person or a legal entity other than the author, that person or entity;
- (c) where the ownership of the economic rights has been transferred to a physical person or legal entity, that person or entity.

"Performers" mean singers, musicians, and other persons who sing, deliver, declaim, play in, or otherwise perform, literary and artistic works or expressions of folklore;

"photographic work" means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made; a still picture

extracted from an audiovisual work shall not be considered a **"photographic work"** but a part of the audiovisual work concerned;

"producer" of an audiovisual work or a sound recording means the physical person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording;

"Public display" means the showing of the original or a copy of a work -

- (a) directly;
- (b) by means of a film, slide, television image or otherwise on screen;
- (c) by means of any other device or process ;or
- (d) in the case of an audiovisual work, the showing of individual images non-sequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time or at different places or times, and where the work can be displayed without communication to the public;

"public lending" means the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time for non profit making purposes, by an institution, the services of

which are available to the public, such as a public library or archive;

"public performance" means -

- (a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work in public either directly or by means of any device or process;
- (b) in the case of an audiovisual work, the showing of images in sequence and the making of accompanying sound audible in public; and
- (c) in the case of a sound recording, making the recording sounds audible at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the performance can be perceived without the need for communication to the public within the meaning of the definition "Communication to the public".

"published" means a work or a sound recording -

- (a) copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for transfer of the ownership or the possession of the copies; or

- (b) which have been made available to the public by means of an electronic system, provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a sound recording, with the consent of the producer of the sound recording or his successor in title;

"rental" means the transfer of the possession of the original or a copy of a work or sound recording for a limited period of time for profit making purposes;

"reproduction" means the making of one or more copies of a work or sound recording in any material form, including any permanent or temporary storage of the work or sound recording in electronic form;

"sound recording" means any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied; it does not include a fixation of sounds and images, such as the sound track of an audiovisual work;

"work" means any literary or artistic or scientific work specified in section 7;

"work of applied art" means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

"work of joint authorship" means a work to the creation of which

two or more authors have contributed, provided the work does not qualify as "**a collective work.**"

Works
protected

7. (1) The following works shall be protected as Literary, artistic and scientific work (hereinafter referred to as "works") which are original intellectual creations in the literary artistic and scientific domain, including and in particular-

- (a) books, pamphlets, articles, computer programs and other writings;
- (b) speeches, lectures, addresses, sermons and other oral works;
- (c) dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;
- (d) Stage production of work specified in paragraph (c) and expressions of folklore that are apt for such productions;
- (e) musical works, with or without accompanying words;
- (f) audiovisual works;
- (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.

(2) The Works specified in subsection (1) of this section shall be protected by the sole fact of their creation and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Derivative
works.

8. (1) The following shall also be protected as works:-

- (a) translations, adaptations, arrangements and other transformations or modifications of works; and
- (b) collections of works and collections of mere data (data bases), whether in machine readable or other form, provided that such collections are original by reason of the selection, coordination or arrangement of their contents.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre existing work incorporated in, or utilized for, the making of such a work.

Works not
Protected

9. Notwithstanding the provisions of sections 7 and 8, no protection shall be extended under this Part -

- (a) to 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) to any official text of a legislative, administrative or legal nature, as well as any official translation thereof;
- (c) to news of the day published, broadcast, or publicly communicated by any other means.

Economic
Rights

10. (1) Subject to the provisions of rights sections 12 to 14 the author or other owner of copyright of a work shall have the exclusive right to carry out or to authorize 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 public distribution of the original and each copy of the work by sale, rental or otherwise;
- (e) rental of the original or a copy of an audiovisual work, a Work embodied in a sound recording, a computer program, a data base 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 authorization of the author or other 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;
- (j) other communication to the public of the work.

(2) The rights of rental in terms of paragraph (e) of subsection (1) shall not apply to rental of computer programs where the program itself is not the essential object of the rental.

(3) Notwithstanding the provisions of subsection (1)(d), the owner of a copy of a work lawfully made or any person authorized in that behalf by such owner, is entitled without the authority of the copyright owner, to sell or otherwise dispose of that copy.

Moral
R i g h t s

11. (1) The author of a work shall have the following rights independently of his economic rights and even where he is no longer the owner of those economic rights-

- (a) to have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;

- (b) to not have his name indicated on the copies and in connection with any public use of his work, and the right to use a pseudonym;
- (c) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honour or reputation.

(2) No right mentioned in subsection (1) shall be transmissible during the life of the author, but the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law subsequent to the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1) provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies:

Provided that any waiver of the right under paragraph (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived. Subsequent to the death of the author, the physical person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

Fair use.

12. (1) Notwithstanding the provisions of section 10 (1), the fair use of a work, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, shall not be an infringement of copyright.

(2) In determining whether the use made of a work in any particular case is fair use the factors to be considered shall include -

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for non profitable educational purposes;
- (b) the nature of the copyrighted work;
- (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (d) the effect of the use upon the potential market for, or value of, the copyrighted work.

(3) The acts of fair use include the circumstances specified in section 13.

Acts of
fair use.

13. (1) Notwithstanding any thing contained in section 10 (1)(a) and subject to the provisions of subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorization of the author or other owner of copyright, where the reproduction is made by a physical person exclusively for his own personal purposes.

(2) The permission under sub-section (1) shall not be extended to reproduction -

- (a) of a work of architecture in the form of building or other construction;

- (b) 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;
- (c) of the whole or a substantial part of a data base;
- (d) of a computer program, except as provided in subsection (7); and
- (e) of any work in case where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

(3) Notwithstanding the provisions of section 10(1)(a), the reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorization of the author or other owner of copyright:

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

(4) Notwithstanding the provisions of section 10(1)(a), the following acts shall be permitted without authorization of the author or other owner of copyright:

- (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 the 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 the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions;
- (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 subsection.

(5) Notwithstanding the provisions of section 10 (1)(a), any library or archive whose activities do not serve direct or indirect commercial gain may, without the authorization of the author or other owner of copyright, make a single copy of the work by reprographic reproduction -

- (a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a physical person:

Provided that -

- (i) the library or archive is satisfied that the copy will be

used solely for the purposes of study, scholarship or private research,

(ii) the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions,

(b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which 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.

(6). Notwithstanding the provisions of section 10 (1) (a),(h) and (i), the following acts shall be permitted in respect of a work without the authorization of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:

(a) the reproduction in a newspaper or periodical, 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 a broadcast work of the same character, and such 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 other owner of copyright, 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;
- (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.

(7) (a) Notwithstanding anything contained in section 10 (1) (a) and (c) 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 other owner of copyright, provided that the copy or adaptation is necessary

- (i) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;
- (ii) for archival purposes and for replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

- (b) No copy or adaptation of a computer program shall be used for any purpose other than those specified in paragraph (a), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

(8) Notwithstanding the provisions of section 10(1)(f), the importation of a copy of a work by a physical person for his own personal purposes shall be permitted without the authorization of the author or other owner of copyright.

(9) Notwithstanding anything contained in section 10(1)(g), the public display of originals or copies of works shall be permitted without the authorization of the author or other owner of copyright, provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process:

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 or his successor in title.

(10) Notwithstanding any thing contained in this Part, the following shall not be an infringement of copyright :

- (a) Performance or display of a work for educational or teaching purposes by government or non profit educational institutes, in classrooms or similar places devoted for education:

Provided that in the case of an audiovisual work, the performance or the display of individual images, is given by

means of a lawfully made copy, or the person responsible for the performance did not know or had no reason to believe that the copy was not lawfully made.

(b) Communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus of a kind commonly used in private homes, unless -

(i) a direct charge is made to see or hear the transmission; or

(ii) the transmission thus received is further transmitted to the public.

Duration of
Copyright

14. (1) Subject to the provisions of subsections (2) to (5), the economic and moral rights shall be protected during the life of the author and for fifty years after his death.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights shall be protected for fifty years from the date on which the work was first published or, failing such an event, within fifty years from the making of the work.

(4) In the case of a work published anonymously or under a

pseudonym, the economic and moral rights shall be protected for fifty years from the date on which the work was first published:

Provided that where the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2) shall apply, as the case may require.

(5) In the case of work of applied art, the economic and moral rights shall be protected for twenty five years from the making of the work.

(6) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

Original
ownership
of Economic
Rights.

15. (1) Subject to the provisions of subsections (2) to (5), the original owner of economic rights is the author who has created the work.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in respect of the part that he has created.

(3) In respect of a collective work, the physical person or legal entity at the initiative, and under the direction, of whom or which the work has been created shall be the original owner of the economic rights.

(4) In respect of a work created by an author employed by a physical person or legal entity in the course of his employment, the original owner of the economic rights shall be, unless provided otherwise in a contract, the

employer. If the work is created pursuant to a commission, the original owner of economic rights shall be, unless otherwise provided in a contract, the person who commissioned the work.

(5) In respect of an audiovisual work, the original owner of the economic rights shall be the producer, unless otherwise provided in a contract. The coauthors of the audiovisual works and the authors of the pre-existing works included, in or adapted for, the making of the audiovisual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre existing works can be subject of acts covered by their economic, rights separately from the audiovisual work.

Presumption
of authorship
and of
re-presentation
Of the Author

16. The physical 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. The provisions of this section shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

Assignment
and Licence
of Author's
Rights

17. (1) Economic rights shall be assignable in whole or in part and economic rights shall be transferable in whole or in part by licence.

(2) Any assignment of an economic right, and any licence to do an act subject to authorization by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee, as the case may be.

(3) An assignment in whole or in part of any economic right, or a licence to do an act subject to authorization by the author or other owner of

copyright, shall not include or be deemed to include the assignment or licence in respect of any other rights not expressly referred to therein.

PROTECTION OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND BROADCASTING ORGANIZATIONS.

Acts requiring
authorization
of performers

18. (1) Subject to the provisions of section 22, a performer shall have exclusive right to carry out or to authorize any of the following acts:

- (a) the broadcasting or other communication to the public of his performance, except where the broadcasting, or the other communication -
 - (i) is made from a fixation of the performance, other than a fixation made under the terms of section 22; or
 - (ii) is a re-broadcasting, made or authorized by the organization initially broadcasting the performance;
- (b) the fixation of his unfixed performance;
- (c) the reproduction of a fixation of his performance.

(2) Once the performer has authorized the incorporation of his performance in an audiovisual fixation, the provisions of subsection (1) shall have no further application.

(3) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favourable to them in respect of their performances.

(4) The rights under this section shall be protected from the moment in which the performance takes place until the end of the fiftieth calendar year following the year in which the performance takes place.

Acts
requiring
authorization
of producers
of sound
recordings.

19. (1) Subject to the provisions of section 22, a producer of a sound recording shall have the exclusive right to carry out or to authorize any of the following acts:

- (a) direct or indirect reproduction of the sound recording;
- (b) importation of copies of the sound recording even where such imported copies were made with the authorization of the producer;
- (c) adaptation or other transformation of the sound recording;
- (d) rental of a copy of the sound recording, irrespective of the ownership of the copy rented.

(2) The rights under subsection (1) of this section shall be protected from the publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

Equitable
remuneration
for use of
Sound
Recordings

20. (1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly, for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user.

(2) Unless otherwise agreed between the performer or the producer, half of the amount of moneys received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

Acts
requiring
authorization
of
Broadcasting
Organization.

21. (1) Subject to the provisions of section 22, a broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts:

- (a) the rebroadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast;
- (d) the reproduction of a fixation of its broadcast.

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year

following the year in which broadcast takes place.

Limitations

22. Sections 18,19,20 and 21 shall not apply where the acts referred to

on

in those sections are related to -

Protection

- (a) the use by a physical person exclusively for his own personal purposes;
- (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (c) use solely for the purpose of face to face teaching activities or for scientific research;
- (d) cases where, under copyright, a work can be used without the authorization of the author or other owner of copyright.

Enforcement

of rights

23. (1) Any person who infringes or is about to infringe any of the rights protected under this Part may be prohibited by an injunction and shall also be liable in damages and the owner of such rights is entitled to seek such remedies from Court.

(2) (a) The Court shall have power and jurisdiction -

- (i) to grant such injunctions to prohibit the committing, or continuation of the committing, of infringement of any right protected under this Part;
- (ii) to order the impounding of copies of works or sound recordings suspected of being made or imported

without the authorization of the owner of any right protected under this Part 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.

- (b) The Court shall also have power and jurisdiction to order the payment, by the infringer, of damages for the loss suffered as a consequence of the act of infringement, as well as the payment of expenses caused by the infringement, including legal costs. The amount of damages shall be fixed taking into account inter alia, the importance of the material and moral prejudice suffered by the owner of the right, as well as the importance of the infringer's profits attributable to the infringement. Where the infringer did not know or had no reasonable cause to know that he or it was engaged in infringing activity, the court may limit damages to the profits of the infringer attributable to the infringement or to pre established damages.
- (c) Where infringing, copies exist, the Court shall have the authority to order the destruction or other reasonable disposition of those copies and their packaging outside the channels of commerce in such a manner as would avoid harm to the owner of the right, unless he requests otherwise. The provisions of this section shall not be applicable to copies and their packaging which were acquired by a third

party in good faith.

- (d) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the rights.
- (e) Where there is a danger that acts of infringement may be continued, the court shall expressly order that such acts not be committed.
- (f) The provisions of Chapter XXXII of the Code relating to infringement shall apply, mutatis mutandis, to rights protected under this Part.
- (g) Any infringement of or attempted infringement of any of the rights protected under this Part is a punishable offence as provided for in Part VI of the Code.

Measures,
Remedies
and
Sanctions
against
abuses in
respect of

24. (1) The following acts shall be considered unlawful and, in the application of section 23 shall be assimilated to infringements of the rights of authors and other owners of copyright:-

- (i) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction

Technical
Means.

of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy protection or copy management device or means");

- (ii) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program.

(2) In the application of section 23 any illicit device mentioned in subsection (1) shall be assimilated to infringing copies of works.

(3) The author, or other owner of copyright in a work shall also be entitled to the damages for infringement provided for by section 23, where -

- (a) authorized copies of the work have been made and offered for sale or rental in an electronic form combined with a copy protection or copy management device or means, and a device or means specifically designed or adapted to circumvent the said device or means is made or imported for sale or rental;
- (b) the work is authorized for inclusion in an encrypted program, broadcast or otherwise communicated to the public, including, by satellite, and a device or means enabling or assisting the reception of the program by those who are not entitled to receive the program is made or imported for sale or rental.

Protection
of
expressions
of folklore

24 A. (1) Expressions of folklore are protected against-

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means;
- (c) adaptation, translation and other transformation, when such expressions are made either for commercial purposes or outside their traditional or customary context.

(2) The rights conferred by subsection (1) of this section shall not apply where the acts referred to therein are related to -

- (a) the use by a physical person exclusively for his own personal purposes;
- (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (c) the use solely for the purpose of face to face teaching or for scientific research;
- (d) instances referred to in section 12 and 13 where a work can be used without the authorization of the author or other owner of copyright.

(3) In all printed publications, and in connection with any communication to the public of any identifiable expression of folklore, its source shall be indicated

in an appropriate manner and in conformity with fair practice, by mentioning the community or place from where the expression utilized has been derived.

(4) The right to authorize acts referred to in subsection (1) of this section shall vest in a competent authority to be determined by the Minister.

(5) The money collected in relation to this section shall be used for purposes of cultural development.

Damages

24 B. Any person who, without the permission of the competent authority referred to in section 24 A (4) uses an expression of folklore in a manner not permitted by section 24 A shall be in contravention of the provisions of that section and be liable to the competent authority in damages, and be subject to injunctions and any other remedy as the Court may deem fit to award in the circumstances.

Scope of Application

24 C. (1) The provisions of this Part in respect of the protection of literary, artistic or scientific works shall apply to -

- (a) works of authors who are nationals of, or have their habitual residence in Sri Lanka; and
- (b) works first published in Sri Lanka, and works first published in another country and also published in Sri Lanka, within thirty days from such publication, irrespective of the nationality or residence of the author.

(2) The provisions of this Part shall also apply to works that are protected in Sri Lanka by virtue of and in accordance with any international convention or other international agreement to which Sri Lanka is a party.

24 D. (1) The provisions of this Part in respect of protection of performers shall apply to -

- (a) performers who are nationals of Sri Lanka;
- (b) performers who are not nationals of Sri Lanka but whose performances:-
 - (i) take place on the territory of Sri Lanka; or
 - (ii) are incorporated in sound recordings that are protected under this Part; or
 - (iii) have not been fixed in a sound recording but are included in broadcasts qualifying for protection under this Part.

(2) The provisions of this Part on the protection of sound recordings shall apply to-

- (a) sound recordings the producers of which are nationals of Sri Lanka;
- (b) sound recordings first fixed in Sri Lanka; and
- (c) sound recordings first published in Sri Lanka.

(3) The provisions of this Part on the protection of broadcasts shall apply to -

- (a) broadcasts of broadcasting organizations the headquarters of which are situated in Sri Lanka; and

(b) broadcasts transmitted from transmitters situated in Sri Lanka.

(4) The provisions in this Part shall also apply to performers, producers of sound recordings and broadcasting organizations protected by virtue of, and in accordance with, any international convention or other international agreements to which Sri Lanka is a party."

Amendment of section 26 of the principle enactment

"Industrial
Design"

4. Section 26 of the principal enactment is hereby amended in subsection (2) of that section by the substitution, for the words "is contrary to morality or public order or which , in the opinion of the Registrar" of the words "is contrary to morality or public order or public interest or which in the opinion of the Director".

Replacement of section 30 of the principal enactment

5. Section 30 of the principal enactment is hereby amended by the repeal of that section and the substitution of the following section therefor:-

"Industrial
Design"

30 (1) Where the essential elements of an industrial design, the subject of an application for registration or of a registration have been derived from an industrial design, for which the right to protection belongs to another person such other person may apply in writing to the Director to assign the said application or registration to him.

(2) The application for assignment shall be forwarded with the prescribed fee and evidence to substantiate the claim of the applicant. Where the registration has already been effected, the application under subsection (1) shall be made within one year from the date of the publication of the registration under section 41.

(3) The Director shall forthwith send a copy of such application for assignment to the applicant for registration or the registered owner of the industrial design, who shall within a period of three months from the date of such notice send to the Director a counter statement in the prescribed manner together with evidence to substantiate his claim and the prescribed fee.

(4) If the applicant or the registered owner sends a counter statement as referred to in subsection (3), the Director shall after hearing the parties, if he considers it necessary decide as expeditiously as possible whether the application or registration should be assigned and, where applicable whether the register should be rectified. If the applicant or the registered owner fails to send a counter statement as provided in subsection (3) within the period of three months, the Director shall allow the application referred to in subsection (1).

(5) Where, after an application for the registration of an industrial design has been filed, the person to whom the right to protection belongs gives his consent to the filing of the said application, such consent shall, for all purposes, be deemed to have been effective from the date of filing of such application".

Industrial
Design-
Registration

Amendment of section 37 of the principal enactment

6. Section 37 of the principal enactment is hereby amended as follows -

- (1) by the renumbering of that section as subsection (1) of that section;
and
- (2) by the addition of the following subsection immediately after the renumbered subsection (1) of that section -

" (2) (a) Notwithstanding the provisions of subsection (1), where the Director finds that the essential elements of an industrial design in respect of which an application for registration is made is derived from an industrial design already registered, he shall notify the applicant accordingly and request him, with a copy to the registered owner of the cited industrial design, to show that the industrial design is not so derived.

- (b) The applicant may, within a period of three months from the date of such notice, tender his written submissions to the Director with the prescribed fee. The registered owner of the cited industrial design may also tender his observations in writing within the same period of time.
- (c) On receipt of such written submissions and observations, if any, the Director shall after hearing the parties if he considers it necessary forthwith decide whether or not the industrial design should be registered.
- (d) If the Director does not receive the written submissions of the applicant within the prescribed period of three months, the application for the registration of industrial design shall be refused".

Amendment of section 59 of the principal enactment

Patents-
Definition of
Invention

7. Section 59 of the principal enactment is hereby amended in subsection (3) of that section as follows -

- (i) by the substitution for paragraph (b) of the following paragraph :-

"(b) plants and animals other than micro organisms, and essentially biological process for the production of plants and animals other than non-biological and microbiological process;

(ii) by the addition of the following new paragraphs immediately after paragraph (d) of that section -

"(e) An invention which is useful in the utilization of special nuclear material or atomic energy in an atomic weapon.

(f) any invention, the prevention within Sri Lanka of the commercial exploitation of which is necessary to protect the public order, morality including the protection of human, animal or plant life or health or the avoidance of serious prejudice to the environment".

Right to a
Patent

Amendment of section 64 of the principal enactment

8. Section 64 of the principal enactment is hereby amended by the addition of the following new subsection immediately after subsection (2) of that section-

"(3) If and to the extent to which two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date or, if priority is claimed, the earliest validly claimed priority date, shall have the right to the patent, so long as that application is not withdrawn, abandoned or rejected.".

Patents -
Requirements
Of Application

Amendment of section 68 of the principal enactment.

9. Section 68 of the principal enactment is hereby amended in subsection (1) of

And Procedure that section:-

For Grant

- (i) by the repeal of paragraph (V) there of; and
- (ii) by the addition of the following paragraphs therefor:
 - (v) an abstract,
 - (vi) date and number of any application for a patent filed by the applicant abroad (herein after referred to as "the foreign application"), if any, relating to the same, or essentially the same, invention as that claimed in the application;
 - (vii) a declaration that the applicant or his predecessor in title has not obtained a patent abroad before the application was filed relating to the same or essentially the same invention as that claimed in the application;
- (aa) if the declaration referred to in paragraph 68(1)(a)(vii) is found to be false the Court may declare the patent to be null and void on an application made to it by any interested party. The registered owner of the patent, assignees and licensees shall be made party to that application."

Patents -

Amendment of section 70 of the principal enactment

Search Report

10. Section 70 of the principal enactment is hereby amended by the insertion of the following new subsection immediately after subsection (2) of that section :-

"(2A) (a) the applicant shall, at the request of the Director, furnish him with the following documents in respect of any foreign application for a patent

filed by him abroad relating to the same or essentially the same invention as that claimed in the application filed under this Code -

- (i) a copy of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;
- (ii) a copy of the patent granted on the basis of the foreign application; and
- (iii) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

(b) The applicant shall, at the request of the Director, furnish him with a copy of any final decision invalidating the patent granted on the basis of the foreign application referred to in paragraph (a).".

Patents -
Amendment and
Division of
Application

Amendment of section 72 of the principal enactment

11. Section 72 of the principal enactment is hereby amended by the addition of the following new subsection immediately after subsection (2) of that section -

" (3) An amendment to an application or a division of application shall be subject to a prescribed fee."

Patents -
Filing date

Amendment of section 74 of the principal enactment

12. Section 74 of the principal enactment is hereby amended in subsection (2) of that section by the substitution for the words "he shall request the applicant to file the

required correction". of the words "he shall request the applicant to file the required correction within a period of three months from the date of such request."

Patents-
Examination

Amendment of section 75 of the principal enactment

13. Section 75 of the principal enactment is hereby amended as follows -

- (1) in subsection (1) of that section by the insertion of the following paragraph immediately after paragraph (d) -

"(dd) the essential elements of the invention claimed in the application have not been unlawfully derived from a patent already granted."

- (2) in subsection (2) of that section by the substitution for the words "he shall request the applicant to file the required correction;" of the words "he shall request the applicant to file the required correction within a period of three months from the date of such request";

- (3) by insertion of the following new subsection immediately after subsection (3):-

"(3A) Where the Director finds that the essential elements of an invention claimed in an application are unlawfully derived from a patent already granted, such application shall be rejected."

- (4) By the repeal of subsection (4) of that section and the substitution of the following subsection therefor :-

"(4) The Director shall notify the applicant of any decision under subsections (2), (3) and (3A) and any decision taken to reject the application shall be in writing giving the reasons for such rejection.".

Patents -
Grant of patent

Amendment of section 76 of the principal enactment

14. Section 76 of the principal enactment is hereby amended by the substitution in subsection (1) of that section for the words "performance of any act in respect of the claimed invention is prohibited by any law or regulation, except where the performance of that act would be contrary to public order." of the words "commercial exploitation of the claimed invention is prohibited by any law or regulation except where the prevention of the commercial exploitation of the claimed invention is necessary to protect public order.".

Patents-
Duration of
Patents

Amendments of section 80 of the principal enactment

15. Section 80 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words "a patent shall expire fifteen years after the date of its grant." of the words "a patent shall expire twenty years after the date of application for its registration.".

Patents-
Rights of
Owner of
Patent

Amendment of section 81 of the principal enactment

16. Section 81 of the principal enactment is hereby amended as follows -

(1) in subsection (1) of that section-

(a) by the substitution for the words "in relation to the patented"

of the words "in relation to patented invention";

(b) in paragraph (a) of that subsection for the words "to exploit the patent" of the words "to exploit the patented;"

(2) in paragraph (b) of subsection (3) of that section by the addition of the following new subparagraph immediately after subparagraph (II) of that paragraph -

"(iii) preventing any person using that process or using, selling or importing any product obtained directly by means of that process unless such person is authorised to do so.".

Patents-
"Burden of
proof to
be on the
infringer".

Insertion of a new section 81 A in the principal enactment

17 The following new section is hereby inserted immediately after section 81 and shall have effect as section 81A of the principal enactment -

81 A.(1) Where the subject matter of a patent is a process for obtaining a product, the burden of proof in a civil action of establishing that an alleged infringing product was not obtained by that patented process shall be on the alleged infringer -

- (a) if the product obtained by the patented process is new; or
- (b) if a substantial likelihood exists that the product was made by the patented process and the patent owner has been unable through reasonable efforts to determine the process actually used.

(2) In the gathering and evaluation of evidence the legitimate interests of the alleged infringer in protecting his undisclosed information shall be taken into account."

Patents-
Limitation of
Owner's
rights

Amendment of section 82 of the principal enactment

18. Section 82 of the principal enactment is hereby amended by the addition of the following new subsection immediately after subsection (3) of that section -

" (4) not extend to acts in respect of articles which have been put in the market by the owner of the patent or with his written consent."

Marks,
Trade Names
And
Unfair
Competition

Amendment of section 97 of the principal enactment

19. Section 97 of the principal enactment is hereby amended as follows:-

- (1) by the omission of the definition "**appellation of origin**" appearing in that section;
- (2) by the insertion immediately before the definition of "**collective mark**" appearing in that section of the following new definition-

"**Certification Mark**" means a mark indicating that the goods or services in connection with which it is used are certified by the proprietor of the mark in respect of origin, material, mode of manufacture of goods or performance of services, quality, accuracy or other characteristics."; and

- (3) by the insertion immediately after the definition of "**false trade description**" appearing in that section of the following new definition

"**geographical indication**" means an indication which identifies a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin."

Marks,
Trade Names
And
Unfair
Competition-

Amendment of section 99 of the principal enactment

20. Section 99 of the principal enactment is hereby amended in subsection (1) of that section as follows -

- (1) in paragraph (f) of that sub section by the substitution for the words "the source, the manufacturing process," of the words "the source, geographical indication, the manufacturing process"; and
- (2) by the repeal of paragraph (k) of that subsection and the substitution of the following new paragraph therefor: -

" (k) "Which resembles in such a way as to be likely to mislead the public, a mark or a collective mark or a certification mark the registration of which has expired and has not been renewed during a period of two years preceding the filing of the application for the registration of the mark in question or where its renunciation, removal or nullity has been recorded in the register during a period of two years preceding the filing of the application for the mark in question".

Marks,
Trade Names
And
Unfair
Competition

Amendment to section 100 of the principal enactment

21. Section 100 of the principal enactment is hereby amended in subsection (1) of that section as follows-

- (1) by the repeal of paragraph (a) of that subsection and the substitution of the following new paragraph therefor-

"(a) which resembles, in such a way as to be likely to mislead the public, a mark already validly filed or registered by a third party, or subsequently filed by a person validly claiming priority in respect of identical or similar goods or services in connection with which the use of such mark may be likely to mislead the public";

- (2) by the repeal of paragraph (d) of that subsection and the substitution of the following new paragraph therefor -

"(d) If it is identical with, or misleadingly similar to, or constitutes a translation or transliteration or transcription of a mark or trade name which is well known in Sri Lanka for identical or similar goods or services of a third party, or if it is well known and registered in Sri Lanka for goods or services which are not identical or similar to those in respect of which registration is applied for, provided in the latter case the use of the mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the well known mark and that the interests of the owner of the well known mark are likely to be damaged by

such use"; and

- (3) in paragraph (e) of that section by the substitution for the words "provisions of Chapter XXIX relating to" of the words "provisions of Chapter XXIX A relating to the".

Marks,	Amendment of section 102 of the principal enactment
Trade Names	
And	22. Section 102 of the principal enactment is hereby amended in paragraph
Unfair	(b) of that section by the substitution for the words "address and description of the
Competition-	applicant and" of the words "address of the applicant and".

Marks,	Amendment of section 106 of the principal enactment.
Trade Names	
And	23. Section 106 of the principal enactment is hereby amended in subsection
Unfair	(2) of that section by the addition of the following words at the end of the proviso to
Competition	that subsection -

"The date on which the applicant remedies such defect shall be considered the date of receipt of the application for registration".

Marks,	Amendment of section 107 of the principal enactment
Trade Names	
And	24. Section 107 of the principal enactment is hereby amended as follows -
Unfair	
Competition	(1) in subsection (6) of that section by the substitution for the words "if required by the applicant state in writing the grounds of his decision" of the words "if required by the applicant within a period of three months from such refusal or conditional acceptance, state in writing

the grounds of his decision";

- (2) in subsection (10) of that section by the substitution for words "grounds of opposition" of the words "grounds of opposition accompanied by evidence to substantiate such grounds.";
- (3) in subsection (12) of that subsection by the substitution for the words " his observations on those grounds in writing within a period of three months", of the words "his observations in writing accompanied by evidence to support his application within a period of three months.";and
- (4) in subsection (13) of that section by the substitution for the words "accordingly register such mark", of the words "accordingly register such mark -
 - (a) where no appeal is preferred against his decision, upon the expiry of the period within which an appeal may be preferred against his decision;
 - (b) where an appeal is preferred against his decision, upon the dismissal of such appeal,

as the case may be."

Marks,
Trade Names
And
Unfair

Amendment of section 116 of the principal enactment

25. Section 116 of the principal enactment is hereby amended by the substitution for the words "the registered owner of any mark may apply in the

Competition prescribed manner to the Registrar" of the words "The registered owner of any mark may apply in the prescribed manner and with prescribed fee to the Director."

Marks,
Trade Names **Amendment of section 117 of the principal enactment**

And 26. Section 117 of the principal enactment is hereby amended in subsection (2)
Unfair of that section by the repeal of paragraph (a) and the substitution of the following
Competition new paragraph -

"(a) Any use of the mark, or a sign resembling it in such a way as to be likely to mislead the public, for goods or services in respect of which the mark is registered or for similar goods or services in connection with which the use of the mark or sign is likely to mislead the public; and

Marks,
Trade Names **Amendment of section 130 of the principal enactment**

And 26 A. Subsection (3) of section 130 of the principal enactment is hereby
Unfair amended by the substitution for the words "the date of registration of the mark" of
Competition the words "the date of issue of the certificate of registration under section 109(3)".

Replacement of section 134 of the principal enactment

27. Section 134 of the principal enactment is hereby repealed and the following section is substituted therefor -

"Collective 134. (1) the subject to the provisions of this Chapter the provisions relating
Marks" to marks shall apply to collective marks.

(2) In relation to a collective mark, the reference in section 97 (signs of which a trade mark or service mark may consist) to distinguishing goods or services of one enterprise from those of other enterprises shall be construed as a reference to distinguishing goods or services of the enterprises which use the collective mark from those of other enterprises."

"Collective
Marks"

Amendment of section 135 of the Principal enactment

28. Section 135 of the principal enactment is hereby amended by the insertion of the following new subsections immediately after subsection (2) of that section -

"(3) A collective mark shall not be registered unless the conditions governing the use of the mark -

- (a) comply with the provisions of sub-section (2) and any further requirements imposed by the regulations, and
- (b) are not contrary to public policy or accepted principles of morality.

(4) (a) An authorized user is entitled, subject to any agreement to the contrary between him and the registered owner of the collective mark to call on the owner to take infringement proceedings in respect of any matter which affects his interests.

(b) If the owner-

- (i) refuses to do so; or

- (ii) fails to do so within two months after being called upon to do so,

the authorized user may bring the proceedings in his own name as if he were the owner. The registered owner shall be made party to the action.

- (c) In infringement proceedings brought by the owner of a registered collective mark, any loss suffered or likely to be suffered by authorised users shall be taken into consideration by Court.

- (5) The registration of the collective mark may be removed on the following grounds in addition to the grounds specified in section 132 :-

- (i) that the manner in which the mark has been used by the owner has caused it to become liable to mislead the public to understand or think that the mark has state patronage.
- (ii) that the owner has failed to observe, or to secure the observance of, the conditions governing the use of the mark, or
- (iii) that an amendment of the conditions has been made so that the conditions-
 - (a) no longer comply with subsection (2) and any other condition imposed by regulation made under this Act,

or

(b) are contrary to public policy or to the accepted principles of morality.

(6) The registration of a collective mark shall be declared null and void if it was registered in violation of the provisions of section 130 and subsections (2) and (3) of section 135.

(7) The provisions of Sections 117(1)(b) and (c), 119, 120, 121, 122, 123, 124, 125, 126, 127 and 128 shall not apply to collective marks."

Replacement of section 137 of the principal enactment

29. Section 137 of the principal enactment is hereby repealed and the following Chapter is substituted therefor : -

"CHAPTER XXVIII A CERTIFICATION MARKS.

"Certification
Marks"

137 (1) Subject to the provisions of this Chapter provisions relating to marks shall apply to certification marks.

(2) In relation to a certification mark the reference in section 97 (signs of which a trade mark or service mark may consist) to distinguishing goods or services of one enterprise from those of another enterprise shall be construed as a reference to distinguishing goods or services which are certified from those which are not certified.

(3) An application for registration of a certification mark shall not be filed unless in the application the mark is designated as a certification mark and it is accompanied by a copy of such conditions as may be prescribed governing the use of the mark duly certified by the applicant.

(4) The conditions prescribed under subsection (3) shall define the common characteristics or quality of the goods or services which the certification mark shall designate and the conditions in which, and the person by whom, it may be used. They shall further provide for the exercise of effective control over the use of the mark and shall specify proper sanctions for the use of the mark contrary to the said conditions.

(5) A certification mark shall not be registered:-

- (a) if the owner of the certification mark carries on a business involving the supply of goods or services of the kind certified;
and
- (b) unless the conditions governing the use of the mark,
 - (i) comply with the provisions of subsection (4) and any other requirement as may be imposed by regulations;
and
 - (ii) are not contrary to public policy or accepted principles of morality.

(6) In infringement proceedings brought by the owner of the registered certification mark any loss suffered, or likely to be suffered, by authorised users shall

be taken into account; and the Court may give such directions as it thinks fit as to the extent to which the owner is to hold the proceeds of any pecuniary remedy on behalf of such users.

(7) Apart from the grounds of removal of a mark provided for in section 132, the registration of a certification mark may be removed on the ground:-

- (a) that the owner has begun to carry on such a business as is mentioned in paragraph (a) of subsection (5);
- (b) that the manner in which the mark has been used by the owner has caused it to become liable to mislead the public as to the character or significance of the mark;
- (c) the owner has failed to observe, or to secure observance of, the conditions governing the use of the mark;
- (d) that the owner is no longer competent to certify the goods or services for which the mark is registered;
- (e) that an amendment of the conditions have been made so that the conditions-
 - (i) no longer comply with the provisions of subsection (4) and any other condition imposed by regulations;
 - (ii) are contrary to public policy and order or to the accepted principles of morality.

(8) Apart from the grounds of nullity provided in section 130 the registration of a certification mark may be declared null and void if it was registered contrary to the provisions of subsections (4) and (5)."

Use of
Collective
Marks and
other Matters

Repeal of section 138 of the principal enactment

30. Section 138 of the principal enactment is hereby repealed.

Replacement of Section 142 of the principal enactment

31. Section 142 of the principal enactment is hereby repealed and the following new CHAPTERS are substituted therefor and shall have effect as CHAPTER XXIXA CHAPTER XXIXB and CHAPTER XXIXC respectively of the principal enactment: -

"CHAPTER XXIX A

Unfair competition and undisclosed information.

Unfair
Competition
And
Undisclosed
Information

142(1) (a) Any act or practice in the course of industrial or commercial activities, that is contrary to honest practices shall constitute an act of unfair competition.

(b) The provisions of this section shall apply independently of, and in addition to, other provisions of the Code protecting inventions, industrial designs, marks, literary, scientific and artistic works and other intellectual property.

(2) (a) Any act or practice, in the course of industrial or commercial activities, that causes, or is likely to cause, confusion with respect to another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.

(b) Confusion may, in particular, be caused with respect to -

- (i) a mark, whether registered or not;
- (ii) a trade name;
- (iii) a business identifier other than a mark or trade name;
- (iv) the appearance of a product;
- (v) the presentation of products or services;
- (vi) a celebrity or a well-known fictional character.

(3) (a) Any act or practice, in the course of industrial or commercial activities, that damages, or is likely to damage, the goodwill or reputation of another's enterprise shall constitute an act of unfair competition, regardless of whether such act or practice causes confusion.

(b) Damaging another's goodwill or reputation may, in particular, result from the dilution of the goodwill or reputation attached to -

- (i) a mark, whether registered or not;
 - (ii) a trade name;
 - (iii) a business identifier other than a mark or a trade name;
 - (iv) the appearance of a product;
 - (v) the presentation of products or services;
 - (vi) a celebrity or a well-known fictional character.
- (C) For the purposes of these provisions, "dilution of goodwill or reputation" means the lessening of the distinctive character or advertising value of a mark, trade name or other business identifier, the appearance of a product or the presentation of products or services or of a celebrity or well-known fictional character.
- (4) (a) Any act or practice, in the course of industrial or commercial activities, that misleads, or is likely to mislead, the public with respect to an enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.
- (b) Misleading may arise out of advertising or promotion and may, in particular occur with respect to -
- (i) the manufacturing process of a product;

- (ii) the suitability of a product or service for a particular purpose;
 - (iii) the quality or quantity or other characteristics of products or services ;
 - (iv) the geographical indication of products or services ;
 - (v) the conditions on which products or services are offered or provided;
 - (vi) the price of products or services or the manner in which it is calculated.
- (5) (a) Any false or unjustifiable allegation, in the course of industrial or commercial activities, that discredits, or is likely to discredit, another's enterprise or its activities, in particular, the products or services offered by such enterprise, shall constitute an act of unfair competition.
- (b) Discrediting may arise out of advertising or promotion and may, in particular, occur with respect to -
- (i) the manufacturing process of a product;
 - (ii) the suitability of a product or service for a particular purpose;
 - (iii) the quality or quantity or other characteristics of products or services;

- (iv) the conditions on which products or services are offered or provided;
 - (v) the price of products or services or the manner in which it is calculated.
- (6) (a) Any act or practice, in the course of industrial or commercial activities, that results in the disclosure, acquisition or use by others, of undisclosed information without the consent of the person lawfully in control of that information (in this section referred to as "the rightful holder") and in a manner contrary to honest commercial practices shall constitute an act of unfair competition.
- (b) Disclosure, acquisition or use of undisclosed information by others without the consent of the rightful holder may, in particular, result from:-
- (i) industrial or commercial espionage;
 - (ii) breach of contract;
 - (iii) breach of confidence;
 - (iv) inducement to commit any of the acts referred to in sub paragraph (i) to (iii) ;
 - (v) acquisition of undisclosed information by a third party who knew, or was grossly negligent in failing to know, that an act referred to in sub paragraph (i) to (iv) was involved in the

acquisition.

- (c) For the purposes of the Code, information shall be considered "undisclosed information" if :-
- (i) it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with the kind of information in question ;
 - (ii) it has actual or potential commercial value because it is secret; and
 - (iii) it has been subject to reasonable steps under the circumstances by the rightful holder to keep it secret.
- (d) Any act or practice, in the course of industrial or commercial activities, shall be considered an act of unfair competition if it consists or results in:-
- (1) an unfair commercial use of secret test or other data, the origination of which involves considerable effort and which have been submitted to a competent authority for the purposes of obtaining approval, of the marketing of pharmaceutical or agricultural or chemical products which utilize new chemical entities; or
 - (2) the disclosure of such data, except where necessary to protect the public, or unless steps have been taken to ensure that the data is protected against unfair commercial use.

(e) The undisclosed information for the purpose of the Code shall include:-

- (i) technical information related to the manufacture of goods or the provision of services; or
- (ii) business information which includes the internal information which an enterprise has developed so as to be used within the enterprise.

In this section the word "enterprise" has the same meaning as in section 97 of the Code.

(7) Any person or association of producers, manufacturers or traders aggrieved by any act or practice referred to in this CHAPTER may institute proceedings in Court to prohibit the continuance of such act or practice and the provisions of Chapter XXXII of the Code relating to infringement shall apply, mutatis mutandis, to such proceeding.

(8) (i) Any person, who willfully and without lawful authority, discloses any undisclosed information shall be guilty of an offence under this Code and shall on conviction after summary trial before Magistrate be liable to a fine not exceeding five hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(ii) The provisions of Part VI of the Code shall apply mutatis mutandis to this offence.

(9) The rights conferred by the provisions of sub section (6) shall be in addition to, and not in derogation of, any common law rights.

CHAPTER XXIX B
Geographical Indications.

Protection
Of
Geographical
Indications

142 A. (1) Any interested party shall be entitled to prevent-

- (i) the use of any means in the designation or presentation of a good, that indicates or suggests that the goods (including an agricultural product, food, wine or spirit) in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good; or
- (ii) any use which constitutes an act of unfair competition within the meaning of section 142;
- (iii) the use of a geographical indication identifying wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expression such as kind, type, style or imitation or the like.

(2) The protection accorded to geographical indications under sections 99, 142 and 142 A shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

(3) In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to paragraph (2) of this section. The Minister, in cases of permitted concurrent use of such indications, shall determine by regulations the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into consideration the need to ensure equitable treatment of the producers concerned and the protection of consumers from false or deceptive indications.

(4) The Court shall have power and jurisdiction to grant an injunction and any other relief deemed appropriate to prevent any such use as is referred to in this section. The provisions of Chapter XXXII of the Code shall apply, mutatis mutandis, to such proceedings.

(5) For the purposes of this section "**geographical indications**" shall have the same meaning as in section 97.

CHAPTER XXIX C

Registered Agents

Registered Agents 142 B (1) An Agent referred to in the Code means an Agent registered under the provisions of the Code and regulations made thereunder.

(2) Only an agent registered under the Code shall have status and be competent to act as an agent under the Code.

(3) A person may be admitted and registered as an agent if he is:-

(a) a citizen of Sri Lanka and is ordinarily resident in Sri Lanka,
and

(b) (i) an attorney-at-law of the Supreme Court of Sri Lanka,
or

(ii) a person duly qualified to be appointed as an agent
under regulations made by the Minister.

(4) A corporate body or a firm may act as an agent if all the Directors of such corporate body or all the partners of the firm, as the case may be, are registered agents.

(5) The registration of an agent under the Code shall be valid for a period of three years and shall be renewable, subject to the payment of a prescribed fee, for a consecutive period of three years provided, however, that a period of grace of six months shall be allowed for renewal upon payment of such surcharge as may be prescribed.

(6) Notwithstanding anything in the provisions of sub section (2), any duly appointed agent, irrespective of not being registered under this CHAPTER, may represent his clients, for a period of two years from the date on which this CHAPTER comes into operation.

(7) The power of attorney referred to in the Code means a power of attorney duly executed or a letter of authorisation duly signed by the principal."

Offences

Amendment of Section 144 of the principal enactment

And

Penalties

32. Section 144 of the principal enactment is hereby amended as follows :-

(1) in subsection (1) of that section by the substitution for the words "a

fine not exceeding twenty thousand" of the words " a fine not exceeding five hundred thousand";

- (2) by the renumbering of subsection (2) of that section as subsection (3) of that section;
- (3) in the renumbered subsection (3) of that section by the omission of the word "copy right" and substitution of the word "right"; and
- (4) by the insertion of the following new subsection immediately after subsection (1) of that section.

"(2) Any person knowing or having reason to believe that copies have been made in infringement of the rights protected under Part II of the Code sells, or displays for, or has in his possession for, sale or rental or for any purpose of trade any such copies, shall be guilty of an offence and shall be liable on conviction by a Magistrate for a fine not exceeding Rupees five hundred thousand or to imprisonment for a term not exceeding six months or to both such fine and such imprisonment, and in the case of second or subsequent conviction, to double the aforesaid fine or term of imprisonment or both".

Offences

Amendment of section 145 of the principal enactment

And

Penalties

33. Section 145 of the principal enactment is hereby amended by the substitution for the words "a fine not exceeding twenty thousand rupees" of the words "a fine not exceeding five hundred thousand rupees".

Offences **Amendment of section 146 of the principal enactment**

And

Penalties 34. Section 146 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words "to a fine not exceeding "twenty thousand rupees" of the words "to a fine not exceeding five hundred thousand rupees".

Offences **Amendment of section 147 of the principal enactment**

And

Penalties 35. Section 147 of the principal enactment is hereby amended by the substitution for the words "to a fine not exceeding twenty thousand rupees" of the words "to a fine not exceeding five hundred thousand rupees".

Offences **Amendment of section 148 of the principal enactment**

And

Penalties 36. Section 148 of the principal enactment is hereby amended subsection (1) of that section by the substitution for the words "to a fine not exceeding twenty thousand rupees" of the words "to a fine not exceeding five hundred thousand rupees".

Amendment of section 149 of the principal enactment

37. Section 149 of the principal enactment is hereby amended by the substitution for the words "twenty thousand rupees" of the words "five hundred thousand rupees".

Amendment of section 150 of the principal enactment

38. Section 150 of the principal enactment is hereby amended by the substitution for the words "to a fine not exceeding twenty thousand rupees" of the words "to a fine not exceeding five hundred thousand rupees".

Amendment of section 151 of the principal enactment

39. Section 151 of the principal enactment is hereby amended in subsection (1) of that section by the substitution for the words "to a fine not exceeding twenty thousand rupees" of the words "to a fine not exceeding five hundred thousand rupees".

Amendment of section 152 of the principal enactment

40. Section 152 of the principal enactment is hereby amended in subsection (4) of that section by the substitution for the words "to a fine not exceeding twenty thousand rupees" of the words "to a fine not exceeding five hundred thousand rupees."

Insertion of new section 156A in the principal enactment

41. The following new sections are hereby inserted immediately after section 156 and shall have effect as section 156A of the principal enactment -

"False
Declaration
To be an
Offence

156 A. (1) Every person who -

(a) makes a false declaration to the Director ;

- (b) makes a false declaration in respect of Geographical Indications inclusive of Ceylon Tea,

shall be guilty of an offence and shall be liable on conviction by a Magistrate to a fine not exceeding five hundred thousand rupees.

- (2) Every person who makes a false declaration or provides false information to Customs Authorities which causes them to act under section 166 in respect of goods referred to therein shall be guilty of an offence and shall be liable on conviction by a Magistrate to a fine not less than two hundred thousand rupees or to imprisonment for a term not exceeding six months or to both such fine and imprisonment."

Replacement of section 165 of the principal enactment

42. Section 165 of the principal enactment is hereby repealed and the following new section is substituted therefore -

"Limitation of
Prosecution"

165. No prosecution for an offence under the Code shall be commenced after the expiration of three years after the commission of the offence charged or two years after the discovery thereof by the prosecutor, whichever expiration first occurs."

Replacement of section 166 of the principal enactment

43. Section 166 of the principal enactment is hereby repealed and the following section is substituted therefor -

“Amendment
Of Certain
Provisions
Of the
Customs
Ordinance”

166 (1) Importation of counterfeit trademark goods or pirated copyright goods or any other goods in contravention of the provisions of the Code shall be prohibited and such goods shall be included among the goods prohibited to be imported as if they were referred to in section 43 of the Customs Ordinance and included in Schedule B of the Customs Ordinance as prohibited goods.

(2) Exportation of goods referred to in subsection (1) of this section shall be prohibited and such goods shall be included among the goods prohibited to be exported as if they were referred to in section 44 of the Customs Ordinance and included in Schedule B of the Customs Ordinance as prohibited goods.

(3) Counterfeit trademark goods mean any goods, including packaging, bearing without authorization of a trade mark which is identical to a trade mark validly registered in respect of such goods or which cannot be distinguished in its essential aspects from such a trade mark, and which thereby infringes the rights of the owner of the trade mark recognized by the Code.

(4) Pirated copyright goods mean any goods which are made without the consent of the copyright holder or person duly authorized by the copyright holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right by the Code.

(5) This section shall have effect as if it formed part of the Customs Ordinance.

(6) The Minister in charge of the subject of Customs shall have power to make regulations required to enforce the above provisions.

(7) All regulations made under this section shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(8) Every regulation made under subsection (1) shall soon as convenient after its publication be brought before Parliament for approval. Any such regulation which is not so approved shall be deemed to be rescinded from the date of disapproval but without prejudice to any thing previously done thereunder. Notification of the date on which a regulation is deemed to be rescinded shall be published in the Gazette".

"Suspension
Of Certain
Goods by
Customs
Authorities"

Insertion of a new section 166 A

44. The following new section is hereby inserted immediately after section 166 and shall have effect as section 166 A of the principal enactment.

166 A (1) A right holder, who has valid grounds to believe that the importation of counterfeit trademark or pirated copyright goods or of any other goods in contravention of the right holder's rights under the Code is taking place, may make an application in writing with the Director-General of Customs, for the suspension by him, of the release of such goods into free circulation.

(2) Every right holder who makes an application under subsection (1) shall provide adequate evidence to satisfy the Director-General of Customs that there is prima facie an infringement of the right holder's rights under the Code and supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities.

(3) (a) The Director-General of Customs shall have the power to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.

(b) Where pursuant to an application made under subsection (1), the Director-General of Customs suspends the release of any goods into free circulation, the Director-General shall cause the importer and the applicant to be promptly notified of the suspension.

(4) If, within a period not exceeding ten working days after the applicant has been informed of the suspension as provided for in subsection (3), the Director-General of Customs is not informed that proceedings leading to a decision on the merits of the case has been initiated in a court, the Director-General shall cause the goods to be released, provided that all other conditions for importation or exportation have been complied with.

(5) Where pursuant to an application made under subsection (1), the Director-General of Customs has suspended the release of any goods into free circulation and the period referred to in subsection (4) has expired without the granting of any provisional relief by a Court, and provided that all other conditions for importation have been complied with, the owner, importer or consignee of such goods shall be entitled to their release.

(6) Notwithstanding anything contained in the preceding provisions of this section, where the suspension of the release of any goods is carried out or continued in accordance with an order of Court, the provisions of section 179(4) shall apply.

(7) The court shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods, appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to the preceding provisions of this section.

(8) Without prejudice to the protection of confidential information, the Court shall have power to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The Court shall also have power to give the importer an equivalent opportunity to have any such goods inspected.

(9) Without prejudice to other rights of action open to the right holder and the defendant, the Court shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in section 179(3). In regard to counterfeit trademark goods, the Court shall not allow the re-exportation of the infringing goods in an unrelated state or subject them to a different customs procedure, other than in exceptional circumstances.

(10) The provisions of sections 166 and 166A shall not apply to small quantities of goods of a non commercial nature contained in a traveller's personal luggage or sent in small consignments.

(11) In this section, the expressions "counterfeit trademark goods" and "pirated copyright goods" shall have the same meanings as in section 166."

Amendment of Section 170 of the principal enactment

45. Section 170 of the principal enactment is hereby amended by the addition of the following words to the end of that section -

"The provisions of the said Code of Criminal procedure Act shall apply to the offences under this CHAPTER".

Amendment of section 171 of the principal enactment

46. Section 171 of the principal enactment is hereby amended in subsection (2) of that section by the insertion of the following paragraphs immediately after paragraph (d) of that section -

- (dd) the setting up of organizations to administer rights on behalf of the owners of such rights;
- (ddd) the conditions under which such organizations are required to work;
- (dddd) the admission, registration, cancellation, removal and any other matter relating to agents specified in CHAPTER XXIXC of the Code;"

Amendment of section 172 of the principal enactment

47. Section 172 of the principal enactment is hereby amended as follows -

- (1) in subsection (1) of that section by the substitution for the word "mark" wherever that word occurs in that subsection, of the words "mark or any other matter provided for by the Code";
- (2) in subsection (2) of that section by the substitution for the word "mark" of the words "mark or any other matter provided for by the Code."

Amendment of section 177 of the principal enactment

48. Section 177 of the principal enactment is hereby amended by the substitution for the words "mark" of the words "mark or any other matter provided for by the Code".

Replacement of section 179 of the principal enactment

49. Section 179 of the principal enactment is hereby repealed and the following new section is substituted therefore-

“Infringement
And the
Remedies”

179 (1) Where a person to whom any of the rights recognized by and under this Code is granted, proves that any person is threatening to infringe or has infringed his rights or is performing acts which make it likely that infringement will occur, the Court may grant an injunction restraining any such person from commencing or continuing such infringement or performing such acts and may order damages and such other relief as to the Court appears just and appropriate. The injunction may be granted along with the award of damages and an injunction shall not be denied only for the reason that the applicant is entitled to damages.

(2) The defendant may in the proceedings referred to in subsection (1) request the Court to declare the registration of an industrial design, patent, mark or any other registration under the Code, as the case may be, or any part of it, null and void, in which event the provisions of the section relating to the nullity of such registration shall apply as appropriate.

(3) (a) The Court shall have power to order the infringer to pay the right holder damages adequate to compensate for the loss the right holder has suffered, by reason of such infringement, as well as the recovery of profits.

- (b) The Court shall also have the power to order that the infringing goods be disposed of outside the channels of commerce or destroyed, without the payment of compensation of any sort.
- (c) The Court may make similar orders in respect of materials and implements used in the creation of the infringing goods. In making such orders the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trade mark goods, the simple removal of the trade mark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

(4) The Court may, unless it would be out of proportion to the seriousness of infringement, order the infringer to inform the right holder of the identity of the persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

(5) The Court shall have power to order interim measures of protection, ex-parte, where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder or where there is a demonstrable risk of evidence being destroyed.

(6) Where interim measures have been ordered ex-parte the parties affected shall be given notice and shall be entitled to be heard as to whether the interim measures ordered should be modified or revoked.

(7) Where the interim measures are modified or revoked or it is subsequently found that there has been no infringement of a protected right the court

shall have the authority to order the applicant, upon the request of the defendant to pay appropriate compensation for any injury caused.

(8) The Court may order among other things the applicant to provide security or equivalent assurance sufficient to protect the defendant and to prevent abuse of interim measures referred to in the preceding provisions of this section.

(9) The person to whom any of the rights recognised under the Code belongs may, notwithstanding the other provisions of the Code relating to the award of damages, elect at the time before the final judgement to recover, instead of actual damages on proof, an award of statutory damages for all the infringements involved in the action in a sum of rupees not less than Rupees fifty thousand and not more than Rupees one million as the Court may consider appropriate and just.

(10) No suit or prosecution shall lie against any public authority or official for any act which is done in good faith or purported to be done under this Code."

Amendment of section 180 of the principal enactment

50. Section 180 of the principal enactment is hereby amended by the substitution for the word "mark" wherever that word occurs in that section of the words "mark or any other matter provided for by the Code".

Amendment of Section 181 of the principal enactment

51. Section 181 of the principal enactment is hereby amended by the substitution for the word "mark" wherever that word occurs in that section of the words "mark or any other matter provided for by the Code".

Replacement of section 182 of the principal enactment

52. Section 182 of the principal enactment is hereby repealed and the following new section is substituted therefor -

"Appeals"

182. (1) Any person aggrieved by any decision made by the Director under any provision of the Code may appeal therefrom to the Court within a period of six months from the date of such decision.

(2) Such person may prefer an appeal to the Court by way of a petition of appeal with a certified copy of the decision appealed from, accompanied by copies of all relevant documents and affidavits from the file of the Intellectual Property Office. A copy of the petition of appeal and the accompanying documents and the affidavits shall be served on the Director and other respondents named in the petition of appeal. Proof of such service shall be furnished with the petition of appeal. The respondents may file their statement of objections.

(3) Court may call for the original file or files from the Director and may receive and admit new evidence by way of affidavit and documents, additional to, or supplementary of, the evidence already given before the Director in respect of the matter at issue as the justice of the case may require.

(4) On any such appeal, the Court may affirm, reverse or vary the decision of the Director or may issue such directions to the Director, or order a further hearing by the Director, as the justice of the case may require.

(5) Any person who is dissatisfied with any order made by the Court in the exercise of its jurisdiction under subsection (4) to which such person is a party

may prefer an appeal to the Supreme Court against such order for the correction of any error in fact or in law, with the leave of the Supreme Court first had and obtained.

(6) Every appeal to the Supreme Court under subsection (5) shall be made as nearly as may be in accordance with the procedure prescribed by the rules of the Supreme Court with respect to special leave to appeal to the Supreme Court."

Amendment of section 186 of the principal enactment

53. Section 186 of the principal enactment is hereby amended as follows -

(1) By the repeal of the definition "convention country" appearing in that section and the substitution of the following definition therefor -

"**Convention country**" means any country that has acceded to or ratified or that may hereafter accede to or ratify the Paris Convention for the protection of Industrial Property, as well as all members of the World Trade Organization or States that may here after become members of the World Trade Organization, and includes any country which has entered into or which may hereafter enter into any treaty, convention or arrangement with Sri Lanka creating reciprocal rights and obligations between such country and Sri Lanka in regard to industrial designs, patents and marks and any other matter provided for by the Code and the registration thereof";

(2) by the insertion of the following new definition immediately after the definition of "Convention country" :-

"**convention**" means the Paris Convention for the protection of Industrial Property, World Trade Organization or any other international or regional convention, treaty or arrangement to which Sri Lanka is party creating reciprocal rights and obligations between such country and Sri Lanka in regard to Industrial Designs, Patents, Marks and any other matter provided for by the Code and the registration thereof";

- (3) by the repeal of the definition "**Court**" appearing in that section and the substitution of the following new definition therefor -

"**Court**" means a High Court established under Article 154 P of the Constitution for a Province empowered with civil jurisdiction by Order published in the Gazette under section 2 of the High Court of Provinces (Special Provisions) Act, No. 10 of 1996 and where the party or parties defendant to such action resides or reside or the cause of action has arisen or the contract sought to be enforced was made within the Province for which such High Court is established; or where no such High Court is established for any such Province or vested with such civil jurisdiction the High Court established for the Western Province."

Amendment of section 193 of the Principal enactment

54. Section 193 of the principal enactment is hereby amended by the substitution for the words "copyright, industrial designs, trademarks, patents, unfair competition of the words "Copyright, and related rights, industrial designs, marks, patents and unfair competition and any other area or subject of Intellectual property".

**Amendment made to the High Court of the
provinces (special provisions) Act No. 10 of 1996.**

55. High Court of the Provinces (special Provisions) Act, No. 10 of 1996 is hereby amended as follows -

- (1) by the repeal of clause 3 of the First Schedule to that Act and substitution therefor of the following :-

"All proceedings required to be taken under the Code of Intellectual Property Act, No. 52 of 1979 in the High Court established under Article 154 P of the constitution.

- (2) by the repeal of Clause 2 of the second Schedule to the Act.

Retrospective
effect.

56. Amendment to Part 11 of the principal enactment shall be deemed for all purposes to have come into operation on the date on which the principal enactment came into operation provided that the term of protection had not expired under the principal enactment or under the legislation of the country of origin of such works, performances, sound recordings or broadcasts that are to be protected under an international treaty to which Sri Lanka is a party.

Sinhala Text
to prevail in
case of
inconsistency.

57. In the event of any inconsistency between the Sinhala and Tamil Texts of this Act, the Sinhala Text shall prevail.
