

Annex 1: Legislative Proposal

1. Title of the Proposal:

Proposal to Amend the Copyright Act of the Kingdom of Bhutan 2001

1) Type of Legal Measure:

Act (Full Amendment and Substitution of Principal Legislation)

2) Lead Ministry/Commission/Agency:

Department of Media, Creative Industry and Intellectual Property (DoMCIIP), Ministry of Industry, Commerce and Employment (MoICE).

3) Expected Date of Adoption: January 2027

2. PROBLEM IDENTIFICATION

The Copyright Act 2001 was drafted for an analog-era creative economy, where works were primarily produced, stored, and distributed in physical formats. Over the past two decades, disruptive technological advancements have transformed the creative landscape:

- Streaming platforms have become the dominant mode of distribution, requiring rights frameworks for on-demand, interactive transmissions.
- User-generated content and social media ecosystems have blurred traditional producer–consumer roles, necessitating nuanced limitations, exceptions, and licensing models.
- Algorithmic authorship and AI-assisted creative production challenge conventional definitions of authorship, originality, and moral rights.
- Deepfake technologies and synthetic media have created urgent needs for biometric IP protection and platform accountability.

The current statute omits key elements such as:

- The “making available” right, critical to regulating digital distribution and streaming;
- Enforceable regimes for Technological Protection Measures (TPMs) and Rights Management Information (RMI) to secure digital rights management (DRM) systems;
- A legal basis for Collective Management Organization (CMO) formation, accreditation, and oversight;
- Safe harbor rules for intermediary liability coupled with enforceable obligations for content moderation and takedown;

- A sui generis regime for Traditional Cultural Expressions (TCEs), grounded in Bhutan's cultural protocols and community custodianship;
- Recognition and protection of biometric identifiers to address synthetic impersonation risks;
- Scalable enforcement tools such as blockchain registries, automated content recognition, and metadata-based tracking.

Without a structural reform, Bhutan's creators remain unprotected in global markets, cultural sovereignty is exposed to misappropriation, and the country remains ineligible for WCT and WPPT accession.

3. OBJECTIVE OF THE PROPOSAL

The principal objective is to enact a future-ready copyright framework that is technologically robust, culturally inclusive, treaty-compatible, and digitally enforceable. The proposed legislation aims to:

- Codify the right of communication to the public, including interactive digital transmissions, to reflect global digital rights standards;
- Introduce enforceable statutory protections for Technological Protection Measures (TPMs) and Rights Management Information (RMI), which are essential for the integrity of digital rights management (DRM) systems;
- Establish a legal and regulatory regime for the creation, accreditation, and oversight of Collective Management Organizations (CMOs), ensuring transparency, accountability, and efficient royalty distribution;
- Introduce a differentiated legal regime for authorship and ownership of algorithmically generated works, balancing human intellectual creativity with machine-assisted innovation;
- Create a sui generis framework for the legal recognition and protection of Traditional Cultural Expressions (TCEs), enabling community-based control, attribution, and benefit-sharing;
- Expand the scope of statutory limitations and exceptions to accommodate contemporary educational, accessibility, and transformative uses, including digital learning, text and data mining (TDM), and preservation exceptions.
- Extend the duration of copyright protection to no less than 70 years post mortem auctoris, consistent with international treaty practice and global reciprocity principles;

- Introduce a functional intermediary liability regime that balances platform responsibility with safe harbor protections, enabling lawful online content hosting, moderation, and takedown mechanisms.
- Introduce an automatic copyright protection over an individual's biometric identity, including face, voice, and body, treating personal identity itself as a form of intellectual property.
- Provide legal clarity on the ownership and enforceability of AI-generated and algorithmically assisted works, including hybrid authorship frameworks and machine-originated content.
- Modernize limitations and exceptions to reflect the realities of digital reuse, educational digitization, parody, TDM (text and data mining), and access for persons with disabilities.
- Establish a statutory basis for real-time, scalable digital enforcement mechanisms, enabling cross-border cooperation and metadata-based rights tracking.

4. POLICY OPTIONS

1) Considered Policy Pathways:

- Option A: Retain the Existing Act (Status Quo)

This option was dismissed outright. The current law is technologically and doctrinally obsolete. It cannot support Bhutan's treaty accession or its creative and digital economy aspirations.

- Option B: Incremental Reform

Partial reform would create patchwork legal fixes without structural integrity, leaving many foundational issues, such as AI authorship, biometric IP, and digital licensing, unaddressed. This option was deemed doctrinally incoherent and administratively inefficient.

- Option C: Full Legal Overhaul (Recommended Option)

A comprehensive repeal and reenactment will allow for a coherent, strategically aligned copyright ecosystem. This approach ensures procedural modernization, treaty readiness, cultural integrity, and digital enforcement capability.

2) Application of Subsidiarity and Proportionality:

- **Subsidiarity:** While copyright requires central statutory coherence, localized mechanisms, particularly for traditional knowledge and TCE governance, will

ensure cultural legitimacy and community ownership. The law will embed prior informed consent (PIC) and community-based licensing models.

- **Proportionality:** The proposed reforms will be precisely tailored to balance the rights of creators, users, platforms, and cultural stakeholders. Special mechanisms, such as tiered enforcement, opt-out clauses, and differentiated exceptions, will ensure fairness without overregulation.

5. IMPACTS – POSITIVE AND NEGATIVE

1) Likely Impacts of the Reform

- *Legal Impacts*

- (i) Establishes Bhutan as a treaty-ready jurisdiction for WCT and WPPT. The reform will align Bhutan's substantive and procedural rules with the minimum standards required under these treaties, including recognition of digital communication rights, protection for technological measures, and harmonized limitations and exceptions. This will allow Bhutan to participate in the international copyright framework on equal footing with other jurisdictions.
 - (ii) Introduces legal clarity on digital rights, AI authorship, and moral rights in hybrid content. The amended Act will remove doctrinal ambiguities by explicitly defining rights in the digital environment, setting authorship thresholds for AI-assisted and algorithmic works, and ensuring that moral rights, such as attribution and integrity, apply appropriately in contexts where human and machine creativity intersect.
 - (iii) Provides a legitimate framework for regulating intermediaries and enabling scalable enforcement. By introducing a statutory liability framework for online platforms, the reform will balance innovation with accountability, enabling lawful hosting, timely takedowns, and cooperation in rights enforcement. This will give rights-holders a predictable and enforceable pathway to protect works in both domestic and cross-border digital markets.
- *Economic Impacts*

- (i) Unlocks the commercial potential of Bhutanese creative works through cross-border licensing. Treaty accession and legal modernization will make Bhutanese works more attractive to international licensees, enabling

Bhutanese creators to monetize their works abroad under reciprocal protection arrangements.

- (ii) Enables efficient royalty collection and international revenue streams via regulated CMOs. A transparent CMO system will ensure timely and equitable distribution of royalties, strengthening trust among creators and foreign partners,* and enabling entry into regional and global licensing networks.
- (iii) Reduces enforcement costs and increases recoverability through digital-first compliance tools. Digital-first enforcement tools, such as automated rights tracking and blockchain registration, will allow rightsholders to monitor and act on infringements in real time, reducing litigation costs and increasing successful recovery of damages or royalties.

- *Cultural Impacts*

- (i) Protects and valorizes Bhutan's rich traditional knowledge and cultural expressions. A sui generis TCE regime will enable communities to control how their cultural heritage is used, preventing misappropriation while creating opportunities for culturally respectful commercialization.
- (ii) Establishes legal recognition for communal custodianship and the moral integrity of cultural works. The law will affirm community-based ownership structures and moral rights, ensuring that cultural works are preserved, attributed, and used per traditional values.
- (iii) Ensures equitable access to copyrighted material for education, research, and disability access. Expanded limitations and exceptions will enable schools, universities, researchers, and persons with disabilities to lawfully use protected works, supporting the constitutional goals of education and cultural development.

- *Technological Impacts*

- (i) Creates a framework to govern synthetic content, digital impersonation, and AI-generated media. The law will provide a governance framework for emerging risks, including deepfakes, voice cloning, and other synthetic content, through enforceable rights and liability mechanisms.
- (ii) Empowers creators with platform-level enforcement and automated rights tracking. Digital platforms will be equipped and obliged to use technological tools such as content recognition systems and metadata

tracking to identify, flag, and remove infringing materials promptly, supporting both preventive and reactive enforcement strategies.

- *Environmental/Developmental Impacts*

- (i) Enhances Bhutan's digital infrastructure and copyright governance capacity, with minimal environmental footprint. The move towards fully digital rights management and enforcement will strengthen Bhutan's governance capacity while avoiding resource-intensive paper-based processes, aligning IP modernization with the country's environmental and sustainable development objectives.

2) **Affected Stakeholders**

- *Beneficiaries*

- (i) Bhutanese creators: Authors, artists, composers, performers, and broadcasters will gain stronger rights, easier licensing options, and better protection in domestic and foreign markets.
- (ii) Indigenous and rural communities: Communities holding traditional knowledge will gain enforceable rights and benefit-sharing arrangements, empowering them economically and culturally.
- (iii) Educational and cultural institutions: Libraries, archives, and universities will benefit from legal certainty in using works for teaching, research, preservation, and accessibility purposes.
- (iv) Creative tech companies and platforms: By clarifying legal obligations and safe harbor provisions, the law will create a predictable business environment for innovation while enabling partnerships in rights licensing and enforcement.

- *Transition-Impacted Groups*

- (i) Judiciary, legal officers, and policy implementers: These actors will require specialized training in modern copyright principles, digital enforcement tools, and international treaty obligations to effectively interpret and apply the amended law.
- (ii) Online intermediaries: Platforms will need to adapt their compliance systems to meet new statutory obligations for notice-and-takedown, content moderation, and user accountability.