

ACT 690
COPYRIGHT ACT, 2005

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ACT 690**COPYRIGHT ACT, 2005¹**

AN ACT to replace the Copyright Law, 1985 (P.N.D.C.L. 110); and to bring the provisions on copyright and the Copyright Office in conformity with the Constitution and to provide for related matters.

*Copyright***1. Work eligible for copyright**

(1) An author, co-author or joint author of any of the following works is entitled to the copyright and protection afforded to that work under this Act,

- (a) literary work,
- (b) artistic work,
- (c) musical work,
- (d) sound recording,
- (e) audiovisual work,
- (f) choreographic work,
- (g) derivative work, and
- (h) computer software or programmes.

(2) Despite subsection (1), a work is not eligible for copyright unless

- (a) it is original in character,

1. The Act was assented to on 17th May, 2005 and notified in the *Gazette* on 3rd June, 2005.

- (b) it has been fixed in a definite medium of expression now known or later to be developed with the result that the work can directly or with the aid of a machine or device be perceived, reproduced or otherwise communicated, and
- (c) it is
 - (i) created by a citizen or a person who is ordinarily resident in the Republic,
 - (ii) first published in the Republic and in the case of a work first published outside the Republic is subsequently published in the Republic within thirty days of its publication outside the Republic, or
 - (iii) a work in respect of which the Republic has an obligation under an international treaty to grant protection.

(3) The eligibility of a work for copyright is not affected by its artistic quality, the purpose of the author in creating it or by the manner or form of its expression.

(4) For the purposes of this section a work is original if it is the product of the independent effort of the author.

2. Ideas, concepts excluded from copyright

Copyright shall not extend to ideas, concepts, procedures, methods or other things of a similar nature.

3. The Government and international body copyright

The copyright of work shall vest in

- (a) the President on behalf of and in trust for the people of the Republic, or
- (b) an international body,

if the work is made by or under the direction or control of the President on behalf of and in trust for the people of the Republic or a specified international body.

4. Folklore protected

(1) An expression of folklore is protected under this Act against

- (a) reproduction,
- (b) communication to the public by performance, broadcasting, distribution by cable or other means, and
- (c) adaptation, translation or any other transformation.

(2) The rights of folklore are vested in the President on behalf of and in trust for the people of the Republic.

5. Economic rights of authors

The author of a protected copyright work has the exclusive economic right in respect of the work to do or authorise the doing of any of the following:

- (a) the reproduction of the work in any manner or form,

- (b) the translation, adaptation, arrangement or any other transformation of the work,
- (c) the public performance, broadcasting or communication of the work to the public,
- (d) the distribution to the public of originals or copies of the work by way of first sales or any other first transfer of ownership, and
- (e) the commercial rental to the public of originals or copies of the work.

6. Moral rights of authors

In addition to the economic rights referred to in section 5, the author of protected copyright work has the sole moral right

- (a) to claim authorship of the work and in particular to demand that the name or pseudonym of the author be mentioned when any of the acts referred to in section 5 are done in relation to the work, and
- (b) to object to and seek relief in connection with a distortion, mutilation or any other modification of the work where that act would be or is prejudicial to the reputation of the author or where the work is discredited by the act.

7. Employed authors

In the absence of a contract to the contrary, the economic right of a work shall vest in an employer or a person who commissions the work where the employed or commissioned author has created the work in the course of the employment or commission.

8. Public benefit works

(1) The rights referred to in sections 5 and 6 shall not vest in a person in respect of the following works:

- (a) an enactment,
- (b) a decision made by a Court or tribunal established under an enactment for the administration of justice in the Republic,
- (c) a report made by a commission of enquiry appointed by the Government or an agency of the Government and published by the Government, and
- (d) except where news is disseminated by the private media, news, namely a report of fresh events or current information made by the media, whether published in written form, by broadcast, or communicated to the public by any other means.

(2) The President is the trustee for the public of the works specified in subsection (1) other than works authored by the private media under paragraph (d) of that subsection.

9. Transfer of copyright

(1) The owner of copyright may transfer the economic rights in section 5 to another person in whole or in part but the transfer whether in whole or in part shall not include the moral rights referred to in section 6.

(2) A contract which requires the total transfer of the rights referred to in section 6 shall be limited in scope to the use provided for in that contract.

(3) Copyright may be transferred by assignment, testamentary disposition or operation of law.

(4) An assignment of copyright shall be in writing and signed by the owner of the copyright or by the person authorised by the owner of the copyright for the purpose.

(5) A licence to do an act that falls within copyright may be oral, written or inferred from conduct.

(6) In the case of joint authorship of a work, an assignment or a licence for the work shall be subject to the authorisation of the joint authors.

(7) Where a work is of joint authorship and one of the joint authors withholds consent to an assignment or the granting of a licence, the matter shall be referred to the Copyright Administrator to determine whether or not consent should be granted in respect of the assignment or licence and the conditions for the grant.

(8) A person dissatisfied with the decision of the Copyright Administrator may apply to the High Court for review.

(9) An assignment, a licence or a testamentary disposition may be made or granted in respect of an existing work or future work.

10. Obligation of producers

(1) The producer of a sound recording or audiovisual work shall state on the label of the sound recording or audiovisual work or on its container,

- (a) the name of the author and those of the main performers,
- (b) the title of the work,
- (c) the year the original matrix was cut,
- (d) the individual or corporate name or the distinguishing mark of the producer, and
- (e) that the rights accruing to the producer under this Act are reserved.

(2) Choirs, orchestras and composers shall be referred to by their proper names or by the name of the leader for the purpose of paragraph (a) of subsection (1).

(3) Copyright protection of a work shall not depend on the obligation of producers specified in this section.

11. Notice of protection of rights of producers

(1) A notice shall be printed on copies of sound recordings or audiovisual work made for commercial purposes which shall include the year of first publication of the sound recording or audiovisual work.

(2) The notice shall be placed in a manner that gives reasonable notice of claim of protection of the rights of the producer.

(3) If the notice on the copies of the sound recording, audiovisual work or their containers does not identify the producer or licence by name, description or trademark, it shall indicate the name of the person who owns the rights of the producer.

(4) If the notice on the copies of the sound recording, audiovisual work or their containers do not identify the principal performers, it shall indicate the name of the person who owns the rights of the performers.

(5) Non-compliance with the provisions of this section by a producer does not deprive the producer of copyright protection.

(6) A person may use fixations or reproductions made in good faith before the commencement of this Act if made in accordance with its provisions.

Duration of Copyright

12. Duration of copyright in works of individuals

(1) The rights of the author referred to in section 5 are protected during the life of the author and seventy years after the death of the author unless the contrary is stated in this Act.

(2) Where a work is jointly authored, the rights of the author referred to in section 5 are protected during the life of the last surviving author and seventy years after the death of that author.

13. Duration of copyright in works of bodies corporate

Where the copyright in a work is owned by a public corporation or other body corporate, the term of protection shall be seventy years from the date on which the work was made or first published, whichever date is the later.

14. Duration of copyright in anonymous works

Where a work is published anonymously or under a pseudonym, the rights of the author referred to in section 5 are protected until the expiration of seventy years from the date on which the work was made, first made available to the public, or first published, whichever date is the later, but if the identity of the author is known or is no longer in doubt before the expiration of that period, the rights of the author shall be protected during the life of the author and seventy years after the death of the author.

15. Duration of copyright in audiovisual works

In the case of an audiovisual work, the rights of the author referred to in section 5 are protected until the expiration of seventy years from the date of the making of the work, or where the work is made available to the public during that period with the consent of the author, until the expiration of seventy years from the date on which the work was made, first made available to the public, or first published, whichever date is the later.

16. Duration of copyright in sound recordings

In the case of a sound recording, the rights of the author referred to in section 5 are protected from the publication of the sound recording until the expiration of seventy years after the year of publication or, if the sound recording has not been published from the fixation of the sound recording, until the expiration of seventy years after the year of fixation.

17. Duration of protection for expressions of folklore

The rights vested in the President on behalf of and in trust for the people of the Republic in respect of folklore under section 4 exist in perpetuity.

18. Duration of moral rights

The moral rights of authors under section 6 exist in perpetuity and these rights are enforceable by the author, during the lifetime of the author, and after the author's death, by the author's successors whether or not the economic rights vested in the author under section 5 are still vested in the author or the successor in title of the author.

*Permitted Uses of Copyright***19. Permitted use of work protected by copyright**

(1) The use of a literary or artistic work in the original language or in translation is not an infringement of the right of the author in that work and does not require the consent of the owner of the copyright where the use involves

- (a) the reproduction, translation, adaptation, arrangement or any other transformation of the work for exclusive personal use of a person, if the user is an individual and the work has been made public,
- (b) subject to subsection (2), the inclusion with an indication of the source and the name of the author of quotations from the work in another work, including quotations from articles in newspapers or periodicals in the form of press summaries, if the work from which the quotations are taken has been made public,
- (c) subject to subsection (3), and if the work has been made public,
 - (i) the utilisation of the work by way of illustration in publications, broadcasts of sound or visual recordings for teaching, to the extent justified for the purposes, or
 - (ii) the communication for teaching purposes of the work, broadcast for use in educational institutions, or
 - (iii) the utilisation of the work for professional training or public education,
- (d) in the case of
 - (i) an article published in one or more newspapers or periodicals on current economic, political or religious topics, or
 - (ii) a broadcast on current economic, political or religious topics,

the reproduction of the article in a newspaper or periodical or the broadcast or any other communication to the public where a statement of the source is provided unless the article or broadcast when first published or made was accompanied by an express condition prohibiting its use without consent,

- (e) the reproduction or making available to the public by means of photographic works, audiovisual works or any other means of communication of any work that can be seen or heard in the course of the reporting of fresh events or new information, if
 - (i) the work is reproduced or made available for the purpose of reporting by a news medium of fresh events or new information, and
 - (ii) the use of the work does not extend beyond that justified for the purpose of keeping the public informed of current events,
- (f) the reproduction of works of art or architecture in an audiovisual work for cinema or television or in a broadcast by television and the communication to the public of any of those works of art or architecture if those works are
 - (i) permanently located in a place where they can be viewed by the public, or
 - (ii) included in an audiovisual work for cinema or television only by way of background or as incidental to essential matters represented,
- (g) subject to subsection (4), the reproduction in the media or the communication to the public of
 - (i) political speech delivered in public,
 - (ii) speech delivered in public during legal proceedings, or
 - (iii) lecture, address, sermon or any other work of a similar nature delivered in public,

where the use by reproduction or communication to the public is exclusively for the purpose of reporting fresh events or new information.

- (2) The permission under subsection (1) (a) shall not extend to reproduction
 - (a) of a work of architecture in the form of building or any other construction;
 - (b) in the form of reprography of a whole or of a substantial part of a book or of musical work in the form of notation;
 - (c) of the whole or of a substantial part of a database in digital form; and
 - (d) of a computer programme, except as provided in section 16.

(3) Paragraph (b) of subsection (1) does not apply in respect of a particular quotation unless the quotations referred to in that paragraph are compatible with fair practice and the extent of the quotations does not exceed what is justified for the purpose of the work in which the quotations are used.

(4) Paragraph (c) of subsection (1) does not apply in respect of a particular work unless the use referred to in that paragraph is compatible with fair practice and the source of the work used and the name of the author are indicated in the relevant publication, broadcast or recording.

(5) Paragraph (g) of subsection (1) does not apply unless the reproduction referred to in that paragraph and the number of copies made in the reproduction are limited to what is required in the particular circumstances.

(6) Despite the provisions of section 5 (a) the temporary reproduction of a work is not an infringement of copyright if the reproduction is made in order to make a digitally stored work perceptible or in the process of a digital transmission

- (a) by a person who or entity that is authorised for that purpose by
 - (i) the owner of the copyright, or
 - (ii) operation of law, and
- (b) as an accessory that occurs during the normal operation of the equipment used and which is
 - (i) automatically deleted, and
 - (ii) incapable of being retrieved for any other purpose than those referred to in this subsection.

20. Reproduction and adaptation of computer programmes

(1) The reproduction, in a single copy, or the adaptation of a computer programme by the lawful owner of a copy of that computer programme is not an infringement of copyright if the reproduction or adaptation is necessary for

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

(2) A reproduction or an adaptation of a computer programme shall not be used for any other purpose than those specified in subsection (1) and a reproduction or adaptation shall be destroyed when the continued possession of the reproduction or adaptation becomes unlawful.

21. Permitted use of protected copyright work by library and archive

(1) A library and archive with activities that are not for gain may, without the authorisation of the author or other owner of copyright, make a single copy of the work by reprographic reproduction.

(2) A reprographic reproduction under subsection (1) may be made when 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 an individual.

(3) The library or archive shall under subsection (1) ascertain that the copy is to be used solely for the purpose of study, scholarship or private research.

(4) The act of reproduction under subsection (1) shall be an isolated case which shall occur on separate and unrelated occasions and shall occur where

- (a) there is no collective licence available under which copies can be made, or

- (b) the copy is made in order to preserve or replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of similar library or archive if it is impossible to obtain the copy under reasonable conditions.

(5) Where a library or archive requires more than a single copy of a work by reprographic reproduction, the permission for this shall be obtained from the author, other owner of the copyright or from an appropriate collective administration society authorised by the publisher.

(6) The provisions of this section are subject to the interest of the publisher, author or the relevant collective administration society.

22. Permitted use of work or publication of portrait in public interest events

(1) The accidental or incidental inclusion of a work in the reporting of a news broadcast of fresh events or of new information is not an infringement of the rights of the author in the work.

(2) The publication of the portrait of a person is not an infringement of the rights of the author or any other person having an interest in the portrait where the publication is related to scientific, educational or cultural purposes in general or to facts or events of public interest or events that have occurred in public.

23. Ephemeral recordings

(1) Where a work is broadcast, the broadcaster may make a recording of the broadcast with the broadcaster's own facility and may produce copies of the recording for the broadcaster's own use.

(2) Subject to subsection (3), the copies of the recording shall be destroyed by the broadcaster within six months after the date on which the recording was made.

(3) An authorised recording under subsection (1) of exceptional documentary character may be preserved for presentation to the National Archives.

(4) The preservation of an authorised recording for presentation to the National Archives does not affect the rights of the author in the work that was broadcast.

(5) Whether a recording of a broadcast is of exceptional documentary character is a question of fact to be determined by the broadcaster after taking into consideration the circumstances of the case and in particular the need for the enhancement of the historical and cultural aspects of life in the country.

Copies of Sound Recordings, Mechanical Reproduction Rights of Composers

24. Production of copies of sound recordings

(1) A manufacturer, producer or production company of sound recordings may make copies of a musical work or a similar adaptation, if copies of the musical work or a similar adaptation of them have previously been made in or imported into the Republic for the purpose of retail sale and the copies were made with the licence of or imported by the owner of the copyright or authorised collective administration society.

(2) Before the making of the copies under subsection (1), the manufacturer, producer or production company shall give the owner of the copyright or authorised collective administration society notice of the intention to make the copies and the address at which the person intends to make them.

(3) The manufacturer, producer or production company shall, not later than fifteen days before the sale of a copy made by that person under this section, send to the owner of the copyright or the person authorised by the owner for the purpose, by registered post, notice of that person's intention to sell or distribute in any other manner the copies made.

(4) The notice shall contain

- (a) the name and address of the manufacturer, producer or production company,
- (b) the title of the work to which the notice relates with sufficient description to identify the author of the work and its publisher,
- (c) the type of sound recording on which the manufacturer, producer or production company intends to produce the work and an estimate of the number of copies the manufacturer, producer or production company initially intends to sell,
- (d) the ordinary selling price of the copies the manufacturer, producer or production company intends to sell and the amount of royalty payable for them, and
- (e) the earliest date on which any of the copies may be available for sale.

(5) The manufacturer, producer or production company shall make a mechanical royalty payment on each copy of a sound recording to the owner of the copyright through the appropriate collective administration society established under section 49 within fourteen days after the manufacturer, producer or the production company has sent the notice to the owner of the copyright or the person authorised by the owner.

(6) The royalty payable by the manufacturer, producer or production company or publisher shall be an amount not less than seven percent or a higher percentage as the Copyright Tribunal may recommend, of the ordinary retail price of each copy of the sound recording made under this section.

(7) It is an infringement of copyright if a manufacturer or publisher deals in a copy of a sound recording made under this section without the mechanical royalty payment.

Enforcement Provisions

25. Security device for sound and audiovisual recording

(1) A manufacturer, importer or publisher of sound or audiovisual recording shall on the approval of the Minister purchase a security device from the Internal Revenue Service as may be required to cover the number of copyright works the manufacturer, importer or publisher intends to sell or distribute.

(2) The security device shall be fixed to each copy of the copyright work made or published by the applicant.

(3) A person shall not sell or exhibit for sale a copyright work that requires a security device, without a security device affixed to it.

(4) A person who sells or exhibits for sale a copyright work without a security device obtained from the Internal Revenue Service affixed to it commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units.

26. Importation of pre-recorded music and other copyright works

An officer of the Customs, Excise and Preventive Service shall, unless satisfied that an imported sound recording or any other copyright work is not a pirated product, not permit the importation of the copyright work without written clearance from the right owner of the work and the Copyright Office.

27. Levy on devices used for reproducing copyright materials

(1) There shall be imposed on a device capable of being used to copy a copyright work a levy of a sum that shall be prescribed in Regulations made by the Minister in consultation with the Minister responsible for Finance.

(2) The levy shall be collected by the Customs, Excise and Preventive Service at the time of importation or production.

(3) The provisions of the Customs, Excise and Preventive Service (Management) Act, 1993² as variously amended shall apply for the purpose of the collection of the levy.

(4) The levy shall on collection by the Customs, Excise and Preventive Service be deposited in a fund established for the right holders by the Minister.

(5) The fund is subject to an annual audit by the Auditor-General.

(6) The Auditor-General shall submit the audit report to the Minister and the appointed collective administration society established under section 49 of this Act.

(7) The Minister in consultation with the executive officers of the appropriate collective administration society shall cause the distribution of the levy to the right holders.

(8) Any exception, quantum and modalities for the distribution of the levy shall be provided for in the Regulations.

(9) A person shall not import a device capable of copying protected materials without payment of the levy.

(10) A person who imports a device without payment of the levy commits an offence and is liable on summary conviction to a fine of not less than two hundred and fifty penalty units or to imprisonment for a term not exceeding twelve months.

2. P.N.D.C.L. 330.

*Protection of Performers and Broadcasting Organisations***28. Performer's rights**

- (1) A person shall not without the authorisation of a performer
 - (a) broadcast or communicate a performance of the performer directly or indirectly to the public except
 - (i) where the broadcast or communication to the public is made from a previously authorised fixation, or
 - (ii) where the transmission is one that has been authorised by the broadcasting organisation which transmits the first performance,
 - (b) arrange the fixation of a performance not previously fixed on a physical medium,
 - (c) exercise the right of reproduction of the fixation in any manner or form,
 - (d) provide the first public distribution of the original or a copy of a fixation of a performance,
 - (e) provide or obtain a rental of the original or a copy of the performance for the purpose of direct or indirect commercial advantage irrespective of the ownership of the original or copy rented, or
 - (f) make available to the public a fixed performance by wire or wireless means, in a way that members of the public may access it from a place and at a time individually chosen by them.
- (2) A performer has the exclusive right to authorise or prohibit
 - (a) the re-broadcasting, rental and distribution of a fixation of the performance,
 - (b) the fixation of the performance,
 - (c) the reproduction of a fixation of the performance, or
 - (d) the communication to the public of the performance except where the performance has been lawfully fixed on audiovisual or audio recording media which may be broadcast without the consent of the performer, if the recordings have been published subject to the payment of equitable remuneration to the performer.
- (3) Where a performer has given a performance under a contract of employment of service, the extent and conditions under which the employer of the performer may use the performance or authorise others to use it shall be determined by reference to the nature of the contract of employment or service unless agreed otherwise.
- (4) The consent of the elected representative of a group participating in choral, orchestral or stage performance shall satisfy the conditions of subsection (2) and where the group has no representative, the consent of the performers belonging to the group shall be expressed by the consent of the leader of the group.

29. Duration of performer's right

The rights of a performer in respect of the performance are protected for a period of seventy years starting from the end of the calendar year in which the performance was fixed on a physical medium or in the absence of such a fixation, from the end of the calendar year in which the performance took place.

30. Performer's right to contract

Subject to sections 5 and 28 (3) a provision in this Act shall not preclude the right of a performer to enter into a contract with a person on the terms and conditions, that the performer considers appropriate for the use of the performance by another person.

31. Moral rights of a performer

A performer has the right, independent of the economic rights of the owner and even after the transfer of those rights,

- (a) to require to be identified with the performer's live oral performances and performances fixed in phonograms, and
- (b) to object to a distortion, mutilation or any other modification of a personal performance which would be prejudicial to the reputation of the performer.

32. Authorisation relating to broadcast

In the absence of a law or contract to the contrary, the provisions of section 28 shall not imply a consent to

- (a) licence other broadcasters to transmit the performance,
- (b) make a fixation of the performance,
- (c) reproduce the fixation if the authorisation granted is to broadcast and make a fixation of the performance, or
- (d) broadcast the performance from a previous fixation or from the reproduction of the fixation where initial permission was given solely to enable the broadcasting of the performance.

33. Broadcasting organisations

A broadcasting organisation has the exclusive right to authorise or prohibit,

- (a) the re-broadcasting of its broadcast,
- (b) the fixation of its broadcast, or
- (c) the reproduction of a fixation of its broadcast, or
- (d) the communication to the public of its broadcast.

34. Programme carrying signals

A broadcasting organisation has the right in relation to its programme carrying signals, to prevent the distribution in the Republic or from the Republic of any signals by a distributor for whom the signals were not intended.

35. Limitation on economic rights of performers and broadcasting organisations

The provisions of sections 28 and 33 shall not apply where the acts referred to are concerned with

- (a) private use,
- (b) the reporting of current events, which involves the use of only short excerpts of a performance, sound recording, audiovisual work or broadcast,
- (c) teaching or scientific research,
- (d) quotations in the form of short excerpts of a performance, sound recording, audiovisual work or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations, and
- (e) cases where, under permitted users of copyright in sections 19 to 23 a work can be used without the authorisation of the author or other owner of the copyright.

36. Duration of rights of broadcasting organisation

The rights of a broadcasting organisation referred to in sections 33 and 34 are protected until the expiration of forty years from the date of making the broadcast of the signal.

37. Public performance and use of copyright work

(1) Where in a public place by means of broadcasting, cinematography, jukebox or other apparatus, a sound recording or audiovisual work is used the authorised performer and producer of the sound recording or audiovisual work are entitled to royalty in accordance with this Act.

(2) An owner of copyright is entitled to collect royalties for the live performance of the copyright work or for the public performance of the recorded copyright work.

*General Provisions***38. The public domain**

(1) The following works belong to the public domain:

- (a) works with expired terms of protection,
- (b) works by authors who have renounced their rights, and
- (c) foreign works that do not enjoy protection in the Republic.

(2) For the purposes of paragraph (b) of subsection (1), renunciation by an author or the author's successor in title of the author's rights provided under section 5 shall be by writing and made public, but the renunciation shall not conflict with a previous contractual obligation relating to the work.

(3) Subject to the payment of a fee that may be specified by the Minister a work that has fallen into the public domain may be used without a restriction.

(4) There shall be established by the Minister a fund for the deposit of any money that accrues from the payment of fees under subsection (3).

(5) The fund shall be established with the approval of the Accountant-General and shall be for the benefit of institutions that promote the arts, authors, performers, producers of sound recording, translators and the arts in general, except that separate head accounts shall be assigned to the respective arts.

(6) The fund shall be managed by the Copyright Administrator in consultation with the Minister.

39. Registration of works

(1) The Copyright Administrator appointed under section 68 shall open and maintain registers in which shall be registered associations of authors, works and productions.

(2) The purposes of registration are

- (a) to maintain a record of works,
- (b) to publicise the rights of the owners, and
- (c) to give evidence of the ownership and authentication of intellectual property.

(3) A publisher of work in the Republic may submit the work for registration by the Copyright Administrator after its publication and two copies of the best edition may be deposited at the Copyright Office.

(4) Copyright protection of a work is not dependent on the registration of the work.

40. Presumption of authorship

(1) An individual whose name is indicated as the author on a work is presumed to be the author of the work in the absence of a proof to the contrary.

(2) Subsection (1) applies where the name used is a pseudonym if the pseudonym does not leave a doubt as to the identity of the author.

(3) The presumption of authorship also applies to works created by more than one author.

41. Infringement of copyright and related rights

Subject to this Act, the doing of an act contrary to

- (a) the rights of an author under sections 5 and 6,
- (b) the rights of a performer under sections 28, 30 and 31,
- (c) the rights of broadcasting organisations under sections 33 and 34,

constitutes an infringement of copyright or related right, and the right owner may seek relief in a civil action under section 44.

42. Copyright and related rights offences

A person who

- (a) reproduces, duplicates, extracts, imitates or imports into the country, except for that person's private use, a work, or

- (b) causes to be reproduced, duplicated, extracted, imitated or imported into the country except for the person's private use a work, or
- (c) distributes or permits or causes to be distributed in the country by way of sale or otherwise a work, or
- (d) exhibits or permits or causes to be exhibited in public a work, or
- (e) removes or alters any electronic rights management information, or
- (f) distributes, imports for distribution, broadcasts, communicates or makes available to the public, works, performances, copies of fixed performances or sound recordings knowing that electronic right management information has been removed or altered without authority, or
- (g) manufactures, imports, distributes, exports, sells, rents, possesses for commercial purposes, offers to the public, advertises, communicates or otherwise provides a device, product or component that is designed or adapted to remove, alter or add electronic rights management information, or
- (h) circumvents a technological protection measure applied by the right holder to the protected work, or
- (i) manufactures, imports, distributes, exports, sells, rent, possesses for commercial purposes, offers to the public, advertises, communicates or otherwise provides without authority devices, components, services or other means, designed, adapted, or promoted to circumvent such a measure, or
- (j) rents or lends to the public any work,

where the person performing the act knew or had reasonable grounds to know that the action induces, enables, facilitates or conceals an infringement of a copyright or related right protected under this Act without the licence or authorisation of the person whose rights are protected under this Act or the agent of that person whose rights are protected, infringes the protected rights and commits an offence punishable under section 43.

43. Penalty for copyright offence

A person who infringes a right protected under this Act commits an offence and is liable on summary conviction to a fine of not more than one thousand penalty units and not less than five hundred penalty units or to a term of imprisonment of not more than three years or to both; and in the case of a continuing offence to a further fine of not less than twenty-five penalty units and not more than one hundred penalty units for each day during which the offence continues.

44. Offences related to folklore

(1) A person shall not sell, offer or expose for sale or distribution in the Republic copies of

- (a) works of folklore made in or outside the Republic, or
- (b) translations, adaptations, arrangements of folklore made outside the Republic,

without the permission in writing of the National Folklore Board.

(2) A person who contravenes a provision of subsection (1) commits an offence and is liable on summary conviction to a fine of not more than one thousand penalty units and not less than one hundred and fifty penalty units or to a term of imprisonment of not more than three years or to both; and in the case of a continuing offence to a further fine of not less than twenty-five penalty units for each day during which the offence continues.

45. Offences by body of persons

(1) Where an offence is committed by a body of persons under this Act

- (a) in the case of a body corporate other than a partnership, every director or secretary of the body corporate shall also be deemed to have committed the offence, and
- (b) in the case of a partnership, every partner shall also be deemed to have committed the offence.

(2) A person shall not be convicted of an offence by virtue of subsection (1) if that person proves to the satisfaction of the Court that the offence in respect of which that person is charged was committed by some other person and was without the consent or connivance of the person charged and that the person charged exercised due diligence to prevent the commission of that offence having regard to the circumstances.

46. Compensation to victim of offence and forfeiture

In addition to any punishment imposed by the Court in respect of an offence under this Act, the Court may order

- (a) that the sums of money arising out of the offence be paid to the person entitled under this Act to those sums, and
- (b) that the reproduction, duplication, extract, imitation and any other material involved in the infringement, and the implement or device used in the infringement be forfeited and disposed of as the Court may direct having regard to the circumstances relating to the infringement.

47. Civil remedies

(1) A person whose rights under this Act are in imminent danger of being infringed or are being infringed upon may initiate civil proceedings in the High Court

- (a) for an injunction to prevent the infringement or prohibit the continuation of the infringement,
- (b) in respect of imported goods or goods ready for export, for an order requiring the Customs, Excise and Preventive Service to detain the goods, or
- (c) for the recovery of damages for the infringement.

(2) On an *ex parte* application, the Court may make an order in chambers for the inspection or removal from the defendant's premises of copyright infringing materials which constitute evidence of infringement by the defendant.

(3) The grant of an injunction under subsection (1) of this section shall not affect the claim for damages in respect of loss sustained by the applicant as a result of the infringement of the applicant's rights under this Act.

(4) A person who sustains damage from an infringement of that person's rights under this Act may institute civil proceedings against the person responsible for the infringement whether or not the person has been successfully prosecuted under this Act.

(5) Where the Customs, Excise and Preventive Service detain goods under subsection (1) (b)

- (a) the right holder or the person on whose application the order was made shall provide to the Service a sufficiently detailed description of the goods to make them readily recognisable by the Service;
- (b) the Service shall release the goods to their owner if within ten working days it is not informed by the person on whose application the order was made that
 - (i) proceedings leading to a decision on the merits of the case have been initiated by a party other than the owner of the detained goods, or
 - (ii) an extension of the order for the detention of the goods had been granted by the appropriate authority.

(6) A right holder may apply directly to the Service for the detention of goods on the grounds stated in subsection (1) (b); and subsection (5) shall apply to the application as appropriate except that before the application is granted, the applicant shall provide sufficient information to satisfy the Service that there is an infringement or imminent infringement of the rights holder's copyright or related right.

(7) On receipt of an application under subsection (6), the Service shall within fourteen days, inform the applicant of

- (a) the decision of the Service on the application, and
- (b) where the application is granted, the period of the detention of the goods.

48. Settlement of disputes

(1) Where a dispute arises between any parties under this Act or in relation to a copyright or claim under this Act, the parties involved in the dispute may seek to negotiate a settlement of the dispute.

(2) Where negotiation under subsection (1) fails, a report may be made by either or both parties to the Copyright Administrator who shall mediate for a settlement.

(3) A party dissatisfied with a decision to submit to mediation made under subsection (2) may seek redress from a court of competent jurisdiction.

49. Collective administration societies

(1) Authors, producers, performers and publishers may form collective administration societies for the promotion and protection of their interest.

(2) A collective administration society may, acting on the authority of the owner of a right, collect and distribute royalties and any other remuneration accruing to the owner.

(3) The Minister may, by legislative instrument, make Regulations for the formation, operation and administration of societies.

50. Copyright monitoring team

(1) There is by this Act established a copyright monitoring team.

(2) The monitoring team shall comprise a number of police officers, five representatives of copyright owners and two officers of the Copyright Office that the Copyright Office may require.

(3) The monitoring team shall

- (a) monitor copyright works,
- (b) investigate cases in respect of copyright,
- (c) undertake anti-piracy activity, and
- (d) perform any other functions that are necessary to protect authors.

(4) Members of the monitoring team from the Police Service may be seconded to the Copyright Office for periods and on terms that the Minister of Justice and the Minister of Interior may determine on the advice of the Copyright Administrator and the Inspector General of Police.

51. Establishment of the Copyright Tribunal

There is established by this Act a Copyright Tribunal.

52. Composition of the Tribunal

The Tribunal shall comprise three persons, one of whom is a lawyer of at least ten years standing who shall be the chairperson.

53. Functions of the Tribunal

(1) The Tribunal shall

- (a) hear and determine
 - (i) a matter referred to it pursuant to a provision relating to a licensing scheme, and
 - (ii) an application to settle the royalty or any other sum payable for rental of a sound recording, film or computer programme;
- (b) keep under review the prescribed rate of royalty payable to a performer in connection with an adaptation of an original recording of a performance; and
- (c) make recommendations to the Minister on the rate of royalties or any other payments payable in respect of the use or presentation in a national cultural event, of a work or performance in which copyright or any other rights subsist.

(2) In relation to its functions under subsection (1) (b) the Tribunal may on its own initiative and shall, on a request made in writing by the Minister, enquire into the appropriateness of any rate fixed and make recommendations to the Minister with respect to the rate that the Tribunal considers appropriate.

54. Tenure of office of members of the Tribunal

(1) A member of the Tribunal shall be appointed by the Minister and shall hold office for a period of not more than three years, and is eligible for reappointment.

(2) A member of the Copyright Tribunal shall, subject to subsection (1), hold and vacate office in accordance with the terms of appointment, and may

- (a) resign from office by notice in writing to the Minister; or
- (b) by notice in writing from the Minister to the member to be removed from office on account of
 - (i) bankruptcy,
 - (ii) having made an arrangement with creditors or, having executed a trust deed for creditors or entered into a composition contract, or
 - (iii) being incapacitated by physical or mental illness.

(3) If a member of the Tribunal is by reason of illness, absence or any other reasonable cause unable to perform the functions of office, generally or in relation to particular proceedings, the Minister may appoint another person to perform the functions of the member or in relation to those proceedings for a period not exceeding six months at one time, and a person so appointed shall have during the period of the appointment, or in relation to the proceedings in question, the same powers as the member in whose place that person is appointed.

55. Allowances of members

A member of the Tribunal shall receive the remuneration that the Minister determines.

56. Proceedings of the Tribunal

(1) Where part of any proceedings before the Tribunal has been heard and a member of the Tribunal is unable to continue, the Tribunal shall remain duly constituted for the purpose of those proceedings so long as two members remain.

(2) If the chairperson is unable to continue, the chairperson shall

- (a) appoint one of the remaining members to act as chairperson, and
- (b) where necessary appoint a suitably qualified person to attend the proceedings and advise the members on any questions of law arising.

(3) A person is "suitably qualified" for the purposes of subsection (2) if that person is eligible for appointment as chairperson of the Tribunal.

(4) The tribunal shall sit at a place and time to be determined by the chairperson or the member for the time being acting as the chairperson.

57. Rules of procedure

- (1) The Minister shall, by legislative instrument, make Regulations to govern the proceedings of the Copyright Tribunal.
- (2) Regulations made under subsection (1) may
 - (a) empower the Tribunal not to entertain a representative organisation unless the Tribunal is satisfied that the organisation is reasonably representative of the class of the persons it claims to represent;
 - (b) provide for the manner in which the parties to any proceedings is to be determined and enable the Tribunal to join as a party to proceedings any person or organisation that the Tribunal is satisfied has a substantial interest in the matter; and
 - (c) require the Tribunal to give the parties to proceedings an opportunity to state their case, in writing or orally as the Regulations may provide.

58. Appeal

- (1) An appeal lies on a point of law arising from a decision of the Tribunal to the High Court.
- (2) The Tribunal may, by way of case stated, refer a question of law to the High Court for its opinion.
- (3) The decision of the High Court, whether on an appeal or on a case stated, is binding on the Tribunal.

*National Folklore Board***59. National Folklore Board**

- (1) There is established by this Act a National Folklore Board.
- (2) The Board consists of
 - (a) the chairperson,
 - (b) the Copyright Administrator,
 - (c) a person nominated by the National Commission on Culture, and
 - (d) six other persons,

who shall be appointed by the President in consultation with the Council of State.

60. Tenure of office of members of the Board

- (1) The members of the Board shall hold office for four years and are eligible for re-appointment on the expiry of the period.
- (2) A member of the Board may resign from office in writing addressed to the President through the chairperson.

(3) Where the office of a member other than an ex officio member becomes vacant before the expiry of the term of the member or if for any other reason the member is unable to perform the functions of office, the chairperson shall notify the President who shall, acting in consultation with the Council of State, appoint another person to complete the unexpired term of office.

(4) A person appointed to complete the unexpired term of a member may after serving the unexpired term be appointed a member of the Board.

61. Allowances for members

Members of the Board shall be paid allowances determined by the Minister in consultation with the Minister responsible for Finance.

62. Meetings of the Board

(1) The Board shall meet at least once every three months, to conduct business at times and at places that the chairperson may determine.

(2) The Board shall regulate the procedure of its meetings.

63. Functions of the Board

The Board shall

- (a) administer, monitor and register expressions of folklore on behalf of the Republic,
- (b) maintain a register of expressions of folklore at the Copyright Office,
- (c) preserve and monitor the use of expressions of folklore in the Republic,
- (d) provide members of the public with information and advice on matters relating to folklore,
- (e) promote activities which will increase public awareness on the activities of the Board, and
- (f) promote activities for the dissemination of expressions of folklore within the Republic and abroad.

64. Use of folklore

(1) A person who intends to use folklore for any purpose other than as permitted under section 19, shall apply to the Board for permission in the prescribed form and that person shall pay a fee that the Board may determine.

(2) There shall be established by the Minister with the approval of the Accountant-General a fund for the deposit of the fees that may be charged in respect of the use of folklore.

(3) The fund shall be managed by the Board and shall be used

- (a) for the preservation and promotion of folklore, and
- (b) for the promotion of indigenous arts.

*Administration, the Copyright Office and Miscellaneous Matters***65. Establishment of the Copyright Office**

- (1) There is established by this Act the Copyright Office.
- (2) The Copyright Office shall consist of the Copyright Administrator appointed under section 68, and any other officers employed for the Copyright Office.
- (3) The headquarters of the Copyright Office shall be in Accra.
- (4) There may be opened regional branches of the Copyright Office in the regions that the Minister acting on the advice of the Legal Service Board may determine.

66. Object and functions of the Copyright Office

- (1) The Copyright Office is responsible for the administration of copyright.
- (2) In pursuance of its object the Copyright Office shall
 - (a) implement copyright and copyright related laws and regulations and provide for copyright administration;
 - (b) investigate and redress cases of infringement of copyright, and settle disputes of copyright where those disputes have not been reserved for settlement by the Copyright Tribunal;
 - (c) be responsible for the administration of external copyright relations;
 - (d) administer copyrights of which the Republic is the owner;
 - (e) carry out any other duties in relation to copyright administration.

67. Governing body

The governing body of the Copyright Office shall be the Legal Service Board.

68. Copyright Administrator

- (1) The chief executive of the Copyright Office shall be the Copyright Administrator who shall be appointed by the President in accordance with the advice of the Legal Service Board given in consultation with the Public Services Commission.
- (2) The Copyright Administrator shall hold office on the terms and conditions specified in the letter of appointment of the Copyright Administrator.
- (3) The Copyright Administrator is responsible for the day-to-day administration of the Copyright Office subject to directives that the Legal Service Board may give.
- (4) The Copyright Administrator may delegate any of the duties of the office.

69. Appointment of staff of the Copyright Office

- (1) The Copyright Office shall have other officers and employees that are necessary for the proper and effective performance of its functions.
- (2) The staff of the Copyright Office shall perform the functions that the Copyright Administrator may assign to them.

(3) The President shall appoint the staff and employees of the Copyright Office in accordance with article 195 of the Constitution on the terms and conditions that the President may determine.

(4) The Legal Service Board may engage the services of consultants and advisers as it considers necessary on the recommendation of the Copyright Administrator.

(5) Public officers may be transferred or seconded to the Copyright Office or may otherwise be required to give assistance to it.

70. Funds of the Copyright Office

The funds for the operation of the Copyright Office include

- (a) money approved by Parliament for the Office,
- (b) donations,
- (c) gifts, and
- (d) money received from any other source approved by the Minister responsible for Finance.

71. Budget

The Copyright Office shall submit to the Minister responsible for Finance through the Minister at the end of each financial year detailed estimates of the budget for the Copyright Office for the ensuing year.

72. Accounts and audit

(1) The Copyright Office shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The account books and records of the Copyright Office shall, within three months after the financial year be audited by the Auditor-General and a report on the audit shall be submitted to the Board.

(3) The financial year of the Copyright Office shall be the same as the financial year of the Government.

73. Annual report

(1) The Copyright Office shall after the expiration of each financial year but within six months after the end of the year, submit to the Minister through the Legal Service Board an annual report covering the activities of the Copyright Office for the year to which the report relates.

(2) The annual report submitted under subsection (1) shall include the report of the Auditor-General.

(3) The Minister shall, within two months after the receipt of the annual report submit the report to Parliament with the statement that the Minister considers necessary.

(4) The Copyright Office shall also submit to the Minister any other report that the Minister may in writing request.

74. Regulations

The Minister may, by legislative instrument, make Regulations

- (a) for the registration and deposit of works,
- (b) in consultation with the Minister responsible for Finance for the levy payable on technical devices used for copying copyright materials,
- (c) for the form and scope of contracts and licences relating to publishing, performance, sound recording and audiovisual productions, and
- (d) generally for carrying into effect the provisions of this Act.

75. Minister's power of delegation

The Minister may delegate any of the powers of the Minister under this Act in writing to the Copyright Administrator or any other public officer.

76. Interpretation

In this Act, unless the context otherwise requires,

"artistic work" means irrespective of artistic quality any of the following works:

- (a) painting, drawing, etching, lithograph, woodcut, engraving, print, fashion design and wood design;
- (b) photography not comprised in an audiovisual film;
- (c) map, plan or diagram;
- (d) sculpture;
- (e) work of architecture in the form of building or model; or
- (f) work of applied art, whether handcraft or produced on an industrial scale;

"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;

"Auditor-General" includes an auditor appointed by the Auditor-General;

"author" means a person who creates a work, and in the case of cinematographic work or sound recording means the person by whom the arrangements for the making of the work or recording is undertaken;

"Board" means the National Folklore Board;

"broadcasting" means the transmitting for reception by the general public over a distance by means of radio, television, electromagnetic emissions, light beams, wire, cable or other means;

"choreographic work" includes forms of dance, whether or not in dramatic form;

"collective licence" means a licence issued by a collective administration body under which copies of a protected work can be made;

“communication to the public” means the transmission, other than broadcasting, 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 irrespective of whether the person can receive images or sounds at the same place and time, or at different places or times individually chosen by them;

“copy” means a reproduction of a work in a written form, or in the form of a recording or film, or in any manner or form, but an object shall not be taken to be a copy of an architectural work unless the object is a building or a model;

“copyright monitoring team” means the copyright monitoring team established by section 50;

“derivative work” means a work resulting from adaptation, translation or other transformation of an original work in so far as it constitutes an independent creation;

“device” includes audio or visual cassettes, compact discs, CD-Rom’s, VCR’s, photocopy machines and any other device used to copy copyright materials;

“fixation” means the embodiment of sounds, images or images and sounds or of representations made from them from which the sounds, images or images and sounds can be perceived, reproduced or communicated through a device;

“folklore” includes the literary, artistic and scientific expression belonging to the cultural heritage of Ghana which are created, preserved and developed by ethnic communities of Ghana or by an unidentified Ghanaian author, and kente and adinkra designs, where the author of the designs are not known, and any similar work designated under this Act to be works of folklore;

“literary work” includes

- (a) novels, stories or poetical works;
- (b) plays, stage directions, film scenarios or broadcasting scripts;
- (c) textbooks, treaties, histories, biographies, essays or articles;
- (d) encyclopaedias, dictionaries, directories, timetables, anthologies, databases or compilation of data or other material, whether in machine readable form, which by reason of the selection or arrangement of contents constitutes intellectual creations;
- (e) letters, reports or memoranda;
- (f) lectures, addresses or sermons; and
- (g) computer programmes whatever may be the mode or form of expression;

“mechanical right” includes the right of the author to reproduce literary, dramatic or musical works in the form of sound recordings and audiovisual works produced mechanically and electro-acoustic and electronic procedures the rights of which are usually administered by authors, societies or other appropriate organisations;

“Minister” means the Minister responsible for Justice;

“musical work” includes any musical work irrespective of its musical quality and words composed for musical accompaniment;

“owner” means the person to whom the copyright in a work belongs and includes the heir of an author or an assignee in whole or in part of a copyright;

“performance” means the presentation of a work by such action as dancing, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators;

“performer” means the actor, dancer, musician, singer and other persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works or expressions of folklore;

“producer” means a person or an entity that

- (a) finances or organises
 - (i) stage performances; or
 - (ii) productions; or
- (b) undertakes the first fixation of audiovisual work or sound recording;

“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, 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 sounds audible; and
- (c) in the case of a sound recording, making the recorded 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 broadcasting or communication to the public within the meaning of the definitions of “broadcasting” and “communication to the public”;

“public place” includes a building, place or conveyance to which for the time being the public are entitled or permitted to have access, without a condition or on condition of making a payment, and theatres, hotels, cinemas, concert halls, dance halls, bars, clubs, sports grounds, holiday resorts, circuses, restaurants and commercial banking and industrial establishments;

“publisher” means a person who undertakes the publication of a work by the issue of copies to the public usually for sale or in the case of a sound recording or audiovisual work a publisher is the person who issues duplicates of the sound recording or audiovisual work;

“programme-carrying signals” means electronically generated carriers transmitting live or recorded material consisting of images, sounds or both, in their original form or any form recognisably derived from the original, in extraterrestrial space;

“Regulations” means Regulations made under this Act;

“Service” means the Customs, Excise and Preventive Service;

“sound recording” means work that results from the fixation of a series of musical, spoken or other sound, or of a representation of sounds but does not include sounds accompanying a motion picture or other audiovisual work regardless of the nature of the material objects in which those sounds are embodied;

“systematic instructional activities” means the methodical presentation of information for educational purposes;

“Tribunal” means the Copyright Tribunal established by section 51;

“work of joint authorship” means a work created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other.

77. Repeal and saving

(1) The Copyright Law, 1985 (P.N.D.C.L. 110) is hereby repealed.

(2) The rights, assets, properties, obligations and liabilities of the Copyright Office under the repealed enactment are by this Act transferred to the Copyright Office established under this Act.

(3) The repeal of the Copyright Law, 1985 (P.N.D.C.L. 110) shall not affect any copyright or other rights that were vested in any person by virtue of that Law and those rights shall continue to be enforceable as if they were conferred under this Act.

(4) Any appointment made under the repealed enactment and valid at the commencement of this Act shall remain valid as if made under the corresponding provision of this Act until terminated or otherwise dealt with under this Act.

(5) The employees of the Copyright Office in existence immediately before the coming into force of this Act are hereby transferred to the Copyright Office established under this Act.

78. Retroactive protection

The provisions of this Act applies to works, performances and sound recordings which were made prior to the date of the coming into effect of this Act, if the term of protection had not expired under the Copyright Law, 1985 (P.N.D.C.L. 110) or under the legislation of the country of origin of the works, performances or sound recordings that are to be protected under an international treaty to which the Republic is party.
