

THE UNITED REPUBLIC OF TANZANIA

ACTS SUPPLEMENT

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**THE COPYRIGHT AND NEIGHBOURING
RIGHTS ACT, 1999**

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THE UNITED REPUBLIC OF TANZANIA



No. 7 OF 1999

I ASSENT,
BENJAMIN W. MKAPA
President
2nd JUNE, 1999

**An Act to make better provisions for protection of copy-right
and neighbouring rights in literary, artistic works
and folklore and for related matters**

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

**PART I
PRELIMINARY PROVISIONS**

1.-(1) This Act may be cited as the Copyright and Neighbouring Rights Act, (No. 7) 1999.

Short title and commencement

This Act shall come into Operation on such date as the Minister may, by notice in the *Gazette*, appoint.

2. In Order to promote the creation of traditional culture and to further productive activities in the field of communicating to the public author's works, expression of folklore, other cultural productions and events of general interest, this Act-

Objectives

- (i) protects the moral and economic interests of authors relating to the works, by recognizing exclusive author's rights and providing for just and reasonable conditions of lawful use of authors' work and regulated access to them;
- (ii) provides for the protection of expressions of folklore by rendering certain uses thereof subject to authorization and determining offences against lawful interests relating to their integrity; and
- (iii) protects lawful interest of performing artists, producers of phonograms and broadcasting organizations relating to their productions, by granting them relevant rights.

3.-(1) This Act shall apply to-

Application

- (a) works of authors who are nationals of, or have their habitual residence in the United Republic of Tanzania;
- (b) works first published in the United Republic of Tanzania, irrespective of the nationality or residence of their authors;
- (c) audio-visual works, the producer of which has his headquarters or habitual residence in the United Republic of Tanzania;
- (d) works of architecture erected in the United Republic of Tanzania and other 'artistic works' incorporated in a building or other structure located in the United Republic of Tanzania.

(2) In this Act the expression "the protection of expressions of folklore" applies to expressions of folklore developed and maintained in the United Republic of Tanzania.

(3) Protection of performance under this Act is available where-

- (a) the performer is a national of the United Republic of Tanzania; or
- (b) the performance took place on the territory of the United Republic of Tanzania;
- (c) the performance is fixed in a phonogram or in audio-visual form qualifying for protection under subsection (4);
- (d) the performance, which has not been fixed in a phonogram or in audio visual form, is embodied in a broadcast qualifying for protection under subsection (5);

(4) Protection of phonograms under this Act is available where-

- (a) the producer is a national of the United Republic of Tanzania; or
- (b) the first fixation of the sound was made in the United Republic of Tanzania; and
- (c) the phonogram was first Published in the United Republic of Tanzania.

(5) Protection of broadcasts under this Act is available where-

- (a) the headquarters of the organization is situated in the United Republic of Tanzania, or
- (b) the broadcast was transmitted from a transmitter situated in the United Republic of Tanzania.

(6) This Act shall further apply to-

- (a) unpublished works and works first published in a foreign country of authors of foreign nationality and having their residence in a foreign country, provided that the country where the author has his habitual residence or, in case of published works, the country of their first publication, grants similar protection to nationals or residents of the country of the United Republic of Tanzania for their unpublished works or to works first published in the United Republic of Tanzania;
- (b) expression of foreign folklore, provided that the country of the community from which such expressions have been derived, grants similar protection to expression of folklore developed and maintained in the United Republic of Tanzania;
- (c) works, expression of folklore, performances, phonogram and broadcasts which are to be protected in the United Republic of Tanzania by virtue of and in accordance with international conventions to which it is a party.

Interpretatio

- 4.** In this Act, unless the context otherwise requires-
- “an audio-visual work” means
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 natural person who creates 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;
- “Communication to the public”
means the transmission by wire, or without wire, of the images of sound, or both, of a work, a performance, a sound recording or a broadcast, in such a way that the images or sounds can be perceived or accessed by persons outside the normal circle of a family and its closest social acquaintances at a place so distant from the place where the transmission, the images or sounds would not be perceivable or accessible and, further, irrespective of whether the persons can receive or access the images or sound at the same place and time, or at different places and/or times individually chosen by them;

“Computer” means an electronic or similar device having information processing capabilities;

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

“Court” means the district court established under the Magistrates Courts Act, 1984;

Act No. 2 of 1984

“Copyright” means the sole legal right to print, publish, perform film or record a literally or artistic or musical work;

“copies of phonograms” means any article which contains sounds taken directly or indirectly from a phonogram and which embodies all or a substantial part of the sounds fixed in that phonogram;

“distribution by cable” means the operation by which signals are guided by wire, beam or other conductor device, to the public or any section thereof, for reception;

“distribution to the public of the original work or a copy of a work or a sound recording” refers to any act by which such copies are offered to the general public or any section thereof, mainly through appropriate commercial channels;

“Expression of folklore: means production consisting of characteristic elements of the traditional artistic heritage developed and maintained over generations by a community or by individuals reflecting the traditional artistic expectations of their community;

“fixation” means the embodiment of sounds or images or both or representations of sounds or images in a material sufficiently permanent or stable to permit them to be perceived, reproduced or otherwise communicated during a period of more than transitory duration;

“Minister” means the minister for the time being responsible for copyright and neighbouring rights;

“neighbouring rights” means the secondary right of copyright which performers are entitled;

“Performers” means actors, singers, musicians, dancers and other persons who act, sing, deliver declaim, play in or otherwise perform literary or artistic works including expressions of folklore, and variety and circus artists;

“phonogram” means any exclusively aural fixation of the sounds of a performance or of other sounds, or of a representation of sounds regardless of the method by which the sounds are fixed on the

medium in which the sounds are embodied, and it does not include a fixation of sounds and images, such as the sound track of an audio-visual work;

“Producer of phonograms” means the person who, or the legal entity which first fixes the sounds of a performance or other sounds;

“public exhibition means” a showing of the original or copy of the work:-

- (a) directly;
- (b) by means of a film, television images or otherwise on screen;
- (c) by means of any other device or process; or
- (d) in the case of an audio-visual work, the showing of individual images consequentially;

at a place or places where a person outside the normal circle or 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 and/or times, and where the work can be displayed without communication to the public;

“public performance includes-“

- (a) in the case of a work other than an audio-visual work, the recitation, playing, dancing, acting or otherwise performing the work, or the expression of folklore, either directly or by means of any device or process;
- (b) in the case of an audio-visual work, the showing of images in sequence and the making of accompanying sound audible; and
- (c) in the case of a sound recording, making the recording sounds audible, in each case at a place or places where persons outside the normal circles 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 and times or both, and where the performance can be perceived without the need for communication to the public;

“published” refers to a work or a phonogram, tangible copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies, 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 phonogram, with

- the consent of producer of the phonogram or his successor in title;
- “rebroadcasting” means the unchanged broadcasting of the broadcast of another broadcasting organization;
- “reproduction” means the making of one or more copies of a work or of a phonogram in any manner of form, including any sound or visual recording or any permanent or temporary storage of the work or phonogram in electronic form;
- “video recording” means the embodiment of interrelated changing images, with or without accompanying sounds, in some enduring material form permitting them to be repeatedly perceived, reproduced or communicated to the public;
- “works first published in the United Republic of Tanzania” also means works first published abroad but thereafter published in the United Republic of Tanzania within thirty days;
- “works of joint authorship” means works created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other; and
- “rights management information” is any information which identifies the author, the work, the performer, the performance of the performer, the producer of the sound recording, the broadcast, or the owner of any right under this Act, or information about the terms and conditions of use of the work, the performance, the sound recording or the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of work, fixed performance, a sound recording or a fixed broadcast, or appears in connection, with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast.

PART II COPYRIGHT

5.-(1) Authors of original literary and artistic works shall be entitled to copyright protection for their works under this Act, by the sole fact of the creation of such works.

Works in which copyright may subsist

(2) In this section literary and artistic works shall include in particular-

- (a) books, pamphlets and other writings, including computer programs;
- (b) lectures, addresses, sermons and other works of the same nature;

- (c) Dramatic and dramatic-musical works;
- (d) musical works (vocal and instruments), whether or not they include accompanying words;
- (e) choreographic works and pantomimes;
- (f) cinematographer works, and other audio-visual works;
- (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
- (h) photographic works including works expressed by processes analogous to photography;
- (i) works of applied art, whether handicraft or produced on an industrial scale;
- (j) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

Works shall be protected irrespective of their form or expression, their quality and the purpose for which they were created.

- 6.-(1)** The following shall be protected as original works-
- (a) translation, adaptations, arrangements and other transformation of literary, and artistic works; and
 - (b) collection of literary and artistic works, such as encyclopaedia and anthologies; or collection of expressions of folklore and compilation of data or data bases which, by reason of selection and arrangement of their contents constitute intellectual creation; and
 - (c) works inspired by expression of folklore.

Derivative works

- (2) The protection of any work referred to in subsection (1) of this section shall be without prejudice to any protection of a pre-existing work or expression of folklore utilized for making of such work.

7. Notwithstanding the provisions of sections 5 and 6, protection shall not extend to-

Subject matter not protected

- (a) laws and decisions of courts and administrative bodies as well as to official translations thereof;
- (b) news of the day published, broadcast or publicly communicated by any other means; and
- (c) any idea, procedure, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work.

Substance of
copyright

8. Copyright in a literary and artistic work comprises the exclusive economic and moral rights of the author as provided for under sections 9 to 11.

Economic rights

9.-(1) Subject to the provisions of sections 12 to 21 the author 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) distribution of the work;
- (c) the rental of the original or a copy of an audio-visual work, a work embodied in a sound recording, a computer program, a database, or a musical work in the form of notation, irrespective of the ownership of the ownership of the original or copy concerned;
- (d) public exhibition of the work;
- (e) translation of the work;
- (f) adaptation of the work;
- (g) public performance of the work;
- (h) broadcasting of the work;
- (i) other communication to the public of the work;
- (j) importation of copies of the work.

(2) The right of rental under paragraph (c) of subsection (1) of this section does not apply to the rental of computer programs where the program itself is not the essential object of the rental.

Right of
distribution

10.-(1) The right to authorize distribution provided for in section 9(1) (b), shall cease to exist in respect of the original or a copy of the work which has been sold by the author or other owner of copyright, or with his authorization, on the territory of the United Republic of Tanzania.

(2) Notwithstanding the provisions included in subsection (2) of section 9, the author or any owner of copyright preserves the exclusive rights to authorize the rental of copies of such works after the sale of the copies.

Moral rights

11. The author of a protected work shall have the right-

- (a) to claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in section 9, except when the work is included by means of photography, sound or visual recording, broadcasting or distribution by cable;
- (b) to object to and to seek relief connection with, any distribution, mutilation of other modification of, and any other derogatory action in relation to, his work, where such action would be or is prejudicial to his honor or reputation.

12.-(1) Notwithstanding provisions of section I, the following uses of a protected work, either in the original or in translation, shall be permissible without the authors' consent and the obligation to pay remuneration for the use of the work.

Free use

(2) In the case of any work except computer programs and architectural works, that has been lawfully published-

- (a) the production, translation, adaptation, arrangement or other transformation of such work exclusively for the user's own personal and private use provided that such reproduction does not conflict with normal exploitation of the work and does not unreasonably prejudice the legitimate interest of the author;
- (b) the inclusion, subject to mention of the source and the name of the author or quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations for newspaper articles and periodicals in the form of press summaries;
- (c) the utilization of the work by way of illustration in publications, broadcasts, programs distributed by cable, or sound or visual recordings for teaching, to the extent justified by the purpose or the communication for teaching purposes of the work broadcast or distributed by cable for the use in schools, education, universities and professional training, provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast, the programme distributed by cable or the recording.

(3) The distribution by cable or any work broadcast, where the beneficiaries of the distribution by cable live in the one and the same building, or group of buildings none of which is separated from another building by a public street or road, if the cable distributed originated from the same building or group of buildings and the distribution by cable is done without gainful intent.

(4) In the case of any article published in newspaper or periodicals on current economic, political or religious topics, and in the case of any work of the same character broadcast or distributed by cable, the reproduction of such article or such work in the press, or the communication of it to the public, unless the said article when broadcast or distributed by cable, was accompanied by express provision prohibiting such use, and provided that

the source of it when used in the said manner is clearly indicated.

(5) For the purpose of reporting a current event by means of photography, cinematography or communication to the public the reproduction of making available to the public, to the extent justified by the informatory purpose, of any work that can be seen or heard in the course of the said event.

(6) The reproduction of works of art and of architecture in an audio-visual or video recording, and the communication to the public of the works so reproduced, if the said works are permanently located in a place where they can be viewed by the public or are included in the audio-visual work or video recording only by way of background or as incidental to the essential matters represented.

(7) The reproduction, by photography of sound or video recording, or electronic storage, by public libraries, non-commercial documentation centers, scientific institutions and educational establishments of literary and artistic works which have already been lawfully made available to the public, provided such reproduction, the number of copies made, and the use thereof are limited to the need of the regular activities of the entity reproducing the work and neither conflict with the normal exploitation of the work nor unreasonably prejudice the legitimate interests of the author.

(8) The reproduction in the press or the communication to the public of-

- (a) any political speech delivered in public or any speech delivered during legal proceedings; or
- (b) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purpose of current information, the author retaining the right to publish a collection of such works.

(9) The recording by any broadcasting organization for the purpose of its own broadcasts and by means of its own facilities, in one or several copies, of any work which it is authorized to broadcast. All copies of such recording shall be destroyed within six months or any longer period agreed to by the author.

(10) Where a recording made under subsection (9) has an exceptional documentary character, a copy of it may be preserved in official archives, without the prejudice to the application of the provisions of this Act.

13. Notwithstanding the provisions of section 9, the temporary reproduction of a work shall be permitted if all of the following conditions are met-

- (i) the reproduction is made in the process of a transmission of the work or an act of making a stored work perceptible;

Temporary
reproduction

- (ii) it is caused by a person or entity that, by way of authorization by the owner of copyright or of operation of law, is entitled to make that transmission or making perceptible of the work; and
- (iii) it is an accessory to the transmission of making perceptible that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work of any other purpose than those referred to in paragraphs (i) and (ii) above.

Duration of authors
right

14.-(1) Subject to the provisions of subsections (2) to (5), of this section, 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 fifty years after his death.

(3) 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 either made, first made available to the public or first published, whichever date is the latest, 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 be.

(4) In the case of audiovisuals work, the economic and moral rights shall be protected for fifty years from the date on which the work was either made, first made available to the public, or first published, whichever date is the latest.

(5) In the case of a 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 proceeding subsections shall continue until the end of the calendar year in which it would otherwise expire.

Ownership of
copyright

15.-(1) The right in a work protected under this Act shall be owned in the first instance by the author or authors who created the work. The authors of a work of joint authorship shall be co-owners of the said rights.

(2) In respect of audio-visual work, the original owner of the economic right shall be the co-author of the audio-visual work who, in the absence of proof of the contrary, shall be presumed to be the author of the scenario, the author of the dialogue, the composer of the music specifically created for the audio-visual work, the director, provided that he has exercised actual supervision and made an actual intellectual contribution to the creation of the work. The author of pre-existing works included in, or adopted for, the audio-visual in, or adapted for, the audio-visual work shall be assimilated to the co-author of the audio-visual work.

(3) The conclusion of a contract under which the co-author of an individual work undertakes to make contribution to, or under which the authors of pre-existing works authorize their works to be included in, or adopted for, an audio-visual work shall, unless provided otherwise in the said contracts, imply a presumption of the assignment, to the producer of the audio-visual work, of the economic rights in their contributions. The co-authors 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 audio-visual works.

(4) In the case of a work created by an author for any person or body corporate in the course of fulfillment of his or her duties under a contract of service or employment, the rights of the work referred to in section 9 shall, in the absence of contractual provisions to the contrary, be deemed to be assigned to the employer of the author to such extent as may be necessary to its customary activities at the time of the conclusion of the relevant contract of service or employment.

(5) In the absence of proof to the contrary, the author of a work is the person under whose name the work is disclosed. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

(6) In the case of an anonymous or pseudonymous work, subject to the provisions in the second sentence of subsection (5), the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author. This presumption shall cease to apply when the author reveals his identity.

(7) The rights referred to in section 9 to 11 shall be inherited according to the general rules of the law of succession.

16.-(1) The rights referred to in section 9 shall be assignable in the whole or in part.

(2) Any assignment of a right referred to in section 9 shall be in writing signed by the assignee.

(3) An assignment, in whole or in part, of any right referred to in section 9 shall not include or be deemed to include the assignment of any other rights referred to therein.

(4) Notwithstanding the provisions of section 21 the assignment of right in future work shall be void.

(5) The transfer of ownership of the original or of one or several copies of a work shall not imply the assignment of right in the work.

Assignment of author's rights

Licenses

17. -(1)The author or other owner of copyright may grant non-exclusive or exclusive licenses to others to carry out, or to authorize the carrying out of certain specified acts covered by his or its economic rights.

(2) A non-exclusive license shall entitle the licensee to carry out the act concerned concurrently with the author or

other owner of copyright and concurrently with any other possible non-exclusive licensees.

(3) An exclusive license shall entitle the licensee to carry out the act concerned to exclusion of all others, including the author or other owner of copyright.

(4) A licensee shall be considered to be exclusive only if the licensing contract contains words to that effect, or if the obvious intention of the contracting parties to that effect clearly result from the circumstances. The licensee shall have *locus standi* to sue in his own name for an infringement of any exclusive right conferred on him.

(5) Failure to mention the scope or ways and means of carrying out the acts for which a license is granted shall be deemed to limit the licensee to such ways and means that are necessary for the purpose that may be reasonable presumed to be envisaged by the contracting parties when concluding the licensing contract.

(6) Only the economic right explicitly mentioned in the contract shall be considered part of the license.

(7) Unless the licensing contract provides for a shorter period, the validity of the license expires fifteen years after conclusion of the contract or, if this period is shorter, on the expiring of the contract an assignment on the basis of which the assignee has granted the license.

(8) Any grant of exclusive license, shall be valid only if it is the subject of written contract signed by the contracting parties.

18. Unless otherwise provided for by legislation, the user shall be entitled to transfer the rights conferred on him under the contract for the use of the work only with the consent of the owner of copyright.

Transfer of rights

19. If the owner of copyright has conferred the rights to use the work on conditions the effect of which is a gross disproportion between the remuneration paid him by the use of the work and the income from the use thereof, the owner of copyright may request an amendment of the contract so as to secure him an equitable share of the income, corresponding to standards generally prevailing in similar cases, such claim may not be waived in advance, it cannot be enforced, however, after the lapse of two years from the time when the owner of copyright received knowledge of the circumstances which give rise to the claim, and the owner of copyright may not claim to have received such a knowledge after more than five years.

Disproportionate remuneration

Non-exercise of exclusive rights

20. Where the user does not exercise an exclusive right conferred on him by the owner of copyright, the latter may revoke the right concerned if the non-exercise thereof was prejudicial to his legitimate interests. The right of revocation may be exercised only after the expiration of the delay stipulated in the contract for the beginning of the exercise of the right conferred and not earlier than two years after the conferral of same, or if the work to be used was supplied subsequently, from

the date of its delivery. In each case the owner of copyright has to notify the user on the proposed revocation, granting him a reasonable additional time, suitable for adequately exercising the right transferred, except for cases where the exercise of the right by the user became impossible or he refused it. The right of revocation may not be waived in advance.

21. A contract on future grant of rights for the use of works to be created is enforceable. Thereafter rights not specified in detail but only mentioned in general or by reference to their nature, may be terminated by either party by six months notice after a period of four years from the conclusion of the contract.

Contract of
future grant

General rules of
contracts

22. The general rules of the law of contracts shall apply to other questions relating to contracts for use of authors work other than uses provided for under this section.

Contracts for
commissioned
works

23.-(1) Where a contract has been concluded for the use of a work to be created (commissioned work), the user shall be under the obligation to make a declaration concerning acceptance of the work within two months from the date on which the work was handed over, unless the law otherwise provides; if the user fails to make such a declaration within the time fixed by law, the work shall be deemed to have been accepted.

(2) Within the time open for acceptance of the work the user shall be entitled to return the same to the author for correction or amendments, such request shall be initiated by him in writing, taking into consideration the purpose for which the creation of the work was agreed upon. Justified request for correction or amendments can be repeatedly made to the author, by fixing suitable dates therefore; if the author refuses to comply with such a request or the amended work, does not qualify for the stipulated purpose either, the user may terminate the contract and shall be obliged to pay in consideration of the work done by the author an appropriated less than the remuneration agreed upon for the use of the work.

PART III
PROTECTION OF EXPRESSION OF
FOLKLORE AGAINST ILLICIT EXPLOITATION

Protected
expression of
folklore

- 24.** This Act protects expression of folklore such as-
- (a) folk tales, folk poetry, riddles;
 - (b) folk songs and instrumental folk music;
 - (c) folk dances, plays and artistic forms of rituals;
 - (d) production of folk art, in particular drawings, painting, carvings, sculpture, pottery, terracotta, mosaic, wood work, metal ware, jewellery, baskets, costumes; and
 - (e) traditional musical instruments.

25. Subject to the exception provided for in section 26, the following utilization of the expression of folklore are subject to authorization by the competent authority when they are made both with gainful intent and outside their traditional or customary context-

Utilization
subject to
authorization

- (a) any application, reproduction and distribution of copies of expressions of folklore;
- (b) communication to public, including recitation, performance, broadcasting or distribution by cable, of expressions of folklore.

26. The provisions of section 25 shall not apply in the following cases-

Exceptions

- (a) utilization for the purposes of education;
- (b) utilization by way of illustration in an original work of an author or authors, provided that the extent of such utilization is compatible with fair practice;
- (c) borrowing expressions of folklore for creating an original work of an author or authors inspired by folklore;
- (d) incidental utilization of an expression of folklore, including in particular-
 - (i) utilization of an expression of folklore that can be seen or heard in the course of a current event for the purposes of reporting on the current event by means of photography, broadcasting or sound or visual recording, provided that the extent of such utilization is justified by the informatory purpose;
 - (ii) utilization of objects containing the expression of folklore which are permanently located in a place where they can be viewed by the public, if the utilization consists including their image in a photograph, in a film or in a television broadcasting.

Acknowledgement of source

27. In all printed publication, and in connection with any communications to the public, of any identifiable expression of folklore its source shall be indicated in an appropriate manner, by mentioning the community and/or geographic place from where the expression utilized has been derived. The provisions shall not apply to utilization referred to in Section 26 (c) and (d).

Authorization

- 28.** (a) Application for individual or blanket authorization of any utilization of expression of folklore subject to authorization under this Act shall be made in writing to the competent authority.
- (b) where the competent authority grants authorization, it may fix the amount of any collection fees corresponding to a tariff approved by (the supervisory authority), the fees collected shall be used for the purpose of promoting or safeguarding national culture.
- (c) Appeals against the decisions of the competent authority shall be by the person applying for the authorization or the representative of the interested community and shall be with the supervisory authority.

Competent authorities

- 29.** (a) For the purposes of this Act, the expression "competent authority" means The National Arts Council of Tanzania established under section 3 of the National Arts Council of Tanzania Act, 1984.
- (c) For the purpose of this Act, the expression "supervisory authority" means the Minister.

Act No.23 of 1984

30.-(1) The provisions of the folklore under this Act shall in no way be interpreted so as to hinder the normal use, maintaining and development of such expressions.

(2) the provisions of this part of the Act shall in no way limit or prejudice any protection applicable to expressions of folklore under other Parts of this Act, or the laws protecting industrial property, or any other law or international treaty to which the United Republic of Tanzania is a party, nor shall it in any way prejudice other forms of protection provided for the safeguard and preservation of folklore.

Interpretation

PART IV

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

Acts requiring
authorization of
performers

31.-(1) Subject to the provisions of Section 5 of this Act, a performer shall have the 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 5 of this Act or otherwise made without the authorization of the performer; or
 - (ii) is a rebroadcasting made or authorized by the organization initially broadcasting the performance;
- (b) the fixation of his unfixed performance;
- (c) the direct or indirect reproduction of a fixation of his performance, in any manner or form;
- (d) the first making available to the public of a fixation of his performance, or copies thereof, through sale or other transfer of ownership;
- (e) rental to the public or public lending of a fixation of his performance, or copies thereof, irrespective of the ownership of the copy rented or lent;
- (f) the making available to the public of his fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

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

(3) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances and performances fixed in phonograms, have the right to claim to be identified as the performer or his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

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

(5)The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed in phonogram, or in the absence of such a fixation,

from the end of the year in which the performance took place.

Act requiring authorization of producers of sound recordings

32.-(1) Subject to the provisions of section 5 of this Act, 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, in any manner or form;
- (b) the making available to the public by sale or other transfer of ownership, of the original or copies of the sound recording that has not already been subject to a distribution authorized by the producer;
- (c) rental to the public or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent;
- (d) the making available to the public of the sound recording, by way of wireless means, in such a way that members of the public may access it from a place or at time individually chosen by them.

(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 of use of sound recording

33.-(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 if publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount 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.

(4) For the purposes of this section, sound recording that have been made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

Acts requiring authorization of Broad-casting Organizations

34.-(1) Subject to the provisions of section 5, 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 the broadcast takes place.

Limitations on protection

35. Sections 31, 32, 33 and 34 shall not apply where the acts referred to in those sections are related to-

- (a) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (b) reproduction solely for scientific research;
- (c) reproduction solely for the purpose of face-to-face teaching activities, except for performances and phonograms which have been published as teaching or instructional materials;
- (e) cases where, under Part II of this Act a work can be used without the authorization of the author or other owner of copyright.

PART V SANCTIONS

Civil remedies

36.-(1) Any person whose rights under this Act are in imminent danger of being infringed or have been infringed, may institute proceedings in the United Republic of Tanzania for-

- (a) an injunction to prevent the infringement or to prohibit the continuation of the infringement;
- (b) payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing person that are attributable to the infringement. If the infringement is found to have been prejudicial to the reputation of the person whose rights were infringed, the court may, at its discretion, award exemplary damages.

(2) Any object which was made in violation of this Act and any receipts of the person violating it and resulting from such violations, shall be subject to seizure.

37.-(1) As against any person who infringes a copyright or any other right protected by this Act, the injured party may bring an action in court for injunctive relief requiring the wrongdoer to cease and desist if there is a danger of repetition of the acts of infringement was intentional or the result of negligence. In lieu of damages, the injured party may recover the profits derived by the infringer from the acts of infringement together with a detailed accounting reflecting such profits.

(2) Authors, persons having rights in scientific editions, photographers and performers may, if the infringement was intentional or the result of negligence, recover, as justice

Action for injunction and damages

may require, a monetary indemnity for the injury caused to them even if no pecuniary loss has occurred. This right is not assignable unless it has been acknowledged by contract or unless legal action asserting the right has previously been commenced.

(3) Rights arising from other legal provisions shall not be affected

Right of
destruction and
similar
measures

38.-(1) The injured party may require the destruction of all copies that have been unlawfully manufactured or unlawfully distributed or which are intended for unlawful distribution.

(2) The injured party may further require that the equipment such as moulds, plates, engraving stones, blocks, stencils and negatives which were destined exclusively for the unlawful production of copies be rendered unusable, or if this is not practicable, destroyed.

(3) If the appearance of the copies or the equipment causing the infringement can be modified in some other fashion that the work no longer constitutes an infringement of the rights of the injured party, in such case such injured party may only require that such measures be undertaken as to achieve this effect.

(4) The measures proposed in subsections (1) to (3) of this section shall apply only to copies and equipment which are the unlawful making or distribution of the copies, or their heirs, these measures may be executed only after ownership has been legally confirmed.

Right of delivery

39. The injured party may require that the copies and equipment be delivered to him, in whole or in part, for an equitable price which shall not exceed the production cost.

Responsibility of
the proprietor of
an enterprise

40. If a right protected under this Act has been infringed by an employee or agent of an enterprise in the course of his duties to such enterprise, the injured party may also assert the rights provided in sections 37 to 38, with the exception of the right to damages, as against the proprietor of such enterprise. Further claims which may arise from other legal provisions shall not be affected.

41.-(1) If, in the event of infringement of a right protected under this Act, the demands of the injured party for any injunction (section 37), for destruction or rendering the work unusable (section 38) or for delivery (section 39) are asserted against a person whose acts of infringement were neither intentional nor negligent, such person may simply indemnify in money to the injured party if execution of the aforesaid demands would produce for him a serious and disproportionate injury and if it may be assumed that the injured party could accept redress in cash. The damages payable as aforesaid shall be such an amount as would have constituted an equitable remuneration had the right been granted by contract. Payment of such damages shall constitute the injured party's consent to a utilization within customary limits.

Exception

Offences and
legal sanctions

42.-(1) Without prejudice to the remedies available under section 36, any person who knowingly violates, or causes to be violated, the rights protected under this Act shall be liable to-

- (a) a fine of not exceeding more than five million shillings or to imprisonment for a term not exceeding three years or to both, for the first offence if the infringement was on a commercial basis; and
- (b) a fine of not exceeding ten million shillings or to imprisonment for a term not exceeding five years or both, for each subsequent offence if the infringement was on a commercial basis.

(2) Any person who, without the authorization of the competent authority referred to in paragraph (a) of section 28, of this Act imports or distributes copies of expressions of folklore derived from the United Republic of Tanzania or copies of translations, adaptations, arrangement or other transformations or such expressions of folklore, made abroad without the authorization of the said authority, is guilty of an offence and liable to a fine not exceeding ten million shillings or imprisonment for a term not exceeding ten years.

(3) Any person who willfully or negligently does not comply with the provisions of section 26 of this Act shall be liable to a fine of not exceeding three million shillings or imprisonment for a term not exceeding one year.

(4) Any person who, without the authorization of the competent authority referred to in paragraph (a) of section 28 of this Act willfully or negligently utilizes an expression of folklore in violation of the provisions of section 24 of this Act, shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years.

(5) Any person willfully deceiving others in respect of the source of artifacts or subject matters of performances or recitations made available to the public by him in any direct or indirect manners, presenting such artifacts or subject matters as expressions folklore or a certain community, from where, in fact, they have not been derived, shall be punishable by a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years.

(6) Any person who publicly uses, in any direct or indirect manner expressions of folklore willfully distorting the same in a way prejudicial to the cultural interests of the community concerned, shall be punishable by a fine of not exceeding five million shillings or to imprisonment for a term not exceeding three years.

(7) Any person who gives authorization on behalf of performers without being a duly appointed representative, or any person who knowingly proceeds under such an unlawful authorization, shall be guilty of a criminal offence punishable by a fine of not exceeding five million shillings or to imprisonment for a term not exceeding three years.

(8) Any person omitting the application of the notice of the protection of phonograms prescribed in section 33 to copies of a published phonogram reproduced by him or to the containers of such copies, shall be liable to a fine not exceeding five million shillings and to imprisonment for a term not exceeding three years.

(9) For any other criminal offence under copyright infringement the penalty shall be-

- (a) a fine of not more than four million shillings or to imprisonment of up to three years for the first offence;
- (b) a fine of not more than eight million shillings or to imprisonment of up to two years for each subsequent offence.

43.-(1) The court having jurisdiction of a civil action arising under this Act, or Criminal Procedure Act shall have the authority, subject to (the relevant provisions of the Act and the Civil Procedure Code) and on such terms as it may deem reasonable-

- (a) to grant injunctions to prohibit the committing, or continuation of committing, of infringement of any right protected under this Act;
- (b) 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 Act where the making or importation of copies is subject to such an 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.

(2) The provisions of the Civil Procedure Code, 1966 and the Criminal Procedure Act, 1987 dealing with search and seizure shall apply to infringements of rights under this Act.

(3) The provisions of Tanzania Revenue Authority Act, 1995 dealing with suspension of the release of suspected illegal goods shall apply to articles and implements protected under this Act.

(4) For the purposes of this Act, section 170(2) of the Criminal Procedure Act, 1985 shall not be applicable.

Conservatory
and provisional
measures

Acts No.49 of 1966
and No.9 of 1987

Act No.11 of 1995

PART VI
MEASURES, REMEDIES AND SANCTIONS AGAINST
ABUSES IN RESPECT OF TECHNICAL MEANS OF
PROTECTION AND RIGHTS MANAGEMENT INFORMATION

44.-(1) The following acts shall be considered unlawful and shall be assimilated to infringements of the rights protected under this Act-

Infringements of
Technical means
of protection and
rights
management
information

- (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 of a work, a sound recording or a broadcast, or to impair the quality of copies made;
- (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;
- (iii) the removal or alteration of any electronic rights management information without authority;
- (iv) the distribution, import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, sound recordings or broadcasts, knowing or having reason to know that electronic rights management information has been removed or altered without authority.

(2) Any illicit device and means mentioned in paragraph (i) of section (1) and any copy from which rights management information has been removed, or in which such information has been altered, shall be assimilated to infringing copies of works, and any illicit act referred to in subsection (1) of this section shall be treated as an infringement of copyright or neighbouring rights to which the civil remedies and criminal sanctions are applicable.

Regulations

45. The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or as necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

46. There is hereby established an organization to be known as the Copyright Society of Tanzania (in this Act referred to as the “society”) which shall-

- (i) be a body corporate having perpetual succession and a common seal;
- (ii) under that name be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property; and
- (iii) subject to the provisions of this Act be capable of doing or performing all such acts or things as bodies corporate may by law do or perform.

Collective
administration of
copyright and

Functions of the society

- 47.** The functions of the society shall be-
- (a) to promote and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers, and, in particular, to collect and distribute any royalties or other remuneration accorded to them in respect of their rights provided for in this Act;
 - (b) to maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters and publishers;
 - (c) to search for, identify and publicize the rights of owners and give evidence of the ownership of these where there is a dispute or an infringement;
 - (d) to print, publish, issue or circulate any information, report, periodical, books, pamphlet, leaflet or any other material relating to copyright and rights of performers, producers of recordings and broadcasters.
 - (e) To advise the Minister on all matters under this Act.

Fees, royalties etc.

- 48.** For the better performance of its functions, the Society shall, subject to this Act, have power:-
- (a) to determine the minimum rates of royalties to be levied in respect of uses to be made of works registered by it;
 - (b) to levy fees upon registering works and associations;
 - (c) to acquire, hire and dispose of property;
 - (d) to borrow money whether by way of loan, overdraft or otherwise on the security of its assets;
 - (e) to accept and administer any trusts or donations;
 - (f) to join regional and international associations having similar objectives and functions;
 - (g) to perform such other functions as may be assigned to it by the Board; and
 - (h) to train and sensitize its members, institutions and other members of the Public on Copyright matters.

Funds of Society

- 49.** The funds of the Society shall consist of-
- (a) all fees payable under the Act;
 - (b) grants and bequests;
 - (c) such other moneys or assets as may vest in or accrue to the Society, including government subsidy whether in the course of its functions or otherwise.

Society's accounts and records

- 50.-(1)** The Society shall-
- (a) keep proper accounts and other records relating thereto in respect of its funds;

(b) publish and furnish to the Board annually, or as often as the Board may direct audited accounts and balance sheets and estimates of income and expenditure for the following financial year.

(2) The accounts shall be examined and audited annually by auditors appointed by the Society and approved by the Board.

(3) The financial year of the Society shall be a period of twelve calendar months beginning on 1st July, every year and ending on 30th June the following year.

Society's
composition

51.-(1) The composition, proceedings and other matters of the Society shall be in accordance with the provisions of the Schedule to this Act.

(2) The Minister may in consultation with the relevant Ministry, Department or Institution appoint from among citizens of Tanzania person qualified and knowledgeable in matters relating to copyrights and neighbouring rights to be members of the Board of the Society;

(3) The Minister may by order published in the *Gazette*, amend the Schedule.

PART VII TRANSITIONAL PROVISIONS

52.-(1) The Copyright Act, 1966, is hereby repealed.

Repeal of Act No.6
of 1966

(2) No rights governed by this Act shall be recognized under common law.

53. The provisions of this Act which apply to works, performances, phonograms and broadcasts existing before the date of the coming into effect of this Act, provided that the term of protection had not expired under the former legislation or under the legislation of the country of origin of such works, performances, phonograms or broadcasts that are to be protected under an international treaty to which the United Republic of Tanzania is party, shall not affect contracts on works, performances, sound recordings and broadcasts concluded before the entering into force of this Act.

SCHEDULE

**(Under section 51(1))
CONSTITUTION, PROCEEDINGS AND OTHER
MATTERS OF THE SOCIETY**

1.-(1) subject to paragraph 3, the Society shall consist of the following Board Members appointed by the Minister each of whom representing the following-

- (a) The Commission of Culture;
- (b) The National Arts Council;
- (c) The office dealing with Industrial Property;
- (d) Film Makers Association;
- (e) National Museum of Tanzania;
- (f) Faculty of Law of the University of Dar es Salaam;
- (g) The Attorney Generals Chambers;
- (h) The Tanzania Authors Association;
- (i) The Tanzania Broadcasting Commission; and
- (j) The Customs Department.

(2) One third of the *ex officio* members shall be removed from their position after every two years and they shall be replaced by the private stake holders.

(3) A member of the Society, not being a member *ex officio*, shall hold office for three years.

(4) The Minister may appoint such other persons not exceeding three in number, as he considers suitably qualified to assist the Society in its work and deliberations and such persons shall not have the right to vote at meetings of the Society.

(5) Upon the appointment to the Society of any member, the Minister shall cause notice of such appointment to be published in the *Gazette* and shall in such notice specify the current membership of the Society resulting upon such appointment.

(6) Members of the Society shall not, by virtue only of their appointment to the Society, be deemed to be officers in the public service.

2.-(1) The Minister may require a member of the Board to vacate his office if the Minister is satisfied that the member-

- (a) has become insolvent or bankrupt; or

- (b) has been absent from three consecutive meetings of the Society, of which he has had notice, without the leave of the Chairman of the Society;
- (c) has been convicted of an offence under this Act;
- (d) has been convicted within Tanzania of a criminal offence, or outside Tanzania of an offence by whatever name called which, if committed within Tanzania, would have been criminal offence, and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or
- (e) is mentally or physically incapable of efficiently performing his duties as member of the Society.

(2) The Minister may suspend from office a member of the Board against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed.

(3) A member of the Board may resign his office by giving notice in writing addressed to the Minister and from the date of receipt of the notice by the Minister; he shall cease to be a member.

3.-(1) On vacation of the office by a member of the Board, the vacancy shall be filled by a person appointed in accordance with paragraph 1 (a) under which the former member was appointed:

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Board is granted leave of absence by the Board, the Board may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of the member.

4. The Board may in its discretion at any time and for any length of time invite any person, and the Minister may in the like manner nominate any officer in the public service, to attend any meeting of the Board and take part in the deliberations of the Board, but such person or officer shall not be entitled to vote at that meeting.

5.-(1) The Chairman of the Board shall be appointed by the Minister from amongst persons who are-

- (a) knowledgeable;
- (b) with provable experience;
- and
- (c) has experience on copyright and neighbouring rights.

(2) The board shall elect a Vice-Chairman from amongst its members. The Vice-chairman shall, subject to subparagraph (3), hold office for the duration of his membership in the Board.

(3) The office of the Vice-Chairman shall become vacant-

- (a) if the holder resigns his office by notice in writing to the Society; or
- (b) if the holder of the office ceases to be a member of the Board; or

(c) if the Board so determines.

(4) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

6.-(1) Subject to subparagraph (2), the Board shall hold ordinary meetings for the discharge of its business at least four times in each year.

(2) An extraordinary meeting of the Board-

(a) may be convened by the Chairman at any time;

(b) in the absence of both the Chairman and the Vice-Chairman the members present and forming the quorum shall elect one of their number to preside; and

(c) the quorum shall be formed by any six members.

(3) At any meeting, the decision of the Board on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of any equality of votes in additions to his deliberative vote.

(4) Subject to this Act, the Board may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such standing orders.

7. Members of the Board shall be paid from the funds of the Society such allowances as the Minister may determine and in determining the allowances the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board in connection with the business of the Board.

8.-(1) Subject to this paragraph, the Board-

(a) shall appoint a Copyright Administrator upon such terms and conditions as may be approved by the Minister;

(b) may appoint such other staff as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Copyright Administrator, after consultation with the Chairman of the Board, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by written law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Board at its next meeting.

(3) The Copyright Administrator shall be the Secretary to the Board.

(4) Subject to any general or special directions of the Board, the Copyright Administrator shall be the Chief Executive Officer of the Board and as such he shall be responsible to the Board for the administration and management of its affairs, including the supervisions of other staff of the Society.

Passed in the National Assembly on the 14th April, 1999

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Clerk of the National Assembly