

The Laws of Zambia

REPUBLIC OF ZAMBIA

**THE COPYRIGHT AND PERFORMANCE RIGHTS ACT**

**CHAPTER 406 OF THE LAWS OF ZAMBIA**

**CHAPTER 406 THE COPYRIGHT AND PERFORMANCE RIGHTS ACT**

THE COPYRIGHT AND PERFORMANCE RIGHTS ACT

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## CHAPTER 406

### COPYRIGHT AND PERFORMANCE RIGHTS

Act No.  
44 of 1994  
13 of 1994

**An Act to provide for copyright in literary, musical and artistic works, computer programs, audiovisual works, sound recordings, broadcasts and cable programs; to provide for rights in performances; to repeal the Copyright Act; and to provide for matters incidental to or connected with the foregoing.**

[31st December, 1994]

### PART I

#### PRELIMINARY

1. This Act may be cited as the Copyright and Performance Rights Act. Short title
2. In this Act, unless the context otherwise requires- Interpretation

"adaptation" includes-

- (a) in relation to any literary work-
  - (i) a translation of the work; or
  - (ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures;

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- (b) in relation to a literary work in a non-dramatic form, a version of the work (whether in its original language or in a different language) in a dramatic form;
- (c) in relation to a literary work in a dramatic form, a version of the work (whether in its original language or in a different language) in a non-dramatic form;
- (d) in relation to a musical work, an arrangement or transcription of the work;
- (e) in relation to an artistic work in two dimensions, the reproduction of that work in an object in three dimensions; and in relation to a computer program, a version of the program in which it is converted from one computer language or code into another.

"artistic works" includes works of artistic craftsmanship, including designs for fabrics, carpets and tapestry, and, irrespective of artistic quality-

- (a) paintings, drawings, etchings, lithographs, wood cuts, engravings and prints;
- (b) maps, plans, charts, diagrams, illustrations and sketches;
- (c) works of sculpture;
- (d) works of architecture in the form of either buildings or models; and
- (e) photographs;

"audiovisual work" means the aggregate of a series of related visual images, together with accompanying sounds, if any, which is capable of being shown as a moving picture by means of a mechanical, electronic or other device and irrespective of the nature of the material support on which the visual images and sounds are carried, but does not include a broadcast;

"author" means-

- (a) in relation to an audiovisual work or sound recording, the person who causes the audiovisual work or recording to be made;
- (b) in relation to a broadcast, the person who is responsible for the contents of the broadcast and for arranging for its transmission;

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- (c) in relation to a cable program, the person who is responsible for including it in the cable program service by which it is transmitted;
- (d) in relation to the typographical arrangement of a published edition, the publisher of the edition; and
- (e) in relation to any other work, the individual who created the work;

"broadcast"-

- (a) used as a noun, means the aggregate of sounds, or of sounds and visual images, or other information, embodied in a program as transmitted by broadcasting; and
- (b) used as a verb, means to transmit, by the emission of electro-magnetic energy otherwise than over a path that is provided by a material substance, for reception by members of the public, visual images or sounds, or both, capable of being received by members of the public in possession of suitable apparatus, regardless of whether-
  - (i) the apparatus includes special decoding devices;
  - (ii) the members of the public are in Zambia or elsewhere;
  - (iii) the electro-magnetic energy is carried, after the initial transmission but before it is received by members of the public, on a path provided by a material substance; or
  - (iv) any member of the public actually receives the images or sounds;

"cable program" means the aggregate of sounds, or of sounds and visual images, or other information, embodied in a program as transmitted by a cable program service;

"cable program service" means a service that transmits, by the emission of electro-magnetic energy over a path that is provided by a material substance, for reception by members of the public, visual images or sounds, or both, capable of being received by members of the public in possession of suitable apparatus, regardless of whether-

- (a) the apparatus includes special decoding devices;

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(b) the members of the public are in Zambia or elsewhere; or

(c) any member of the public actually receives the images or sounds;

"collecting society" means a collecting society as defined in section *twenty-two*;

"communication to the public" of a work includes the performance, playing or showing of the work in public;

"compilation" means a collection or assembly of works or other material or data which by reason of selection or arrangement of the contents of the collection or assembly constitutes a product of creativity;

"computer program" means a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine readable medium, of causing an electronic or other device having information-processing capabilities to indicate, perform or achieve a particular function, task or result;

"controlled act" means an act referred to in section *seventeen* in relation to a work subject to copyright;

"convention" means the Berne Convention for the Protection of Literary and Artistic Works of 9th September, 1886, completed at Paris on 4th May, 1896, revised at Berlin on 13th November, 1908, completed at Berne on 20th March 1914, revised at Rome on 2nd June, 1928, at Brussels on 26th June, 1948, at Stockholm on 14th July, 1967 and at Paris on 24th July, 1971 and amended on 28th September, 1979;

"Convention country" means a country prescribed in regulations made for the purposes of this definition, being a member of the Union established by the Convention;

"copy" means a reproduction of a work or of an adaptation of a work, whatever the medium in which the reproduction is made or stored;

"court" means the High Court for Zambia;

"dramatic work" includes a work of dance or mime, whether recorded in writing or other notation, or in an audiovisual work;

"first published" has the meaning given by section *four*;

"infringing copy" means a copy of a work in which copyright subsists-

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- (a) the making of which constituted an infringement under this Act of the copyright in the work;
- (b) the making of which would have constituted an infringement under this Act of the copyright in the work, if the copy had been made in Zambia; or
- (c) the making of which would have constituted a breach of an exclusive licensing agreement, if the copy had been made in Zambia;

"joint authorship" has the meaning given by section *three*;

"literary work" includes a dramatic work or an arrangement of information in tabular form;

"photograph" means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, but does not include a part of an audiovisual work;

"publish" has the meaning given by section *four*;

"registered collecting society" means a collecting society registered by the Registrar under section *twenty-two*;

"Registrar" means the Registrar of Copyright appointed under section *fifty-four*;

"sound recording" means-

- (a) a recording of sounds, from which the sounds may be reproduced;  
or
- (b) a recording of the whole or any part of a literary or musical work, from which sounds reproducing the work may be produced;

regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced;

"substantial part" includes any part of a work which on its own can be identified as a part of the work by someone who is familiar with the work;

"unknown authorship" has the meaning given by section *three*;

"work" means a product of creativity in a category referred to in section *eight*.

3. (1) For the purposes of this Act-

Works of unknown  
authorship and joint  
authorship

- (a) a work is of unknown authorship if the identity of none of the authors is known;
- (b) subject to paragraph (c), the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; and
- (c) the identity of an author that has once been known shall not subsequently be regarded as unknown.

(2) For the purposes of this Act, a work is of joint authorship if it is produced by the collaboration of two or more authors and the contribution of each author is not distinct from that of the other author or authors.

(3) Unless the context requires otherwise, a reference in this Act to the author of work shall, in relation to a work of joint authorship, be read as a reference to all the authors of the work.

4. (1) For the purposes of this Act, a work, other than a broadcast or cable program, is published when copies of the work are made available to the public, whether for gain or not.

Publication and first  
publication

(2) For the purposes of this Act, the first publication of a work, other than a broadcast or cable program, is-

- (a) the earliest publication of the work made with the authority of the copyright owner; or
- (b) any publication of a work made with the authority of the copyright owner within thirty days after the earliest such publication.

(3) For the purposes of this section, any distribution or circulation of a work by way of sale or rental constitutes making copies of the work available to the public.

(4) The following shall not constitute publication for the purposes of this Act:

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- (a) in the case of a literary or musical work-
  - (i) the performance of the work; or
  - (ii) the broadcasting of the work or its inclusion in a cable program service (otherwise than for the purposes of an electronic retrieval system);
  
- (b) in the case of an artistic work-
  - (i) the exhibition of the work;
  - (ii) the making available to the public of a graphic work representing, or of photographs of, a work of architecture in the form of a building, or model for a building, a sculpture or a work of artistic craftsmanship;
  - (iii) the making available to the public of a film including the work; or
  - (iv) the broadcasting of the work or its inclusion in a cable program service (otherwise than for the purposes of an electronic retrieval system);
  
- (c) in relation to an audiovisual work or sound recording-
  - (i) the showing or playing of the work in public; or
  - (ii) the broadcasting of the work or its inclusion in a cable program service (otherwise than for the purpose of an electronic retrieval system).

5. Subject to section *fifty-eight*, this Act shall apply in relation to works whether created before or after the commencement of this Act. Application to all existing works

6. This Act shall bind the Republic. This Act binds the Republic

PART II

COPYRIGHT

NATURE OF COPYRIGHT

7. Copyright is a property right which shall subsist in accordance with this Act in the products of creativity specified in section *eight*. Copyright a form of property

8. (1) The products of creativity in which copyright may subsist under this Act are the following categories of works: Categories of works in which copyright subsists

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- (a) original-
  - (i) literary works;
  - (ii) musical works;
  - (iii) artistic works; or
  - (iv) computer programs;
- (b) compilations;
- (c) audiovisual works;
- (d) sound recordings;
- (e) broadcasts;
- (f) cable programs;
- (g) typographical arrangements of published editions of literary works.

(2) Copyright shall not subsist in a Bill introduced into Parliament or in an Act of Parliament.

(3) Copyright shall not subsist in a literary or musical work or in a computer program unless and until it is recorded in writing or in some other form, and a reference in this Act to the time of making of such a work is a reference to the time at which it is so recorded.

(4) Copyright shall subsist in a work within one of the categories specified in sub-section (1) only if the qualifying conditions specified in section *nine* in respect of that category are fulfilled.

**9. (1)** Copyright shall subsist in-

Qualifying conditions

- (a) a work of any category specified in section *eight*, other than a typographical arrangement of a published edition, if, at the time of completion of the work, the author of the work was-
  - (i) a citizen of, or habitually resident in, Zambia or a convention country; or
  - (ii) a body corporate incorporated in Zambia or a Convention country;
- (b) a literary, musical or artistic work, a compilation, a computer program, an audiovisual work or a typographical arrangement of a published edition, which is made or first published in Zambia or a Convention country;

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- (c) a sound recording which is made or first published in Zambia or a Convention country;
- (d) a broadcast which is first transmitted from a place in Zambia or a Convention country; or
- (e) a cable program service which is first transmitted from a place in Zambia or a Convention country.

(2) In the case of a work of joint authorship-

- (a) the reference in paragraph (1) (a) to the author shall be read as a reference to any of the authors; and
- (b) where the work qualifies for copyright protection only under that paragraph, only those of the authors who satisfy the requirements of that paragraph shall be taken into account for the purposes of-
  - (i) section *ten* (first ownership of copyright);
  - (ii) section *twelve* to *fifteen* (duration of copyright); and
  - (iii) sub-section (3) of section *twenty-one* (acts which do not constitute infringements).

**10.** (1) The first ownership of copyright under this section shall be subject to any agreement under sub-section (3) of section *eleven* to assign the ownership of a copyright expected to arise in the future. First ownership of copyright

(2) Subject to this section, the author of a work shall be the first owner of the copyright which subsists under this Act in the work.

(3) Where a work, other than a broadcast or a cable program, is-

- (a) made by the author in the course of his employment; or
- (b) made by the author on the commission of some other person;

the employer or the person who commissioned the work shall be the first owner of the copyright.

(4) Where a work was completed in a convention country other than Zambia, the law of that country in relation to first ownership of copyright shall apply.

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**11.** (1) Copyright shall be transferable by assignment, by testamentary disposition or by operation of law. Transfer of copyright

(2) An assignment of copyright may be limited by reference to-

- (a) one or more particular acts which the copyright owner has the exclusive right to authorise under this Act;
- (b) a part of the period for which the copyright subsists under this Act; or
- (c) a specified country or geographic area.

(3) Copyright which is expected to arise in the future may be assigned.

(4) An assignment of copyright shall be in writing signed by or on behalf of the assignor.

DURATION OF COPYRIGHT

**12.** (1) Subject to this section, copyright in a literary, musical or artistic work or compilation shall expire at the end of the period of fifty years from the end of the calendar year in which the author dies. Literary, musical and artistic works

(2) If the work is produced by a public officer or employee of the Government of Zambia or of a Convention country in the course of his employment, and the Government concerned is the first owner of the copyright in the work, the copyright in the work shall expire at the end of the period of fifty years from the end of the calendar year in which the work is made.

(3) If the work is of unknown authorship, the copyright in the work shall expire at the end of the period of fifty years from the end of the calendar year in which the work is first published, unless the identity of the author of the work becomes known before that date.

(4) In the case of a work of joint authorship-

- (a) the reference in sub-section (1) to the death of the author shall be read as a reference to the death of the last to die of the authors whose identity is known; and

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- (b) the reference in sub-section (3) to the identity of the author becoming known shall be read as a reference to the identity of any of the authors becoming known.

**13.** Copyright in an audiovisual work or sound recording shall expire-

Audiovisual works and sound recordings

- (a) at the end of the period of fifty years from the end of the calendar year in which it is made; or
- (b) at the end of the period of fifty years from the end of the calendar year in which it is first published, if it is published within the period referred to in paragraph (a).

**14.** Copyright in a broadcast or cable program shall expire at the end of the period of fifty years from the end of the calendar year in which the broadcast or cable program was first transmitted.

Broadcasts and cable programs

**15.** Copyright in a computer program shall expire at the end of the period of fifty years from the end of the calendar year in which the program was first published.

Computer programs

**16.** Copyright in the typographical arrangement of a published edition shall expire at the end of the period of twenty-five years from the end of the calendar year in which the edition was first published.

Typographical arrangements

INFRINGEMENT OF COPYRIGHT

**17.** (1) The owner of the copyright in a work shall have, in accordance with this Act, the exclusive right to do, or to authorise others to do, in Zambia or on any ship or aircraft registered in Zambia, the acts (in this Act called "controlled acts") specified in this section in relation to each category of work.

Acts controlled by copyright

(2) The controlled acts in relation to a literary or musical work or to a compilation or computer program are-

- (a) the publication;
- (b) the reproduction in any material form;
- (c) the broadcasting or inclusion in a cable program service;
- (d) the communication to the public by any other means;
- (e) the importation into Zambia of copies; and

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(i) the adaptation;  
of the work, together with any of the controlled acts in paragraphs (a) to (e) in relation to an adaptation of the work.

(3) the controlled acts in relation to an artistic work are-

- (a) the reproduction in any material form;
- (b) the publication;
- (c) the broadcasting or inclusion in a cable program service;
- (d) the communication to the public by any other means; and
- (e) the importation into Zambia of copies;  
of the work.

(4) The controlled acts in relation to an audiovisual work or sound recording are-

- (a) the adaptation;
- (b) the reproduction;
- (c) the publication;
- (d) the broadcasting or inclusion in a cable program;
- (e) the communication to the public by any other means;  
and
- (f) the importation into Zambia of copies;  
of the audiovisual work or sound recording, together with any of the controlled acts in paragraphs (b) to (e) in relation to an adaptation of the audiovisual work or sound recording.

(5) the Controlled acts in relation to a broadcast or cable program are-

- (a) the reproduction;

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- (b) in the case of a broadcast-
  - (i) the re-broadcasting; or
  - (ii) the inclusion in a cable program;
  
- (c) in the case of a cable program-
  - (i) the broadcasting; or
  - (ii) the inclusion in another cable program; and
  
- (d) the communication to the public by any other means;  
of the broadcast or cable program.

(6) The controlled acts in relation to the typographical arrangement of a published edition are-

- (a) the reproduction; and
  
- (b) the importation into Zambia of copies;  
of the arrangement.

(7) The doing of an act controlled by the copyright in a work includes the doing of that act in relation to a substantial part of the work.

**18.** Subject to section *twenty-one*, copyright in a work is infringed by a person who, without the consent of the owner of the copyright, does, or authorises another person to do, a controlled act in relation to the work.

Copyright is infringed by the doing of a controlled act

**19.** Subject to section *twenty-one*, copyright in a work is also infringed by a person who, without the consent of the copyright owner-

Copyright is infringed by importation, etc. of infringing copies

- (a) imports into Zambia otherwise than-
  - (i) for his private and domestic use; and

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- (ii) as items accompanying him on his entry into Zambia;
- (b) possesses in the course of trade or business;
- (c) sells or lets for hire, or offers or exposes for sale or hire;
- (d) exhibits in public or distributes, in the course of trade or business; or
- (e) distributes, otherwise than in the course of trade or business, to such an extent as to affect prejudicially the owner of the copyright;

articles which are infringing copies of the work, unless he satisfies the court that he did not know and had no reasonable grounds for knowing that the articles were infringing copies of the work.

**20.** (1) Subject to section *twenty-one*, copyright in a work is also infringed by a person who, without the consent of the owner of the copyright-

Copyright is infringed by making or trading in articles for making infringing copies, or transmission for the purpose of making infringing copies

- (a) makes or causes to be made;
- (b) imports into Zambia; or
- (c) sells or lets for hire, or offers or exposes for sale or hire;

an article specifically designed or adapted for making copies of that particular work, unless he satisfies the court that he did not know and had no reasonable grounds for knowing that the article would be used for making such infringing copies.

(2) Copyright in a work is infringed by a person who, without the licence of the copyright owner, transmits the work by electronic means (otherwise than by broadcasting or by means of a cable transmission service) knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Zambia or elsewhere.

**21.** (1) Subject to sub-section (2), the following acts shall not constitute infringement of copyright:

Acts which do not constitute infringements

- (a) fair dealing with a work for private study or for the purposes of research done by an individual for his personal purposes, otherwise than for profit;
- (b) fair dealing with a work for the purposes of criticism or review, whether of that work or any other work, provided there is a sufficient acknowledgement;

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- (c) fair dealing with a work for the purposes of reporting current events-
  - (i) in a newspaper, magazine or similar periodical, provided there is a sufficient acknowledgement;  
or
  - (ii) by broadcasting or by inclusion in a cable program service or by its use in an audiovisual work;
  
- (d) the reproduction of a work for the purposes of judicial proceedings, or of any other proceedings before a tribunal established by law, or for the purposes of a report of judicial proceedings or any other such proceedings;
  
- (e) the reading or recitation in public of any reasonable extract from a published literary work, provided there is a sufficient acknowledgement;
  
- (f) the reproduction of a work for the purposes of the education system of Zambia-
  - (i) by a teacher or pupil in the course of instruction, provided that the reproduction is not made by means of an appliance capable of producing multiple copies; or
  - (ii) as part of the questions to be answered in an examination; or
  - (iii) in answer to such questions;
  
- (g) the performance of a dramatic work by the staff and students of a school or other educational institution for the purposes of the education system of Zambia in the course of the activities of the school or institution, if the audience is composed exclusively of-
  - (i) the staff and students of the school or institution; or
  - (ii) the parents and guardians of the students; or
  - (iii) other persons directly connected with the activities of the school or institution;
  
- (h) the incidental inclusion of a work in an artistic work, audiovisual work, sound recording, broadcast or cable program;
  
- (i) the publishing, broadcasting, inclusion in a cable program service, or the communication to the public by any other means of anything whose making was, by virtue of paragraph (h), not an infringement of the copyright;
  
- (j) the reproduction of a work by a library or archive designated for the purposes of this paragraph by the Minister for the purpose of making a copy of any item in the permanent collection of the library or archive-
  - (i) in order to preserve or replace that item by placing the copy in permanent collection either in addition to or in place of the item; or
  - (ii) in order to replace in the permanent collection of another designated library or archive an item which has been lost, destroyed or damaged:

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Provided that it is not reasonably practicable to purchase a copy of the item in question;

- (k) the reproduction of a computer program made from a copy of the program by the owner of that copy for the purpose of being used in place of that copy in the event that it is lost, destroyed or corrupted;
- (l) the recording of a broadcast or cable program by an individual for the purpose of allowing the individual to listen to or view the broadcast or program at a time more convenient to him.

(2) An act which-

- (a) conflicts with the normal commercial exploitation of a work; or
- (b) unreasonably prejudices the legitimate commercial interests of the owner of the copyright in a work;

shall not, for the purposes of sub-section (1)-

- (i) be treated as fair dealing with the work; or
- (ii) be treated as an act to which paragraph (f) of sub-section (1) applies.

(3) Copyright in a literary, musical or artistic work is not infringed by an act done at a time when, or in pursuance of arrangements made at a time when-

- (a) the work is of unknown authorship; and
- (b) it is reasonable to assume-
  - (i) that copyright has expired; or
  - (ii) that the author died fifty years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

(4) For the purposes of this section, "sufficient acknowledgement" means an acknowledgment identifying the work in question by its title or other description and, unless the work is anonymous or the author has previously agreed or required that no acknowledgement of his name should be made, also identifying the author.

COLLECTING SOCIETIES

**22. (1)** For the purposes of this Act-

"collecting society" means an association, partnership or body corporate whose principal purpose, or one of whose principal purposes, is the representation of copyright owners in the negotiation and administration of collective copyright agreements;

"collective copyright agreement" means an agreement between a group of owners of copyrights and another person licensing the person to use material subject to any of the copyrights.

Collecting societies may be authorised to represent copyright owners

(2) A collecting society may apply to the Registrar for registration and, if the Registrar is satisfied that it qualifies under sub-section (1), he shall register it as such.

(3) The owner of a copyright may authorise a collecting society (whether or not registered) to negotiate and administer collective copyright licence agreements on behalf of the owner and other copyright owners.

(4) Sub-section (3) shall not have the effect of limiting any other right of an owner of a copyright under this Act.

**23. (1)** Where a dispute arises between a registered collecting society and a person who requires a licence from the collecting society regarding-

Disputes with registered collecting societies

(a) the decision of the collecting society whether or not to grant such a licence; or

(b) the terms and conditions on which the collecting society is prepared to grant the licence;

either party may refer the dispute to the Registrar for arbitration.

(2) Where a dispute has been referred to the Registrar under this section, the Registrar shall, in accordance with such procedure (if any) as may be prescribed-

(a) give both parties an opportunity to present their respective cases, either in person or through representatives, both orally and in writing; and

(b) after hearing both parties, make such written orders as he considers reasonable.

(3) An order by the Registrar under this section shall be binding on the parties.

**MORAL RIGHTS**

24. (1) This section applies in relation to-

Moral rights

- (a) the author of a literary, musical or artistic work, other than a computer-generated work; or
- (b) the director of an audiovisual work;

other than a work to which sub-section (3) of section *ten* applied.

(2) Notwithstanding the transfer of the copyright, or any part of it, the author or director shall have the right-

- (a) to be identified as the author or director of the works;  
and
- (b) to object to any distortion, mutilation or other modification or derogatory action in relation to the work that would be prejudicial to his honour or reputation.

(3) The rights provided by this section shall expire on the death of the author or director.

(4) Where there is a dispute regarding the exercise by the author or director of his rights under this section, and the dispute is not resolved by negotiation between the parties, the dispute may be referred by any of the parties to the Registrar.

(5) After giving the parties to the dispute an opportunity of submitting representations, the Registrar shall give, in writing, such directions for settling the dispute as, in the circumstances, he considers reasonable, and the directions shall be binding on all parties to the dispute.

(6) The Court may, at the suit of the author or director, and subject to the provisions of the State Proceedings Act, grant an injunction- Cap. 71

- (a) pending a settlement of dispute by the Registrar, in terms-
  - (i) prohibiting the doing of any disputed act in relation to the work concerned; or
  - (ii) prohibiting the doing of any disputed act in relation to the work concerned unless a disclaimer is made, in such terms and in such manner as the Court may approve, dissociating the author from the treatment of the work; or

- (b) enforcing a settlement by the Registrar.

### PART III

#### ENFORCEMENT OF COPYRIGHT

**25.** (1) An infringement of copyright shall be actionable in the Court at the suit of the owner of the copyright.

Infringement  
actionable by copyright  
owner

(2) Subject to this section, in an action for infringement of copyright, all such relief by way of damages, injunctions, accounts or otherwise shall be available to the plaintiff as is available in respect of the infringement of any other property right.

(3) In an action under this section, proof of actual damage shall not be required.

(4) In an action under this section, the plaintiff shall not be entitled to damages if the defendant shows that he reasonably believed that no copyright subsisted in the work.

(5) No injunction shall be issued under sub-section (2) which requires a completed or partly built building to be demolished or which prevents the completion of a partly built building.

**26.** Where a person-

- (a) has an infringing copy of a work in his possession, custody or control in the course of a trade or business; or
- (b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work;

Right to delivery up of  
infringing copies

the court may, on the application of the owner of the copyright in the work, order that the infringing copy or the article be forfeited and delivered up to the owner of the copyright.

**27.** (1) The owner of the copyright in a literary or musical work, compilation, audiovisual work or sound recording, may, if the work has been published, give notice in writing to the Controller of Customs-

Restriction on  
importation of  
infringing copies

(a) that he is the owner of the copyright in the work; and

(b) that he requests the Controller to treat as prohibited goods, during the period specified in the notice, copies of the work which are infringing copies.

(2) The period specified in a notice under sub-section (1) shall not exceed-

- (a) five years; or
- (b) the remainder of the duration of the copyright;

whichever is less.

(3) The Controller of Customs may require a notice given to him under this section to be supported by such evidence as he thinks necessary.

(4) Where the Controller of Customs is satisfied that there is a reasonable probability that attempts may be made to import infringing copies of the work, and that it is in the public interest that the copies be made prohibited imports-

- (a) he shall issue a notice in the *Gazette* to the effect that, during a specified period (being a period not longer than that specified in the application) infringing copies of the work concerned shall be prohibited imports; and
- (b) during the period so specified-
  - (i) a person shall not import infringing copies of the work concerned, otherwise than for his private and domestic use; and
  - (ii) any infringing copy imported in contravention of sub-paragraph (i) shall be subject to forfeiture.

**28.** (1) Any person who during the subsistence of copyright in a work-

Offences

- (a) makes for sale or hire any infringing copy;
- (b) sells, lets for hire or by way of trade, exposes or offers for sale or hire any infringing copy;
- (c) distributes infringing copies;
- (d) possesses, otherwise than for his private and domestic use, any infringing copy;
- (e) by way of trade, exhibits in public any infringing copy;

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- (f) imports into Zambia, otherwise than-
  - (i) for his private and domestic use; and
  - (ii) as items accompanying him on his entry into Zambia;

an infringing copy; or

- (g) makes or has in his possession any article used or intended to be used for the purpose of making infringing copies;

shall, unless he satisfies the Court that he had acted in good faith and had no reasonable grounds for supposing that copyright would or might thereby be infringed, be guilty of an offence and shall be liable-

- (i) on a first conviction, to a fine not exceeding-

- (a) fifty thousand penalty units; or

- (b) ten penalty units for each infringing copy;

whichever is greater, or to imprisonment for a term not exceeding five years, or to both; or

- (ii) on a subsequent conviction, to a fine not exceeding-

- (a) one hundred thousand penalty units; or

- (b) twenty penalty units for each infringing copy;

whichever is greater, or to imprisonment for a term not exceeding ten years, or to both.

(2) A person who makes or imports for sale or hire any article specifically designed or adapted to circumvent the operation of a device or system designed or adapted to prevent or control the reproduction of a recording of a work shall be guilty of an offence and shall be liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) A person who dishonestly receives a program included in a broadcast or in a cable program service provided from a place in Zambia with intent to avoid payment of any charge applicable to the reception of the program shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years or to both.

(4) Where a person is charged with an offence against this section, the court may, whether or not he is convicted of the offence, order that any article in his possession which appears to the court to be an infringing copy, or to be an article used or intended to be used for making infringing copies or for the commission of an offence against this section, shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court thinks fit.

*(As amended by Act No. 13 of 1994)*

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**29.** In any proceedings brought under this Act, a person who has in his possession, custody or control five or more infringing copies of a work in the same form shall be presumed to be in possession of, or to have imported, the copies otherwise than for private or domestic use.

Presumption as to possession of copies

**30.** (1) This section shall apply in proceedings for an infringement of the copyright in a work.

Presumptions as to existence of copyright

(2) Copyright shall be presumed to subsist in the work if the defendant does not put in issue the question whether copyright subsists therein.

(3) Where the subsistence of the copyright is proved or admitted or is presumed in accordance with sub-section (2), the plaintiff shall be presumed to be the owner of the copyright, if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership thereof.

(4) If the question arises whether an article is an infringing copy of a work and it is shown-

(a) that the article is a copy of the work; and

(b) that copyright subsists in the work or has subsisted at any time;

it shall be presumed that the article was made at a time when copyright subsisted in the work.

**31.** (1) This section shall apply in proceedings for an infringement of the copyright in a work other than a broadcast or cable program.

Presumptions as to authorship and date of publication

(2) Where a published work, in its published form, states, or carries a label or other mark that states-

(a) that a named person was the author of the work;

(b) in the case of an audiovisual work, that a named person was the director or producer of the audiovisual work;

(c) that a named person was the owner of the copyright at a specified time, being a time not later than the time of publication; or

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- (d) that the work was first published in a specified year or in a specified country;

the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct.

(3) Where an audiovisual work, whether published or not, is shown in public, broadcast or included in a cable program service and the work as so shown, broadcast or included in the cable program service states-

- (a) that a named person was the director or producer of the work;
- (b) that a named person was the owner of the copyright at a specified time, being a time not later than the time of showing, broadcast or inclusion in the program; or
- (c) that the work was first published in a specified year or in a specified country;

the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct.

(4) Where an original artistic work carries a name purporting to be the name of the author, that person shall be presumed to be the author of the work.

(5) In the case of a work alleged to be a work of joint authorship, sub-sections (1), (2) and (3) shall apply in relation to each person alleged to be one of the authors of the work, as if references in those sub-sections to the author were references to one of the authors.

(6) Where, in an action for infringement in respect of a literary, musical or artistic work, a compilation or a computer program, sub-section (1) does not apply, but-

- (a) the work qualifies for copyright protection by virtue of the country of its first publication; and
- (b) a name purporting to be that of the publisher appeared on copies of the work as first published;

then, subject to sub-section (1), the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.

(7) Where, in an action for infringement in respect of a literary, musical or artistic work, a compilation or a computer program, it is established that the author of the work is dead-

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- (a) the work shall be presumed to be an original work; and
- (b) if it is alleged by the plaintiff that a publication on a specified date in a specified country was the first publication of the work, that publication shall be presumed to have been the first publication of the work and to have taken place in that country and on that date.

**32.** (1) Subject to this section, an affidavit or statutory declaration by any person claiming to be the owner of the copyright in any work eligible for copyright under this Act or by his agent, stating that-

Affidavit admissible in evidence

- (a) at a time specified therein copyright subsisted in the work;
- (b) the person is the owner of the copyright; and
- (c) a copy of the work annexed thereto is a true copy thereof;

shall be admissible in any proceedings under this Act as *prima facie* evidence of the facts contained therein.

(2) Where the affidavit or declaration is made by an agent of the person claiming to be the copyright owner, the document setting forth the agent's authority to act in the matter shall be annexed to the affidavit or declaration.

(3) If the ownership of the copyright is claimed by a body of persons (whether corporate or unincorporated), the affidavit or declaration shall be made by a responsible officer of the body.

(4) Where the affidavit or declaration is made outside Zambia, the signature of the person before whom it is made shall be authenticated in accordance with the Authentication of Documents Act.

Cap. 75

**33.** (1) Where information is given on oath to a Magistrate that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any article used or intended to be used for making infringing copies, or any other article, book or document by means of or in relation to which an offence against section *twenty-eight* has been committed, the Magistrate may issue a warrant under his hand by virtue of which any police officer, of or above the rank of Inspector, named or referred to in the warrant may enter the house or premises at any reasonable time by day or night and search for and seize any such copy, contrivance, article, book or document.

Issue of warrants to enter, search and seize

(2) A police officer who seizes anything under this section shall, within forty-eight hours after the seizure, produce the same before a Magistrate, and upon the production the Magistrate shall direct the same to be kept in the custody of the officer in charge of the police for the purpose of any investigation or prosecution under this Act.

**34.** (1) Any police officer of or above the rank of Inspector may, in the exercise of powers conferred by or under section *thirty-three*, if it is necessary so to do-

Power to use force,  
detain persons

- (a) break open any outer or inner door of a dwelling house or any other premises;
- (b) forcibly enter any part of the premises;
- (c) remove by force any obstruction to entry, search, seizure or removal; and
- (d) detain every person found on the premises until the premises have been searched.

(2) Where a forcible entry is made under this section, the police officer concerned shall make arrangements to ensure that the premises are left as secure as they were before the entry.

**35.** (1) Where it appears to a police officer exercising powers under this Part that it is not practical to seize and remove from where they are found any thing or document that he is entitled to seize in the exercise of his powers, by reason of their nature, size or amount, he may by any means seal the things or documents in the premises or container in which they are found.

Sealing of things

(2) A person who, without lawful authority, breaks, tampers with or damages such a seal or removes things or documents so sealed shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or imprisonment for a term not exceeding two years, or to both.

*(As amended by Act No. 13 of 1994)*

**36.** (1) A police officer seizing or sealing any infringing copy, contrivance, article, book or document under this Part shall prepare a list of the things seized or sealed and forthwith deliver a copy signed by him to the occupier, or his agents or servants present in the premises.

List of things seized or  
sealed

(2) If the premises are unoccupied, the police officer shall, wherever possible, affix a list of the things seized or sealed on a surface of the premises.

**37.** For the purposes of this Act, including any proceedings for infringement or for an offence under this Act, where a package, container or other receptacle containing articles alleged to be infringing copies or to be otherwise subject to seizure, has been seized, it shall be sufficient to examine a sample consisting of one percent of the articles, or five articles, whichever is the smaller number; and if it is established that all the articles in the sample are identical with each other, it shall be presumed that the remainder of the articles in the package, container or receptacle are identical with the articles in the sample.

Articles in containers  
need only to examine  
sample

**38.** Any person who-

Obstruction to search

- (a) refuses a police officer access to any place when the officer is seeking to exercise his powers under this Act;
- (b) assaults, obstructs, hinders or delays a police officer in effecting any entry which the officer is entitled to effect under this Act, or in the execution of any duty imposed power conferred on him by this Act;
- (c) refuses to give to a police officer any information relating to an offence or suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give; or
- (d) knowingly gives false information to a police officer seeking to exercise his powers under this Act;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding twelve months, or to both.

*(As amended by Act No. 13 of 1994)*

#### PART IV

##### REGISTER OF COPYRIGHTS

**39.** (1) For the purposes of this Part, where the copyright in a work is owned by more than one person (otherwise than as joint owners) the rights held by each of those persons shall be regarded as a separate copyright.

The register of  
copyrights

(2) The Registrar shall keep a register of copyrights in works other than broadcasts or cable programs.

(3) The register, and copies of the works concerned, shall be made available for inspection by members of the public on payment of a fee of not more than twenty fee units, or such larger amounts as may be prescribed in the regulations.

(4) The existence and enforceability of a copyright shall be independent of whether or not it is registered under this Part.

40. (1) If the owner of a copyright in a work wishes to register it, he shall lodge with the Registrar- Registration and issue of certificate

- (a) a claim for registration, in a form approved by the Registrar;
- (b) a copy of the work in which copyright is claimed;
- (c) particulars of-
  - (i) the owner of the copyright;
  - (ii) the type of copyright claimed and any limitations on the copyright held by that owner;
  - (iii) the date on which the copyright arose;
  - (iv) the person from whom the copyright was acquired, if the owner of the copyright is not the first owner of the copyright; and
  - (v) any other matters required by the approved form; and
- (d) a statutory declaration that he is the owner of the copyright described.

(2) Where a claim is for copyright in relation to a work already on the register, the Registrar may waive the requirement that a copy of the work be lodged with the application.

(3) On receiving a claim in accordance with this section, the Registrar shall register the copyright, assign it an identifying number and issue a certificate of registration stating-

- (a) that on the date specified in the certificate, the person named in the certificate claimed the copyright in the work;
- (b) the type of copyright claimed and any limitations;
- (c) the date on which the copyright arose; and
- (d) that a copy of the work may be inspected at the office of the Registrar.

(4) Where any particulars in relation to a registered copyright change, the owner of the copyright shall lodge details of the changed particulars with the Registrar.

**41.** Where a copyright is registered under this Part in the name of a person, the Registrar shall not transfer the registration to the name of another person except- Transfer of registration

- (a) on lodgement with the Registrar of an instrument, in a form approved by the Registrar, evidencing the assignment of the copyright to the other person and executed by both the assignor and assignee or by persons duly authorised on behalf of the assignor or assignee; or
- (b) on presentation to the Registrar of such evidence as he may reasonably require that ownership of the copyright has devolved on the other person by reason of his being the legal personal representative, receiver or trustee in bankruptcy of the first person, or otherwise by operation of law.

**42.** Where a copyright is registered under this Part in the name of a person, and the court, on the application of another person, is satisfied that the other person is the owner of the copyright, the court may order that the Registrar rectify the register in the manner specified in the order. Rectification of register

**43.** Where- Issue of new certificate

- (a) registration is transferred;
- (b) the register is ordered to be rectified under this Part;
- (c) particulars relating to a registered copyright are varied so that the certificate is no longer accurate; or
- (d) the Registrar is satisfied that a certificate has been lost or destroyed;

the Registrar shall issue a new certificate of registration worded to meet the circumstances of the case.

## PART V

### RIGHTS IN PERFORMANCES

**44.** In this Part, unless the context otherwise requires- Interpretation

"performer's right" means the right of a performer conferred by section *forty-five* in relation to a performance;

"performance" means-

- (a) a performance of drama, dance or mime;
- (b) a musical performance;
- (c) a reading or recitation of a literary work; or

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(d) a performance of a variety act or any similar presentation;  
insofar as it is a live performance given by one or more individuals;

"recording right" means the right of a performance recorder conferred by section *forty-five* in relation to a performance;

"qualifying person" means a person who is-

- (a) a citizen or habitual resident of; or
- (b) a body corporate incorporated in;

Zambia or another country to which the provisions of this Part have been applied under section *fifty-six*;

"qualifying performance" means a performance-

- (a) given by a person who is a citizen of, or habitual resident in; or
- (b) which takes place in;

Zambia or another country to which the provisions of this Part have been applied under section *fifty-six*.

**45.** (1) A performer shall have, in accordance with this Part, the right, in this Act called the "performer's right", to exploit a qualifying performance by him by means of the recording, broadcast or inclusion in a cable program service of the performance.

Conferment of performer's right and recording right

(2) A qualifying person who-

- (a) has the benefit of an exclusive recording contract in relation to a performance; or
- (b) has been licensed by a person who-
  - (i) has the benefit of an exclusive recording contract in relation to the performance; and
  - (ii) is not a qualifying person;

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to make recordings of the performance with a view to their being sold, let for hire or shown or played to the public;

whether or not the performance is a qualifying performance, shall have a right, in this Act called the "recording right", to exploit the qualifying performance by him by means of the recording, broadcast or inclusion in a cable program service of the performance, in accordance with this Part and the exclusive recording contract.

(3) For the purposes of this section, a person has an "exclusive recording contract" with a performer if the person is entitled under the contract to the exclusion of all other persons (including the performer) to make recordings of one or more of his performances with a view to the recordings being sold or let for hire, or shown or played in public.

**46.** (1) Performer's right shall be a property right, but shall not be assignable or transferrable except on death by testamentary disposition or by the operation of law. Transfer of rights

(2) Recording right shall not be assignable or otherwise transferable.

(3) Nothing in this section shall affect the creation of recording rights by the operation of sub-section (2) of section *forty-five* on licensing agreements.

**47.** Performer's right and recording right in relation to a performance shall subsist for fifty years from the end of the calendar year in which the performance takes place. Duration of rights in performances

**48.** (1) Performer's right in relation to a performance is infringed by a person who, without the consent of the performer- Infringement of performer's rights

(a) makes, otherwise than for his private and domestic use, a recording of the whole or any substantial part of a qualifying performance; or

(b) broadcasts live, or includes live in a cable program service, the whole or any substantial part of a qualifying performance.

(2) Performer's right in relation to a performance is infringed by a person who, without the consent of the performer-

(a) shows or plays in public; or

(b) broadcasts or includes in a cable program service;

the whole or any substantial part of the performance by means of a recording which was, and which that person knows or has reason to believe was, made without the consent of the performer.

(3) Performer's right in relation to a performance is infringed by a person who, without the consent of the performer-

- (a) imports into Zambia otherwise than for his private and domestic use; or
- (b) in the course of business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes;

a recording of a qualifying performance which was, and which that person knows or has reason to believe was, made without the consent of the performer.

**49.** (1) Recording right in relation to a performance is infringed by a person who, without the consent of either the performer or the holder of the recording rights, makes, otherwise than for his private and domestic use, a recording of the whole or any substantial part of the performance.

Infringement of recording rights

(2) Recording right in relation to a performance is infringed by a person who-

- (a) without the consent of the holder for the time being of the recording rights; and
- (b) in the case of a qualifying performance, without the consent of the performer;

shows or plays in public, or broadcasts or includes in a cable program service, the whole or any substantial part of the performance by means of a recording which was, and which that person knows or has reason to believe was, made without the consent of one of those persons.

(3) Recording right in relation to a performance is infringed by a person who-

- (a) without the consent of the holder for the time being of the recording rights; and
- (b) in the case of a qualifying performance, without the consent of the performer;

imports into Zambia otherwise than for his private and domestic use, or in the course of business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes a recording of the performance which was, and which that person knows or has reason to believe was, made without the consent of one of those persons.

**50.** (1) Subject to sub-section (2), the following acts shall not constitute infringement of performer's right or recording right:

Acts which do not constitute infringements

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- (a) fair dealing with a performance or recording for private study or for the purposes of research done by an individual for his personal purposes, otherwise than for profit;
- (b) fair dealing with a performance or recording for the purposes of criticism or review, whether of that performance or any other performance, provided there is a sufficient acknowledgement;
- (c) fair dealing with a performance or recording for the purposes of reporting current events by broadcasting or by inclusion in a cable program service or by its use in an audiovisual work;
- (d) the recording of a performance or reproduction of a recording for the purposes of judicial proceedings, or of any other proceedings before a tribunal established by law, or for the purposes of a report of judicial proceedings or any other such proceedings;
- (e) the incidental inclusion of a recording in an audiovisual work, sound recording, broadcast or cable program;
- (f) the publishing, broadcasting, inclusion in a cable program service, or the communication to the public by any other means of anything the making of which was, under paragraph (e), not an infringement of performer's right or recording right.

(2) An act which-

- (a) conflicts with the normal commercial exploitation of a performance; or
- (b) unreasonably prejudices the legitimate commercial interests of the performer or holder of a recording right in a work;

shall not, for the purposes of sub-section (1), be treated as fair dealing.

(3) For the purposes of this section, "sufficient acknowledgement" means an acknowledgement identifying the performer.

**51. (1)** An infringement of performer's right shall be actionable in the court at the suit of the performer or his successor in title.

Infringement of performer's right is actionable

(2) An infringement of recording right shall be actionable in the court at the suit of the holder of the recording right.

(3) In an action under this section, all such relief by way of damages, injunctions, accounts or otherwise shall be available to the plaintiff as is available in respect of the infringement of any other property right.

**52.** A person who does an act which constitutes an infringement of performer's right or recording right in relation to a performance, knowing or having reason to believe that the act would constitute such an infringement shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Offence of infringing performer's or recording right

*(As amended by Act No. 13 of 1994)*

**53.** (1) A person who represents falsely that he is authorised by a person to give consent for the purposes of this Part in relation to a performance shall be guilty of an offence, and shall be punishable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding one year, or to both.

False representation of authority to give consent

(2) It shall be a defence to a charge under sub-section (1) if the defendant proves that he believed on reasonable grounds that he had the represented authority.

*(As amended by Act No. 13 of 1994)*

## PART VI

### MISCELLANEOUS

**54.** (1) There shall be a Registrar of Copyright, who shall be a public officer appointed under the Service Commissions Act.

Registrar of copyright  
Cap. 259

(2) The duties and functions of the Registrar shall be-

- (a) to monitor the activities of collecting societies;
- (b) to encourage and facilitate the development of collecting societies;
- (c) at the request of copyright owners or collecting societies, to examine cases of alleged copyright infringement and, where appropriate, to advise the Director of Public Prosecutions;
- (d) to provide information and advice on copyright matters to the Minister; and
- (e) to perform such other duties or functions as are provided for under this or any other Act.

(3) The Registrar shall be assisted by a staff of persons appointed under the Service Commissions Act. Cap. 259

**55.** (1) The Registrar may, subject to Articles II, III and IV of the Appendix to the Convention (reproduction in the Schedule), grant licences under this section for persons to translate or reproduce certain works.

Registrar may authorise translation and reproduction of works in certain cases

(2) Where-

(a) a work in printed or analogous form; or

(b) an audiovisual work produced solely for the purposes of systematic instruction;

is the subject of, or contains material the subject of, copyright under this Act and, at a time more than three years after its first publication, no translation has been made into a language in general use in Zambia, the Registrar may, on the application of a Zambian citizen or company incorporated in Zambia, grant that person the right to translate the work and reproduce the translation.

(3) The Registrar may on the application of a Zambian citizen or a company incorporated in Zambia grant the person the right to translate for the purposes of broadcasting, and to broadcast-

(a) a literary work subject to copyright; or

(b) any material subject to copyright contained in an audiovisual work produced solely for the purposes of systematic instruction.

(4) Where copies of a work-

(a) in printed or analogous form; or

(b) in audiovisual form;

have not been made available to the public in Zambia for a period of-

(i) three years, in the case of works of the natural and physical sciences, mathematics or technology;

(ii) seven years, in the case of works of fiction, poetry, drama or music or art books; or

- (iii) five years, in any other case;

the Registrar may, on the application of a Zambian citizen or a company incorporated in Zambia, grant the person the right to reproduce and distribute in Zambia copies of the work.

**56.** The regulations may extend the provisions of this Act, or specified provisions thereof, to works originating, or performances given, in another country provided that that country is a party to a relevant convention or treaty relating to copyright or other rights established by this Act to which Zambia is also a party.

Application of Act to works, etc. originating in other countries

**57.** (1) The Minister may, by statutory instrument, make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed, or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Regulations

(2) Without limiting the generality of sub-section (1), such regulations may be made on-

- (a) the administration of moral rights;
- (b) the administration of authorisations under section *fifty-five*;
- (c) the form and content of any application or other document required for the purposes of this Act; and
- (d) the payment of fees and charges in respect of any matter or anything done or supplied under this Act.

**58.** (1) No act done before the commencement of this Act shall constitute an infringement of copyright conferred by this Act or an offence against this Act.

Transitional provisions

(2) No act done before the commencement of this Act shall constitute an infringement of the rights conferred by section *twenty-four* (moral rights).

(3) Performer's right and recording right shall not subsist in any performance that took place before the commencement of this Act.

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(4) Where before the commencement of this Act any person has incurred any expenditure or liability in connection with or in contemplation of, the doing of an act in relation to a protected work or a performance in respect of which rights are conferred by this Act, being an act which prior to that date would have been lawful, nothing in this Act shall diminish or prejudice any rights or interests of that person which, in relation to that work or performance, are subsisting and valuable on the commencement of this Act, unless the person who, under this Act, is the owner of the copyright or the person having rights in the performance, agrees to pay such compensation as, in default of agreement, may be fixed by the Registrar.

(5) Where an act done before the commencement of this Act was then an infringement of copyright, proceedings in respect of that act may be taken as if this Act had not been passed.

Cap. 701

**59.** The Copyright Act is hereby repealed.

Repeal of Cap. 701  
old edition

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SCHEDULE  
(Section 54)

APPENDIX TO THE BERNE CONVENTION FOR THE PROTECTION OF LITERARY AND  
ARTISTIC WORKS

(SPECIAL PROVISIONS REGARDING DEVELOPING COUNTRIES)

ARTICLE I

*(Faculties Open to Developing Countries: 1. Availability of certain faculties; declaration; 2. Duration of effect of declaration; 3. Cessation of developing country status; 4. Existing stocks of copies; 5. Declaration concerning certain territories; 6. Limits of reciprocity)*

(1) Any country regarded as a developing country in conformity with the established practice of the General Assembly of the United Nations which ratifies or accedes to this Act, of which this Appendix forms an integral part, and which, having regard to its economic situation and its social or cultural needs, does not consider itself immediately in a position to make provision for the protection of all the rights as provided for in this Act, may, by a notification deposited with the Director General at the time of depositing its instrument of ratification or accession or, subject to Article V (1) (c), at any time thereafter, declare that it will avail itself of the faculty provided for in Article II, or of the faculty provided for in Article III, or of both those faculties. It may, instead of availing itself of the faculty provided for in Article II, make a declaration according to Article V (1) (a).

(2)(a) Any declaration under paragraph (1) notified before the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28 (2) shall be effective until the expiration of the said period. Any such declaration may be renewed in whole or in part for periods of ten years each by a notification deposited with the Director-General not more than fifteen months and not less than three months before the expiration of the ten years period then running.

(b) Any declaration under paragraph (1) notified after the expiration of the period of ten years from the entry into force of Articles 1 to 21 and this Appendix according to Article 28 (2) shall be effective until the expiration of the ten-year period then running. Any such declaration may be renewed as provided for in the second sentence of sub-paragraph (a).

(3) Any country of the Union which has ceased to be regarded as a developing country as referred to in paragraph (1) shall no longer be entitled to renew its declaration as provided in paragraph (2), and, whether or not it formally withdraws its declaration, such country shall be precluded from availing itself of the faculties referred to in paragraph (1) from expiration of the ten-year period then running or from the expiration of a period of three years after it has ceased to be regarded as a developing country, whichever period expires later.

(4) Where, at the time when the declaration made under paragraph (1) or (2) ceases to be effective, there are copies in stock which were made under a licence granted by virtue of this Appendix, such copies may continue to be distributed until their stock is exhausted.

(5) Any country which is bound by the provisions of this Act and which has deposited a declaration or a notification in accordance with Article 31 (1) with respect to the application of this Act to a particular territory, the situation of which can be regarded as analogous to that of the countries referred to in paragraph (1), may, in respect of such territory, make the declaration referred to in paragraph (1) and the notification of renewal referred to in paragraph (2). As long as such declaration or notification remains in effect, the provisions of this Appendix shall be applicable to the territory in respect of which it was made.

(6)(a) The fact that a country avails itself of any of the faculties referred to in paragraph (1) does not permit another country to give less protection to works of which the country of origin is the former country than it is obliged to grant under Articles 1 to 20.

(b) The right to apply reciprocal treatment provided for in Article 30 (2) (b), second sentence, shall not, until the date on which the period applicable under Article I (3) expires, be exercised in respect of works the country of origin of which is a country which has made a declaration according to Article V (1) (a).

ARTICLE II

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*(Limitations on the Right of Translation: 1. Licences granted by competent authority; 2. to 4. Conditions allowing the grant of such licences; 5. Purposes for which licences may be granted; 6. Termination of licences; 7. Works composed mainly of illustrations; 8. Works withdrawn from circulation; 9. Licences for broadcasting organisations)*

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled, so far as works published in printed or analogous forms of reproduction are concerned, to substitute for the exclusive right of translation provided for in Article 8 a system of non-exclusive and non-transferable licences, granted by the competent authority under the following conditions and subject to Article IV.

(2) (a) Subject to paragraph (3), if, after the expiration of a period of three years, or of any longer period determined by the national legislation of the said country, commencing on the date of the first publication of the work, a translation of such work has not been published in a language in general use in that country by the owner of the right of translation, or with his authorisation, any national of such country may obtain a licence to make a translation of the work in the said language and publish the translation in printed or analogous forms of reproduction.

(b) A licence under the conditions provided for in this Article may also be granted if all the editions of the translation published in the language concerned are out of print.

(3) (a) In the case of translation into a language which is not in general use in one or more developed countries which are members of the Union, a period of one year shall be substituted for the period of three years referred to in paragraph (2) (a).

(b) Any country referred to in paragraph (1) may, with the unanimous agreement of the developed countries which are members of the Union and in which the same language is in general use, substitute, in the case of translations into that language, for the period of three years referred to in paragraph (2) (a) a shorter period as determined by such agreement but not less than one year. However, the provisions of the foregoing sentence shall not apply where the language in question is English, French or Spanish. The Director General shall be notified of any such agreement by the Governments which have concluded it.

(4) (a) No licence obtainable after three years shall be granted under this Article until a further period of six months has elapsed, and no licence obtainable after one year shall be granted under this Article until a further period of nine months has elapsed-

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- (i) from the date on which the applicant complies with the requirements mentioned in Article IV (1), or
- (ii) where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant sends, as provided for in Article IV (2), copies of his application submitted to the authority competent to grant the licence.

(b) If, during the said period of six or nine months, a translation in the language in respect of which the application was made is published by the owner of the right of translation or with his authorisation, no licence under this Article shall be granted.

(5) Any licence under this Article shall be granted only for the purpose of teaching, scholarship or research.

(6) If a translation of a work is published by the owner of the right of translation or with his authorisation at a price reasonably related to that normally charged in the country for comparable works, any licence granted under this Article shall terminate if such translation is in the same language and with substantially the same content as the translation published under the licence. Any copies already made before the licence terminates may continue to be distributed until their stock is exhausted.

(7) For works which are composed mainly of illustrations, a licence to make and publish a translation of the text and to reproduce and publish the illustrations may be granted only if the conditions of Article III are also fulfilled.

(8) No licence shall be granted under this Article when the author has withdrawn from circulation all copies of his work.

(9) (a) A licence to make a translation of a work which has been published in printed or analogous forms of reproduction may also be granted to any broadcasting organisation having its headquarters in a country referred to in paragraph (1), upon an application made to the competent authority of that country by the said organisation, provided that all of the following conditions are met:

- (i) the translation is made from a copy made and acquired in accordance with the laws of the said country;
- (ii) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialised technical or scientific research to experts in a particular profession;
- (iii) the translation is used exclusively for the purposes referred to in condition (ii) through broadcasts made lawfully and intended for recipients on the territory of the said country, including broadcasts made through the medium of sound or visual recordings lawfully and exclusively made for the purpose of such broadcasts;
- (iv) all uses made of the translation are without any commercial purpose.

(b) Sound or visual recordings of a translation which was made by broadcasting organisation under a licence granted by virtue of this paragraph may, for the purposes and subject to the conditions referred to in sub-paragraph (a) and with the agreement of that organisation, also be used by any other broadcasting organisation having its headquarters in the country whose competent authority granted the licence in question.

(c) Provided that all of the criteria and conditions set out in sub-paragraph (a) are met, a licence may also be granted to a broadcasting organisation to translate any text incorporated in an audio-visual fixation where such fixation was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

(d) Subject to sub-paragraphs (a) to (c), the provisions of the preceding paragraphs shall apply to the grant and exercise of any licence granted under this paragraph.

## ARTICLE III

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*(Limitation on the Right of Reproduction: 1. Licences grantable by competent authority; 2. to 5. Conditions allowing the grant of such licences; 6. Termination of Licences; 7. Works to which this Article applies)*

(1) Any country which has declared that it will avail itself of the faculty provided for in this Article shall be entitled to substitute for the exclusive right of reproduction provided for in Article 9 a system of non-exclusive and non-transferable licences, granted by the competent authority under the following conditions and subject to Article IV.

(2) (a) If, in relation to a work to which this Article applies by virtue of paragraph (7), after the expiration of-

- (i) the relevant period specified in paragraph (3), commencing on the date of first publication of a particular edition of the work, or
- (ii) any longer period determined by national legislation of the country referred to in paragraph (1), commencing on the same date,

copies of such edition have not been distributed in that country to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorisation, at a price reasonably related to that normally charged in the country for comparable works, any national of such country may obtain a licence to reproduce and publish such edition at that or a lower price for use in connection with systematic instructional activities.

(b) A licence to reproduce and publish an edition which has been distributed as described in sub-paragraph (a) may also be granted under the conditions provided for in this Article if, after the expiration of the applicable period, no authorised copies of that edition have been on sale for a period of six months in the country concerned to the general public or in connection with systematic instructional activities at a price reasonably related to that normally charged in the country for comparable works.

(3) The period referred to in paragraph (2) (a) (i) shall be five years, except that-

- (i) for works of the natural and physical sciences, including mathematics, and of technology, the period shall be three years;
- (ii) for works of fiction, poetry, drama and music, and for art books, the period shall be seven years.

(4) (a) No licence obtainable after three years shall be granted under this Article until a period of six months has elapsed-

- (i) from the date on which the applicant complies with the requirements mentioned in Article IV (1), or
- (ii) where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant sends, as provided for in article IV (2), copies of his application submitted to the authority competent to grant the licence.

(b) Where licences are obtainable after other periods and Article IV (2) is applicable, no licence shall be granted until a period of three months has elapsed from the date of the dispatch of the copies of the application.

(c) If, during the period of six or three months referred to in sub-paragraphs (a) and (b), a distribution as described in paragraph (2) (a) has taken place, no licence shall be granted under this Article.

(d) No licence shall be granted if the author has withdrawn from circulation all copies of the edition for the reproduction and publication of which the licence has been applied for.

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(5) A licence to reproduce and publish a translation of a work shall not be granted under this Article in the following cases:

- (i) where the translation was not published by the owner of the right of translation or with his authorisation, or
- (ii) where the translation is not in a language in general use in the country in which the licence is applied for.

(6) If copies of an edition of a work are distributed in the country referred to in paragraph (1) to the general public or in connection with systematic instructional activities, by the owner of the right of reproduction or with his authorisation, at a price reasonably related to that normally charged in the country for comparable works, any licence granted under this Article shall terminate if such edition is in the same language and with substantially the same content as the edition which was published under the said licence. Any copies already made before the licence terminates may continue to be distributed until their stock is exhausted.

(7) (a) Subject to sub-paragraph (b), the works to which this Article applies shall be limited to works published in printed or analogous forms of reproduction.

(b) This Article shall also apply to the reproduction in audio-visual form of lawfully made audio-visual fixations including any protected works incorporated therein and to the translation of any incorporated text into a language in general use in the country in which the licence is applied for, always provided that the audio-visual fixations in question were prepared and published for the sole purpose of being used in connection with systematic instructional activities.

## ARTICLE IV

*(Provisions Common to Licences Under Articles II and III: 1. and 2. Procedure; 3. Indication of author and title of work; 4. Exportation of copies; 5. Notice; 6. Compensation)*

(1) A licence under Article II or Article III may be granted only if the applicant, in accordance with the procedure of the country concerned, establishes either that he has requested, and has been denied, authorisation by the owner of the right to make and publish the translation or to reproduce and publish the edition, as the case may be, or that, after due diligence on his part, he was unable to find the owner of the right. At the same time as making the request, the applicant shall inform any national or international information centre referred to in paragraph (2).

(2) If the owner of the right cannot be found, the applicant for a licence shall send, by registered airmail, copies of his application, submitted to the authority competent to grant the licence, to the publisher whose name appears on the work and to any national or international information centre which may have been designated, in a notification to that effect deposited with the Director General, by the Government of the country in which the publisher is believed to have his principal place of business.

(3) The name of the author shall be indicated on all copies of the translation or reproduction published under a licence granted under Article II or Article III. The title of the work shall appear on all such copies. In the case of a translation, the original title of the work shall appear in any case on all the said copies.

(4) (a) No licence granted under Article II or Article III shall extend to the export of copies, and any such licence shall be valid only for publication of the translation or of the reproduction, as the case may be, in the territory of the country in which it has been applied for.

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(b) For the purpose of sub-paragraph (a), the notion of export shall include the sending of copies from any territory to the country which, in respect of that territory, has made a declaration under Article I (5).

(c) Where a governmental or other public entity of a country which has granted a licence to make a translation under Article II into a language other than English, French or Spanish sends copies of a translation published under such licence to another country, such sending of copies shall not, for the purposes of sub-paragraph (a), be considered to constitute export if all of the following conditions are met:

- (i) the recipients are individuals who are nationals of the country whose competent authority has granted the licence, or organisations grouping such individuals;
- (ii) the copies are to be used only for the purpose of teaching, scholarship or research;
- (iii) the sending of the copies and their subsequent distribution to recipients is without any commercial purpose; and
- (iv) the country to which the copies have been sent has agreed with the country whose competent authority has granted the licence to allow the receipt, or distribution, or both, and the Director General has been notified of the agreement by the Government of the country in which the licence has been granted.

(5) All copies published under a licence granted by virtue of Article II or Article III shall bear a notice in the appropriate language stating that the copies are available for distribution only in the country or territory to which the said licence applies.

(6) (a) Due provision shall be made at the national level to ensure-

- (i) that the licence provides, in favour of the owner of the right of translation or of reproduction, as the case may be, for just compensation that is consistent with standards of royalties normally operating on licences freely negotiated between persons in the two countries concerned; and
- (ii) payment and transmittal of the compensation; should national current regulations intervene, the competent authority shall make all efforts, by the use of international machinery, to ensure transmittal in internationally convertible currency or its equivalent.

(b) Due provision shall be made by national legislation to ensure a correct translation of the work, or an accurate reproduction of the particular edition, as the case may be.

## ARTICLE V

*(Alternative Possibility for Limitation of the Right of Translation: 1. Regime provided for under the 1886 and 1896 Acts; 2. No possibility of change to regime under Article II; 3. Time limit for choosing the alternative possibility)*

(1) (a) Any country entitled to make a declaration that it will avail itself of the faculty provided for in Article II may, instead, at the time of ratifying or acceding to this Act-

- (i) if it is country to which Article 30 (2) (a) applies, make a declaration under that provision as far as the right of translation is concerned;
- (ii) if it is a country to which Article 30 (2) (a) does not apply, and even if it is not a country outside the Union, make a declaration as provided for in Article 30 (2) (b), first sentence.

(b) In the case of a country which ceases to be regarded as a developing country as referred to in Article I (1), a declaration made according to this paragraph shall be effective until the date on which the period applicable under Article I (3) expires.

(c) Any country which has made a declaration according to this paragraph may not subsequently avail itself of the faculty provided for in Article II even if it withdraws the said declaration.

(2) Subject to paragraph (3), any country which has availed itself of the faculty provided for in Article II may not subsequently make a declaration according to paragraph (1).

(3) Any country which has ceased to be regarded as a developing country as referred to in Article I (1) may, not later than two years prior to the expiration of the period applicable under Article I (3), make a declaration to the effect provided for in Article 30 (2) (b), first sentence, notwithstanding the fact that it is not a country outside the Union. Such declaration shall take effect at the date on which the period applicable under Article I (3) expires.

## ARTICLE VI

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*(Possibilities of applying, or admitting the application of, certain provisions of the Appendix before becoming bound by it: 1. Declaration; 2. Depository and effective date of declaration)*

(1) Any country of the Union may declare, as from the date to this Act, and at any time before becoming bound by Articles 1 to 21 and this Appendix:

- (i) if it is a country which, were it bound by Articles 1 to 21 and this Appendix, would be entitled to avail itself of the faculties referred to in Article 1 (1), that it will apply the provisions of Article II or of Article III or of both to works whose country of origin is a country which, pursuant to (ii) below, admits the application of those Articles to such works, or which is bound by Articles 1 to 21 and this Appendix; such declaration may, instead of referring to Article II, refer to Article V;
- (ii) that it admits the application of this Appendix to works of which it is the country of origin by countries which have made a declaration under (i) above or a notification under Article I.

(2) Any declaration made under paragraph (1) shall be in writing and shall be deposited with the Director General. The declaration shall become effective from the date of its deposit.