

LAWS OF KENYA

COPYRIGHT ACT

CHAPTER 130

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CHAPTER 130

COPYRIGHT ACT

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PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

CHAPTER 130

COPYRIGHT ACT

[*Date of assent: 31st December, 2001.*]

[*Date of commencement: 1st February, 2003.*]

An Act of Parliament to make provision for copyright in literary, musical and artistic works, audio-visual works, sound recordings, broadcasts and for connected purposes

[Corr. No. 44/2002, L.N. 15/2003, L.N. 54/2003, Act No. 6 of 2006, Act No. 7 of 2007, Act No. 10 of 2010, Act No. 12 of 2012.]

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Copyright Act, 2001.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"artistic work" means, irrespective of artistic quality, any of the following, or works similar thereto—

(a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;

(b) maps, plans and diagrams;

(c) works of sculpture;

(d) photographs not comprised in audio-visual works;

(e) works of architecture in the form of buildings or models; and

(f) works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art;

"audio-visual work" means a fixation in any physical medium of images, either synchronised with or without sound, from which a moving picture may by any means be reproduced and includes videotapes and videogames but does not include a broadcast;

"authentication device" means any legal device that is used as proof that works or copies thereof are legitimate;

"author", in relation to—

(a) a literary, musical or artistic work, means the person who first makes or creates the work;

(b) a photograph, means the person who is responsible for the composition of the photograph;

(c) a sound recording, means a person by whom the arrangements for the making of the sound recording were made;

(d) audio-visual works, means the person by whom the arrangements for the making of the film were made;

(e) a broadcast, means the first broadcaster;

(f) a published edition, means the publisher of the edition;

(g) a literary, dramatic, musical or artistic work or computer program which is computer generated, means the person by whom the arrangements necessary for the creation of the work were undertaken; and

(h) a computer programmer, means the person who exercised control over the working of the program;

"Board" means the Kenya Copyright Board established under section 3;

"broadcast" means the transmission, by wire or wireless means, of sounds or images or both or the representations thereof, in such a manner as to cause such images or sounds to be received by the public and includes transmission by satellite;

"broadcast authority" means the Kenya Broadcasting Corporation established by the Kenya Broadcasting Corporation Act (Cap. 221), or any other broadcaster authorized by or under any written law;

"building" includes any structure;

"competent authority" has the meaning assigned to it in section 48;

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

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

"communication to the public" means—

(a) a live performance; or

(b) a transmission to the public, other than a broadcast, of the images or sounds or both, of a work, performance or sound recording;

"copy" means a reproduction of work in any manner or form and includes any sound or visual recording of a work and any permanent or transient storage of a work in any medium, by computer technology or any other electronic means;

"copyright" means copyright under this Act;

"electronic rights management information" means any information by right-holders which identifies the work or recording;

"fixation" means the embodiment of sounds or images, or of the representation thereof from which they can be perceived, reproduced or communicated through a device;

"folklore" means a literary, musical or artistic work presumed to have been created within Kenya by an unidentified author which has been passed from one generation to another and constitutes a basic element of the traditional cultural heritage of Kenya and includes—

(a) folktales, folk poetry and folk riddles;

(b) folk songs and instrumental folk music;

(c) folk dances and folk plays; and

(d) the production of folk art, in particular drawings, paintings, sculptures, pottery, woodwork, metalware, jewellery, handicrafts, costumes and indigenous textiles;

"infringement" means any act which violates a right protected by this Act;

"infringing copy" means—

(a) a copy, the manufacture of which constitutes an infringement of any rights protected by this Act; or

(b) where imported, a copy the manufacture of which would have constituted an infringement of such rights if manufactured in Kenya by the importer;

"inspector" means an inspector appointed under section 39;

"Kenya Revenue Authority" means the Kenya Revenue Authority established under the Kenya Revenue Authority Act (Cap. 469);

"licence" means a lawfully granted licence permitting the doing of an act controlled by copyright;

"literary work" means, irrespective of literary quality, any of the following, or works similar thereto—

(a) novels, stories and poetic works;

(b) plays, stage directions, film sceneries and broadcasting scripts;

(c) textbooks, treatises, histories, biographies, essays and articles;

(d) encyclopaedias and dictionaries;

(e) letters, reports and memoranda;

(f) lectures, addresses and sermons;

(g) charts and tables;

(h) computer programs; and

(i) tables and compilations of data including tables and compilations of data stored and embodied in a computer or a medium used in conjunction with a computer,

but does not include a written law or a judicial decision;

"moral rights" means the rights referred to in section 32 of this Act;

"Minister" means the Minister for the time being responsible for matters relating to copyright and related rights;

"musical work" means any musical work, irrespective of musical quality, and includes works composed for musical accompaniment;

"prescribed" means prescribed by regulations made under section 49;

"rebroadcasting" means simultaneous or subsequent broadcasting by one or more broadcasting authorities of the broadcast of another broadcasting authority;

"rental" means the transfer of, the possession of the original or a copy of a work or sound recording for a limited period of time in return for a monetary consideration;

"reproduction" means the making of one or more copies of a work in any material form and includes any permanent or temporary storage of such work in electronic or any other form;

"school" has the meaning assigned to it by the Education Act (Cap. 211);

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

"technical measure" means any device, product or component incorporated into a work that effectively prevents or inhibits the infringement of any copyright or related right;

"work" includes translations, adaptations, new versions, or arrangements of pre-existing works, and anthologies or collections of works which, by reason of the selection and arrangement of their content, present an original character;

"work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

(2) For the purposes of this Act, the following provisions shall apply with respect to publications—

(a) a work shall be taken to have been published if, but only if, copies have been issued in sufficient quantities to satisfy the reasonable requirements of the public;

(b) where in the first instance a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work; and

(c) a publication in a country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

PART II – ADMINISTRATION

3. Establishment and incorporation of the Board

(1) There is established a Board to be known as "the Kenya Copyright Board" which shall be a body corporate with perpetual succession and a common seal and which shall be capable, in its corporate name of—

(a) suing and being sued;

(b) purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;

(c) borrowing and lending money; and

(d) doing or performing all such other things or acts as may be necessary for the proper performance of its functions under this Act which may lawfully be done by a body corporate.

4. Headquarters

The Headquarters of the Board shall be in Nairobi.

5. Functions of the Board

The functions of the Board shall be to—

(a) direct, co-ordinate and oversee the implementation of laws and international treaties and conventions to which Kenya is a party and which relate to copyright and other rights recognised by this Act and ensure the observance thereof;

(b) license and supervise the activities of collective management societies as provided for under this Act;

(c) devise promotion, introduction and training programs on copyright and related rights, to which end it may co-ordinate its work with national or international organisations concerned with the same subject matter;

(d) organise the legislation on copyright and related rights and propose other arrangements that will ensure its constant improvement and continuing effectiveness;

(e) enlighten and inform the public on matters relating to copyright and related rights;

(f) maintain an effective data bank on authors and their works; and

(g) administer all matters of copyright and related rights in Kenya as provided for under this Act and to deal with ancillary matters connected with its functions under this Act.

6. Composition of the Board

(1) The Board shall consist of—

(a) *deleted by Act No. 7 of 2007, Sch.*

(b) one member nominated by registered software associations;

(c) one member nominated by registered musicians' associations;

(d) one member nominated by registered filming associations;

(e) two members nominated by publishers, authors and writers associations;

(f) one member nominated by performing artistes associations;

(g) one member nominated by public universities;

(h) one member nominated by registered associations of producers of sound recordings;

(i) one member nominated by registered associations of broadcasting stations;

(j) one member nominated by producers and distributors of audio-visual works;

(k) the Permanent Secretary in the Ministry for the time being responsible for matters relating to broadcasting or his representative;

(l) the Attorney-General or his representative;

(m) the Commissioner of Police or his representative;

(n) the Permanent Secretary in the Ministry for the time being responsible for matters relating to home affairs, heritage and Sports or his representative;

(o) the Permanent Secretary to the Treasury or his representative;

(p) the Executive Director appointed under section 11; and

(q) not more than four other members appointed by the Minister by virtue of their knowledge and expertise in matters relating to copyright and other related rights.

(2) The Minister shall appoint a chairman from among the members appointed under subsection (1).

[L.N. 54/2003, Act No. 7 of 2007, Sch.]

7. Functions and powers of the Board

The Board shall have all powers necessary for functions and the proper performance of its functions under this Act and particular, but without prejudice to the generality of the foregoing, the Board shall have power to—

(a) control, supervise and administer the assets of the Board in such manner as best promotes the purposes for which the Board is established;

(b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Board;

(c) receive any grants, gifts, donations or endowments and make legitimate disbursements therefrom;

(d) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Board is established;

(e) open a banking account or banking accounts for the funds of the Board; and

(f) invest any of its funds not immediately required for its purposes in the manner provided in section 20.

8. Conduct of business and affairs of the Board

(1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

9. Remuneration of Board members

The Board shall pay its members such remuneration, fees, or allowances for expenses as it may determine after consultation with the Minister for the time being responsible for Finance.

10. Delegation by the Board

The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Board, the exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act or under any other written law.

11. Executive Director

(1) There shall be an Executive Director of the Board who shall be appointed by the Minister on the recommendation of the Board and whose terms and conditions of service shall be determined by the Minister in the instrument of appointment or otherwise in writing from time to time.

(2) No person shall be appointed under this section unless such person—

(a) is a person qualified as an advocate of the High Court of Kenya of not less than five years' standing or has held judicial office in Kenya; or

(b) has at least five years' experience in matters relating to copyright and other related rights; or

(c) has served in a senior position in a copyright office for at least three years.

(3) The Executive Director shall—

(a) be an *ex-officio* member of the Board but shall have no right to vote at any meetings of the Board;

(b) be the secretary to the Board; and

(c) subject to the directions of the Board, be responsible for the day to day management of the affairs of the Board.

12. Staff of the Board

The Board may appoint such Deputy Executive Directors, Assistant Executive Directors, and such officers or other staff of the Board as are necessary for the proper discharge of its functions under this Act or any other written law upon such terms and conditions of service as the Board may determine.

13. The common seal of the Board

(1) The common seal of the Board shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The common seal of the Board when affixed to a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

14. Protection from personal liability

No matter or thing done by a member of the Board or any officer, employee or agent of the Board shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Board, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.

15. *Deleted by Act No. 12 of 2012, Sch.*

16. Funds of the Board

(1) The funds of the Board shall comprise—

(a) such sums as may be granted to the Board by the Minister pursuant to subsection (2);

(b) such monies or assets as may accrue to or vest in the Board in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law; and

(c) all monies from any other source provided for or donated or lent to the Board.

(2) There shall be made to the Board, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Board in the exercise of its powers or the performance of its functions under this Act.

17. Financial year

The financial year of the Board shall be the period of twelve months ending on the thirtieth June in each year.

18. Annual estimates

(1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the Board for the financial year and in particular, the estimates shall provide for—

(a) the payment of the salaries, allowances and other charges in respect of the staff of the Board;

(b) the payment of pensions, gratuities and other charges in respect of the staff of the Board;

(c) the proper maintenance of the buildings and grounds of the Board;

(d) the remuneration of Board members pursuant to section 9;

(e) the maintenance, repair and replacement of equipment and other property of the Board; and

(f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister's approval, the Board shall not increase the annual estimates without the consent of the Minister.

19. Accounts and audit

(1) The Board shall cause to be kept all proper books and records of accounts of its income, expenditure and assets.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor General (Corporations) or to an auditor appointed under this section, the accounts of the Board together with—

(a) a statement of the income and expenditure of the Board during that year; and

(b) a statement of the assets and liabilities of the Board on the last day of that year.

(3) The accounts of the Board shall be audited and reported upon in accordance with sections 29 and 30A of the Exchequer and Audit Act (Cap. 412), by the Auditor-General (Corporations), or by an auditor appointed by the Board with the approval of the Auditor-General (Corporations) given in accordance with section 29(2)(b) of the Exchequer and Audit Act (Cap. 412).

20. Investment of funds

(1) The Board may invest any of its funds in securities in which for the time being trustees may by law invest trust funds, or in any other securities which the Treasury may, from time to time, approve for that purpose.

(2) The Board may place on deposit with such bank or banks as it may determine, any monies not immediately required for the purposes of the Board.

21. Appeals

(1) Any person aggrieved by the decision of the Board under this Act may, within sixty days from the date of the decision, appeal to the competent authority.

(2) On request from the competent authority, the Board shall provide written comments on any matter over which an appeal has been submitted to the competent authority under this section.

(3) The competent authority shall issue a decision on the appeal within thirty days from the date of such an appeal, and such decision shall be final.

PART III – COPYRIGHT AND OTHER RELATED RIGHTS

22. Works eligible for copyright

(1) Subject to this section, the following works shall be eligible for copyright—

(a) literary works;

(b) musical works;

(c) artistic works;

(d) audio-visual works;

(e) sound recordings; and

(f) broadcasts.

(2) A broadcast shall not be eligible for copyright until it has been broadcast.

(3) A literary, musical or artistic work shall not be eligible for copyright unless—

(a) sufficient effort has been expended on making the work to give it an original character; and

(b) the work has been written down, recorded or otherwise reduced to material form.

(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

23. Copyright by virtue of nationality or residence, and duration of copyright

(1) Copyright shall be conferred by this section on every work eligible for copyright of which the author, or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a citizen of, or is domiciled or ordinarily resident in, Kenya or is a body corporate which is incorporated under or in accordance with the laws of Kenya.

(2) The term of a copyright conferred by this section shall be calculated according to the following table—

Type of Work	*Date of Expiration of Copyright*
1. Literary, musical or artistic work other than photographs	Fifty years after the end of the year in which the author dies.
2. Audio-visual works and photographs	Fifty years from the end of the year in which the work was either made, first made available to the public, or first published, whichever date is the latest.
3. Sound recordings	Fifty years after the end of the year in which the recording was made.
4. Broadcasts	Fifty years after the end of the year in which the broadcast took place.

(3) In the case of anonymous or pseudonymous literary, musical or artistic works, the copyright therein shall subsist until the expiration of fifty years from the end of the year in which it was first published:

Provided that in the event of the identity of the author becoming known the term of protection of a copyright shall be calculated in accordance with subsection (2).

(4) In the case of a work of joint authorship, reference in the preceding table to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person.

(5) Notwithstanding anything else contained in this Act copyright in works eligible for copyright and vested in the National Museums Board of Directors or the National Museums is conferred in perpetuity on the National Museums.

[Act No. 6 of 2006, s. 71.]

24. Copyright by reference to country of origin

(1) Copyright shall be conferred by this section on every work, other than a broadcast which is eligible for copyright and which—

(a) being a literary, musical or artistic work or any audio-visual work, is first published in Kenya; or

(b) being a sound recording, is made or first published in Kenya; or

(c) being a broadcast, is transmitted from transmitters situated in Kenya.

(2) Copyright conferred on a work by this section shall have the same duration as is provided for in section 23 in relation to a similar work.

25. Copyright in works of Government and international bodies

(1) Copyright is conferred under this section on any work eligible for copyright which has been created pursuant to a commission from the Government or such international body or non-governmental body as may be prescribed, and on which no copyright has been conferred under section 23(1) or 24(1).

(2) Copyright conferred by this section on a literary, musical or artistic work, shall subsist until the end of the expiration of fifty years from the end of the year in which it was first published.

(3) Copyright conferred by this section on any audio-visual work, photograph, sound recording or broadcast shall have the same duration as is provided for by section 23 in relation to a similar work.

(4) Sections 23 and 24 shall not confer copyright on works to which this section applies.

26. Nature of copyright in literary, musical or artistic works and audio-visual works

(1) Copyright in a literary, musical or artistic work or audio-visual work shall be the exclusive right to control the doing in Kenya of any of the following acts, namely the reproduction in any material form of the original work or its translation or adaptation, the distribution to the public of the work by way of sale, rental, lease, hire, loan, importation or similar arrangement, and the communication to the public and the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognisably derived from the original; but copyright in any such work shall not include the right to control—

(a) the doing of any of those acts by way of fair dealing for the purposes of scientific research, private use, criticism or review, or the reporting of current events subject to acknowledgement of the source;

(b) the reproduction and distribution of copies, or the inclusion in a film or broadcast, of an artistic work situated in a place where it can be viewed by the public;

(c) the incidental inclusion of an artistic work in a film or broadcast;

(d) the inclusion in a collection of literary or musical works of not more than two short passages from the work in question if the collection is designed for use in a school registered under the Education Act (Cap. 211) or any university established by or under any written law and includes an acknowledgement of the title and authorship of the work;

(e) the broadcasting of a work if the broadcast is intended to be used for purposes of systematic instructional activities;

(f) the reproduction of a broadcast referred to in the preceding paragraph and the use of that reproduction in a school registered under the Education Act (Cap. 211) or any university established by or under any written law for the systematic instructional activities of any such school or university;

(g) the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgement of the author;

(h) the reproduction of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific institutions as may be prescribed, where the reproduction is in the public interest and no revenue is derived therefrom;

(i) the reproduction of a work by or under the direction or control of a broadcasting authority where the reproduction or copies thereof are intended exclusively for broadcast by that broadcasting authority authorised by the copyright owner of the work and are destroyed before the end of the period of six calendar months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant part of the copyright in the work; and any reproduction of a work made under this paragraph may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcasting authority, but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;

(j) the broadcasting of a literary, musical or artistic work or audio-visual works already lawfully made accessible to the public with which no licensing body referred to under section 46 is concerned:

Provided that subject to the provisions of this section the owner of the broadcasting right in the work receives fair compensation determined, in the absence of agreement, by the competent authority appointed under section 48; and

(k) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding.

(2) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial

part of the work either in its original form or in any form recognizably derived from the original; but the copyright in any such work shall not include the right to control the reconstruction of a building to which that copyright relates in the same style as the original.

(3) Copyright of a computer program shall not constitute fair dealing for the purposes of paragraph (a) of subsection (1).

(4) Notwithstanding the provisions of subsection (3), a person who is in lawful possession of a computer program may do any of the following acts without the authorization of the right holder whereby copies are necessary for the use of the computer program in accordance with its intended purpose—

(a) to make copies of the program to the extent necessary to correct errors; or

(b) to make a back-up copy; or

(c) for the purpose of testing a program to determine its suitability for the person's use; or

(d) for any purpose that is not prohibited under any license or agreement whereby the person is permitted to use the program.

(5) The authorization of the right holder of the program shall not be required to decompile the program, convert the program into a version expressed in different programming language, code, notation for the purpose of obtaining information needed to enable the program to operate with other programs.

(6) Any copies made pursuant to this section shall be used only for the purpose for which it was made and shall be destroyed when the person's possession of the computer program ceases to be lawful.

27. Broadcasting of works incorporated in audio-visual works

(1) Where the owner of the copyright in any literary, musical or artistic work authorizes a person to incorporate the work in audio-visual works and a broadcasting authority broadcasts such works, it shall, in the absence of any express agreement to the contrary, be deemed that the owner of the copyright authorized the broadcast.

(2) Notwithstanding subsection (1), where a broadcasting authority broadcasts audio-visual works in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority, and in the absence of an agreement the amount of compensation shall be determined by the competent authority appointed under section 48.

28. Nature of copyright in sound recordings

(1) Subject to subsections (2) and (3), copyright in sound recordings shall be the exclusive right to control the doing in Kenya of any of the following acts in respect of the sound recording, namely—

(a) the direct or indirect reproduction in any manner or form; or

(b) the distribution to the public of copies by way of sale, rental, lease, hire, loan or any similar arrangements; or

(c) the importation into Kenya; or

(d) the communication to the public or the broadcasting of the sound recording in whole or in part either in its original form or in any form recognizably derived from the original.

(2) The provisions of paragraphs (a), (f), (j) and (h) of section 26(1) shall apply *mutatis mutandis* to the copyright in a sound recording.

(3) Subject to subsections (4) and (5), the rights of an owner of a copyright in a sound recording are not infringed by the making of a single copy of the recording for the personal and private use of the person making the copy; and in respect of such use the owner of copyright in the sound recording shall have the right to receive fair compensation consisting of a royalty levied on audio recording equipment or audio blank tape suitable for recording and other media intended for recording, payable at the point of first sale in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.

(4) The level of the royalty payable under subsection (3) shall be agreed between organizations representative of producers of sound recordings and of manufacturers and importers of audio recording equipment, audio blank tape and media intended for recording or failing such agreement by the competent authority appointed under section 48.

(5) All claims for compensation under this section shall be made through an organization representative of producers of sound recordings.

(6) Any person who, for commercial purposes, makes available any audio recording equipment for the purposes of enabling any other person to make single copies of any sound recording for his personal or private use, without payment of the royalty levied under subsection (3) shall be guilty of an offence and shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding four years or to both.

29. Nature of copyright in broadcasts

Copyright in a broadcast shall be the exclusive right to control the doing in Kenya of any of the following acts, namely, the fixation and the rebroadcast of the whole or a substantial part of the broadcast and the communication to the public of the whole or a substantial part of a television broadcast either in its original form or in any form recognizably derived from the original, but—

(a) paragraphs (a), (f), (e) and (k) of section 26(1) shall apply *mutatis mutandis* to the copyright in a broadcast; and

(b) the copyright in a television broadcast shall include the right to control the taking of still photographs therefrom.

30. Rights of performers

(1) Subject to section 30 of this Act, a performer shall have the exclusive right to carry out any of the following acts—

(a) broadcast his performance except where the broadcast is made from a fixation of the performance authorized by the performer;

(b) communicate to the public his performance except where the communication—

(i) is made from a fixation of the performance; or

(ii) is made from broadcast of the performance,

authorized by the performer;

(c) make a fixation of a previously unfixed performance; and

(d) reproduce a fixation of the performance in either of the following cases —

(i) where the performance was initially fixed without the authorization of the performer; or

(ii) where the reproduction is made for purposes different from those for which the performer gave his authorization;

(e) rent for commercial purposes to the public, the original and copies of their fixed performances;

(f) distribution of a fixation of his performance or copies thereof, to the public;

(g) 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 a time individually chosen by them.

(2) In the absence of any contractual agreement to the contrary in circumstances of employment from which the contrary would normally be inferred —

(a) the authorization to broadcast does not imply an authorization to license other organizations to broadcast the performance;

(b) the authorization to broadcast does not imply an authorization to make a fixation of the performance; and

(c) the authorization to broadcast and fix the performance does not imply an authorization to reproduce the fixation.

(3) A binding authorisation given under this section may be given by the performer or by a duly appointed representative to whom he has granted in writing the right to give such authorisation; and any authorisation given by the performer claiming that he has retained the relevant rights or by a person claiming to be a duly appointed representative of a performer shall be considered valid.

(4) Protection of the rights of the performer under this section shall subsist for fifty years after the end of the year in which the performance was fixed.

(5) The performer shall, during his lifetime, as regards live performances or performances fixed in phonograms, have the right, independently of his economic rights, to—

(a) be identified as the performer of his performances and to object to any distortion, mutilation, or other modification of his performances that would be prejudicial to his reputation; and

(b) seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his work, where such work would be or is prejudicial to his honour or reputation.

(6) Subject to subsections (7) and (8), the rights of an owner of a copyright in a fixation of their performance are not infringed by the making of a single copy of the performance for the personal and private use of the person making the copy and in respect of such use the owner of a related right in the performance shall have the right to receive fair compensation consisting of a royalty levied on audio-visual recording equipment or audio-visual blank media suitable for recording and other media intended for recording, payable at the point of first sale in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.

(7) The level of the royalty payable under subsection (6) shall be agreed upon between organizations representative of performers, manufacturers and importers of any audio-visual recording equipment and media intended for recording, or failing such agreement, by the Copyright Tribunal.

(8) The claims for compensation under this section shall be made through an organization representative of performers.

[Act No. 12 of 2012, Sch.]

30A. Right to equitable remuneration for use of sound recordings and audio visual works

(1) If a sound recording is published for commercial purposes or a reproduction of such recording is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer and the producer of the sound recording shall be paid by the user through the respective collective management organization, and the remuneration shall be shared equally between the producer of the sound recording and the performer.

(2) If a fixation of a performance is published for commercial purposes or a reproduction of a fixation of a performance is used for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer shall be paid by the user to the collective management organization.

(3) The right of equitable remuneration under this section shall subsist from the date of publication of the sound recording or fixed performance until the end of the fiftieth calendar year following the year of publication, provided the sound recording or fixed performance is still protected under section 28 and 30.

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

[Act No. 12 of 2012, Sch.]

31. First ownership of copyright

(1) Copyright conferred by sections 23 and 24 shall vest initially in the author:

Provided that where a work—

(a) is commissioned by a person who is not the author's employer under a contract of service; or

(b) not having been so commissioned, is made in the course of the author's employment under a contract of service,

the copyright shall be deemed to be transferred to the person who commissioned the work or the author's employer, subject to any agreement between the parties excluding or limiting the transfer.

(2) Copyright conferred by section 25 shall vest initially in the Government or such international bodies or other governmental organizations as may be prescribed, and not in the author.

(3) In this section **"owner of copyright"**—

(a) where the economic rights are vested in the author, means the author;

(b) where the economic rights are originally vested in a physical person other than the author or in a legal entity, means that person or entity; and

(c) where the ownership of the economic rights has been transferred to a physical person or legal entity, means that person or entity.

32. Moral rights of an author

(1) Independently of the author's economic rights and even after the transfer of the said rights, the author shall have the right to—

(a) claim the authorship of the work; and

(b) object to any distortion, mutilation or other modification of or other derogatory action in relation to, the said work which would be prejudicial to his honour or reputation.

(2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the author but the right to exercise any of the said rights shall be transmissible by testamentary disposition or by operation of the law following the demise of the author.

(3) The author has the right to seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his work, where such work would be or is prejudicial to his honour or reputation.

33. Assignment and licences

(1) Subject to this section, copyright shall be transmissible by assignment, by licence, testamentary disposition, or by operation of law as movable property.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply only to some of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the period of the copyright, or to a specified country or other geographical area.

(3) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing signed by or on behalf of the assignor, or by or on behalf of the licensor, as the case may be and the written assignment of copyright shall be accompanied by a letter of verification from the Board in the event of an assignment of copyright works from outside Kenya.

(4) A non-exclusive licence to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time, but a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a further contract.

(5) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work, or an existing work in which copyright does not yet subsist, and the prospective copyright in any such work shall be transmissible by operation of law as movable property.

(6) A testamentary disposition of the material on which a work is first written or otherwise recorded shall, in the absence of contrary indication, be taken to include the disposition of any copyright or prospective copyright in the work which is vested in the deceased.

(7) Where an agreement for assignment of copyright does not specify the period of assignment, the assignment shall terminate after three years.

(8) In the case of agreements regarding future works which are not specified in detail, either party may, on giving not less than one month's notice, terminate the agreement not earlier than three years after it was signed or such shorter period as may be agreed.

(9) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright, shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the licence, or a person deriving title from such purchaser and any reference in this Act to the doing of anything in relation to any copyright, with or without the licence of the owner of the copyright, shall be construed accordingly.

(10) Where the doing of anything is authorised by the grantee of a licence or a person deriving title from the grantee, and it is within the terms, including any implied terms of the licence for him to authorise it, it shall for the purpose of this Act be deemed to be done with the licence of the grantor and of every person, if any, upon whom the licence is binding.

34. Rights of action and remedies of exclusive licensee and sub-licensee

(1) An exclusive licensee and exclusive sub-licensee shall have the same rights of action and be entitled to the same remedies, as if the licence were an assignment and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under which the licence and sub-licence were granted.

(2) Before an exclusive licensee or sub-licensee institutes proceedings under subsection (1), he shall give notice in writing to the owner of the copyright concerned, of his intention to do so, and the owner may intervene in such proceedings and recover any damages he may have suffered as a result of the infringement concerned or a reasonable royalty to which he may be entitled.

PART IV – INFRINGEMENT

35. Infringement

(1) Copyright shall be infringed by a person who, without the licence of the owner of the copyright—

(a) does, or causes to be done, an act the doing of which is controlled by the copyright; or

(b) imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.

(2) The rights of a performer shall be infringed by a person who without the consent of the performer—

(a) does, or causes to be done, any act specified in section 30(1); or

(b) imports or causes to be imported, otherwise than for his own private or domestic use, an article which he knows would have been made contrary to section 30 had it been made in Kenya by the importer.

(3) Copyright and related rights shall be infringed by a person who—

(a) circumvents any effective technical measure designed to protect works; or

(b) manufactures or distributes devices which are primarily designed or produced for the purpose of circumventing technical measures designed to protect works protected under this Act; or

(c) removes or alters any electronic rights management information; or

(d) distributes, imports, broadcasts or makes available to the public, protected works, records or copies from which electronic rights management information has been removed or has been altered without the authority of the right holder.

(4) Infringement of any right protected under this Act shall be actionable at the suit of the owner of the right and in any action for infringement the following reliefs shall be available to the plaintiff—

(a) the relief by way of damages, injunction, accounts or otherwise that is available in any corresponding proceedings in respect of infringement of other proprietary rights;

(b) delivery up to the plaintiff of any article in the possession of the defendant which appears to the court to be an infringing copy, or any article used or intended to be used for making infringing copies;

(c) in lieu of damages, the plaintiff at his option, be awarded an amount calculated on the basis of reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned;

(d) for the purpose of determining the amount of damages or a reasonable royalty to be awarded under this section or section 33(2), the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiries as the court considers necessary; and

(e) before the owner of the right institutes proceedings under this section, he shall give notice in writing to the exclusive licensee or sub-licensee of the copyright concerned of the intention to do so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he may have suffered as a result of the infringement concerned or a reasonable royalty to which he may be entitled.

(5) Where in an action for infringement of copyright it is proved or admitted—

(a) that an infringement was committed; but

(b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement whether or not other relief is granted under this section.

(6) Where in an action under this section an infringement of copyright protected under this Act is proved or admitted, and the court, having regard (in addition to all other material considerations) to—

(a) the flagrancy of the infringement; and

(b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, may award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(7) No injunction shall be issued in proceedings for infringement of any right protected under this Act which requires a completed or partly built building to be demolished or prevents the completion of a partly built building.

(8) In an action under this section—

(a) copyright shall be presumed to subsist in the work or other subject matter to which the action relates, if the defendant does not put in issue the subsistence of copyright therein; and

(b) where the subsistence of copyright is proved, admitted or presumed under paragraph (a), the plaintiff shall be presumed to be the owner of the copyright if he makes a claim thereto and the defendant does not dispute that claim.

(9) Where in an action under this section, a name purporting to be the name of the author or joint author appears on copies of a literary or musical work as published or an artistic work when it was made, any person whose name so appears, if it is his true name or the name by which he is commonly known, shall be presumed, unless the contrary is proved, to be the author of the work.

(10) In the case of an anonymous or pseudonymous work, the publisher whose name appears on the work shall, in the absence of any 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:

Provided that the presumption under this subsection shall cease to apply when the author reveals his identity or where the pseudonym leaves no doubts as to the identity of the author.

(11) Where, in any action under this section, the author of the literary, musical or artistic work to which the action relates is dead, it shall be presumed, unless the contrary is proved—

(a) that the work is eligible for copyright; and

(b) that any allegation by the plaintiff that the work is a first publication and was published in a specified country on a specified date, is true.

(12) Where, in an action under this section, the sound recording to which the action relates is reproduced on a record bearing a label or other mark which has been issued to the public, any statement on that label or mark to the effect that a person named thereon was the maker of the sound recording or by whom the recording was first published in a specified year shall, unless the contrary is proved, be presumed to be true.

(13) In this section—

"record" means any disc, tape, perforated roll or other device in which sounds or the representations of sounds are embodied which are capable of reproduction therefrom with or without the aid of another instrument;

"action" includes a counterclaim and references to the plaintiff and to the defendant in an action shall be construed accordingly;

"court" means a court of competent jurisdiction;

"owner of the copyright" means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

36. Authentication of copyright

(1) Every sound and audiovisual recording made available to the public by way of sale, lending or distribution in any other manner to the public for commercial purposes in Kenya shall have affixed on it an authentication device prescribed by the Board.

(2) The Board shall authenticate copyright works according to all required documents furnished to it by the applicant for that purpose and shall issue an approval certificate in the prescribed form to the applicant for authority to purchase an authentication device.

(3) The authentication device shall be issued to an applicant upon proof that the applicant has been authorized by the copyright owner to manufacture, reproduce, sell, import, rent or otherwise distribute the work.

(4) The authentication device shall be affixed to each copy of the copyright work made or published by the applicant.

(5) No person shall sell or exhibit for sale any copyright works that require an authentication device in any form without an authentication device affixed thereto pursuant to subsection (4).

(6) Any person who knowingly sells or offers for sale any copyright work that require an authentication device without an authentication device affixed thereto is guilty of an offence and is liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.

(7) Any work requiring an authenticating device and which is sold or exhibited for sale without the authentication device shall be presumed to be an infringing copy.

(8) Any person who, without the permission of the Board?

(a) is found to be in possession of or to have reproduced, a security device; or

(b) is found to be in possession of any machine, instrument or contrivance intended to be used to produce or reproduce a security device,

shall be guilty of an offence and liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding ten years, or to both.

[Act No. 12 of 2012, Sch.]

37. Anton Piller orders

(1) If a person has *prima facie* evidence that his right has been infringed by another party and he satisfies the court or competent authority that *prima facie*—

(a) he has a cause of action against another person which he intends to pursue;

(b) the other person has, in his possession, documents infringing copies or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and

(c) there is the real and well-founded apprehension that the documents, infringing copies or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way,

the court or competent authority as the case may be, may make such order as it considers necessary or appropriate to secure the preservation of the documents, copies or things as evidence.

(2) An order made under subsection (1) may be granted *ex parte.*

38. Offence and penalties for infringement

(1) Any person who, at a time when copyright or the right of a performer subsists in a work—

(a) makes for sale or hire any infringing copy; or

(b) sells or lets for hire or by way of trade exposes or offers for sale any infringing copy; or

(c) distributes infringing copies; or

(d) possesses otherwise than for his private and domestic use, any infringing copy; or

(e) imports into Kenya otherwise than for his private and domestic use any infringing copy; or

(f) makes or has in his possession any contrivance used or intended to be used for the purpose of making infringing copies,

shall, unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright or the right of a performer would or might thereby be infringed, be guilty of an offence.

(2) Any person who causes a literary or musical work, an audio-visual work or a sound recording to be performed in public at a time when copyright subsists in such work or sound recording and where such performance is an infringement of that copyright shall be guilty of an offence unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright would or might be infringed.

(3) For the purposes of paragraphs (a) to (f) of subsection (1), any person who has in his possession, custody or control two or more infringing copies of a work in the same form, shall, unless the contrary is proved, be presumed to be in possession of or to have imported such copies otherwise than for private and domestic use.

(4) Any person guilty of an offence under paragraph (a), (c), (e) or (f) of subsection (1) shall be liable to a fine not exceeding four hundred thousand shillings or to imprisonment for a term not exceeding ten years or to both.

(5) Any person guilty of an offence under paragraph (b) or (d) of subsection (1) shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(6) A person convicted of an offence under this section shall be liable—

(a) in the case of a first conviction, to a fine not exceeding four hundred thousand shillings, or to imprisonment for a term not exceeding six years, or to both; and

(b) in any other case, to a fine not exceeding eight hundred thousand shillings, or to imprisonment for a term not exceeding ten years, or to both.

(7) Any person guilty of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.

(8) The court before which a person is charged with an offence under this section, shall whether such person is convicted of the offence or not, 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, be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.

(9) No prosecution for an offence under this section shall be instituted—

(a) after the expiration of the period of three years immediately following the date of the alleged offence; and

(b) except, before the High Court or a Resident Magistrate's Court.

(10) One half of all fines imposed and recovered by a competent court in respect of the contravention of any of the provisions of this Act or of any regulations made thereunder shall be paid into the revenues of the Board and the other half shall be paid into the general revenues of Kenya.

PART V – INSPECTION

39. Inspectors

(1) The Board shall, for the purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Board considers appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such inspectors.

(2) In addition to inspectors appointed under subsection (1), any member of the Board or a police officer may perform the functions of an inspector under this Act.

(3) A person appointed as an inspector shall hold office subject to such conditions as the Board may determine with approval of the Minister.

40. Entry into premises

Subject to the provisions of this section, an inspector may, at any reasonable time and on production of his certificate of authority, enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connexion with such premises, ship, aircraft or vehicle any contravention of this Act.

41. Mode of inspection

(1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect—

(a) any substance or article appearing to him to be a work;

(b) any container or package used or intended to be used to contain any work; or

(c) any plant or equipment appearing to him to be used or intended to be used in connexion with the production, reproduction or otherwise manufacture of a work.

(2) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which he has reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he has reasonable cause to believe to be a document which may be required in proceedings under this Act.

(3) Where an inspector seizes any work he shall in writing, notify the person from whom it is seized the fact of that seizure and shall in that notification specify any item seized.

(4) Any person who—

(a) wilfully obstructs an inspector in the discharge of the inspector's duties; or

(b) wilfully fails to comply with any requirement properly made to him by an inspector; or

(c) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require of that person for the purpose of the performance of his duties under this Act; or

(d) in giving any such information as is mentioned in paragraph (c), makes any statement which he knows to be false or does not believe to be true,

shall be guilty of an offence and shall be liable to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months or to both.

42. Powers of arrest

A police officer may arrest, without a warrant, any person suspected, upon reasonable grounds, of having committed an offence under this Act, and any officer of the Board who at the time is wearing a visible badge of office and authorized thereto in writing by the Board, may arrest, without warrant, any person, who, in his presence, commits any such offence, and may detain such person until that person can be delivered into the custody of a police officer to be dealt with according to law:

Provided that a person shall not be arrested or detained without warrant unless reasonable grounds exist for believing that, except by such arrest, the person may not be found or made answerable to justice without unreasonable delay, trouble or expense.

[Act No. 10 of 2010, s. 77, Act No. 12 of 2012, Sch.]

43. Conduct of prosecution

(1) The Attorney-General may, pursuant to the provisions of the Criminal Procedure Code (Cap. 75), appoint public prosecutors for the purposes of cases arising under this Act.

(2) The Board shall, for the purposes of section 171(4) of the Criminal Procedure Code (Cap. 75), be deemed to be a public authority.

44. Inspectors not personally liable for acts done under this Act

An inspector shall not be personally liable in respect of any act done in good faith by him in the course of his employment and in the execution or purported execution of any duty under this Act.

PART VI – PUBLIC DOMAIN

45. Works in the public domain

(1) The following works shall belong to the public domain—

(a) works whose terms of protection have expired;

(b) works in respect of which authors have renounced their rights; and

(c) foreign works which do not enjoy protection in Kenya.

(2) For the purposes of paragraph (b), renunciation by an author or his successor in title of his rights shall be in writing and made public but any such renunciation shall not be contrary to any previous contractual obligation relating to the work.

(3) Subject to the payment of such fees as may be determined by the Minister in relation thereto, a work which has fallen into the public domain may be used without any restriction.

PART VII – COLLECTIVE ADMINISTRATION OF COPYRIGHT

46. Collective administration of Copyright

(1) No person or association of persons shall commence or carry on the business of a copyright collecting society except under or in accordance with a certificate of registration granted under this section.

(2) Applications for registration as collecting societies shall be made to the Board accompanied with the prescribed fees and the Board, by a *Gazette* notice is empowered to declare a body which has applied for registration a collecting society, for all relevant copyright owners of for such classes of relevant copyright owners as are specified in the notice.

(3) Every certificate issued to a collecting society shall be in the prescribed form and shall unless cancelled be valid for a period of twelve months from the date of issue.

(4) The Board may approve a collecting society if it is satisfied that—

(a) the body is a company limited by guarantee and incorporated under the Companies Act (Cap. 486);

(b) it is a non-profit making entity;

(c) its rules and regulations contain such other provisions as are prescribed, being provisions necessary to ensure that the interests of members of the collecting society are adequately protected;

(d) its principal objectives are the collection and distribution of royalties; and

(e) its accounts are regularly audited by independent external auditors elected by the society.

(5) The Board shall not approve another collecting society in respect of the same class of rights and category of works if there exists another collecting society that has been licensed and functions to the satisfaction of its members.

(6) The Board may, where it finds it expedient, assist in establishing a collecting society for any class of copyright owners.

(7) There shall be a transitional registration period not exceeding six months from the date of commencement of this Act:

Provided that the Minister may extend the period upon application by a collecting society.

(8) All collecting societies that are presently registered under any other written law in Kenya, shall within the period specified in subsection (7), apply for and obtain a certificate under this Act.

(9) The Board may by notice in the *Gazette* de-register a collecting society if its satisfied that the collecting society—

(a) is not functioning adequately as a collecting society;

(b) is not acting in accordance with its Memorandum and Articles of Association or in the best interests of its members;

(c) has altered its rules so that it no longer complies with subsection 4 of this section; and

(d) it has refused or failed to comply with any of the provisions of this Act.

47. Annual reports and accounts

(1) A collecting society shall, as soon as reasonably practicable after the end of each financial year, submit to the Board—

(a) a report of its operations during that year;

(b) a copy of its audited accounts in respect of that year.

(2) This section shall apply without prejudice to the obligations of a collecting society under the provisions of the Companies Act (Cap. 486).

48. Appointment of competent authority and duties of authority

(1) There shall be a competent authority appointed by the Minister for the purpose of exercising jurisdiction under this Act where any matter requires to be determined by such authority.

(2) Subject to subsection (3), in any case where it appears to the competent authority that—

(a) the Board is unreasonably refusing to grant a certificate of registration in respect of a collecting society; or

(b) the board is imposing unreasonable terms or conditions on the granting of such a certificate; or

(c) a collecting society is unreasonably refusing to grant a licence in respect of a copyright work; or

(d) a collecting society is imposing unreasonable terms or conditions on the granting of such a licence; or

(e) the competent authority may direct that as respects the doing of any act relating to work with which the collecting society is concerned or with respect to the granting of a certificate to operate as a collecting society, a licence or a certificate shall be deemed to have been granted by the collecting society or the Board at the time the act is done or the application is made, provided the appropriate fees are paid or tendered before the expiration of such period or periods as the competent authority may determine.

(3) Where a dispute has been referred to the competent authority under this section, the competent authority shall, in accordance with such procedure as may be prescribed, give both parties an opportunity to present their respective cases, either in person or through representatives, both orally and in writing.

(4) In this section—

"collecting society" means an organisation which has as its main object, or one of its main objects, the negotiating for the collection and distribution of royalties and the granting of licenses in respect of copyright works or performer's rights; and

"competent authority" means an authority of not less than three and not more than five persons, one of whom shall be a person qualified as an advocate of the High Court of Kenya of not less than seven years' standing or a person who holds or has held judicial office in Kenya who shall be the chairman, appointed by the Minister for the purpose of exercising jurisdiction under this Act where any matter requires to be determined by such authority.

(5) No person shall be appointed under this section, nor shall any person so appointed act as a member of a competent authority, if he, his partner, his employer body (whether statutory or not) of which he is a member has a pecuniary interest in any matter which requires to be determined by the authority.

PART VIII – MISCELLANEOUS

49. Regulations and extensions of application of the Act

The Minister may make regulations generally for the better carrying out of the provisions of extension of the Act and, without prejudice to the generality of the application of the doing, the Minister may in such regulations—

(a) prescribe anything required by this Act to be prescribed;

(b) extend the application of this Act in respect of any or all of the works referred to in section 22(1)—

(i) to individuals or bodies corporate who are citizens of, domiciled or resident in or incorporated under the laws of; or

(ii) to works, other than sound recordings, first published in; or

(iii) to sound recordings made or published in Kenya or a country which is a party to a treaty to which Kenya is also a party and which provides for the protection of copyright and related rights in works to which the application of this Act extends;

(c) restrict the right of an author to control the translation or the reproduction of his work up to the extent permitted by any Copyright Convention for the time being in force in Kenya;

(d) authorise and prescribe the terms and conditions governing any specified use of folklore, except by a national public entity for non-commercial purposes, or the importation of any work made abroad which embodies folklore.

50. Application to works made before commencement of Act

(1) This Act shall apply to—

(a) works, performances, sound recordings and broadcasts made prior to the commencement of this Act, where the term of protection had not expired under the former Act or under the legislation of the country of origin of such works;

(b) performances, sound recordings or broadcasts that are to be protected under an international treaty to which Kenya is a party.

(2) This Act shall not affect contracts on works, performances, sound recordings and broadcasts concluded before the commencement of this Act.

51. Abrogation of common law rights

No copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

52. Repeal of Cap. 130 and savings

(1) The Copyright Act is repealed:

Provided that any regulation or other instrument made or issued thereunder and having effect before the commencement of this Act shall continue to have effect as if such regulation or other instrument were made or issued under this Act.

(2) In this Part—

"former Act" means the Copyright Act repealed by this section.

SCHEDULE

[Section 8.]

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Tenure of office

The chairman or a member of the Board other than an *ex officio* member shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment.

2. Vacation of office

The chairman or a member other than an *ex officio* member may—

(a) at any time resign from office by notice in writing to the Minister;

(b) be removed from office by the Minister on the recommendation of the Board if the member—

(i) has been absent from three consecutive meetings of the Board without the permission of the Board;

(ii) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings;

(iii) is incapacitated by prolonged physical or mental illness; or

(iv) is otherwise unable or unfit to discharge his functions.

3. Meetings

(1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(2) Notwithstanding subparagraph (1), the chairman may, and upon requisition in writing by at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three-quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be seven members including the chairman or the person presiding.

(5) The chairman shall preside at every meeting of the Board at which he is present but in his absence, the members present shall elect one of their number to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the chairman.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting and in the case of an equality of votes, the chairman or the person presiding shall have a second or casting vote.

(7) Subject to paragraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject to the provisions of this Schedule, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of other persons at its meetings and may make standing orders in respect thereof.

4. Disclosure of interest

(1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he shall, at the meeting and as soon as reasonably practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. The common seal

The affixing of the common seal of the Board shall be authenticated by the signature of the chairman and the Executive Director and any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signatures of the chairman and the Executive Director:

Provided that the Board shall, in the absence of either the chairman or the Executive Director in any particular matter, nominate one member to authenticate the seal on behalf of either the chairman or the Executive Director.

6. Contracts and instruments

Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorised by the Board for that purpose.