

CHAPTER 68:02
COPYRIGHT AND NEIGHBOURING RIGHTS

ARRANGEMENT OF SECTIONS

PART I
Preliminary

SECTION

1. Short title and commencement
2. Interpretation

PART II
Copyright

3. Works protected
4. Derivative works
5. Provisions as to State and Government department
6. Protection to be for creation, and the kind of works not protected
7. Economic rights
8. Moral rights
9. Original ownership of economic rights
10. Duration of copyright
11. Presumption of authorship and of representation of author

PART III
Exceptions to Exclusive Right to Copyright

12. Exceptions to exclusive right to copyright
13. Private reproduction for personal purposes
14. Quotation
15. Reproduction for teaching
16. Reprographic reproduction by libraries and archives
17. Reproduction and adaptation of computer programmes
18. Reproduction broadcasting and other communication to the public
19. Temporary reproduction
20. Importation for personal purposes
21. Display of works
22. Assignment and licence of authors' rights

PART IIIA
Establishment of Copyright Office

- 22A. Establishment of Copyright Office
- 22B. Functions of the Copyright Office

PART IV
Protection of Neighbouring Rights

23. Neighbouring rights
24. Acts requiring authorization of performers

- 25. Acts requiring authorization of producers of sound recordings
- 26. Equitable remuneration for use of sound recordings
- 27. Acts requiring authorization of broadcasting organizations
- 28. Limitations on protection

PART V
Enforcement of Rights

- 29. Conservatory measures to enforce rights
- 30. Civil remedies
- 31. Criminal sanctions
- 32. Powers of Customs officials
- 33. Measures, remedies and sanctions against abuses in respect of technical means of protection and rights management information.
- 33A. Copyright Arbitration Panel

PART VI
General Provisions

- 34. Application of Act to works protected under Cap 68:01
- 35. Scope of application
- 35A. Security devices
- 35B. Affixation of security services
- 35C. Price of security device
- 35D. Accreditation of producers
- 35E. Accreditation of importers
- 35F. Keeping of books and returns
- 35G. Levy on technical devices
- 36. Application of International Treaties
- 36A. Establishment of Copyright Society
- 36B. Duties of Copyright Society
- 37. Regulations
- 38. Repeal of Cap 68:01
- 39. Savings

Act 8, 2000,
S.I. 65, 2001,
Act 6, 2006,
S.I. 71, 2006.

An Act to make provision for the regulation of copyright and to provide for matters connected to and incidental to the foregoing.

[Date of Commencement: 1st October, 2006]

PART I
Preliminary (ss 1-2)

1. Short title and commencement

This Act may be cited as the Copyright and Neighbouring Rights Act, 2000.

2. Interpretation

In this Act unless the context otherwise requires-

"adaptation" includes, in relation to a-

- (a) computer programme, a version of the programme in which it is converted into or out of a computer language or code, or into a different computer language or code otherwise than incidentally in the course of running the programme;
- (b) 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) 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) literary work, whether in a non-dramatic form or in a dramatic form-
 - (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 in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical; and
- (e) musical work, an arrangement or transcription of the work;

"artistic work" means-

- (a) a graphic work, photograph, sculpture or collage, irrespective of its artistic quality;
- (b) a work of architecture, being a building or a model of a building, irrespective of its artistic quality;
- (c) a work of artistic craftsmanship not falling within paragraph (a) or (b) of this definition, irrespective of its artistic quality;

"audiovisual work" means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible to being made visible, and where accompanied by sounds, susceptible to being made audible;

"author" means the person who has created a work, and shall include-

- (a) in relation to a literary work, the author of the work;
- (b) in relation to a musical work, the composer;
- (c) in relation to an artistic work other than a photograph, the artist;
- (d) in relation to a photograph, the photographer;

- (e) in the case of a sound recording or film, the person by whom the arrangements necessary for making the recording or film are undertaken;
- (f) in the case of a broadcast, the person making the broadcast or, in case of broadcast which relays another broadcast by reception and immediate re-transmission, the person making the other broadcast;
- (g) in the case of a cable programme, the person providing the cable programme service in which the programme is included;
- (h) in the case of a typographical arrangement of a published edition, the publisher;
- (i) in the case of a literary, dramatic, musical or artistic work which is computer-generated, the person by whom the arrangements necessary for the creation of the work are undertaken;

"broadcasting" means the communication of a work, a performance or a sound recording to the public by wireless transmission, including transmission by satellite;

"collective work" means a work created by two or more persons at the initiative and under the direction of another person, with the understanding that it will be disclosed by the latter person under his or its own name and that the identity of the contributing persons will not be indicated;

"communication to the public" means the transmission by wire or without wire of the images or sounds, or both, of a work, a performance, a sound recording or a broadcast in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintance at a place or places so distant from the place where the transmission originates that, without the transmission, the images or sound would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places or times individually chosen by them;

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

"computer programme" 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;

"copyright" in relation to a work means the exclusive right, by virtue and subject to the provisions of this Act, to do, and authorise other persons to do, certain acts in relation to that work in Botswana or in any other country to which the relevant provisions of this Act extends;

"Copyright Arbitration Panel" means the Copyright Arbitration Panel established under section 33A of the Act;

"Copyright Society" means the Copyright Society of Botswana established under section 36A of the Act;

"dramatic work" includes a work of dance or mime;

"distribution" means the distribution to the public, for commercial purposes, of copies of a work by way of rental, lease, hire, loan or similar arrangement, and **"distributing"** shall have a corresponding meaning;

"economic rights" means the rights derived as a consequence to the right to a copyright, the extent of which is provided for under section 7;

"expression of folklore" means a group-oriented and tradition-based creation of groups or persons reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means including-

- (i) folktales, folk poetry, and folk riddles;
- (ii) folk songs and instrumental folk music;
- (iii) folk dances and folk plays;
- (iv) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terra-cotta, mosaic, woodwork, metal-ware, jewellery, handicrafts, costumes, and indigenous textiles;

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

"literary work" means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes-

- (a) a table of compilation; and
- (b) a computer programme;

"musical work" means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;

"neighbouring rights" means the rights neighbouring on copyright as provided for under section 23;

"owner of copyrights" means-

- (i) where the economic rights are vested in the author, the author;
- (ii) where the economic rights are originally vested in a person other than the author, that person;
- (iii) where the ownership of the economic rights has been transferred to another person, that person;

"performer" means a singer, musician or other person who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or expressions of folklore;

"performance" in relation to-

- (a) the rights conferred under Part IV, includes-
 - (i) a dramatic performance which includes dance and mime;
 - (ii) a musical performance;
 - (iii) a reading or recitation of a literary work;
 - (iv) a performance of a variety act or any similar presentation; that is, or to the extent that it is, a live performance, given by one or more persons; and
- (b) a literary, dramatic or musical work includes-
 - (i) delivery in the case of lectures, addresses, speeches and sermons; and
 - (ii) any mode of visual or acoustic presentation, including presentation by means of sound recording, film, broadcast or cable programme of the work;

"photographic work" means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique, chemical, electronic or other, by which such recording is made; a still picture extracted from an audiovisual work shall not be considered a "photographic work" but a part of the audiovisual work concerned;

"producer" of an audiovisual work or a sound recording, means the person who undertakes the initiative and responsibility for the making of the audiovisual work or sound recording;

"public display" means the showing of the original or a copy of the work-

- (i) directly;
- (ii) by means of a film, slide, television image or otherwise on screen;
- (iii) by means of any other device or process; or,
- (iv) in the case of an audiovisual work, the showing of individual images non-sequentially, at a place or places where persons outside the normal circle of a family and its closest social acquaintance are or can be present, irrespective of whether they are or can be present at the same place and time or at different places and times or at different places or times, and where the work can be displayed without communication to the public;

"public lending" means the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes, by an institution, the services of which are available to the public, such as a public library or archive;

"public performance" means in the case of-

- (i) a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- (ii) of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and
- (iii) a sound recording, making the recording sounds audible,

at a place or at places where persons outside the normal circle of the family and its closest acquaintance are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places and times, or different places or times, and where the performance can be perceived without the need for communication to the public;

"published" in relation to a work or a sound recording means copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies;

"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 for profit-making purposes;

"reproduction" means the making of one or more copies of a work or sound recording in any material form, including any permanent or temporary storage of the work or sound recording in electronic form;

"sound recording" means any exclusively aural fixation of the sounds of a performance or of other sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied; excluding a fixation of sounds and images, such as the sound track of an audiovisual work;

"work" means any literary or artistic work as provided for under sections 3 and 4(1);

"work of applied art" means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale;

"work of joint authorship" means a work to the creation of which two or more authors have contributed, provided the work does not qualify as a "collective work".

PART II

Copyright (ss 3-11)

3. Works protected

(1) A literary and artistic work shall not be considered as a work protected by copyright under this Act unless it is an original intellectual creation in the literary or artistic domain.

(2) Literary and artistic works under this Act include-

- (a) books, pamphlets, articles, computer programmes and other writings;
- (b) speeches, lectures, addresses, sermons and other oral works;
- (c) dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions;
- (d) stage productions of works referred to in paragraph (a) and of expressions of folklore;
- (e) musical works with or without accompanying words;
- (f) audiovisual works;
- (g) works of architecture;
- (h) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- (i) photographic works;
- (j) works of applied art; and
- (k) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(3) The Minister may, by Order, add to or otherwise vary the works included under subsection (2).

4. Derivative works

(1) The following derivative works shall be protected as works-

- (a) translations, adaptations, arrangements and other transformations or modifications of works; and
- (b) collections of works, collections of mere data (data bases), whether in machine readable or other form, and collections of expression of folklore, provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents.

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

5. Provisions as to State and Government department.

(1) In the case of any work made by or under the direction or control of the State or a Government department-

- (a) if apart from this section copyright would not subsist in the work, copyright shall subsist

therein by virtue of this section; and

- (b) in any case, the State, subject to the provisions of this Part, be entitled to the copyright in the work.

(2) The State shall, subject to the provisions of subsection (3), be entitled to the copyright in every work first published in Botswana, if first published by or under the direction or control of the State or a Government department.

(3) The preceding provisions of this section shall have effect subject to any agreement made by or on behalf of the State or a Government department with the author of the work, whereby it is agreed that the copyright in the work, shall vest in the author or in another person designated in the agreement in that behalf.

(4) In this section "Government department" means any department of the Government of Botswana.

6. Protection to be for creation, and the kind of works not protected.

(1) A work shall be protected under the Act by the sole fact of its creation and irrespective of its mode or form of expression, as well as of its content, quality and purpose.

(2) Notwithstanding the provisions of sections 3, 4 and 5, no protection shall extend under this Act to-

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work;
- (b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof;
- (c) a broadcast which infringes, or to the extent that it infringes, the copyright in another broadcast or in a cable programme; or
- (d) a sound recording or film which is, or to the extent that it is, a copy of a previous sound recording or film.

7. Economic rights.

(1) Subject to the provisions of sections 13 and 21, the author or other owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the work-

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement or other transformation of the work;
- (d) the first public distribution of the original and each copy of the works by sale, rental or

otherwise;

- (e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;
- (f) importation of copies of the work, even where the imported copies were made with the authorization of the author or other owner of copyright;
- (g) public display of the original or a copy of the work;
- (h) public performance of the work;
- (i) broadcasting of the work;
- (j) other communication to the public of the work.

(2) The rights of rental and lending under paragraph (e) do not apply to rental or lending of computer programmes where the program itself is not the essential object of the rental or lending.

8. Moral rights

(1) The author of a work shall, independently of any economic rights he may be entitled to, and even where he is no longer the owner of the said rights, have the right to-

- (a) have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;
- (b) not have his name indicated on the copies and in connection with any public use of his work, and the right to use a pseudonym;
- (c) object to any distortion, mutilation or other modification of, or other derogatory action in relation to his 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, provided that the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under item (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived.

(4) Following the death of the author, the person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

9. Original ownership of economic rights

(1) Subject to the other provisions of this Act, the original owner of economic rights is the author who has created the work.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights, provided that where a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in the part that he has created.

(3) In respect of a collective work, the person at the initiative and under the direction of whom or which the work has been created shall be the original owner of the economic rights.

(4) In respect of an audiovisual work, the original owner of the economic rights shall be the producer, unless provided otherwise in a contract.

(5) The co-authors of the audiovisual work and the authors of the pre-existing works included in or adapted for the making of the audiovisual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works, can be subject of acts covered by the economic rights separately from the audiovisual work.

10. Duration of copyright

(1) Subject to the other provisions of this section, the economic and moral rights shall be protected during the life of the author and for fifty years after his death.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights shall be protected for fifty years from the date on which the work was made, first made available to the public or first published, whichever date is the latest.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for fifty years from the date on which the work was made, first made available to the public or first published, whichever date is the latest, provided that where the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2) shall apply, as the case may be.

(5) In the case of a work of applied art, the economic and moral rights shall be protected for twenty-five years from the making of the work.

(6) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

11. Presumption of authorship and representation of author

(1) The person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work.

(2) Where a pseudonym used leaves no doubt as to the identity of the author, subsection (1) shall be applicable to the pseudonym.

(3) In the case of an anonymous or pseudonymous work, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and in this capacity shall be entitled to exercise and enforce the moral and economic rights of the author:

Provided that such presumption shall cease to apply when the author reveals his identity.

PART III

Exceptions to Exclusive Right to Copyright (ss 12-21)

12. Exceptions to exclusive right to copyright

Notwithstanding the provisions of section 7, the following dealings with a work shall be permitted without the authorisation of the author or other owner of the copyright-

- (i) private reproduction for personal purposes, subject to section 13;
- (ii) quotations, subject to section 14;
- (iii) reproduction for teaching, subject to section 15;
- (iv) reprographic reproduction by libraries and archives, subject to section 16;
- (v) reproduction and adaptation of computer programmes, subject to section 17;
- (vi) reproduction, broadcasting and other communications to the public for informatory purposes, subject to section 18;
- (vii) temporary reproduction, subject to section 19;
- (viii) importation for personal purposes, subject to section 20; and
- (ix) display of works, subject to section 21.

13. Private reproduction for personal purposes

(1) Subject to subsection (2), the private reproduction of a published work in a single copy shall be permitted without the authorization of the author or owner of copyright, where the reproduction is made by any person exclusively for his own personal purposes.

(2) The permission granted under subsection (1) shall not extend to reproduction-

- (a) of a work of architecture in the form of building or other construction;
- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notation;
- (c) of the whole or a substantial part of a data base;

- (d) of a computer, except as provided in section 17; and
- (e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

14. Quotation

(1) The reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorization of the author or other owner of copyright, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose.

(2) Any quotation made in accordance with subsection (1) shall be accompanied by an indication of source and the name of the author, if his name appears in the work from which the quotation is taken.

15. Reproduction for teaching

(1) The following acts effected for purposes of teaching shall be permitted without authorization of the author, or other owner of copyright-

- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writings or sound or visual recordings, provided that reproduction is compatible with fair practice and does not exceed the extent justified;
- (b) the reprographic reproduction, for face-to-face teaching in education institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that-
 - (i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions; and
 - (ii) there is no collective licence available, offered by a collective administration organization of which the educational institution is or should be aware, under which such reproduction can be made.

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1).

16. Reprographic reproduction by libraries and archives

Any library or archive whose activities do not serve direct or indirect gain may, without the authorization of the author or other owner of copyright, make a single copy of the work by reprographic reproduction-

- (a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a person,

provided that-

- (i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research;
 - (ii) the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; and
 - (iii) there is no collective licence available, offered by a collective administration organization of which the library or archive is or should be aware, under which such copies can be made; or
- (b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive, provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

17. Reproduction and adaptation of computer programmes

(1) The reproduction, in a single copy, or the adaptation of a computer by the lawful owner of a copy of that computer programme shall be permitted without the authorization of the author or other owner of copyright, provided that the copy or adaptation is necessary-

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

(2) No copy or adaptation of a computer programme shall be used for any purpose other than those specified in subsection (1), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer ceases to be lawful.

18. Reproduction broadcasting and other communication to the public

The following acts shall be permitted in respect of a work without the authorisation of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable-

- (a) the reproduction in a newspaper or other periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character, provided that this permission shall not apply where the right to authorise reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with

broadcasting or other communication to the public of the work;

- (b) the reproduction and the broadcasting or other communication to the public, for the purpose of reporting current events, of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose; or
- (c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified for the purpose of providing current information.

19. Temporary reproduction

The temporary reproduction of a work shall be permitted if all of the following conditions are met-

- (a) the reproduction is made in the process of a transmission of the work or an act of making a stored work perceptible;
- (b) it is caused by a person or entity that, by virtue of authorisation by the owner of the copyright or of operation of law, is entitled to make that transmission or make the work perceptible; and
- (c) it is an accessory to the transmission or making perceptible that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those referred to in paragraphs (a) and (b).

20. Importation for personal purposes

The importation of a copy of a work by any person for his own personal purposes shall be permitted without the authorization of the author or other owner of copyright.

21. Display of works

The public display of originals or copies of works shall be permitted without the authorization of the author, provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process, and provided further that the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

22. Assignment and licence of authors' rights

(1) Economic rights shall be assignable in whole or in part.

(2) Any assignment of an economic right, and any licence to do an act subject to authorization by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.

(3) An assignment in whole or in part of any economic right, or a licence to do an act subject

to authorization by the author or other owner of copyright, shall not include or be deemed to include the assignment or licence of any other rights not explicitly referred to therein.

PART IIIA ***Establishment of Copyright Office (ss 22A-22B)***

22A. Establishment of Copyright Office

(1) There is hereby established an office to be known as the Copyright Office, which shall be situated in Gaborone and shall have branches in such other places as the Minister may, by Order published in the *Gazette*, designate.

(2) The Copyright Office shall be headed by the Copyright Administrator who shall be a public officer and who shall, subject to the direction of the Minister, be responsible for the administration of this Act, and who shall perform such functions and exercise such powers as may be conferred on him or her by this Act or any other enactment.

(3) The Copyright Office shall also have-

- (a) A Deputy Copyright Administrator; and
- (b) such other officers as may be necessary for the proper performance of its functions, and carrying out of its duties.

(4) The Copyright Administrator and other officers of the Copyright Office shall be appointed in accordance with the provisions of the Public Service Act.

22B. Functions of the Copyright Office

The Copyright Office shall-

- (a) be responsible for all matters affecting copyright in Botswana;
- (b) supervise the activities of the Copyright Society as provided for under section 36A of the Act;
- (c) advise Government and its agencies on all matters pertaining to copyright;
- (d) monitor the position of Botswana in relation to international conventions, treaties or agreements relating to copyright, and advise Government thereon;
- (e) advise Government on the negotiation, conclusion and implementation of bilateral and multilateral agreements on copyright between Botswana and other countries;
- (f) organise out-reach and awareness creation programmes to inform, educate and sensitise the public on matters relating to copyright;
- (g) maintain an effective database on copyright matters and on authors and their works;
- (h) maintain a register of works published in Botswana;

- (i) issue a licence, prescribed by the Minister, for the operation of the Copyright Society;
- (j) administer the fund established under section 35G (2); and
- (k) be responsible for such matters related to copyright, as the Minister may, from time to time, direct for the better carrying out of the purposes and provisions of this Act.

PART IV

Protection of Neighbouring Rights (ss 23-28)

23. Neighbouring rights

In this Part "neighbouring rights" means the intellectual property rights provided for the protection of the legal interests of certain persons and legal entities who either contribute to making works available to the public or produce subject matter which, will not qualify as "works" under the general understanding of copyright, but who, nevertheless, express creativity or technical and organisational skill sufficient to justify recognition of their contribution as deserving of protection; and such rights include the rights of performers, producers of sound recordings and broadcasting.

24. Acts requiring authorization of performers

(1) Subject to section 28, a performer shall have the exclusive right to carry out or to authorize any of the following acts-

- (a) the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication-
 - (i) is made from fixation of the performance, other than fixation made under the terms of section 28; or
 - (ii) is a re-broadcasting made or authorized by the organization initially broadcasting the performance;
- (b) the fixation of his unfixed performance;
- (c) the reproduction of a fixation of his performance;
- (d) the first making available to the public of a fixation of his performance, or copies thereof, through sale or other transfer or ownership;
- (e) rental to the public or public lending of a fixation of his performance, or copies thereof irrespective of the ownership of the copy rented; or
- (f) the making available to the public of his fixed performance, by wire or wireless means, in such way that members of the public may access them from a place or at a time individually chosen by them.

(2) Once the performer has authorized the incorporation of his performance in an audiovisual

fixation, the provisions of subsection (1) shall have no further application.

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

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

(5) The provisions of subsections (2), (3) and (4) of section 8 apply *mutatis mutandis* to the rights granted under subsection (3) of this section.

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

25. Acts requiring authorization of producers of sound recordings

(1) Subject to the provisions of section 28, a producer of a sound recording shall have the exclusive right to carry out or to authorize any of the following acts-

- (a) direct or indirect reproduction of the sound recording;
- (b) importation of copies of the sound recording, even where the imported copies were made with the authorization of the producer;
- (c) adaptation or other transformation of the sound recording;
- (d) rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent;
- (e) the first making available to the public by sale or other transfer of ownership, of the original copies of the sound recording;
- (f) the making available sound recordings, by wire or wireless means, to enable members of the public to access them from a place or at a time individually chosen by them.

(2) The rights under subsection (1) shall be protected from the publication of the sound recording until the end of the fiftieth calendar year following the year of publication or if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

26. Equitable remuneration for use of sound recordings

(1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of

the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performer or performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

27. Acts requiring authorization of broadcasting organizations

(1) Subject to section 28, a broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts-

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

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.

28. Limitations on protection

Sections 24, 25, 26 and 27 shall not apply where the acts referred to in those sections are related to-

- (a) the use by a person exclusively for his own personal purposes;
- (b) using short excerpts for reporting current events to the extent justified for the purpose of providing current information;
- (c) use solely for the purpose of face-to-face teaching activities or for scientific research; or
- (d) cases where, under Part III, a work can be used without the authorization of the author or other owner of copyright.

PART V

Enforcement of Rights (ss 29-33A)

29. Conservatory measures to enforce rights

(1) Subject to subsection (2) where a complaint of the contravention of the provisions of this Act is made and it is considered that a document, book or other object connected to any

investigation in regard to the complaint, is being concealed within specified premises, a Police Officer or such other person as the Minister may, by Order, appoint and grant investigating powers, shall enter the premises to conduct a search and seize any item found within the premises.

(2) The Police Officer or the person appointed by the Minister under subsection (1) (hereinafter both referred to as "the investigating officer") shall not enter, conduct a search or seize any item in terms of subsection (1) unless he has obtained-

- (a) the consent in writing of the owner of the premises or the person in charge of the premises; or
- (b) a search warrant.

(3) The court shall grant the application for a search warrant if it appears, on information given on oath or affirmation, that there are reasonable grounds to suspect that-

- (a) there are works that infringe the rights protected under the Act in the premises;
- (b) there is in the premises equipment or other device specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means") or
- (c) a document, book or other object which may afford evidence of such contravention of the provisions of this Act is within those premises.

(4) Where a Chief or Senior Magistrate is satisfied from information given on oath or affirmation by the investigating officer, that urgent action is required to obtain evidence pertaining to the contravention of the provisions of this Act, which evidence is likely to be concealed or destroyed, the Magistrate may dispense with any procedural requirements and grant a search warrant to the investigating officer at such time and place and under such conditions as the urgency of the matter may require.

(5) A search warrant granted by the court shall-

- (a) authorise the investigating officer mentioned in the warrant to enter the premises identified in the warrant to conduct searches, examinations, take extracts or copies, seize any item or to do any other thing that may assist with the investigation;
- (b) be executed by day, unless the court authorises its execution by night; and
- (c) be in force until it is executed, cancelled by the court or a period of one month from the date of its issue expires, whichever occurs first.

(6) The investigating officer executing a search warrant under this section shall, before such execution or upon demand by any person whose rights may be affected-

- (a) present his identification card; and

(b) hand to such person a copy of the warrant.

(7) An investigating officer shall not seize any item found within the premises being searched in accordance with the provisions of this section unless he has handed the person from whose possession or charge the item is being seized, a receipt of the seizure in the prescribed form.

(8) A person from whose possession or charge a document, book or other object has been seized shall, as long as it is in the possession or charge of the investigating officer concerned, be allowed on request to make copies or to take extracts from it at any reasonable time at his own expense and under the supervision of that investigating officer or other authorised person in the service of the Office.

(9) A person shall not be entitled to refuse to answer any question or to produce any document, book or other object on the ground that such answer, document, book or other object would incriminate him.

(10) Subject to subsection (11) incriminating evidence, arising out of any answer, document, book or other object a person may present to an investigating officer in answer to an enquiry made by the investigating officer, shall not be admissible in any criminal trial against that person.

(11) Any person who-

(a) obstructs or hinders the investigating officer in the performance of his functions in terms of this section; or

(b) knowingly makes a false statement or gives a false answer to any enquiry,

shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding P2,000 or to imprisonment for a term not exceeding 12 months, or to both.

30. Civil remedies

(1) The court shall, subject to any other Act of Parliament, and on such terms as it may deem reasonable, have the authority to-

(a) grant injunctions to prohibit the committing, or continued committal, of infringement of any right protected under this Act;

(b) order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected under this Act, where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to, such copies.

(c) order payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing party, that are attributable to the infringement; and

(d) award exemplary damages where it finds that the infringement is prejudicial to the

honour or reputation of the person whose rights were infringed.

(2) In addition to any civil remedy that may be ordered by the court against any person who has infringed any right protected under this Act, the court shall have the authority to order the destruction or other reasonable disposition of infringing copies, where they exist, and their packaging outside the channels of commerce in such a manner as to avoid harm to the holder of the right, unless the owner of the right requests otherwise:

Provided that copies and their packaging which were acquired by a third party in good faith shall not be so destroyed.

(3) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements.

(4) Any person who in contravention of the provisions of subsections (2) and (3), fails to carry out the order of the court for the destruction or other reasonable disposition of the infringing copies or implements, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding P10,000 or to imprisonment for a term not exceeding five years or to both.

31. Criminal sanctions

(1) Any person who contravenes the provisions of this Act so as to infringe a right protected under this Act for profit, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding P20,000 or to imprisonment for a term not exceeding ten years or to both.

(2) Any person convicted of a second or subsequent offence shall be fined a minimum of P30,000 or a maximum of P5,000,000 or be imprisoned for a term not exceeding ten years, or to both.

32. Powers of Customs officials

Any goods imported into the country that are in contravention of the provisions of this Act, may be placed under an embargo, destroyed or otherwise disposed of as provided for under sections 119 and 120 of the Customs and Excise Duty Act.

33. Measures, remedies and sanctions against abuses in respect of technical means of protection and rights management information

(1) The following acts shall be considered unlawful and, in the application of the civil and criminal remedies under this Part, shall be assimilated to infringements of the rights protected under this Act-

- (a) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work, sound recording or a broadcast, or to impair the quality of copies made (the latter device or means hereinafter referred to as "copy-protection or

copy-management device or means"); or

- (b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program;
- (c) the removal or alteration of any electronic rights management information without authority;
- (d) the distribution import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, sound recording or broadcasts, knowing or having reason to know that electronic rights management information has been removed or altered without authority.

(2) In the application of civil and criminal remedies under this Part, any illicit device and means referred to in subsection (1) and any copy from which rights management information has been removed, or in which such information has been altered, shall be assimilated to infringing copies of works, and any illicit act referred to in subsection (1) shall be treated as an infringement of copyright or related rights to which the civil remedies and criminal sanctions provided for in this Part are applicable.

(3) In this section, "rights management information" means any information which identifies the author, the work, the producer of the sound recording, the broadcaster, the performer, the performance, or any owner of a right under this Act, any information about the terms and conditions of use of the work or the performance, and any numbers or codes that represent such information, when any of these items of a work or a fixed performance, appears in connection with the broadcasting, communication to the public or making available to the public of a work or a fixed performance.

33A. Copyright Arbitration Panel

(1) Notwithstanding the other provisions of this Act, there shall be appointed, by the Minister, an arbitration panel which shall be known as the Copyright Arbitration Panel, for the settlement of disputes under this Act.

(2) The Panel shall be composed of not less than three but not more than five persons, one of whom shall be a person who is enrolled to practice as an attorney in the High Court of Botswana, and has been an attorney for not less than seven years, or a person who has held judicial office in Botswana.

(3) The person referred to under subsection (2) shall be the chairperson of the Panel.

(4) The other members of the Panel shall be persons who are knowledgeable in the field of copyright.

(5) No person shall be appointed as a member of the Panel, nor shall any person so appointed sit in any hearing or proceeding of the Panel where he or she, his or her spouse or business partner, or his or her employer or any person closely associated with him or her, has a

pecuniary interest in any matter which comes before the Panel for determination.

PART VI

General Provisions (ss 34-39)

34. Application of Act to works protected under Cap 68:01

(1) The provisions of this Act shall apply to works, performances, sound recordings and broadcasts protected under the Copyright Act (which is repealed under section 38 and is hereinafter referred to as "the repealed Act") before the commencement of this Act, provided that the term of protection had not expired under the repealed Act or under the legislation of the country of origin of such works, performances, sound recordings or broadcasts that are to be protected under an international treaty to which the Republic of Botswana is party.

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

35. Scope of application

(1) The provisions of this Act concerning the protection of literary and artistic works shall apply to-

- (a) work of authors who are nationals of, or have their habitual residence in Botswana;
- (b) works first published in Botswana, and works first published in another country and also published in Botswana within thirty days of their first publication, irrespective of the nationality or residence of their authors;
- (c) audiovisual works, the producer of which has his headquarters or habitual residence in Botswana;
- (d) works of architecture erected in Botswana and other artistic works incorporated in a building or other structure located in Botswana.

(2) The provisions of this Act shall also apply to works that are protected in Botswana by virtue of and in accordance with any international convention or other international agreement to which the country is party.

(3) The provisions of this Act on the protection of performers shall apply to-

- (a) performers who are nationals of Botswana;
- (b) performers who are not nationals of Botswana but whose performances-
 - (i) take place on the territory of Botswana;
 - (ii) are incorporated in sound recordings that are protected under this Act; or
 - (iii) have not been fixed in a sound recording but are included in broadcasts qualifying for protection under this Act.

(4) The provisions of this Act on the protection of sound recordings shall apply to-

- (a) sound recordings the producers of which are nationals of Botswana;
- (b) sound recordings first fixed in Botswana; and
- (c) sound recordings first published in Botswana.

(5) The provisions of this Act on the protection of broadcasts shall apply to-

- (a) broadcasts of broadcasting organizations the headquarters of which are situated in Botswana; and
- (b) broadcasts transmitted from transmitters situated in Botswana.

(6) The provisions in this Act shall also apply to performers, producers of sound recordings and broadcasting organizations protected by virtue of and in accordance with any international convention or other international agreement to which Botswana is party.

35A. Security devices

(1) Every sound and audiovisual recording made available to the public by sale, rental, lending or distribution in any other manner to the public for commercial purposes in Botswana shall have affixed, to it, such security device as may be prescribed.

(2) The security device shall be issued by the Copyright Office, upon payment of the price, to a person who makes available to the public, or intends to make available to the public, a sound or audiovisual recording by any method specified in subsection (1).

(3) The security device shall be issued by the Copyright Office upon proof, by the person referred to in this section, that he or she has been authorised by the owner of the copyright in the work to so sell, rent, lend or otherwise distribute the work.

(4) The security device shall be evidence that the work to which it is affixed is not a pirated work.

(5) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding P20,000 or to imprisonment for a term not exceeding two years, or to both.

(6) Any person who, without the permission of the Copyright Office-

- (a) is in possession of, or reproduces, a security device; or
- (b) is 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 shall be liable upon conviction, to a fine not exceeding P50,000 or to imprisonment for a term not exceeding five years, or to both.

35B. Affixation of security device

- (1) The security device shall be affixed-
 - (a) in the case of a sound or audio visual recording produced or manufactured in Botswana, at the Copyright Office or such other place as the Copyright Office may, from time to time, designate by notice published in the *Gazette*; and
 - (b) in the case of a sound or audio visual recording which is imported, but is not imported exclusively for personal use, at the relevant office of the Department of Customs and Excise before it is released for commercial use.

(2) The security device shall be affixed to every cassette, disc or other medium in which a sound recording or audio visual recording is embodied in such a manner as to make the device visible to prospective purchasers.

35C. Price of security device

The price of a security device shall be as fixed from time to time by the Copyright Office after consultation with the Copyright Society.

35D. Accreditation of producers

(1) Every person engaged in the reproduction of sound and audio visual recordings shall, for the purpose of affixing the security device, apply, in such form as may be prescribed, to the Copyright Office for accreditation as a producer.

- (2) No person shall be accredited unless he or she-
 - (a) proves, to the satisfaction of the Copyright Office, that he or she has been authorised by the owner of the copyright in the work to reproduce the work referred to in subsection (1); and
 - (b) has paid the application fee prescribed.

(3) Upon being accredited, the applicant shall be issued with a certificate of accreditation, in such form as may be prescribed, by the Copyright Office, and such accreditation shall be renewed annually.

35E. Accreditation of importers

(1) Any person who imports or intends to import, into Botswana, any sound or audiovisual recording for the purpose of sale, rental, lending or distribution in any other manner to the public for commercial purposes shall apply in such form as may be prescribed to the Copyright Office for accreditation as an importer authorised to use a security device in connection with such works.

(2) Upon being accredited, the applicant shall be issued with a certificate of accreditation, in such form as may be prescribed, by the Copyright Office.

(3) The Copyright Office shall issue a certificate of accreditation under this section only where the applicant produces valid authorisation from the owner of the copyright in the works permitting the importation of such works into Botswana.

(4) Any person who, without the accreditation of the Copyright Office, imports any work specified in subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding P50,000 or to imprisonment for a term not exceeding five years, or to both.

35F. Keeping of books and returns

Every accredited person shall keep such books and make such returns as may be required, and in the manner prescribed by the Minister.

35G. Levy on technical devices

(1) There shall be imposed on all imported and locally manufactured blank sound and audio visual carriers, compact discs and equipment capable of being used to copy protected materials, a levy of such sum as may be prescribed by the Minister.

(2) The levy shall be collected by the Department of Customs and Excise and shall be deposited in a fund to be established by the Minister of Finance and Development Planning for the development of authors and publishers of works.

36. Application of International Treaties

The provisions of any international treaty in respect of copyright and related rights to which the Republic of Botswana is a party shall apply to matters dealt with under this Act.

36A. Establishment of Copyright Society

(1) There shall be established, for the various categories of works protected under this Act, a collective administration body to be known as the Copyright Society of Botswana.

(2) The Copyright Society shall be a non-profit making company limited by guarantee, and shall be responsible for-

- (a) the negotiation and granting of licences in written agreement with the owners of copyright for:
 - (i) the adaptation of works, performances and sound recordings,
 - (ii) the insertion of works, performances or sound recordings in other scopes,
 - (iii) the use of works for publicity purposes;
 - (b) setting rates for royalties in accordance with acceptable international standards; and
 - (c) the collection and distribution of royalties to appropriate owners of copyright.
- (3) The Copyright Society shall-

- (a) represent the owners of the copyright in the various categories of works protected under this Act; and
- (b) put in place rules and regulations, approved by the Copyright Office, which contain such provisions as are necessary to ensure the protection of the interests of its members.

36B. Duties of Copyright Society

(1) The Copyright Society shall, as soon as reasonably practicable after the end of each financial year, submit, to the Copyright Office-

- (a) a report of its operations and performance during the year in question;
- (b) a copy of its audited financial statements in respect of that year; and
- (c) a copy of such other reports as may be requested by the Copyright Office.

(2) The Copyright Society shall distribute royalties on an equitable basis, approved by the Copyright Office, to its members.

37. Regulations

(1) The Minister may make regulations providing for any matter which under this Act is to be prescribed or for the better carrying out of the purposes and provisions of this Act.

(2) Without prejudice to the generality of the subsection (1), the Minister may make Regulations to-

- (a) establish, constitute and provide the functions of a Copyright Council to administer the Act and to regulate the rights protected under the Act;
- (b) provide for the setting up of a Copyright Society and such other body of persons necessary to promote the rights protected under the Act.

38. Repeal of Cap 68:01

The Copyright Act is hereby repealed.

39. Savings

(1) Nothing in this Act shall affect the operation of any rule relating to breaches of trust or confidence.

(2) Nothing in this Act shall affect the right of the State or of any person deriving title from the State to sell, use or otherwise deal with articles forfeited under the laws relating to customs or excise, including any article forfeited by virtue of this Act or the repealed Act.