

# COPYRIGHT AND PERFORMANCE RIGHTS ACT, 1994

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GOVERNMENT OF ZAMBIA

# ACT

No. 44 of 1994

Date of assent: 31st December, 1994.

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

[31st December, 1994 ENACTED by the Parliament of Zambia.

## PART I

### PRELIMINARY

1. This Act may be cited as the Copyright and Performance Rights Act, 1994.

2. In this Act, unless the context otherwise requires

"adaptation" includes

- (a) in relation to any literary work
  - (i) a translation of the work; or
  - (ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures;
- (b) in relation to a literary work in a non-dramatic form, a version of the work (whether in its original language or in a different language) in a dramatic form;
- (c) in relation to a literary work in a dramatic form, a version of the work (whether in its original language or in a different language) in a non-dramatic form;
- (d) in relation to a musical work, an arrangement or transcription of the work;
- (e) in relation to an artistic work in two dimensions, the reproduction of that work in an object in three dimensions; and in relation to a computer program, a version of the program in which it is converted from one computer language or code into another;

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

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

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

"author" means

- (a) in relation to an audiovisual work or sound recording, the person who causes the audiovisual work or recording to be made;
- (b) in relation to a broadcast, the person who is responsible for the contents of the broadcast and for arranging for its transmission;
- (c) in relation to a cable program, the person who is responsible for including it in the cable program service by which it is transmitted;
- (d) in relation to the typographical arrangement of a published edition, the publisher of the edition; and
- (e) in relation to any other work, the individual who created the work;

"broadcast"

(a) used as a noun, means the aggregate of sounds, or of sounds and visual images, or other information, embodied in a program as transmitted by broadcasting; and

(b) used as a verb, means to transmit, by the emission of electro-magnetic energy otherwise than over a path that is provided by a material substance, for reception by members of the public, visual images or sounds, or both, capable of being received by members of the public in possession of suitable apparatus, regardless of whether

- (i) the apparatus includes special decoding devices;
- (ii) the members of the public are in Zambia or elsewhere;
- (iii) the electromagnetic energy is carried, after the initial transmission but before it is received by members of the public, on a path provided by a material substance; or
- (iv) any member of the public actually receives the images or sounds;

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

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

- (a) the apparatus includes special decoding devices;
- (b) the members of the public are in Zambia or elsewhere; or
- (c) any member of the public actually receives the images or sounds;

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

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

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

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

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

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

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

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

"court" means the High Court for Zambia;

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

"first published" has the meaning given by section *four*; "infringing copy" means a copy of a work in which copyright subsists

(a) the making of which constituted an infringement under this Act of the copyright in the work;

(b) the making of which would have constituted an infringement under this Act of the copyright in the work, if the copy had been made in Zambia; or

(c) the making of which would have constituted a breach of an exclusive licensing agreement, if the copy had been made in Zambia; "joint authorship" has the meaning given by section *three*; "literary work" includes a dramatic work or an arrangement of information in tabular form

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

"publish" has the meaning given by *section four*; "registered collecting society" means a collecting society registered by the Registrar under section *twenty-two*;

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

"sound recording" means

(a) a recording of sounds, from which the sounds may be reproduced; or

(b) a recording of the whole or any part of a literary or musical work, from which sounds reproducing the work may be produced; regardless of the medium on which the recording is made or the method by which the sounds are reproduced or produced;

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

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

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

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

(a) a work is of unknown authorship if the identity of none of the authors is known;

(b) subject to paragraph (c), the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain his identity by reasonable inquiry; and

(c) the identity of an author that has once been known shall not subsequently be regarded as unknown.

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

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

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

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

(a) the earliest publication of the work made with the authority of the copyright owner; or

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

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

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

(a) in the case of a literary or musical work

(i) the performance of the work; or

(ii) the broadcasting of the work or its inclusion in a cable program service (otherwise than for the purposes of an electronic retrieval system);

(b) in the case of an artistic work

(i) the exhibition of the work;

(ii) the making available to the public of a graphic work representing, or of photographs of, a work of architecture in the form of a building, or model for a building, a sculpture or a work of artistic craftsmanship;

(iii) the making available to the public of a film including the work; or

(iv) the broadcasting of the work or its inclusion in a cable program service (otherwise than for the purposes of an electronic retrieval system);

(c) in relation to an audiovisual work or sound recording

(i) the showing or playing of the work in public; or

(ii) the broadcasting of the work or its inclusion in a cable program service (otherwise than for the purpose of an electronic retrieval system).

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

6. This Act shall bind the Republic.

## PART II

### COPYRIGHT

#### NATURE OF COPYRIGHT

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

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

(a) original

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

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

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

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

**9.** (1) Copyright shall subsist 10

(a) a work of any category specified in section *eight*, other than a typographical arrangement of a published edition, if, at the time of completion of the work, the author of the work was

- (i) a citizen of, or habitually resident in, Zambia or a convention country; or
- (ii) a body corporate incorporated in Zambia or a Convention country;

(b) a literary, musical or artistic work, a compilation, a computer program, an audiovisual work or a typographical arrangement of a published edition, which is made or first published in Zambia or a Convention country;

(c) a sound recording which is made or first published in Zambia or a Convention country;

(d) a broadcast which is first transmitted from a place in Zambia or a Convention country; or conditions

(e) a cable program service which is first transmitted from a place in Zambia or a Convention country.

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

(a) the reference in paragraph (1) (a) to the author shall be read as a reference to any of the authors; and

(b) where the work qualifies for copyright protection only under that paragraph, only those of the authors who satisfy the requirements of that paragraph shall be taken into account for the purposes of

- (i) section *ten* (first ownership of copyright);
- (ii) section *twelve* to *fifteen* (duration of copyright); and
- (iii) subsection (3) of section *twenty-one* (acts which do not constitute infringements).

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

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

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

(a) made by the author in the course of his employment; or

(b) made by the author on the commission of some other person;

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

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

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

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

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

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

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

#### DURATION OF COPYRIGHT

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

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

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

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

- (a) the reference in subsection (1) to the death of the author shall be read as a reference to the death of the last to die of the authors whose identity is known; and
- (b) the reference in subsection (3) to the identity of the author becoming known shall be read as a reference to the identity of any of the authors becoming known.

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

(a) at the end of the period of fifty years from the end of the calendar year in which it is made; or

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

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

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

**16.** Copyright in the typographical arrangement of a published edition shall expire at the end of the calendar year in which the edition was first published.

#### INFRINGEMENT OF COPYRIGHT

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

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

- (a) the publication;
- (b) the reproduction in any material form;
- (c) the broadcasting or inclusion in a cable program service;

(d) the communication to the public by any other means;

(e) the importation into Zambia of copies; and

(f) the adaptation;

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

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

(a) the reproduction in any material form;

(b) the publication;

(c) the broadcasting or inclusion in a cable program service;

(d) the communication to the public by any other means; and

(e) the importation into Zambia of copies;

of the work.

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

(a) the adaptation;

(b) the reproduction;

(c) the publication;

(d) the broadcasting or inclusion in a cable program;

(e) the communication to the public by any other means; and

(f) the importation into Zambia of copies;

of the audiovisual work or sound recording, together with any of the controlled acts in paragraphs (b) to (e) in relation to an adaptation of the audiovisual work or sound recording.

The controlled acts in relation to a broadcast or cable program are

(a) the reproduction;

(b) in the case of a broadcast

(i) the re-broadcasting; or

(ii) the inclusion in a cable program;

(c) in the case of a cable program

(i) the broadcasting; or

(ii) the inclusion in another cable program; and

(d) the communication to the public by any other means; of the broadcast or cable program.

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

(a) the reproduction; and

(b) the importation into Zambia of copies;

of the arrangement.

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

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

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

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

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

- (a) makes or causes to be made;
  - (b) imports into Zambia; or
  - (c) sells or lets for hire, or offers or exposes for sale or hire;
- an article specifically designed or adapted for making copies of that particular work, unless he satisfies the court that he did not know and had no reasonable grounds for knowing that the article would be used for making such infringing copies.

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

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

- (a) fair dealing with a work for private study or for the purposes of research done by an individual for his personal purposes, otherwise than for profit;
- (b) fair dealing with a work for the purposes of criticism or review, whether of that work or any other work, provided there is a sufficient acknowledgement;
- (c) fair dealing with a work for the purposes of reporting current events-
  - (i) in a newspaper, magazine or similar periodical, provided there is a sufficient acknowledgement; or
  - (ii) by broadcasting or by inclusion in a cable program service or by its use in an audiovisual work;
- (d) the reproduction of a work for the purposes of judicial proceedings, or of any other proceedings before a tribunal established by law, or for the purposes of a report of judicial proceedings or any other such proceedings;
- (e) the reading or recitation in public of any reasonable extract from a published literary work, provided there is a sufficient acknowledgment;
- (f) the reproduction of a work for the purpose of the education system of Zambia
  - (i) by a teacher or pupil in the course of instruction, provided that the reproduction is not made by means of an appliance capable of producing multiple copies; or
  - (ii) as part of the questions to be answered in all examination; or
  - (iii) in answer to such questions;
- (g) the performance of a dramatic work by the staff and students of a school or other educational institution for the purposes of the education system of Zambia in the course of the activities of the school or institution, if the audience is composed exclusively of
  - (i) the staff and students of the school or institution; or
  - (ii) the parents and guardians of the students; or
  - (iii) other persons directly connected with the activities of the school or institution;
- (h) the incidental inclusion of a work in an artistic work, audiovisual work, sound recording, broadcast or cable program;
- (i) the publishing, broadcasting, inclusion in a cable program service, or the communication to the public by any other means of anything whose making was, by virtue of paragraph (h), nor an infringement of the

copyright;

(j) the reproduction of a work by a library or archive designated for the purposes of this paragraph by the Minister for the purpose of making a copy of any item in the permanent collection of the library or archive

(i) in order to preserve or replace that item by placing the copy in permanent collection either in addition to or in place of the item; or

(ii) in order to replace in the permanent collection of another designated library or archive an item which has been lost, destroyed or damaged provided that it is not reasonably practicable to purchase a copy of the item in question;

(k) the reproduction of a computer program made *from* a copy of the program by the owner of that copy in the event that it is lost, destroyed or corrupt;

(l) the recording of a broadcast or cable program by an individual for the purpose of allowing the individual to listen to or view the broadcast or program at a time more convenient to him.

(2) An act which

(a) conflicts with the normal commercial exploitation of a work; or

(b) unreasonably prejudices the legitimate commercial interests of the owner of the copyright in a work; shall not, for the purposes of subsection (1)

(i) be treated as fair dealing with the work; or

(ii) be treated as an act to which paragraph (f) of subsection (1) applies.

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

(a) the work is of unknown authorship; and

(b) it is reasonable to assume

(i) that copyright has expired; or

(ii) that the author died fifty years or more before the beginning of the calendar year in which the act is done or the arrangements are made.

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

## COLLECTING SOCIETIES

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

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

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

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

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

(4) Subsection (3) shall not have the effect of limiting any other right of an owner of a copyright under this

Act.

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

- (a) the decision of the collecting society whether or not to grant such a licence; or
  - (b) the terms and conditions on which the collecting society is prepared to grant the licence;
- either party may refer the dispute to the Registrar *for* arbitration.

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

- (a) give both parties an opportunity to present their respective cases, either in person or through representatives, both orally and in writing; and
- (b) after hearing both parties, make such written orders as he considers reasonable.

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

### MORAL RIGHTS

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

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

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

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

- (a) to be identified as the author or director of the works; and

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

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

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

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

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

### PART III

#### ENFORCEMENT OF COPYRIGHT

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

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

infringement of any other property right.

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

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

**26.** Where a person-

(a) has an infringing copy of a work in his possession, custody or control in the course of a trade or business; or

(b) has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work; the court may, on the application of the owner of the copyright in the work, order that the infringing copy or the article be forfeited and delivered up to the owner of the copyright.

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

(a) that he is the owner of the copyright in the work; and (b) that he requests the Controller to treat as prohibited goods, during the period specified in the notice, copies of the work which are infringing copies,

(2) The period specified in a notice under subsection (1) shall not exceed

(a) five years; or

(b) the remainder of the duration of the copyright;

whichever is less,

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

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

(a) he shall issue a notice in the *Gazette* to the effect that, during a specified period (being a period not longer than that specified in the application) infringing copies of the work concerned shall be prohibited imports; and

(b) during the period so specified

(i) a person shall not import infringing copies of the work concerned, otherwise than for his private and domestic use, and;

(ii) any infringing copy imported in contravention of subparagraph (i) shall be subject to forfeiture

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

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

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

(c) distributes infringing copies;

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

(e) by way of trade, exhibits in public any infringing copy;

(f) imports into Zambia, otherwise than

(i) for his private and domestic use; and

(ii) as items accompanying him on his entry into Zambia; an infringing copy; or

(g) makes or has in his possession any article used or intended to be used for the purpose of making infringing copies; shall, unless he satisfies the Court that he had acted in good faith and had no reasonable grounds for supposing that copyright would or might thereby be infringed, be guilty of an offence and shall be liable

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

(a) fifty thousand penalty units; or

(b) ten penalty units for each infringing copy;

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

(ii) on a subsequent conviction, to a fine not exceeding (a) one hundred thousand penalty units; or

(b) twenty penalty unit; for each infringing copy; whichever is greater, or to imprisonment for a term not exceeding ten years, or to both.

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

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

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

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

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

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

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

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

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

(b) that copyright subsists in the work or has subsisted at anytime; it shall be presumed that the article was made at a time when copyright subsisted in the work.

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

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

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

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

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

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

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

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

(a) that a named person was the director or producer of the work;

(b) that a named person was the owner of the copyright at a specified time, being a time not later than the time of showing, broadcast or inclusion in the program; or

(c) that the work was first published in a specified year or in specified country; the statement shall be admissible as evidence of the fact stated and shall be presumed to be correct.

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

shall be presumed to be the author of the work.

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

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

(a) the work qualifies for copyright protection by virtue of the country of its first publication; and

(b) a name purporting to be that of the publisher appeared on copies of the work as first published;

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

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

(a) the work shall be presumed to be an original work; and have been the first publication of the work and to have taken place in that country and on that date.

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

(a) at a time specified therein copyright subsisted in the work;

(b) the person is the owner of the copyright; and

(c) a copy of the work annexed thereto is a true copy thereof; shall be admissible in any proceedings under this Act *as prima facie* evidence of the facts contained therein.

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

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

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

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

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

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

(a) break open any outer or inner door of a dwelling house or any other premises;

(b) forcibly enter any part of the premises;

(c) remove by force any obstruction to entry, search, seizure or removal; and

(d) detain every person found on the premises until the premises have been searched.

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

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

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

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

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

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

**38.** Any person who

(a) refuses a police officer access to any place when the officer is seeking to exercise his powers under this Act;

(b) assaults, obstructs, hinders or delays a police officer in effecting any entry which the officer is entitled to effect under this Act, or in the execution of any duty imposed or power conferred on him by this Act;

(c) refuses to give to a police officer any information relating to an offence or suspected offence under this Act or any other information which may reasonably be required of him and which he has in his knowledge or power to give; or

(d) knowingly gives false information to a police officer seeking to exercise his powers under this Act; shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding twelve months, or to both.

## PARTY IV

### REGISTER OF COPYRIGHTS

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

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

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

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

**40.** (1) If the owner of a copyright in a work wishes to register it, he shall lodge with the Registrar

(a) a claim for registration, in a form approved by the Registrar;

(b) a copy of the work in which copyright is claimed;

- (c) particulars of
    - (i) the owner of the copyright;
    - (ii) the type of copyright claimed and any limitations on the copyright held by that owner,
    - (iii) the date on which the copyright arose;
    - (iv) the person from whom the copyright was acquired, if the owner of the copyright is not the first owner of the copyright; and
    - (v) any other matters required by the approved form; and
  - (d) a statutory declaration that he is the owner of the copyright described.
- (2) Where a claim is for copyright in relation to a work already on the register, the Registrar may waive the requirement that a copy of the work be lodged with the application.
- (3) On receiving a claim in accordance with this section, the Registrar shall register the copyright, assign it an identifying number and issue a certificate of registration stating
- (a) that on the date specified in the certificate, the person named in the certificate claimed the copyright in the work;
  - (b) the type of copyright claimed and any limitations;
  - (c) the date on which the copyright arose; and
  - (d) that a copy of the work may be inspected at the office of the Registrar.
- (4) Where any particulars in relation to a registered copyright change, the owner of the copyright shall lodge details of the changed particulars with the Registrar.

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

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

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

**43.** Where

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

## PART V RIGHTS IN PERFORMANCES

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

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

"performance" means-

- (a) a performance: of drama, dance or mime;

- (b) a musical performance;
  - (c) a reading or recitation of a literary work; or
  - (d) a performance of a variety act or any similar presentation;
- insofar as it is a live performance given by one or more individuals;

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

" qualifying person" means a person who is

- (a) a citizen or habitual resident of; or
- (b) a body corporate incorporated in; Zambia or another country to which the provisions of this Part have been applied under *section fifty-six*;

" qualifying performance" means a performance

- (a) given by a person who is a citizen of, or habitual resident in; or
- (b) which takes place in; Zambia or another country to which the provisions of this Part have been applied under *section fifty-six*.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) shows or plays in public; or

(b) broadcasts or includes in a cable program service; the whole or any substantial part of the performance by means of a recording which was, and which that person knows or has reason to believe was, made without the consent of the performer.

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

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

(b) in the course of business possesses, sells or lets for hire, offers or exposes for sale or hire, or distributes; a recording of a qualifying performance which was, and which that person knows or has reason to believe was, made without the consent of the performer.

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

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

(a) without the consent of the holder for the time being of the recording rights; and

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

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

(a) without the consent of the holder for the time being of the recording rights; and

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

50. (1) Subject to subsection (2), the following acts shall not constitute infringement of performer's right or recording right

(a) fair dealing with a performance or recording for private study or for the purposes of research done by an individual for his personal purposes, otherwise than for profit;

(b) fair dealing with a performance or recording for the purposes of criticism or review, whether of that performance or any other performance, provided there is a sufficient acknowledgement;

(c) fair dealing with a performance or recording for the purposes of reporting current events by broadcasting or by inclusion in a cable program service or by its use in an audiovisual work;

(d) the recording of a performance or reproduction of a recording for the purposes of judicial proceedings, or of any other proceedings before a tribunal established by law, or for the purposes of a report of judicial proceedings or any other such proceedings;

(e) the incidental inclusion of a recording in an audiovisual work, sound recording, broadcast or cable program;

(f) the publishing, broadcasting, inclusion in a cable program service, or the communication to the public by any other means of anything the making of which was, under paragraph

(e), not an infringement of performer's right or recording right.

(2) An act which

(a) conflicts with the normal commercial exploitation of a performance; or

(b) unreasonably prejudices the legitimate commercial interests of the performer or holder of recording right

in a work;

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

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

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

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

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

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

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

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

## PART VI

### MISCELLANEOUS

**54.** (1) There shall be a Registrar of Copyright, who shall be a public officer appointed under the Service Commissions Act, 1991.

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

(a) to monitor the activities of collecting societies;

(b) to encourage and facilitate the development of collecting societies;

(c) at the request of copyright owners or collecting societies, to examine cases of alleged copyright infringement and, where appropriate, to advise the Director of Public Prosecutions;

(d) to provide information and advice on copyright matters to the Minister, and

(e) to perform such other duties or functions as are provided for under this or any other Act.

(3) The Registrar shall be assisted by a staff of persons appointed under the Service Commissions Act, 1991.

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

(2) Where

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

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

is the subject of, or contains material the subject of, copyright under this Act and, at a time more than three

years after its first publication, no translation has been made into a language in general use in Zambia, the Registrar may, on the application of a Zambian citizen or company incorporated in Zambia, grant that person the right to translate the work and reproduce the translation.

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

(a) a literary work subject to copyright; or

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

(4) Where copies of a work

(a) in printed or analogous form; or

(b) in audiovisual form; have not been made available to the public in Zambia for a period of

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

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

(iii) five years, in any other case;

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

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

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

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

(a) the administration of moral rights;

(b) the administration of authorizations under section *fifty*

(c) the form and content of any application or other document required for the purposes of this Act; and

(d) the payment of fees and charges in respect of any matter or anything done or supplied under this Act.

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

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

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

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

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

59. The Copyright Act is hereby repealed.