

THE COPYRIGHT AND RELATED RIGHTS BILL, 2025

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the protection of copyright and related rights;
- (b) provide for voluntary registration of copyright and related rights;
- (c) provide for the civil and criminal enforcement of copyright and related rights;
- (d) provide for the collective management of copyright and related rights;
- (e) domesticate the Berne Convention for the Protection of Literary and Artistic works, 1886, the WIPO Copyright Treaty, 1996, the WIPO Performances and Phonograms Treaty, 1996, the Marrakesh Treaty, 2016, and the WTO Agreement on Trade Related Aspects of Intellectual Property Rights, 1995;
- (f) repeal and replace the Copyright and Performance Rights Act, 1994; and
- (g) provide for matters connected with, or incidental to, the foregoing.

M. D. KABESHA,
Attorney-General

THE COPYRIGHT AND RELATED RIGHTS BILL, 2025
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An Act to provide for the protection of copyright and related rights; provide for voluntary registration of copyright and related rights; provide for the civil and criminal enforcement of copyright and related rights; provide for the collective management of copyright and related rights; domesticate the Berne Convention for the Protection of Literary and Artistic Works, 1886, the WIPO Copyright Treaty, 1996, the WIPO Performances and Phonograms Treaty, 1996, the Marrakesh Treaty, 2016, and the WTO Agreement on Trade Related Aspects of Intellectual Property Rights, 1995; repeal and replace the Copyright and Performance Rights Act, 1994; and provide for matters connected with, or incidental to, the foregoing.

Enactment

ENACTED by the Parliament of Zambia.

PART I

PRELIMINARY PROVISIONS

Short title and commencement

1. This Act may be cited as the Copyright and Related Rights Act, 2025, and shall come into operation on the date appointed by the Minister by Statutory Instrument.

Interpretation

2. In this Act, unless the context otherwise requires –

“accessible format copy” means a copy of a work in an alternative manner or form which gives a beneficiary access to the work, including permitting the beneficiary access as feasibly

and comfortably as a person without visual impairment or other print disability;

“Agency” means the Patents and Companies Registration Agency continued under the Patents and Companies Registration Act, 2020;

“applicant” means a person who makes an application under this Act;

“artist” means a person who engages in the creation of a performance, and includes a singer, musician, declaimer or any person whose performance is embodied;

“artistic work” means, irrespective of artistic quality-

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

(b) maps, plans and diagrams;

(c) works of sculpture;

(d) photographs not comprised in an audio-visual work;

(e) works of architecture in the form of a building or model of a building; or

(f) works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art, excluding a layout design as defined in the Layout-designs of Integrated Circuits Act, 2016;

Act No. 6 of 2016

“artwork” means an original work of visual art created by an artist or produced under the artist’s authority;

“assignee” means a person who derives ownership of copyright or a related right, in whole or in part, by means of an assignment ;

“assignment” means a written transfer of copyright or related right ownership from a right owner to an assignee;

“audio-visual work” means a work that consists of a series of related images which impart the impression of motion, with or without sound, by means of a mechanical, an electronic or other device, and includes a movie, film, slide show or video game, but does not include a broadcast;

“author” means, in relation to-

- (a) a literary, dramatic, musical or an artistic work, the person who first makes or creates the work;
- (b) a photograph, the person who took the photograph;
- (c) a sound recording, the person who undertakes the arrangements necessary for the making of the recording;
- (d) an audio-visual work, the person who undertakes the arrangements necessary for the making of the work;
- (e) a broadcast, the person who makes the broadcast or in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person who makes that other broadcast;
- (f) a published edition, the publisher of the edition;
- (g) a literary, dramatic, musical or an artistic work which is computer generated, the person who undertakes the arrangements necessary for the creation of the work; or

(h) a computer program, the person who is responsible for creating or developing the program;

“authorised agent” means a duly authorised agent of a right owner appointed under section 4, and includes a legal practitioner, legal guardian or any person authorised to act on behalf of the right owner;

“authorised entity” means an entity which is authorised under any written law to provide education, institutional training, adaptive reading or information access to beneficiaries in the Republic on a non-profit basis, and includes a State institution and non-profit organisation;

“authorised officer” means an officer authorised by the Commissioner-General in accordance with the Customs and Excise Act;

“beneficiary” means a person who is blind, has a visual impairment or perceptual disability or is unable as a result of a physical disability to hold or manipulate a book or focus or move their eyes to the extent that is normally acceptable for reading, regardless of any other disability;

“Berne Convention” means the Berne Convention for the Protection of Literary and Artistic Works adopted in 1886, and was acceded to by Zambia on 13th September, 1991;

“Board” means the Board of the Agency constituted under the Patents and Companies Registration Agency Act, 2020;

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“broadcast” means the transmission, by wire or wireless means, of sounds or images, or both, or their representations, for public reception, and includes the transmission of encrypted signals where the means of decrypting are provided to the public by a broadcasting organisation or with the broadcasting organisation’s consent;

“broadcasting organisation” means an organisation established under any written law which provides broadcasting;

“cinematograph film” means a work of visual recording on any medium produced through a process from which a moving image may be produced by any means, and includes a sound recording accompanying the visual recording;

“collective management organisation” means a non-profit organisation or body corporate which is authorised by multiple right owners to represent the rights owners in the negotiation and administration of collective right agreements, including negotiating, collecting and distributing royalties and granting licenses in respect of the use of works or objects of related rights protected by copyright or related rights, respectively;

“commercial resale” means the subsequent transfer of ownership in artwork from one person to another for monetary consideration with the involvement of an art market professional;

“Commissioner-General” means the person appointed as Commissioner-General under the Zambia Revenue Authority Act;

“communication to the public” means the transmission of a work or an object of related rights to the public by any means, other than broadcasting, which allows members of the public to access the work or object of related rights from a place and at a time of their choice;

“computer” has the meaning assigned to the word in the Electronic Communications and Transactions Act, 2021;

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

“Convention country” means a country that is a State Party to the Berne Convention;

“copy” means the reproduction of a work or an object of related rights in any format, including digital;

“copyright” means the exclusive property rights granted to the author of an original work, as protected under this Act;

“copyright owner” means the author of a work, and includes an assignee or a successor in title of the copyright;

“Court” means the High Court established under the Constitution;

“database” means a collection of works, data or other information arranged in a systematic or methodical way which is individually accessible by electronic or other means;

“derivative work” means a work resulting from adaptation, translation or other transformation of an original work, in so far as the work constitutes an independent creation; “distribution” means the dissemination into public circulation of a copy of a work or an object of related rights, including in electronic form; “dramatic work” means a work which is preformed or presented to an audience, and includes a choreography, play, screen play or script prepared for cinema, radio or television;

“educational institution” has the meaning assigned to the words in the Education Act, 2011;

“Emoluments Commission” means the Emoluments Commission established by the Constitution;

“exclusive licence” means a written licence signed by or on behalf of a right owner which authorises the licensee to exercise a right which under this Act would otherwise be exclusively exercised by the right owner;

“expressions of folklore” has the meaning assigned to the words in the Protection of Traditional Knowledge, Genetic Resources and Expressions of Folklore Act, 2016;

“fixation” means the embodiment of sounds or images, or both, or their representations, which may be perceived, reproduced or communicated through any device;

“infringement” means an act that violates a right protected under this Act;

“information system” means a system for generating, sending, receiving, storing, displaying or

Act No. 23 of 2011

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Act No. 16 of 2016

otherwise processing data, including over a digital network or the internet;

Act No. 4 of 2021
“information system service” has the meaning assigned to the words in the Electronic Communications and Transactions Act, 2021;

“Intellectual Property Journal” means a journal published by the Agency periodically for purposes of advertising intellectual property applications and other matters required to be published for purposes of this Act;

“internet service provider” means a person providing an information system service or access to multiple users to a computer server or digital system, including a connection for the transmission or routing of data;

“legal practitioner” has the meaning assigned to the word “practitioner” in the Legal Practitioners Act;

“legal representative” means a-

Act No. 9 of 2017
(a) liquidator of a company appointed in accordance with the Corporate Insolvency Act, 2017;

Act No. 9 of 2017
(b) receiver for a company or other person appointed in accordance with the Corporate Insolvency Act, 2017;

(c) person appointed with a power of attorney;

(d) person recognised by law, representing a deceased or bankrupt person; or

(e) person recognised by law, representing a child or a legally disqualified person;

“legally disqualified” means the absence of legal capacity as provided in section 4 of the Mental Health Act, 2019;

“library” means a collection of books or other material, in physical or digital format, which is accessible for use by its members, and includes a physical location or virtual space, or both;

“licensee” means the holder of an exclusive licence; “literary work” irrespective of literary quality, includes-

- (a) novels, stories and poetry;
- (b) plays, stage directions, film scenarios and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopaedia, dictionaries and anthologies;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons;
- (g) computer programs;
- (h) maps, drawings, graphic and three-dimensional representations or portrayals of a scientific or technical nature;
- (i) compilations of data stored and embodied in a computer or medium used in conjunction with a computer;
- (j) electronic literature, including a work created in digital format; or
- (k) databases, including a collection of independent works, data or other materials arranged in a systematic or methodical way and capable of being individually accessed;

“live performance” means a performance performed in the presence of an audience, but does not include-

- (a) a performance referred to in section **35?**;
- (b) a reading, recital or delivery of an item of news or information;
- (c) a performance of a sporting activity; or
- (d) participation in a performance by a member of an audience;

“maker of database” means a person who makes substantial contribution in the collection, obtaining, verification, arrangement or presentation of the data which constitutes the content of the database;

“musical work” means a work consisting of music, and includes a graphical notation of the music;

“National Archives” means the National Archives established by the National Archives Act;

“object of related rights” means the performance of a work, including live performance and its sound or visual fixation, a phonogram, the first fixation of an audio-visual work and a broadcast of a broadcasting organisation;

“original work” means a work which is the intellectual creation of an author, and not a copy;

“orphan work” means a work or an object of related rights where the right owner is unknown or cannot be located;

“performer” means an actor, instrumentalist, a singer, musician, dancer or any person who performs a literary or musical work or expressions of folklore;

“performance” means the presentation of a work or expressions of folklore by means of a dance,

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play, recital, song, declaim or projection to an audience through live performance or other means;

“person” has the meaning assigned to the word in the Constitution;

“phonogram” means a letter or a combination of letters that form a sound;

“photography” includes a photolithograph and any work produced by a process analogous to photography, but does not include any part of an audio-visual work;

“producer of audio-visual work means a person who undertakes the initiative and responsibility for the making of an audio-visual work;

“producer of sound recording” means a person on whose initiative or responsibility, a first legal recording of the sound arising from a performance or other sound occurs;

“publication” means the distribution of tangible copies of a work or sound recording to the public in reasonable quantity through sale, rental or lending, except that the distribution shall in the case of a work, be done with the consent of the author or other copyright owner of the work, and in the case of a sound recording, with the consent of the producer or other related rights owner of the sound recording;

“public performance” means a performance which is performed outside the normal circle of friends and family that occurs in public and may be perceived without the need for communication to the public, and includes in the case of-

(a) a work, other than an audio-visual work, the reciting, playing, dancing, acting or otherwise performance of the work, directly or by means of any device or process;

(b) an audio-visual work, the showing of images in sequence and the making of accompanying sounds audible, either separately or in combination;

(c) a sound recording, the making of recorded sound audible; or

(d) expressions of folklore, the performance of dances, plays, acting, recitals, songs and declaims, live or by any other means;

“re-broadcasting” means the simultaneous or subsequent broadcasting, in part or in whole, by one broadcasting organisation of a broadcast of another broadcasting organisation;

“register” means the register referred to under section 97;

“Registrar” means the person appointed as Registrar under the Patents and Companies Registration Agency Act, 2020;

“related right” means the intellectual property right provided for the protection of the legal interests of a person who contributes to the creation and making of a work available to the public, and includes-

(a) the rights of a performer, in respect of that performer’s performance;

(b) the rights of a producer of a sound recording, in respect of that producer’s phonogram; or

(c) the rights of a broadcasting organisation, in respect of that broadcasting organisation's broadcast;

“related right owner” means a performer, producer of a sound recording or broadcasting organisation in whom a related right vests, and includes an assignee or a successor in title of the related right;

“rental” means the transfer of the possession of an original or a copy of a work, for a limited period of time, for profit making purposes;

“repealed Act” means the Copyright and Performance Rights Act, 1994;

“reproduction” means the making of one or more copies of a work or an object of related rights in any manner or form, and includes any permanent or temporary storage of the work or object of related rights in electronic or other form;

“right owner” mean a copyright or related right owner, as the case may be;

“rights management information” means any information attached to a copy of a work, a fixed performance, sound recording or broadcast or which appears in connection with their communication to the public, and includes information which identifies-

(a) the work, author or other copyright owner of the work;

(b) the performance, performer or other related right owner of the performance;

(c) the sound recording, producer or other related right owner of the sound recording;

- (d) the broadcast, broadcaster of the broadcast or other related right owner of the broadcast;
- (e) the terms and conditions for use of the work, performance, sound recording or broadcast; and
- (f) any numbers or codes that represent the information referred to in paragraphs (a) to (e);

“Society” means the Rights Management Society of Zambia established under section 60;

“sound recording”, regardless of the medium on which the recording is made or the method by which the sound is reproduced, means a recording of-

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

“successor in title” means a person who derives title to copyright or a related right from a right owner;

“technological protection measure” means any technology, product device or digital component which is designed to prevent or restrict the infringement of copyrights or related rights through an application of access control or protection process which controls the use of a work or an object of related rights without the authorisation of the right owner;

“typographical arrangement” includes the style, composition, layout and general appearance of a published work or an object of related rights; “user” means a person who carries out an act subject to the authorisation or remuneration of a right owner, and is not acting in the capacity of a consumer;

“work” means a work in which copyright subsists under this Act, and includes translations, adaptations or arrangements of pre-existing works which by reason of their selection and arrangement in their content present a new work; and

“work of applied art” means an artistic creation with an utilitarian function or embodied in a useful article, whether made by hand or produced on an industrial scale.

3. (1) This Act applies to-

- (a) a work or an object of related rights of a right owner who is a citizen of, or is ordinarily resident in, the Republic;
- (b) a work or an object of related rights which is first published in the Republic;
- (c) a work or an object of related rights which is first published in another country and also published in the Republic, within thirty days of the first publication, irrespective of the nationality or residence of the right owner;
- (d) a live performance performed in any country by a citizen of, or a person domiciled or resident in, the Republic, or

by a citizen or subject of, or a person domiciled or resident in, a Convention country;

- (e) an audio-visual work which is produced by a producer whose registered office is in the Republic or, in the case of an individual, is ordinarily resident in the Republic;
- (f) a work of architecture within the Republic or any artistic work incorporated in a building or other structure located in the Republic; or
- (g) a work or an object of related rights that is eligible for protection under any international convention or agreement to which Zambia is a party.

(2) This Act shall be administered by the Agency.

PART II

VOLUNTARY REGISTRATION OF COPYRIGHT AND RELATED RIGHTS

Application for registration of copyright or related right

4. (1) Subject to subsection (2), a person who intends to register copyright or a related right may apply to the Registrar for the registration of the copyright or related right in a prescribed manner and form on payment of a prescribed fee.

(2) A person is eligible to make an application under subsection (1), if-

- (a) the person is the right owner of the copyright or related right; and
- (b) the copyright or related right relates to a work or an object of related rights.

(3) A person who is not resident in the Republic may appoint an authorised agent domiciled in the Republic to make the application under subsection (1), on that person's behalf.

(4) Despite subsection (3), a person who is resident in the Republic may appoint an authorised agent domiciled in the Republic to make the application under subsection (1), on that person's behalf.

(5) A person appointed under subsection (3) or (4), shall file with the Registrar an authorisation of agent in a prescribed manner and form on payment of a prescribed fee.

Joint application

5. (1) Two or more persons may make a joint application for the registration of copyright or a related right where the work or object of related rights in which copyright or related rights subsists is created jointly by them.

(2) Subject to this Act, the applicants under subsection (1) shall be registered as joint right owners, irrespective of whether the work or object of related rights constitutes a single unitary whole or of parts.

(3) Each joint right owner shall have the right to use the part of the joint work or object of related rights created by that right owner, unless otherwise provided in an agreement concluded by the right owners.

Period for completion of application for registration

6. (1) An applicant shall complete an application for the registration of copyright or a related right within twelve months from the date of filing the application with the Registrar.

(2) The Registrar may, three months before the expiry of the period referred to under subsection (1), notify the applicant to complete the application for the registration in a prescribed manner and form.

(3) The Registrar shall, where an applicant fails to comply with a notice under subsection (2), treat the application as abandoned.

(4) Despite subsection (3), the Registrar shall not treat an application for the registration of copyright or a related right as abandoned, if the application-

- (a) has been opposed and is pending determination by the Registrar or the Court; or
- (b) is pending cancellation or other proceedings under this Act.

(5) The Registrar shall, where the Registrar or Court determines the matter under subsection (4) in favour of an applicant, notify the applicant in accordance with subsection (2).

Formality examination of application

7. (1) The Registrar shall, on receipt of an application for the registration of copyright or a related right, conduct a formality examination to determine whether the application meets the requirements specified under section 4.

(2) The Registrar shall, where the Registrar conducts the formality examination under subsection (1), and is of the opinion that an application does not meet the requirements specified under section 4, request the applicant, in writing, to make the necessary amendments to the application.

(3) The amendment under subsection (2) shall be in a prescribed manner and form on payment of a prescribed fee.

(4) The Registrar shall, where an applicant does not make the necessary amendments after the request under subsection (2), treat the application as abandoned.

Substantive examination of application

8. (1) The Registrar shall, where the Registrar is satisfied after a formality examination under section 7 that

an application for the registration of copyright or a related right meets the requirements specified in this Act, conduct a substantive examination to determine whether the copyright or related right is capable of being registered under this Act.

(2) The Registrar shall, on completion of the substantive examination under subsection (1), produce a report.

(3) The Registrar shall accept or reject an application for the registration of copyright or a related right taking into consideration the report under subsection (2).

(4) Where the Registrar intends to reject an application for the registration of copyright or a related right, the Registrar shall notify the applicant of the intention to reject the registration and require the applicant, within sixty days of the notification to-

- (a) take remedial measures; or
- (b) show cause why the application should not be rejected.

(5) The Registrar shall, where the Registrar rejects an application for the registration of copyright or a related right under subsection (3), notify the applicant, in writing, of the Registrar's decision and give reasons for the rejection.

(6) The Registrar shall not reject an application for the registration of copyright or a related right under subsection (3) where an applicant takes remedial measures to the satisfaction of the Registrar within the period specified in subsection (4).

(7) The Registrar shall, in making a final determination on an application for the registration of copyright or a related right, consider the submissions made by an applicant under subsection (4).

(8) A person who is dissatisfied with the decision of the Registrar under this section may, within three months of receipt of the decision, appeal to the Court.

(9) The Registrar shall, where a notice of appeal is not filed in accordance with subsection (8), treat the application for registration of copyright or a related right as abandoned.

9. (1) An applicant shall, where the Registrar accepts an application for registration of copyright or a related right under this Act, publish the acceptance of the application in the Intellectual Property Journal within ninety days of receipt of the acceptance of the application, on payment of a prescribed fee.

(2) The Registrar shall, where an applicant fails to publish the acceptance of an application for registration of copyright or a related right in accordance with subsection (1), treat the application for registration of copyright or a related right as abandoned.

(3) Despite subsection (2), an applicant may apply for the restoration of an application for registration of copyright or a related right in a prescribed manner and form on payment of a prescribed fee.

(4) Where the Registrar restores an application for registration of copyright or a related right under subsection (3), that application shall retain the original date of filing.

(5) Despite subsection (3), the Registrar shall not accept an application for restoration of an application for registration of copyright or a related right where the-

(a) period of twelve months specified under section 6 (1) has elapsed; or

(b) application for restoration is made after nine months from the date of filing of the application.

Withdrawal of application or restriction of work or object of related right covered by application for registration of copyright or related right

10. (1) An applicant may, before the Registrar registers copyright or a related right, withdraw an application for registration of copyright or a related right or restrict a work or object of related rights covered by an application for registration of copyright or a related right in a prescribed manner and form on payment of a prescribed fee.

(2) The Registrar shall, where an applicant withdraws an application for registration of copyright or a related right after the acceptance of the application for registration of copyright or a related right is published in accordance with section 9, publish the withdrawal or restriction in the Intellectual Property Journal.

Opposition to registration of copyright or related right

11. (1) A person may, within sixty days of the date of publication of the acceptance of the application for registration of copyright or a related right in the Intellectual Property Journal under section 9, file with the Registrar a notice of opposition to the registration of copyright or a related right in a prescribed manner and form on payment of a prescribed fee.

(2) The notice filed under subsection (1) shall be accompanied with evidence in support of the opposition to the registration of copyright or a related right in a prescribed manner.

(3) A person shall not file an opposition under subsection (1), unless that person has an interest or right in the copyright or related right which would be prejudiced if the copyright or related right is registered.

Counter statement to notice of opposition

12. (1) An applicant who intends to respond to a notice of opposition to the application for registration of copyright or a related right under section 11 shall, within sixty days of receipt of the notice of opposition, file with the

Registrar a counter statement in a prescribed manner and form on payment of a prescribed fee.

(2) The counter statement filed under subsection (1) shall be accompanied with evidence in support of the application in a prescribed manner.

(3) The Registrar shall, where an applicant fails to file a counter statement in accordance with subsection (1), treat the application for registration of copyright or a related right as abandoned.

Evidence in reply
of application for
registration of
copyright or

13. A person who files a notice of opposition to an application for registration of copyright or related right under section 11 may, within thirty days of receipt of the counter statement, file with the Registrar evidence in reply.

Hearing

14. (1) The Registrar shall hear an application to oppose the registration of copyright or a related right filed under section 11, in a prescribed manner.

(2) The Registrar may at the conclusion of the hearing-

(a) refuse to register the copyright or related right or

(b) register the copyright or related right with, or without, conditions in respect of a work or object of related rights specified in the application.

Dismissal of
notice of
opposition

15 (1) The Registrar may dismiss an opposition to the application for registration of copyright or a related right, without hearing an applicant, where the Registrar considers that the opposition is frivolous, vexatious or lacks merit.

(2) The Registrar shall, where an opposition to an application for registration of copyright or a related right is dismissed under subsection (1), notify the applicant, in writing.

16. (1) The Registrar shall register copyright or a related right and issue a certificate of registration, in a prescribed manner and form, to an applicant where the Registrar is satisfied that-

- (a) the application for the registration of copyright or a related right meets the requirements under this Act;
- (b) the application for the registration of copyright or a related right is not opposed; and
- (c) where an application for the registration of copyright or a related right has been opposed, the opposition has been dismissed.

(2) Despite subsection (1), the Registrar shall not register and issue a certificate of registration unless the applicant has made a request for registration of copyright or a related right in a prescribed manner and form on payment of a prescribed fee.

(3) The Registrar shall, when registering copyright or a related right-

- (a) enter in the register the date of registration of the copyright or related right in accordance with section 17; and
- (b) publish in the Intellectual Property Journal, a reference to the registration.

(4) A certificate of registration issued under subsection (1) shall be prima facie evidence of-

- (a) ownership of the registered copyright or related right by the right owner and of the registered copyright or related right; or
- (b) any matter in respect of the registration of the copyright or related right.

(5) The right owner of a registered copyright or related right may register in the register any agreement,

contract, assignment, licence or document relating to the registered copyright or related right.

(6) Despite subsection (5), any contract, assignment, licence or document which is not registered under that subsection shall be admissible in evidence in any proceedings.

(7) Despite the provisions of this Part, the non-registration of copyright or a related right shall not-

(a) affect the protection of the copyright or related right under this Act; or

(b) preclude the right owner from asserting their claim to the copyright or related right.

17. The date of filing of an application for the registration of copyright or a related right shall be considered as the date of registration of the right owner and copyright or related right.

18. (1) A right owner may apply to the Registrar for variation of registration of copyright or a related right in a prescribed manner and form on payment of a prescribed fee.

(2) An application made under subsection (1) shall relate to some or all of the works or objects of related rights for which the copyright or related right is registered.

19. (1) The Registrar may, on application by a right owner in a prescribed manner and form and on payment of a prescribed fee, alter a registered copyright or related right.

(2) The Registrar shall, within ninety days of receipt of an application under subsection (1), publish the application for alteration of a registered copyright or related right in the Intellectual Property Journal.

(3) Sections 11, 12, 13 and 14 apply, with necessary modifications, on the publication of the application for alteration of a registered copyright or related right under this section.

Date of registration

Variation of registration

Alteration of registered copyright or related right

20. (1) A right owner or a person with an interest in a registered copyright or related right may apply to the Registrar for the cancellation of the registered copyright or related right in a prescribed manner and form on payment of a prescribed fee.

(2) Where the application under subsection (1) is made by a right owner, the Registrar shall, on receipt of that application, cancel the registration of the copyright or related right.

(3) The Registrar may, on the Registrar's own motion or on application by a person with an interest in a registered copyright or related right under subsection (1), cancel the registration of the copyright or related right-

(a) on the ground that the right owner has contravened or failed to observe a condition relating to the copyright or related right as entered in the register;

(b) on the death of the right owner who has no successor or legal representative appointed; or

(c) in the case of a legal entity, on the dissolution of that legal entity.

(4) The Registrar shall, before cancelling the registration of copyright or a related right under subsection (3), publish in the Intellectual Property Journal the intention to cancel the registration of the copyright or related right, and shall-

(a) give reasons for the intended cancellation; and

(b) require the right owner to show cause, within a period of sixty days, why the copyright or related right should not be cancelled.

(5) The Registrar shall not cancel copyright or a related right under this section if the right owner takes

remedial measures, to the satisfaction of the Registrar, within the period specified under subsection (4).

(6) The Registrar shall, in making a final determination on the cancellation of registration of copyright or a related right, consider the submissions made by a right owner under subsection (4).

(7) A right owner shall, where copyright or a related right registration is cancelled in accordance with this section, surrender the certificate of registration to the Registrar.

(8) The Registrar shall publish the cancellation of registration of copyright or a related right in the Intellectual Property Journal.

(9) The cancellation of the registration of copyright or a related right shall be effective when the cancellation is entered in the register and published in accordance with subsection (8).

Removal of
copyright or
related right from
register

21. (1) A person affected by a registered copyright or related right may apply to the Registrar, in a prescribed manner and form on payment of a prescribed fee, for the removal of that copyright or related right from the register in respect of any of the works or objects of related rights for which that copyright or related right is registered on the ground that-

- (a) an entry has wrongly remained on the register;
- (b) there is an error or defect in an entry in the register; or
- (c) the copyright or related right was fraudulently entered in the register.

(2) The Registrar shall not remove a copyright or related right from the register without providing the right owner an opportunity to be heard, and section 12 shall apply with necessary modifications.

(3) The Registrar shall, after hearing the parties, remove the copyright or related right from the register or dismiss an application made under subsection (1).

(4) The Registrar shall, where the Registrar removes the copyright or related right from the register in accordance with subsection (3), publish the removal of the copyright or related right from the register in the Intellectual Property Journal.

(5) A removal of copyright or a related right from the register shall be effective after the date of the removal is entered in the register and published in the Intellectual Property Journal in accordance with subsection (4).

PART III

COPYRIGHTS

Original works
eligible for copyright

22. (1) Subject to this Act, copyright shall subsist in the following original works:

- (a) literary works, including computer programs;
- (b) musical works, with or without accompanying words;
- (c) artistic works, including photographic works, drawings, paintings, sculptures and other works of applied art;
- (d) audio-visual works, including cinematographic works;
- (e) dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions;
- (f) works of architecture; and
- (g) illustrations, maps, plans, sketches and three-dimensional works relating to

geography, topography, architecture or science.

(2) Copyright shall subsist in a work on creation of the work, irrespective of the mode or form of expression of the work or the content, quality and purpose of the work.

(3) Despite subsection (2), copyright shall not subsist in a work, unless-

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

(b) the work is written down, recorded, represented in digital data or signals or reduced to any other material form.

23. (1) Copyright shall subsist in the following derivative works:

(a) original translations, adaptations, arrangements and other transformations or modifications of original literary, dramatic, musical and artistic works; and

(b) collections of works, compilations of data and other material, whether in machine readable or other form.

(2) For purposes of originality, the collection of works referred to under subsection (1) (b) shall be considered to be original by reason of the selection and arrangement of their content.

(3) Copyright in a derivative work shall subsist independently without affecting the copyright in the pre-existing work or the expressions of folklore incorporated in or utilised for the making of the work.

24. Despite sections 22 and 23, copyright shall not subsist in-

Subject matter in which copyright shall not subsist

- (a) ideas, processes, systems, theories, methods of operation, concepts, principles, inventions, facts, discoveries or expressions of folklore;
- (b) written laws and official texts of a legislative, administrative or legal nature, including official translations of the written laws or official texts;
- (c) court decisions, including official translations of the court decisions;
- (d) delivered political speeches;
- (e) official symbols of the State and insignia of organisations; and
- (f) news which is published, broadcast or communicated to the public by any other means.

Moral rights of
author

25. (1) An author of a work shall have the moral right to-

- (a) be recognised as the creator of the work;
- (b) decide the manner in which the author's name shall be used in relation to the work;
- (c) make changes to the work or permit another person to make changes to the work, including changes to the title or designation of the author's name;
- (d) permit the addition of another author's work to the work;
- (e) object to any changes made to the work without the author's consent;
- (f) object to a misrepresentation of the work or any other distortion or mutilation of the work, the title or the designation of the

author's name which are prejudicial to the author's honour and reputation;

(g) decide when the work may be disclosed to the public; or

(h) demand that the author's name be removed from the work which is in use.

(2) An author has the right to enforce the moral rights referred to in subsection (1).

(3) The rights referred to in subsection (1), shall not be transmissible during the life of the author, but the right to exercise and enforce any of the rights shall be transmissible by testamentary disposition or by operation of the law following the demise of the author.

26. (1) Subject to the exceptions and limitations under Part VI, a copyright owner shall have the exclusive right to undertake or authorise the following in relation to a work:

- (a) reproduction of the work in any material form, including electronic and digital;
- (b) distribution of the work or a copy of the work to the public by sale, rental, hire, loan or any other similar arrangement;
- (c) translation, adaptation, arrangement or other modification of the work;
- (d) compilation and publication of collections of the work;
- (e) public performance of the work;
- (f) exhibition of the work;
- (g) broadcasting and retransmission of the work by cable network or by other technical devices to the public;
- (h) public display of the work;

(i) communication of the work to the public by radio, television or satellite;

(j) making available of the work to the public so that a person may access the work from a place and at a time chosen by that person; or

(k) importation of the work.

(2) Subject to the provisions of this Act, a copyright owner shall have the right to receive remuneration from the exercise of the rights referred to under subsection (1).

(3) The right of distribution referred to under subsection (1) (b) shall not apply to a work that has already been put on the market within the Republic or within or outside the region by, or with the consent of, the copyright owner.

(4) The exclusive right in a work of architecture shall include the right to prohibit the erection of a building which reproduces the whole or a substantial part of the work in its original form or in any form recognisably derived from the original.

(5) Despite subsection (4), copyright in a work of architecture shall not include the reconstruction of a building to which the copyright relates in the same style as the original.

(6) A copyright owner of a computer program shall have the exclusive right to the physical use and holding of the computer program for commercial purposes.

27. (1) Subject to subsection (2), a library shall have the right to lend out, at a fee, a work or a sound recording of a work without the consent of the copyright owner of the work or performer or producer of the sound recording of the work.

(2) The copyright owner of a work or performer or producer of the sound recording of the work shall receive remuneration from the library for the lending referred to under subsection (1).

(3) Where a library lends out an audio-visual work, the library shall obtain prior authorisation for the lending out from the-

- (a) producer of the first fixation of the audio-visual work;
- (b) legal representative of the producer; or
- (c) collective management organisation representing the producer.

(4) A library may lend out a sound recording of a work where a period of four months has lapsed from the date of distribution of the sound recording in the Republic.

(5) The period referred to under subsection (4) may be abridged with the written consent of the performer or producer of the sound recording of the work.

(6) Despite subsections (3) and (4), a library which provides services to an educational institution that operates in a field of study of audio-visual arts or music may lend out to the institution an audio-visual work or a sound recording of the work for purposes of teaching or scientific research, without the consent of the copyright owner or performer or producer, or without compliance to the time limit referred to under subsection (4).

Copyright owner's
right to
remuneration

28. (1) Subject to the exceptions and limitations under Part VI, a copyright owner of a work shall be entitled to remuneration for the use of the copyright owner's work by another person.

(2) The amount of remuneration and the procedure for the collection and payment of the

remuneration referred to under subsection (1) shall be determined by an agreement between-

- (a) the copyright owner and user of the work; or
- (b) the legal representative of the copyright owner and user of the work; or
- (c) the collective management organisation representing the copyright owner and user of the work.

(3) A user of a work shall not use the work without the copyright owner's written consent or before an agreement referred to under subsection (2) is concluded.

(4) Where a user of a work fails to pay the remuneration specified in the agreement under subsection (2), the copyright owner or collective management organisation shall direct the user to stop using the work, except where the parties agree otherwise.

(5) A user of a work who contravenes subsection (3) or fails to comply with the directive issued under subsection (4) shall be considered to be using the work without the copyright owner's consent and the copyright owner may commence legal proceedings for infringement.

29. (1) An author of an original work of art shall receive remuneration from the reseller of the work each time the work is sold after the first transfer of the right of ownership in the work.

(2) The right under subsection (1) shall apply to acts of resale involving a seller, buyer, dealer in works of art, an intermediary sales room or art gallery.

(3) The rate and period for payment of the remuneration referred to under subsection (1) shall be as prescribed.

(4) An author of an original work of art or a collective management organisation shall have the right to request for information relating to the resale from the person who arranged the sale, within a period of three years from the date of the resale, for the purpose of securing payment of remuneration in respect of the resale.

(5) For purposes of this section, “original work of art” means a work made by the artist or a copy of the work which is numbered, signed or otherwise authorised by the artist, and includes the following:

- (a) visual art, paintings, graphics, sculptures or installations; and
- (b) applied arts or photographs.

Exercise of economic rights

30. (1) A copyright owner shall exercise the economic rights set out under section 26, independently or through the Society.

(2) A work may be communicated to the public where the person responsible for the communication has obtained prior authorisation from the-

- (a) copyright owner or their legal representative; or
- (b) Society.

(3) Subsection (2) shall apply where a work is to be communicated to the public by technical means in a place open to the public.

(4) A work may be transmitted by radio, television or satellite, or retransmitted by a cable network where the person communicating or retransmitting the work has obtained prior authorisation for the transmission from the-

- (a) copyright owner or their legal representative; or
- (b) Society

(5) Subsection (4) shall apply where a work communicated by any of the means specified in that subsection is to be transmitted by radio, television, satellite or cable network in a place which is open to the public or in manner that a person may access the work from a place and at a time chosen by that person.

Ownership of
copyright

31. (1) Ownership in a work shall vest in the copyright owner of the work, regardless of the person who has proprietary rights in the object in which the work is expressed.

(2) The person with proprietary rights to the object in which the work is expressed shall not interfere with the economic rights of the copyright owner.

(3) Where two or more persons have joint authorship in a work, ownership of copyright shall vest in the joint authors.

(4) Despite subsection (3), where a work of joint authorship consists of parts that can be used separately, and the author of each part can be identified, ownership of copyright shall vest in the author of each part.

(5) Where a work is created by an author in the course of employment, or the author is commissioned to create the work, ownership of copyright shall vest in the employer or the person who commissioned the work, except where the contract of employment provides otherwise.

(6) Despite subsection (5), the moral rights in a work created in the course of employment or commissioning shall vest in the author.

Duration of copyright

32. (1) Copyright in a work shall subsist for the duration of the life of the author and for fifty years after the author's death.

(2) In the case of joint authorship, copyright in a work shall subsist for the duration of the life of the last surviving author and for fifty years after the author's death.

(3) Copyright shall, in the case of an audio-visual work or a sound recording, subsist 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) Copyright shall, in the case of a work published anonymously or under a pseudonym, subsist 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, except that where the author's identity is revealed or is no longer in doubt before the expiration of the period, subsection (1) and (3) shall apply, as the case may be.

(5) Copyright shall, in the case of a work of applied art, subsist for the duration of twenty-five years from the date of the making of the work.

PART IV

RELATED RIGHTS

Scope of protection of or related rights

33. (1) Related rights shall apply to a performer of a work, where the-

- (a) performer is a citizen or permanent resident of the Republic;
- (b) work is performed within the Republic;
- (c) performance of the work is recorded in a sound recording which is protected under subsection (2); or
- (d) performance of the work which is not recorded in a sound recording is included in a radio or television programme which is protected under subsection (3).

(2) Related rights shall apply to a producer of a sound recording, where the-

- (a) producer of the sound recording is a citizen or permanent resident of the Republic or a legal person incorporated or registered in the Republic; or
- (b) sound was first fixed in a sound recording within the Republic; or
- (c) sound recording was first published in the Republic.

(3) Related rights shall apply to a broadcasting organisation, where the-

- (a) organisation is registered or incorporated in the Republic; or
- (b) work is communicated by means of a transmitter which is located in the Republic.

Moral rights of performer

34. (1) A performer of a work shall have the moral right to-

- (a) authorship of the performance;
- (b) a stage name;
- (c) inviolability of the performance; and
- (d) protection of the performer's honour and reputation with respect to the performer's performance.

(2) The moral rights of a performer shall survive the period of protection of the performance provided under section 42 (1) (a).

Economic rights of performer

35. (1) A performer shall have the exclusive right to use, authorise or prohibit the use of a performance of a work and to be remunerated for the use of the performance.

(2) Despite the generality of subsection (1), a performer shall have the exclusive right to carry out or authorise the following:

- (a) broadcasting of the performance by radio, television or satellite, except where the broadcasting is-
 - (i) made from a fixation of the performance which the performer has authorised to be made, or
 - (ii) a rebroadcasting made or authorised by the broadcasting organisation which first broadcast the performance;
- (b) directing of a performance at the public, by any technical means, outside the location of the performance, except where a recording of the performance is communicated to the public or the performance is directed at the public by means of radio or television;
- (c) communicating to the public of the unfixed performance, except where the performance is already a broadcast performance;
- (d) fixing of the unfixed performance;
- (e) reproducing the performance fixed in an audio-visual fixation or in any other manner or form;
- (f) making available to the public the recording of a performance in a manner that a person may access the performance from a place and at a time chosen by that person; or
- (g) renting and lending of the recording of a performance.

(3) The making available to the public of the original and copy of the performance referred to under subsection (2) (f) shall not apply to the original or copy of the fixed performance that has already been subject to a first sale or other transfer of ownership within or outside the region.

Right of performer to additional remuneration

36. (1) Where a performer assigns or transfers the rights to use the performance to the producer of a sound recording for a lump sum, the performer shall be entitled to receive annual additional remuneration from the producer of the sound recording for each full year after the lapse of fifty years from the date of lawful publication to the public of the sound recording or communication of the sound recording.

(2) An agreement where a performer waives the right to receive the annual additional remuneration referred to under subsection (1) is void.

(3) The formulae for calculating the annual additional remuneration referred to under subsection (1) shall be as prescribed.

(4) A producer shall, on request by the performer, provide any information that may be necessary for the payment of the annual additional remuneration.

(5) The obligation under subsection (2) shall not apply to a business with a turnover below the prescribed threshold.

Authorisation to use performance

37. (1) A user of a performance shall not use the performance without the performer's prior written consent.

(2) Where a work is performed by a group of persons, the consent referred to under subsection (1) may be obtained from-

- (a) all of the members of the group; or
- (b) the leader of the group.

(3) An authorisation by the performer to broadcast the performance of a work on radio or television, and to record the performance, shall not grant the broadcasting organisation the right to reproduce the recording.

(4) An authorisation by the performer to record the performance of a work and to reproduce the recording shall not grant the broadcasting organisation the right to broadcast the recording, or a copy of the recording, on radio or television.

(5) Where a performer has transferred the right to rent the original or a copy of a sound recording or has granted a licence for the rent, the performer shall retain the right to obtain equitable remuneration for the rental.

(6) An agreement to waive the right to an equitable remuneration under subsection (5) is void.

(7) Where a recording contains a fixed performance of several performers-

(a) a performer may cancel the agreement to assign or transfer the performer's rights, in the case of a separately concluded agreement; or

(b) the leader of the group may cancel the agreement to assign or transfer the rights of the performers, in the case of a jointly concluded agreement;

(8) An agreement for a performer to waive the right to cancel an agreement to assign or transfer the rights of the performer is void.

38. (1) A producer of a sound recording shall have the exclusive right to authorise or prohibit the-

(a) direct or indirect reproduction of the sound recording in any form or by any means;

Agreement for use of sound recording

- (b) importation of a copy of the sound recording;
- (c) distribution of the sound recording to the public;
- (d) rental or lending of a copy of the sound recording; and
- (e) making of the sound recording available to the public in a manner that a person may access the sound recording from a place and at a time chosen by that person.

39. (1) A producer and user of a sound recording shall enter into an agreement to provide for the terms of use of the sound recording.

(2) The terms of the agreement referred to under subsection (1) shall include the amount of the remuneration and manner and procedure for payment of the remuneration.

Remuneration for use of sound recording

40. (1) A performer and producer of a sound recording shall be entitled to an equitable remuneration where the sound recording which is published for commercial purposes, or a reproduction of the sound recording, is used for communication to the public.

(2) The remuneration referred to under subsection (1) shall be paid by the person who communicates the sound recording which is published for commercial purposes to the public.

(3) Subject to a written agreement, the remuneration referred to under subsection (1) shall be paid in equal proportions as a single payment to the performer and producer of the sound recording.

Economic rights of broadcasting organisation

41. (1) A broadcasting organisation shall have the exclusive right to authorise or prohibit the-

- (a) retransmission of a broadcast;

- (b) recording of a broadcast;
- (c) reproduction of a recording of a broadcast in any form or by any means;
- (d) communication of a broadcast to the public;
- (e) making of a recording of a broadcast available to the public in a manner that a person may access the broadcast from a place and at a time chosen by that person; or
- (f) distribution of a recording of a broadcast to the public.

(2) The rights under subsection (1) shall apply whether the broadcast is communicated or retransmitted by wire, cable network or satellite.

(3) A broadcasting organisation and user of a recording of a broadcast shall enter into a written agreement to provide for the terms of use of the recording of the broadcast.

(4) The terms referred to under subsection (3) shall include the amount of the remuneration and manner and procedure for payment of the remuneration.

(5) The rights under subsection (1) shall not apply to a cable operator who retransmits by cable, a broadcast of a broadcasting organisation.

42. (1) A related right shall be valid for a period of fifty years, in the case of a-

- (a) performer, from the date of the first-
 - (i) performance;
 - (ii) lawful publication; or
 - (iii) lawful communication of the performance to the public;

(b) producer, from the date of the first fixation or lawful communication to the public of the sound recording; or

(c) broadcasting organisation, from the date of the first transmission of a broadcast whether the broadcast is transmitted or retransmitted by wire, cable network or satellite.

(2) The term of protection of related rights shall commence from the year any of the acts specified in subsection (1) are effected and until the end of the calendar year in which fifty years is attained.

PART V

MAKERS OF DATABASE

Application of Part

43. (1) This Part applies to a maker of a database -

(a) who is a citizen or permanent resident of the Republic; or

(b) that is a company which is incorporated or registered in the Republic and has its registered office within the Republic.

(2) The protection of the rights of a maker of a database under this Part shall apply irrespective of the-

(a) eligibility for protection of the database; or
(b) the contents of the database.

Rights of maker of database

44. (1) A maker of a database has the exclusive right to authorise or prohibit the use of the database and to obtain remuneration for the use.

(2) A maker of a database has the exclusive right to carry out or authorise the following:

(a) extractions from the database, including permanent or temporary transfer of all or a

substantial part of the contents of the database to another medium by any means or in any form; or

(b) re-utilisation of the database, including making available to the public all or a substantial part of the contents of the database by the distribution of copies, renting, on-line or any other form of transmission.

(3) Public lending of a database shall not be considered as an act of extraction or re-utilisation of the database or a substantial part of the database.

(4) A first sale of a copy of a database within or outside the region by the maker of the database, or with the authorisation of the maker, shall exhaust the right of the maker of the database to control the resale of the database or the copy under subsection (2).

(5) A maker of a database may assign the rights referred to under subsection (2) or grant a licence for the exercise of those rights.

45. (1) A lawful user of a database which is made available to the public has the right to make extractions or to re-utilise parts of the database for any purpose.

(2) The right referred to under subsection (1) shall not apply to the making of a substantial extraction or re-utilisation of the database.

(3) Where a person is authorised to use a part of the database in the manner referred to under subsection (1), that subsection shall apply only to that part.

(4) A lawful user of a database which is made available to the public shall not prejudice the copyright or

related right in the work or any other rights contained in the database.

(5) A lawful user of a database which is made available to the public shall not perform acts that conflict with the normal use of the database or unreasonably prejudice the legitimate interests of the maker of the database.

(6) Any contractual provisions which prejudice the exercise of the rights under this section by a lawful user of a database are void.

Duration of protection for maker of database

46. (1) The rights of a maker of a database under section 44 shall be protected for a period of fifteen years from the date-

- (a) of completion of the making of the database;
- (b) of the making of a substantial change to the contents of the database which amounts to a substantial investment; or
- (c) when the database was first made available to the public.

PART VI

LIMITATIONS AND EXCEPTIONS

Permitted use of work or object of related rights

47. The use of a work or object of related rights under this Part shall be permissible without the authorisation of the right owner and without the obligation to pay remuneration for the use of the work or object of related rights, except that the use shall not conflict with the normal exploitation of the work or object of related rights and shall not unreasonably prejudice the legitimate interests of the right owner.

Limitation of personal use

48. (1) A right owner shall not have the right to authorise, or to be paid remuneration for, a reproduction

or translation by a natural person of a lawfully published work or object of related rights for the purpose of personal use, except that the reproduction or translation shall not be for a commercial purpose.

(2) Despite subsection (1), the following works shall not be reproduced for purposes of personal use without the authorisation of, or payment of remuneration to, the copyright owner:

- (a) works of architecture;
- (b) works of visual art;
- (c) electronic databases; and
- (d) computer programs.

Limitation relating to computer program

49. (1) Despite section 48 (2) (d), a lawful user of a computer program may, without the authorisation of the copyright owner of the program and without payment of additional remuneration-

- (a) reproduce, translate, adapt or transform the computer program in any other manner where it is necessary for the-
 - (i) use of the program on any device to the extent and for the purpose for which the program was obtained; or
 - (ii) correction of errors in the program;
- (b) make a back-up copy of the program, except that the back-up copy is necessary-
 - (i) for the use of the computer program; or
 - (ii) to replace a lost or destroyed program or a program rendered unusable;
- (c) observe, study or test the functioning of the program during the act of loading, displaying, running, transmitting or storing the program for purposes of determining the

ideas and principles of the computer program.

(2) A contractual provision which may prejudice the exercise of the rights specified under subsection (1) is void.

50. (1) A lawful user of a computer program may, without the authorisation of the copyright owner of the program and without payment of additional remuneration, reproduce or translate a computer program where the reproduction or translation is indispensable to obtain information necessary for the interoperability of a program created independently of the original program with other programs, except that the-

- (a) reproduction or translation is performed by the lawful user of the program or by a person authorised by the lawful user;
- (b) information required for the purpose of interoperability was not originally provided to the lawful user; or
- (c) reproduction or translation applies to the part of the original program necessary for the purpose of interoperability.

(2) Despite subsection (1), the information obtained under this section shall not be-

- (a) used for any other purpose, other than for the interoperability of the independently created program;
- (b) disclosed to a third person, except when necessary for the interoperability of the independently created program;
- (c) used for the development, production or marketing of a computer program substantially similar in its expression, or for

Limitation relating to transient reproduction

any other act which infringes the copyright of the author of the original program.

(3) A contractual provision which prejudices the exercise of the rights specified in this section is void.

51. (1) A right owner shall not have the right to authorise or be paid remuneration for a transient reproduction of a work or object of related rights which is incidental to a technical process and is an integral and essential part of the technical process where the purpose for the reproduction is to enable-

- (a) a transmission of the work or object of related rights in a network between third parties by an intermediary; or
- (b) a lawful use of the work or object of related rights, except that the reproduced copy shall not have an independent economic significance.

(2) Despite subsection (1), this section shall not apply to computer programs.

Limitation relating to scientific, educational or judicial use of work or object of

52. (1) A right owner shall not have the right to authorise, or be paid remuneration, where mention is made of the name of the right owner, for-

- (a) making summaries of and quotations from a work or object of related rights which has already been lawfully published;
- (b) the use of a lawfully published work or object of related rights for the purpose of illustration, teaching and scientific research, except that the use shall not be carried out for a commercial purpose;
- (c) the reproduction of a lawfully published work or object of related rights for the purpose of teaching or scientific research in

educational and research institutions whose activities are not carried out for commercial purposes;

- (d) the processing of an object of rights for purposes of text and data mining, except that the processing of the object shall not be for a commercial purpose;
- (e) the reproduction in the press and communication to the public of works or objects of related rights seen or heard in the course of an event for the purpose of reporting current events in the form and to the extent required by the purpose of reporting current events;
- (f) the reproduction of a work or object of related rights for the purpose of a judicial procedure or public security;
- (g) the reproduction, distribution and communication to the public of a lawfully published work or object of related rights in the interests of persons with disabilities in a manner which is directly related to their disability, except that the reproduction, distribution and communication to the public shall not be carried out for a commercial purpose; or
- (h) the use of a lawfully published work or object of related rights in a caricature, parody or pastiche to the extent justified by that purpose.

Limitation relating to
public archive,
museum or library

(2) Despite subsection (1) (g), works or objects of related rights created specifically for persons with disabilities shall not be reproduced, distributed and made available without the authorisation of the right owner.

53. (1) A right owner shall not have the right to authorise or be paid remuneration where a public archive, museum or library reproduces a work or an object of related rights in the collection of the public archive, museum or library for the purpose of-

- (a) replacing the work or objects of related rights which has been lost, destroyed or rendered unusable;
- (b) making a copy of the work or object of related rights to ensure the preservation of the work or object of related rights;
- (c) replacing the work or object of related rights which belonged to the permanent collection of another library, archive or museum if the work or object of related rights is lost, destroyed or rendered unusable;
- (d) digitising a collection of the work or object of related rights for the purpose of preservation;
- (e) displaying the work or object of related rights at an exhibition to promote the collection of the library, archive or museum; or
- (f) making a copy of the work or object of related rights on the order of the Court under section 52 (f).

(2) Subsection (1) (a) to (c) shall not apply where the acquisition of another copy of the work or object of related rights is possible.

(3) A public archive, museum or library has the right, without the authorisation of the right owner and without payment of remuneration, on an order from a natural person-

- (a) to make available works or objects of related rights in the collection of the public archive, museum or library to the natural person; or
- (b) to lend out works or objects of related rights in the collection of the public archive, museum or library to the natural person.

(4) The activities specified in this section shall not be carried out for commercial purposes.

54. (1) A copyright owner shall not have the right to authorise or be paid remuneration in respect of-

- (a) a reproduction of a work of architecture, visual art, applied art or photographic work permanently located in a place open to the public by any means, except by mechanical contact copying; or
- (b) communication to the public of the reproduction of a work of architecture, visual art, applied art or photographic work permanently located in a place open to the public, except where the work is-
 - (i) the main subject of the reproduction; and
 - (ii) intended to be used for direct commercial purposes.

(2) Where the work referred to under subsection (1) carries the name of the author, the name of the author shall be indicated in the communication to the public of the reproduction.

Limitation relating to
public performance
of work

Free use of
reproduction of work
located in place open
to the public

55. A copyright owner shall not have the right to authorise or be paid remuneration for the public performance of a work by the teaching staff and students in a direct teaching process in an educational institution where the name of the author is mentioned, except that the audience shall consist of the teaching staff, students or other persons who are directly connected with the educational institution where the work is being performed.

Limitation relating to ephemeral of recording

56. (1) A copyright owner shall not have the right to authorise or be paid remuneration for the making by a broadcasting organisation of an ephemeral recording of a work which the broadcasting organisation has a right to broadcast, except that the recording shall be-

- (a) made using facilities owned by the broadcasting organisation; and
- (b) used for the broadcasting organisation's own broadcasts.

(2) The broadcasting organisation shall destroy the recording referred to under subsection (1) within thirty days from the date of making the recording, except where the broadcasting organisation and the copyright owner have agreed otherwise.

(3) Despite subsection (2), an ephemeral recording under this section shall not be destroyed where the recording has considerable historical cultural value and the recording shall be preserved, without the copyright owner's authorisation, in the archives of the broadcasting organisation as works of documentary character.

(4) The decision to preserve an ephemeral recording in the archives in accordance with subsection (3) shall be made-

- (a) by the broadcasting organisation; or

(b) in the case of a dispute, by the National Archives.

Limitation relating to use of database

57. (1) A copyright owner shall not have the right to authorise or be paid remuneration by a lawful user for the performing of an act which is necessary for the purpose of accessing the contents of the database and normal use of the contents of the database.

(2) Where a lawful user is authorised to use part of the database, subsection (1) shall apply to the corresponding part of the database or a copy of the database.

(3) A contractual provision which prejudices the exercise of the right under subsection (1) is void.

Limitation relating to private use of audio-visual work

58. (1) A copyright owner shall not have the right to authorise the reproduction of an audio-visual work or a sound recording of the audio-visual work for private use, except that this subsection shall not apply to a legal person.

(2) Despite subsection (1), the copyright owner, performer of an audio-visual work or producer of a sound recording shall have the right to obtain equitable remuneration for the use of the audio-visual work or sound recording.

(3) For purposes of this section, private use includes use for scientific research or studying purposes.

Limitation relating to use of orphan work

59. (1) A user has the right to use orphan work without authorisation from, or payment of remuneration to, the right owner in relation to a copy of a work or object of related rights-

(a) contained in a collection held by a public or publicly accessible library, educational or research institution, museum, archive or in

an archive collection of a national broadcasting organisation; and

(b) produced, copied or made available in the Republic or deposited in a library or an institution referred to under paragraph (a).

(2) Despite subsection (1), a user shall carry out a diligent search for the right owner, as prescribed, for purposes of ascertaining if the work or object of related rights is orphan work.

(3) A user may use a work or object of related rights, without authorisation from, or payment of remuneration to, a right owner, where there is more than one right owner in the work or object of related rights, and-

(a) not all of the right owners can be identified;
or

(b) the right owners have been identified, but not all of them can be located after a diligent search.

(4) Despite subsection (3), the right owner that is identified and located shall, in relation to the rights that the right owner holds, authorise the library or institution referred to under subsection (1) (a) to reproduce the work or object of related rights and make it available to the public.

PART VII

RIGHTS MANAGEMENT SOCIETY OF ZAMBIA

Establishment of
Rights Management
Society of Zambia

60. There is established the Rights Management Society of Zambia which shall be a body corporate with perpetual succession and a common seal, capable of suing and being sued in its corporate name and shall, subject to

the provisions of this Act, have power to do all acts and things that a body corporate may, by law, do or perform.

61. The functions of the Society are to-

- (a) collect fees and charges from users of works or objects of related rights on behalf of right owners and licensees who are members of the society and distribute the fees and charges as royalties to the right owners and licencees;
- (b) determine the criteria for, and categories of, membership of the Society;
- (c) represent and defend the interests of the members of the Society within the Republic and within and outside the region;
- (d) contribute to the promotion of national creativity in the artistic, literary and scientific fields;
- (e) administer within the Republic, the economic rights under this Act, of the members of the Society;
- (f) negotiate with the user of a work or an object of related rights-
 - (i) the conditions of and the fees and charges to be paid for the authorisation to be given to do an act covered by an economic right referred to in paragraph (e); and
 - (ii) the amount of equitable remuneration, where the right to that remuneration is administered by the Society;
- (g) enter into an agreement with the user of a work or an object of related rights in relation

to the exercise and management of the rights of the members of the Society;

- (h) grant any authorisation which the Society is permitted to give under this Act;
- (i) enter into a reciprocal agreement with a foreign collective management organisation for the exclusive authorisation in respect of the exercise and management of the rights of the members of that collective management organisation;
- (j) encourage the transfer of membership to the Society of national right owners who are members of a foreign collective management organisation;
- (k) foster a good relationship between the members of the Society and users of a work or an object of related rights in order to protect the economic rights of the members of the Society;
- (l) provide the members of the Society with information or advice on all matters relating to copyright or related rights;
- (m) establish and administer a compassionate fund for the members of the Society; and
- (n) discharge any other functions as may be prescribed.

Board of Society

62. (1) There is constituted a Board of the Society consisting of the following part-time members appointed by the Minister:

- (a) the Registrar, who shall be the Chairperson of the Board;

- (b) a representative of the ministry responsible for commerce;
- (c) a representative of the Attorney-General;
- (d) a representative of the ministry responsible for information and media;
- (e) a representative of the ministry responsible for arts;
- (f) a representative of the ministry responsible for home affairs and internal security;
- (g) a representative each from a registered association responsible for-
 - (i) musical works;
 - (ii) audio-visual works;
 - (iii) literary works; and
 - (iv) broadcasting organisations; and
- (h) one person with knowledge and experience in the field of copyright and related rights.

(2) The members referred to under subsection (1) (b), (c) (d), (e), (f) and (g) shall be nominated by their respective ministries, organisations or institutions for appointment by the Minister.

(3) The members shall appoint the Vice-Chairperson from among themselves.

(4) A person shall not be nominated or appointed as a member of the Bard if that person-

- (a) is an undischarged bankrupt;
- (b) has been convicted of an offence involving fraud or dishonesty under any written law;
- (c) has been convicted of an offence under this Act or any other written law and sentenced to imprisonment for a term exceeding six months without an option of a fine;

(d) has been found guilty of professional misconduct; or

(e) is legally disqualified.

(5) The First Schedule applies to the Board.

Functions of Board

63. (1) Subject to the other provisions of this Act, the Board shall perform the functions of the Society and provide strategic policy direction to the Society.

(2) Despite the generality of subsection (1), the functions of the Board are to-

(a) approve the policies, programmes and strategies of the Society;

(b) approve the annual budget estimates and financial statements of the Society;

(c) approve the annual work plan, action plans and activities of the Society;

(d) monitor and evaluate the performance of the Society against budgets and plans;

(e) promote the effective corporate governance of the Society; and

(f) advise the Minister on matters relating to copyright and related rights.

Delegation of functions

64. (1) the Board may, in writing, and subject to guidelines issued by the Board, delegate any of its functions to the Director.

(2) A delegation made under subsection (1) shall not prevent the Board from performing the functions so delegated.

Director, Secretary and other staff

65. (1) The Board shall appoint a Director of the Society, who shall be the chief executive officer of the Society and responsible, under the direction of the Board, for the day-to-day administration of the Society.

(2) The Director shall be an ex-officio member of the Board.

(3) The Board shall appoint a Secretary who shall perform corporate secretarial duties for the Board and other functions as the Board may determine, under the direction of the Board and Director.

(4) The Board shall appoint other staff of the Society that the Board considers necessary for the performance of its functions.

(5) The Emoluments Commission shall, on the recommendation of the Board, determine the conditions of service of the Director, Secretary and other staff of the Society.

(6) The Board shall determine the conditions of service, other than emoluments, of the Director, Secretary and other staff of the Society.

Application for membership of Society

66. (1) A right owner or licensee may apply for membership of the Society in a prescribed manner and form on payment of a prescribed fee.

(2) The Society shall manage the economic rights of a member of the Society where the member has on application for membership under subsection (1), deposited the work or object of related rights with the Society, as prescribed.

Rights of member of Society

67. A member of the Society shall have the right to-

(a) authorise the Society to exercise or manage, in the Republic or any other country of residence of the member-

(i) specific categories of rights; or
(ii) specific types of work and objects of related rights;

(b) authorise the Society to manage a work or object of related rights for non-commercial purposes;

Collection and use of fees and charges

- (c) terminate any agreement made pursuant to paragraph (a) or (b) in respect of one or more types of works or objects of related rights;
- (d) receive royalties for rights authorised to be exercised or managed under this section;
- (e) receive information from the Society in respect of the exercise or management of copyright or related rights by the Society; or
- (f) exercise any other right as may be prescribed.

68. (1) The Society shall obtain information from users of a work or object of related rights which is necessary for the collection and distribution of fees and charges on behalf of members of the Society.

(2) The Society shall, in a prescribed manner and form request a user of a work or object of related rights to provide the information under subsection (1).

(3) The Society shall use the fees and charges collected on behalf of its members only for the purpose of distribution of royalties to the members.

(4) Despite subsection (3), the Society may-

- (a) deduct management fees or any other fees as may be determined by the Board, from the fees and charges collected on behalf of its members; or
- (b) invest the fees and charges collected on behalf of its members in accordance with the guidelines issued by the Board.

(5) The Society shall consider the following circumstances when establishing the fees and charges payable by users-

- (a) the economic value of the work or object of related rights;

	<ul style="list-style-type: none"> (b) the nature and scope of the use of the work or object of related rights; and (c) any other factor that the Society may consider necessary to collect a just and fair fee or charge.
Distribution of royalties	<p>69. The Society shall pay royalties to members of the Society as prescribed under the rules of the Society.</p>
Principles of collective management of rights	<p>70. (1) The Society shall act in the best interest of its members and shall not impose obligations on them which are not necessary for the protection of their rights and interests, or for the effective exercise of their rights.</p> <p>(2) The Society shall protect the rights and interests of its members.</p> <p>(3) The Society shall not discriminate against any of its members with respect to the conditions for the collection of fees and charges, deductions and distribution of royalties.</p> <p>(4) A member of the Society shall not individually exercise the rights of that member during the period that the member is a member of the Society.</p> <p>(5) Where there is a violation of the rights and legitimate interests of a member of the Society, the Society shall represent that member, without the member's prior authorisation.</p> <p>(6) Where the Society is requested to represent a right owner or licensee of another State, the Society shall enter into an agreement with a collective management organisation of that State on the same terms and conditions as apply to national right holders or licensees represented by the Society.</p>
Guidelines	<p>71. (1) The Board may, in the performance of the Board's functions under this Act, issue guidelines that</p>

are necessary for the better carrying out of the provisions of this Act.

(2) Despite the generality of subsection (1), guidelines issued under that subsection shall provide for the-

- (a) distribution of royalties to members of the Society;
- (b) use of non-distributable amounts;
- (c) investment of fees and charges collected on behalf of members of the Society; and
- (d) making of deductions from the fees and charges of the members of the Society.

(3) The Society shall publish the guidelines issued under this Act by notice in the Gazette or in a manner as the Society may determine and the guidelines shall not take effect until they are so published.

(4) The guidelines issued by the Board shall bind all persons regulated under this Part.

Rules of Society

72. The Minister may, by statutory instrument, make rules with respect to-

- (a) the membership of right owners or licensees to the Society; or
- (b) any other matter required to be prescribed in the rules under this Act.

PART VIII

ASSIGNMENT AND LICENSING OF ECONOMIC RIGHTS

Transfer and licensing of copyright and related rights

73. (1) Subject to this Act, an economic right in copyright and related rights is personal property capable of being-

(a) transferred by any means by which personal property may be lawfully transferred, including-

- (i) assignment;
- (ii) pledge
- (iii) testamentary disposition; or
- (iv) operation of law; or

(b) licensed.

(2) The economic rights in registered copyright or related rights may be the subject of a charge or security in the same manner as other personal property.

(3) An assignment, in whole or in part, of an economic right or a licence to do an act which is subject to authorisation by a right owner shall only apply to the acts to which the right owner has exclusive rights.

(4) An assignment of an economic right and an exclusive licence to do an act which is subject to authorisation by the right owner shall be in writing and signed by both the assignor and assignee or licensor and the licensee, as the case may be.

Terms of licence

74. (1) An agreement for the license of copyright or a related right shall specify-

- (a) particulars of the extent of control by the right owner for the use of the copyright or related right;
- (b) details to whether the licence shall be exclusive or non-exclusive;
- (c) proposed conditions or restrictions with respect to the permitted use of the copyright or related right; and
- (d) the duration of the permitted use of the copyright or related right;

(2) A licence granted in respect of any copyright or related right by the person who, in relation to the matter which the licence relates, is the right owner, shall be binding upon every successor in title to their interest in the copyright or related right, except a purchaser in good faith and without notice, actual or constructive, of the licence, or a person deriving title from the purchaser.

Reversion of rights by exclusive licensor

75. (1) Where a licensee fails to exercise an exclusive right granted by the right owner and the non-exercise is detrimental to the legitimate interests of the right owner, the right owner may revoke the granted right.

(2) The right of revocation under subsection (1) may only be exercised-

(a) after the expiration of the delay stipulated in the contract for the commencement of the exercise of the granted right;

(b) not earlier than two years after the conferral of the rights referred to under paragraph (a); or

(c) if the work or object of related rights to be used was delivered subsequently, from the date of the delivery of the work or object of related rights.

(3) In each case referred to under subsection (2), the right owner must notify the licensee of the proposed revocation and grant a reasonable additional period suitable for adequate exercise of the transferred right, unless the exercise of the right by the licensee has become impossible or the licensee has refused it.

(4) The right of revocation may not be waived in advance.

76. (1) Where a licensee becomes insolvent, is declared bankrupt or is placed under receivership, the licence shall be deemed terminated by operation of law and

Reversion of rights in case of insolvency

Act No. 9 of 2017

the provisions of the Insolvency Act, 2017, shall apply in respect of the insolvency, bankruptcy or receivership.

(2) Where the licence is deemed terminated under subsection (1), the right owner shall have the right to retrieve control and further distribution of the copyright or related right previously licensed.

PART IX

ENFORCEMENT OF RIGHTS

Technological protection measures

77. (1) Where an effective technological measure is used by, or with the consent of, a right owner to protect a work or object of related rights, a person shall not-

- (a) circumvent the effective technological protection measure; or
- (b) produce, import, distribute, sell, rent, advertise for sale or rental, or possess devices, products, components or services for commercial purposes that-

 - (i) are promoted, advertised or marketed for the purpose of circumventing effective technological measures;
 - (ii) have only a limited commercially significant purpose or use, other than circumventing effective technological measures; or
 - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures.

(2) The Minister may, by statutory instrument, provide for exceptions to this section, except that the extent of the exceptions shall not impair the adequacy of legal protection or effectiveness of legal remedies against the circumvention of technological protection measures.

Protection of electronic rights management information

78. (1) A person shall not-

- (a) remove or alter any electronic rights management information without the consent of the right owner; or
- (b) distribute, import for distribution, broadcast or communicate to the public a protected work or object of related rights knowing or having reason to know that electronic rights management information has been removed or altered without the authorisation of the right owner.

(2) Subsection (1) shall not apply to activities of the State relating to public policy or security.

Prohibition of distributing, selling, renting etc. sound recording or audio-visual without authentication device

79. (1) A person shall not distribute, sell, rent, hire, advertise for sale or rental, a sound recording or audio-visual work for commercial purposes within the Republic, without an authentication device.

Application for authentication on device for sound recording, audio-visual work or literary work

80. (1) A manufacturer or producer of a sound recording or an audio-visual work who intends to authenticate a sound recording or an audio-visual work shall apply to the Registrar for the authentication of the work in a prescribed manner and form on payment of a prescribed fee.

(2) A publisher or importer of a literary work who intends to authenticate a literary work shall apply to the Registrar for the authentication of the work in a prescribed manner or form on payment of a prescribed fee.

(3) Subject to the provisions of this Act, the Registrar shall, within thirty days of receipt an application under subsection (1) or (2), grant or reject the application.

(4) The Registrar shall, where the Registrar grants an application under subsection (1) or (2), cause to be affixed an authentication device to each copy of the work made or published by the manufacturer or producer-

(a) in the case of works produced in the Republic, at the point of production; and

(b) in the case of works imported into the Republic, except where such works are for domestic use, before they are released into the channels of commerce.

(5) The Registrar shall, where the Registrar rejects an application under subsections (3), inform the applicant of the rejection, in writing, stating the reasons of the rejection.

(6) The authentication device referred to in this section shall be in a prescribed form.

81. (1) Subject to the Act, a person infringes copyright or related rights if that person-

(a) does or causes to be done, an act that requires authorisation of the right owner or licensee under this Act, without authorisation;

(b) imports or causes to be imported a work or object of related rights which the person knows, or has reasons to believe, is an infringing copy;

(c) circumvents a technological measure designed to protect a work or object of related rights;

Infringement of
copyright or related
rights

(d) manufactures or distributes a device which is primarily designed or produced for the purpose of circumventing an effective technological measure designed to protect a work or object of related rights protected under this Act;

(e) removes or alters an electronic rights management information; or

(f) distributes, imports, broadcasts or makes available to the public, protected works or objects of related rights records or copies from which electronic rights management information have been removed or altered without the authority of the right owner.

(2) An infringement under this section shall be independent of an infringement that may arise under this Act.

(3) For the purpose of this Act, a reference to an infringement of copyright or related rights shall be construed as a reference to an infringement of the rights of a right owner.

(4) Subject to this Act, a right owner may commence an action in Court for infringement of copyright or a related right.

PART X

BORDER MEASURES

Notice of border measures

82. (1) Where a right owner or licensee has valid grounds for suspecting that the importation or exportation of a pirated work or object of related rights may take place, the right owner or licensee may apply, by notice, for border

measures to the Commissioner-General in a prescribed manner and form.

(2) A notice under subsection (1) does not apply to works or objects of related rights in transit.

(3) The right owner or licensee who makes an application under subsection (1) shall provide sufficient evidence to satisfy the Commissioner-General that-

(a) the copyright or related right has likely been infringed;

(b) the right owner or licensee has ownership or a licence in respect of the copyright or related right; and

(c) the right owner or licensee can describe the work or object of related rights in sufficient detail to make the work or object of related rights easily recognizable.

(4) The Commissioner-General shall, on receipt of the notice made under subsection (1), in writing, request the Registrar to verify the evidence submitted under subsection (3).

(5) The Registrar shall, on receipt of the notice under subsection (3), submit a report to the Commissioner-General within a prescribed period.

(6) The Commissioner-General shall, on the Registrar's written verification of the information under subsection (3)-

(a) inform the applicant, in writing, within a prescribed period-

(i) that the application for border measures has been approved; and

(ii) the period for which the commissioner-General shall enforce the notice;

(b) direct an authorised officer to seize and detain the work or object of related rights specified in the notice in a secure place if the right owner or licensee deposits with the Commissioner-General security as the Commissioner-General may determine to-

- (i) reimburse the Government for liability or expenses that the Government is likely to incur as a result of the seizure of work or object of related rights;
- (ii) prevent abuse and protect the importer or exporter; or
- (iii) pay compensation that may be ordered by the Court under this Part;

(c) take appropriate action to prevent a person from importing or exporting the work or object of related rights identified in the notice.

(7) The Commissioner-General shall, within seven days from the date of the seizure and detention of the infringing work or object of related rights under subsection (5), issue to the applicant and the importer or exporter, a notice of suspension of the release of the work or object of related rights in a prescribed manner and form.

(8) A right owner or licensee may, for purposes of this section, commence infringement proceedings under section 77 (4) within ten days of receipt of the notice issued under subsection (6).

Notice of seizure

83. An authorised officer who seizes and detains a work or object of related rights under section 82 shall, within seven days of the seizure and detention of the work or object of related rights, give a notice of the seizure in a prescribed manner and form to the Registrar, right owner, licensee and importer or exporter.

Inspection and release of seized work or object of related rights

84. (1) The Commissioner-General may, on an application by a right owner, licensee, importer or exporter, made in a prescribed manner and form, authorise the inspection by the right owner, licensee, importer or exporter of the seized and detained work or object of related rights.

(2) The Commissioner-General may permit a right owner, licensee, importer or exporter to remove a sample of a seized and detained work or object of related rights.

(3) Where the Commissioner-General permits the inspection or removal of a sample of a seized and detained work or object of related rights under this section, the Commissioner-General shall not be liable to the importer or exporter for any loss or damage suffered by the importer or exporter arising out of-

(a) damage to the seized and detained work or object of related rights incurred during the inspection; or

(b) anything done to the sample of a seized and detained work or object of related rights removed from the custody of the Commissioner-General.

Forfeiture of seized work or object of related rights by consent

85. (1) An importer or exporter may, where infringement proceedings have not commenced, in accordance with section 82 (8) and before the expiry of ninety days, admit to the infringement of the copyright or related right, and consent to the forfeiture of the seized work or object of related rights in a prescribed manner and form.

(2) Where an importer or exporter has made an admission and given consent under subsection (1), the Commissioner-General shall order the destruction or disposal of the seized work or object of related rights outside the channels of commerce.

(3) Where the seized work or object of related rights is destroyed or disposed of under subsection (2), compensation is not payable to the importer or exporter for any loss relating to the destruction or disposal of the work or object of related rights.

Release of seized work or object of related rights and compensation to importer

86. An importer or exporter of any seized and detained work or object of related rights may apply to the Court for the release of the seized and detained work or object of related rights and compensation for the loss or damage relating to the seizure and detention of the work or object of related rights, where the right owner or licensee-

- (a) does not commence proceedings for infringement within the period specified in section 82 (8); and
- (b) had no reasonable grounds for submitting a notice under section 82 (1).

PART XI

OFFENCES

Infringement

87. (1) A person commits an offence if at a time when copyright or a related right subsists in a work or object of related rights, that person knowingly-

- (a) makes for sale or rent an infringing copy;
- (b) sells or lets for hire or, by way of trade, exposes or offers for sale an infringing copy;
- (c) distributes infringing copies;
- (d) possesses, otherwise than for that person's personal use, an infringing copy;
- (e) imports into the Republic, otherwise than for that person's private and domestic use, an infringing copy;

- (f) makes or has in that person's possession a contrivance used or intended to be used for the purpose of making an infringing copy;
- (g) causes a broadcasting to be rebroadcast or transmitted in a diffusion service, knowing that copyright subsists in the broadcast and that the rebroadcast or transmission constitutes an infringement of the copyright;
- (h) causes a program carrying signals to be distributed by a distributor for whom they were not intended, knowing that copyright subsists in the signals and that the distribution constitutes an infringement of the copyright;
- (i) circumvents a technology protection measure or manufactures or distributes devices designed for circumventing technological protection measures; or
- (j) removes or alters rights management information or imports or distributes, or makes available to the public, a copy of a work or object of related rights from which electronic rights management information has been removed or altered.

(2) A person who causes a literary or musical work, an audio-visual work or a sound recording to be performed in public at a time when copyright subsists in the work or sounding recording, and when the performance is an infringement of that copyright, commits an offence.

(3) A person who commits an offence under subsection (1) is liable, on conviction to a fine not exceeding

five hundred thousand penalty units or imprisonment for a term not exceeding five years, or to both.

(4) A body corporate that contravenes subsection (1) is liable to a fine not exceeding three million penalty units.

Falsification of entry in register

88. (1) A person commits an offence if that person makes or causes to be made a false entry in the register, or a document purporting to be a copy of an entry in the register, or produces, tenders or causes to be produced or tendered in evidence a document, knowing the entry or document to be false.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Altering of document

89. A person who alters or defaces a document issued by the Registrar commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Deceiving Registrar or officer with false statement

90. (1) A person commits an offence if that person, for the purpose of deceiving the Registrar or an officer of the Agency in the execution of this Act, makes or submits a false statement or representation whether orally or in writing, knowing that statement or representation to be false.

(2) A person commits an offence if that person makes a statement or representation, whether orally or in writing, for the purpose of procuring or influencing the doing or omission of anything in relation to this Act, and who on becoming aware that the statement or

representation was false, fails to inform the Registrar of the falsity.

(3) A person who commits an offence under subsection (1) or (2) is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

False representation about Agency

91. (1) A person commits an offence if that person-

- (a) places on a document, as a description of that person's office or business, the words "copyrights office", or words of similar nature whether alone or together with other words;
- (b) impersonates or falsely purports to be an employee or agent of the Agency; or
- (c) uses a word or acts in a manner, that would reasonably lead a person to believe that, that person's office is officially connected with the Agency.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

General offences

92. (1) A person commits an offence if that person-

- (a) provides false information in an application for a registration made in accordance with this Act.
- (b) aids, abets, counsels or procures the commission of an offence or is in any way directly or indirectly a party to the commission of an offence under this Act.

(2) A person who commits an offence under subsection (1) is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

PART XII

INSPECTORATE

Inspectors

93. (1) The Agency shall appoint suitably qualified persons as inspectors for the purpose of ensuring compliance with the provisions for this Act.

(2) The Registrar shall issue an identity card to an inspector, which shall be prima facia evidence of the inspector's appointment.

(3) An inspector shall, in performing the functions under this Act-

- (a) be in possession of the identification card referred to under subsection (2); and
- (b) show the identification card to any person who requests to see the identification card.

Power of entry,
search and
inspection

94. (1) An inspector may, for purposes of enforcing the provisions of this Act, at any reasonable time, without prior notice-

- (a) enter and search premises that the inspector has reasonable cause to believe are being used contrary to the provisions of this Act;
- (b) search any person on the premises if the inspector has reasonable grounds to believe that the person has possession of an article, document or record that has a bearing on an inspection, except that a person shall only be searched by a person of the same sex;
- (c) inspect-

- (i) any substance or article on the premises appearing to be a work or object of related rights;
- (ii) any container or package used or intended to be used to contain any work or object of related rights; or
- (iii) any plant or equipment appearing to the inspector to be used or intended to be used in connection with the production, reproduction or otherwise manufacture of a work or object of related rights;

(d) seize and detain any substance or article which the inspector has reasonable cause to believe to be an infringing copy of a work or object of related rights;

(e) take extracts from, or make copies of any book, document or record that is on the premises and has a bearing on the inspection and which may be required in proceedings under this Act; or

(f) make inquiries that may be necessary to ascertain whether the provisions of this Act have been complied with.

(2) An inspector who removes anything from any premises shall-

- (a) issue a receipt for anything removed to the owner or person in control of the premises; and
- (b) return anything removed as soon as practicable after the thing has saved the purpose for which it was removed.

(3) A person commits an offence if that person-

- (a) delays or obstructs an inspector in the performance of the inspector's functions under this Act;

(b) refuses to give an inspector such reasonable assistance as the inspector may require for the purpose of performing the inspector's functions;

(c) impersonates an inspector or presents oneself to be an inspector; or

(d) wilfully gives an inspector false or misleading information in answering to an inquiry made by the inspector.

(4) A person who contravenes subsection (3) is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to imprisonment for a term not exceeding three years, or to both.

Report of inspection

95. An inspector shall furnish the Registrar with a written report and any other information relating to an inspection, as the Registrar may direct.

Code of conduct for inspection

96. The Board shall develop a code of conduct for inspectors for the purpose of performing the functions under this Act.

PART XIII

GENERAL PROVISIONS

Register

97. (1) The Agency shall keep and maintain a register in which the Registrar shall enter the following information:

- (a) particulars of registered copyright and related rights;
- (b) particulars of right owners;
- (c) particulars of any transaction required to be registered under this Act; and
- (d) any other matter relating to copyright or related rights as prescribed.

(2) The register shall be maintained in electronic and non-electronic form.

(3) The register shall be kept in the custody of the Registrar at the offices of the Agency and shall be open for inspection to members of the public during prescribed office hours on payment of a prescribed fee.

Evidence of certain entries and documents

98. (1) A certificate purporting to be signed by the Registrar and certifying that an entry which the Registrar is authorised in accordance with this Act to make, has or has not been made, or that any other thing which the Registrar is authorised to do, has or has not been done, shall be prima facie evidence of the matter so certified.

(2) A copy of any entry or document or an extract from the register certified by the Registrar shall be admitted in evidence without further proof and without production of the original.

(3) The Registrar may, on an application by a person, issue to that person a certified extract from, or a copy of, an entry in the register on payment of a prescribed fee.

(4) Subject to this Act, a copy of the last published and printed register shall be prima facie evidence of any matters required or authorised under this Act to be entered in the register.

Rectification of register

99. (1) The Registrar may rectify the register-

(a) on an application made by a right owner registered under this Act in a prescribed manner and form on payment of a prescribed fee; or

(b) by a court order.

(2) Despite subsection (1), the Registrar may, on the Registrar's own motion, rectify an error or omission without an application made under subsection (1) (a) and

shall give written notice to a right owner affected by the rectification.

(3) The Registrar may rectify the register by-

- (a) correcting an error in the name, address or description of a right owner;
- (b) entering a change in the name, address or description of a right owner;
- (c) striking out a work or object of related rights from those in respect of which copyright or related rights are registered; or
- (d) entering a disclaimer or statement relating to registered copyright or related rights.

(4) The Registrar shall not effect a rectification in respect of a matter that affects the validity of a registration of copyright or related rights.

100. The Registrar shall, at intervals as prescribed, publish in the Intellectual Property Journal particulars required to be published under this Act and other information relating to copyright or related rights that the Registrar considers appropriate.

101. (1) The Registrar may authorise the correction of a clerical error in a document filed with the Agency on request by an applicant in a prescribed manner and form on payment of a prescribed fee.

(2) The Registrar shall, where an error in a document filed with the Agency is identified by the Registrar, notify an applicant, in writing, to correct the error in a prescribed manner and form on payment of a prescribed fee.

102. (1) Despite any other written law, the Registrar shall serve a document under this Act, in the case of-

- (a) a company, by delivery of the document to-

(i) the registered office of the company;
or;

(ii) an agent of the company; or

(b) an individual, by personally serving the individual or authorised agent of that individual.

(2) Where service in the manner specified under subsection (1) is not practicable or expedient, a document may be served by-

(a) registered mail or electronic mail; or

(b) publication in a daily newspaper of general circulation in the Republic.

(3) Where a document is sent by electronic means, service is considered to be effected when the complete data message enters an information system designated or used for that purpose in accordance with the Electronic Communications and Transactions Act, 2021.

Act No.4 of 2021

Filing and service of documents on Registrar

Act No. 4 of 2021

Preliminary advice and search

103. (1) An application, notice or document required to be filed with, or served on, the Registrar shall be filed or served in accordance with this Act.

(2) Where a document is filed or served by electronic means, the document is considered to be filed or served when the complete data message enters an information system designated or used for that purpose in accordance with the Electronic Communications and Transactions Act, 2021.

104. (1) The Registrar may, on an application made by a person who intends to register copyright or a related right, give advice or issue a report as to whether the copyright or related right may be registered under this Act in a prescribed manner and on payment of a prescribed fee.

(2) The Registrar's advice given under subsection (1) shall not be binding on the Registrar as to the registrability of copyrights or related rights.

Request for information

105. Subject to this Act, the Registrar shall, on a request by a person in a prescribed manner and form, on payment of a prescribed fee, furnish copies of a document that is open to public inspection and required to be maintained in accordance with this Act.

Power of Registrar in proceedings

106. (1) The Registrar may, in any proceedings under this Act-

- (a) summon a witness;
- (b) receive written or oral evidence, on oath or affirmation;
- (c) require the production of a document, work, object of related rights, material or an article for inspection;
- (d) provide for the manner of inspection of a document, work, material or an object of related rights or article;
- (e) hear the matter in issue and rely on the evidence of any expert that the Registrar considers necessary to consult;
- (f) allow a witness to be cross examined on oral evidence or evidence adduced in an affidavit or solemn declaration;
- (g) in the case of a party to the proceedings who is resident outside the Republic, order that party to give security for costs of the proceedings within a period that the Registrar may direct;
- (h) award to a party, costs as the Registrar may consider reasonable and direct how the costs are to be paid, and the costs awarded

	<p>shall be taxed by the Court and the payment of the costs may be enforced in the same manner as if the costs were awarded by the Court; or</p> <p>(i) exercise any other power as the Registrar considers appropriate for the performance of the Registrar's functions under this Act.</p>
(2)	The Registrar may make an order as the Registrar considers appropriate regarding any matter under subsection (1).
Registrar not bound by rules of evidence	<p>107. The Registrar is not bound by the rules of evidence in any proceedings under this Act.</p>
Power of Registrar to determine time and place of sitting Extension of time	<p>108. The Registrar may determine the time and place at which proceedings shall take place.</p> <p>109. The Registrar may, on an application by a person in a prescribed manner and form on payment of a prescribed fee, extend the prescribed time for performing an act that is required under this Act.</p>
Appeal against decision of Registrar	<p>110. (1) A person who is dissatisfied with the decision of the Registrar made under this Act may appeal to the Court within ninety days of the person's receipt of the decision.</p> <p>(2) The Registrar shall, where an appeal has been lodged in accordance with subsection (1), submit to the Court a record of the proceedings or any other relevant documents in relation to the appeal.</p>
Registrar to act as soon as practicable	<p>111. The Registrar shall, where the Registrar is required, as provided in this Act, to do any act or thing and no time or period is provided within which the act or thing is to be done, be required to do the act or thing as soon as practicable.</p>
Duplicate certificate	<p>112. (1) A right owner shall, where a certificate issued in accordance with this Act is lost or destroyed,</p>

apply to the Registrar for a duplicate certificate of registration, in a prescribed manner and form on payment of a prescribed fee.

(2) The Registrar may, on receipt of an application under subsection (1), issue a replacement certificate in a prescribed form.

113. The forfeiture and confiscation orders provisions in the Forfeiture of Proceeds of Crime Act, 2010, apply to the prosecution of offences under this Act.

114. (1) The Registrar may impose an administrative penalty on a person for failure to comply with a provision that is not an offence under this Act.

(2) An administrative penalty under subsection (1) shall be as prescribed.

(3) An administrative penalty imposed in accordance with subsection (1) shall be paid to the Agency in a prescribed manner and form.

(4) The Registrar may, where a person fails to pay an administrative penalty, within a prescribed period, by way of civil action in a competent court, recover the amount of the administrative penalty from that person as an amount due and owing to the Agency.

115. A person who contravenes any provision of this Act where no specific penalty has been provided is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

116. Where an offence under this Act is committed by a body corporate or unincorporated body, with the knowledge, consent or connivance of the director, manager, shareholder or partner, that unincorporated body commits an offence and is liable, on conviction, to the penalty specified for that offence.

Forfeiture and
confiscation orders
Act No. 19 of 2010

Administrative penalty

General penalty

Offences by principal
officers, shareholders
or partner or body
corporate or
incorporate body

Regulations

117. (1) The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act.

(2) Despite the generality of subsection (1), regulations made by the Minister may make provision for the-

- (a) administrative requirements or any necessary details for the implementation of this Act and any relevant international treaty or convention to which the Republic is a State Party;
- (b) procedures and conditions for applications to be made in accordance with this Act;
- (c) forms to be used for purposes of this Act;
- (d) fees to be charged for purposes of this Act;
- (e) administrative penalty to be imposed under this Act;
- (f) registration of authorised agents;
- (g) classification of a work or object of related rights for the purpose of registration of copyrights or related rights;
- (h) formulae for calculating remuneration to be paid under this Act;
- (i) rate, and period for payment, of any remuneration to be paid under this Act;
- (j) exceptions for the prohibition of circumventing technological measures;
- (k) the form of an authentication device;
- (l) thresholds of turnover for businesses exempted from paying remuneration under this Act; and
- (m) procedures, requirements and other matters in respect of the registration of copyrights or related rights under this Act.

118. (1) The Copyright and Performance Rights Act, 1994, is repealed.

(2) Despite subsection (1), the Second Schedule applies to the savings and transitional provisions for purposes of this Act.

FIRST SCHEDULE

(Section 62 (5))

PART I

ADMINISTRATION OF BOARD

Tenure of office and
vacancy

1. (1) A member of the Board shall hold office for a term of three years and may be re-appointed for a further and final term of three years, except for the Registrar who shall be an ex-officio member.

(2) The office of a member shall become vacant if that member-

- (a) dies;
- (b) is adjudged bankrupt;
- (c) is absent from three consecutive meetings of the Board, of which that member has had notice, without the prior approval of the Board;
- (d) ceases to be a representative of the ministry, institution or organisation that nominated or appointed that member to the Board;
- (e) resigns by giving notice, in writing, to the Minister;
- (f) is legally disqualified from performing the functions of a member;
- (g) is removed from the Board by the Minister;
- (h) is convicted of an offence under this Act or any other written law and is sentenced to imprisonment for a term exceeding six months without an option of a fine.

(3) The Minister shall, where the office of a member becomes vacant before the expiry of the term of office of the member, appoint another member in place of the member who vacates office and that member shall hold office for the remainder of the term.

(4) In the case of a member referred to under section 62 (1) (a), (b), (c), (d), (e), (f) and (g), an appointment made by the Minister under subsection (3) shall be made from the same ministry, institution or organisation.

(5) A member shall, on the expiration of the term for which the member is appointed, continue to hold office until another member is appointed, but in no case shall the extension of the period exceed three months.

2. (1) Subject to the provisions of this Act, the Board may regulate its own procedure.

(2) The Board shall meet for the transaction of business, at least once in every three months at a place and at a time as the Chairperson may determine.

(3) The Chairperson may call a meeting of the Board on giving notice of not less than fourteen days, or where one-third of the members so request, in writing, except that if the urgency of a particular matter does not permit the giving of that notice, a special meeting may be called on giving a shorter notice.

(4) Seven members of the Board shall form a quorum at a meeting of the Board.

(5) There shall preside at a meeting of the Board-

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; or

(c) in the absence of both the Chairperson and Vice-Chairperson, a member that the members present may elect for the purpose of that meeting.

(6) A decision of the Board in any question shall be by a majority of the members present and voting at the meeting, and in the event of an equality of votes, the person

presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.

(7) The Board may invite a person, whose presence is in its opinion, desirable to attend and to participate in the deliberation of a meeting of the Board but that person shall have no vote.

(8) Where a member is for any reason unable to attend a meeting of the Board, the member may, in writing, nominate another person from the same organisation to attend the meeting in that member's stead and that person shall be deemed to be a member for the purpose of that meeting.

(9) The validity of any proceedings, acts or decision of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.

(10) The Board shall cause to be kept minutes of the proceedings of every meeting of the Board and every meeting of any committee constituted by the Board.

Committees

3. (1) The Board may, for the purpose of performing its functions under this Act, constitute committees that it considers necessary and delegate any of its functions to the committees as it may determine.

(2) The Board may appoint as members of a committee, persons who are or are not members of the Board, except that at least one member of the Board shall be a member of a committee.

(3) A member of a committee shall hold office for a period that the Board may determine.

(4) Subject to any specific or general direction of the Board, a committee established under subsection (1), may regulate its own procedure.

Allowance of
members

4. A member of the Board and a committee of the Board shall be paid allowances that the Emoluments Commission may, on the recommendation of the Minister, determine.

Disclosure of interest

5. (1) A person who is present at a meeting of the Board or a committee of the Board, at which any matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not unless the Board or committee otherwise directs take part in any consideration or discussion of or vote on any question relating to the matter.

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

Prohibition of
publication of
disclosure of
information to
unauthorised person

6. (1) A person shall not, without the consent, in writing, given by or on behalf of the Board, publish or disclose to a person, otherwise than in the course of that person's duties, the contents of any document, communication or information whatsoever which relates to, or which has come to that person's knowledge in the course of that person's duties under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

Immunity of
members of Board,
committees and staff
of Society

7. An action or other proceeding shall not lie or be instituted against a member of the Board or a committee of the Board or a member of staff of the Society, for or in respect of any act or thing done or omitted to be done in

good faith in the exercise or performance of, or purported exercise or performance of any of the powers, functions or duties conferred under this Act.

PART II

FINANCIAL PROVISIONS

Funds of Society

8. (1) The funds of the Society consist of moneys that may-

- (a) be appropriated to the Society by Parliament;
- (b) be paid to the Society by way of fees, levy, grants or donations; and
- (c) vest in or accrue to the Society.

(2) The Society may-

(a) subject to the Public Finance Management Act, 2018, and the approval of the Minister, accept moneys by way of grants or donations from any source within or outside Zambia;

(b) subject to the Public Debt Management Act, 2022, raise by way of loans or otherwise, monies that the Society may require for the performance of its functions; and

(c) in accordance with the regulations made under this Act, charge and collect fees for services provided by the Society.

(3) There shall be paid from the funds of the Society-

- (a) emoluments and loans of the members of the staff of the Society;
- (b) reasonable travelling and other allowances for members of the Board and members of the committee of the Board, when engaged

in the business of the Society, at such rates as the Emoluments Commission may on the recommendation of the Minister determines; and

(c) any other expenses incurred by the Society in carrying out its functions under this Act.

Act No. 15 of 2022

(4) The Society may, subject to the Public Debt Management Act, 2022, and the approval of the Minister, invest in a manner the Society considers appropriate funds of the Society that the Society does not immediately require for the performance of the Society's functions.

Financial year

9. The financial year of the Society shall be a period of twelve months ending on 31st December of each year.

Accounts and audit

10. (1) The Society shall cause to be kept proper books of account and other records relating to accounts of the Society.

(2) The Auditor General or an auditor appointed by the Auditor General shall audit annually the accounts of the Society.

(3) The Society shall pay the fees for the Auditor General or an auditor appointed by the Auditor General.

Annual report

11.(1) The Society shall, as soon as practicable but not later than ninety days after the end of the financial year, submit to the Minister a report concerning the Society's activity during the financial year.

(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Society, and there shall be appended to the report-

(a) an audited statement of financial position;
(b) an audited statement of comprehensive income and expenditure; and

(c) such other information as the Minister may require.

(3) The Minister shall not later than seven days after the first sitting of the National Assembly, next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.

SECOND SCHEDULE

(Section 118 (2))

SAVINGS AND TRANSITIONAL PROVISIONS

Acts under repealed
Act to remain valid

1. Any act done or executed in accordance with the repealed Act and in force and operative at the commencement of this Act has effect as if done or executed in accordance with this Act.

Previous applications

2. An application for the registration of copyright made under the repealed Act, prior to the commencement of this Act, shall be processed in accordance with this Act.

Pending proceedings

3. (1) The enactment of this Act does not affect any investigations or legal proceedings instituted under the repealed Act, which were pending before the Registrar or in court, immediately before the date of commencement of this Act, and such investigations or proceedings shall be disposed of as if this Act had not been passed.

(2). An appeal which, immediately before the commencement of this Act, was pending shall proceed as if this Act had not been passed.

Existing registered
copyright

4. (1) Copyright registered in accordance with the repealed Act shall remain valid until the expiry of the registration, and the renewal of the copyright shall be made in accordance with this Act.

(2). A reference in this Act, express or implied, to the date of registration of copyright under subparagraph (1)

shall be construed as a reference to the date on which the copyright were registered in accordance with the repealed Act.

Authorised agents

5. An authorised agent registered under the repealed Act shall apply for registration as an authorised agent within six months of the commencement of this Act.

Register made under repealed Act Cap. 406

6. A register kept in accordance with the repealed Act shall be considered to be part of the register kept in accordance with this Act.

Infringements under repealed Act Cap. 406

7. Infringement proceedings of copyright under the repealed Act shall be disposed of in accordance with the repealed Act.

Fee, charge or sum paid or unpaid in accordance with repealed Act

8. A fee paid or unpaid before the commencement of this Act shall be considered to be a fee paid or unpaid in accordance with this Act.

Approvals and authorisations Cap 406

9. An approval given or authorisation granted before the commencement of this Act, or any act or thing done in accordance with the repealed Act, shall be considered to have been given or authorised under this Act, and any approval or authorisation shall remain valid for the period specified under the repealed Act.