

Copyright

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NATIONAL LEGISLATION

KENYA

The Copyright Act, 1966

(No. 3, of 1966) ¹⁾

Arrangement of Sections

Section

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4. Copyright by virtue of nationality or residence, and duration of copyright.
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6. Copyright in works of Government and international bodies.
7. Nature of copyright in literary, musical or artistic works and cinematograph films.
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12. Assignments and licences.
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16. Application to works made before commencement of Act.
17. Abrogation of common law rights.
18. Repeal of Copyright Act, 1956.

An Act of Parliament to provide that the Copyright Act, 1956, of the United Kingdom shall cease to have effect in Kenya, and to make provision for copyright in literary, musical and artistic works, cinematograph films, sound recordings and broadcasts.

Enacted by the Parliament of Kenya, as follows:

Short title and commencement

1. — This Act may be cited as the Copyright Act, 1966, and shall come into operation on such date as the Minister may, by notice in the *Gazette*, appoint.

Interpretation

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

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

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in a cinematograph film;
- (e) works of architecture in the form of buildings or models; and
- (f) works of artistic craftsmanship, and also, subject to the provisions of section 3 (3) of this Act, includes

pictorial woven tissues and articles of applied handicraft and industrial art;

“author”, in the case of a cinematograph film or sound recording, means the person by whom the arrangements for the making of the cinematograph film or recording were undertaken, or in the case of a broadcast transmitted from within any country, means the person by whom the arrangements for the making of the transmission from within that country were undertaken;

“broadcast” means a sound or television broadcast of any material and includes a diffusion over wires;

“broadcasting authority” means the Voice of Kenya or any other broadcaster authorized by or under any written law;

“building” includes any structure;

“cinematograph film” means the first fixation on film or on any other medium of a sequence of visual images or electronic impulses capable of being seen as a moving picture and of being the subject of reproduction, and includes the recording of a soundtrack associated with the cinematograph film;

“communication to the public” includes, in addition to any live performance or delivery, any mode of visual or acoustic presentation;

“copy” means a reproduction in written form, in the form of a recording or cinematograph film, or in any other material form, so however that an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

“copyright” means copyright under this Act;

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

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

- (a) novels, stories and poetical works;
- (b) plays, stage directions, film scenarios and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopaedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons,

but does not include any written law, law report or judicial decision;

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

¹⁾ This Act came into force on April 1, 1966.

“prescribed” means prescribed by regulations made under section 15 of this Act;

“rebroadcasting” means simultaneous or subsequent broadcasting by one broadcasting authority of the broadcast of another broadcasting authority and includes diffusion of the broadcast over wires;

“reproduction” means the making of one or more copies of a literary, musical or artistic work, cinematograph film or sound recording;

“school” shall have the meaning assigned thereto under the provisions of the Education Act;

“sound recording” means the first fixation of a sequence of sounds capable of being perceived aurally and of being reproduced, but does not include a soundtrack associated with a cinematograph film;

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

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

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

- (a) a work shall be taken to have been published if, but only if, copies have been issued in sufficient quantities to satisfy the reasonable requirements of the public;
- (b) where in the first instance a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;
- (c) a publication in any country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days.

Works eligible for copyright

3. — (1) Subject to the provisions of this section the following works shall be eligible for copyright —

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) cinematograph films;
- (e) sound recordings;
- (f) broadcasts.

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

- (a) sufficient effort has been expended on making the work to give it an original character; and
- (b) the work has been written down, recorded or otherwise reduced to material form.

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

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

4. — (1) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is, at the time when the work is made, a qualified person, that is to say —

- (a) an individual who is a citizen of, or is domiciled or resident in, Kenya; or
- (b) a body corporate which is incorporated under or in accordance with the laws of Kenya.

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

<i>Type of work</i>	<i>Date of expiration of copyright</i>
1. Literary, musical or artistic work other than photographs.	Twenty-five years after the end of the year in which the author dies.
2. Cinematograph films and photographs.	Twenty-five years after the end of the year in which the work was first made lawfully accessible to the public.
3. Sound recordings.	Twenty years after the end of the year in which the recording was made.
4. Broadcasts.	Twenty years after the end of the year in which the broadcast took place.

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

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

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

Copyright by reference to country of origin

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

- (a) being a literary, musical or artistic work or a cinematograph film is first published in Kenya; and
 - (b) being a sound recording, is made in Kenya,
- and which has not been the subject of copyright conferred by section 4 of this Act.

(2) Copyright conferred on a work by this section shall have the same duration as is provided for in section 4 of this Act in relation to a similar work.

Copyright in works of Government and international bodies

6. — (1) Copyright shall be conferred by this section on every work which is eligible for copyright and which is made by or under the direction or control of the Government and also such international bodies or other governmental organizations as may be prescribed.

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

(3) Copyright conferred by this section on a cinematograph film, photograph, sound recording or broadcast shall have the same duration as is provided for by section 4 of this Act in relation to a similar work.

(4) Sections 4 and 5 of this Act shall not be deemed to confer copyright on works to which this section applies.

Nature of copyright in literary, musical or artistic works and cinematograph films

7. — (1) Copyright in a literary, musical or artistic work or in a cinematograph film shall be the exclusive right to control the doing in Kenya of any of the following acts, namely the reproduction in any material form, the communication to the public and the broadcasting, of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original:

Provided that copyright in any such work shall not include the right to control —

- (i) the doing of any of the aforesaid acts by way of fair dealing for purposes of research, private use, criticism or review, or the reporting of current events, if any public use of the work is accompanied by an acknowledgment of its title and authorship except where the work is incidentally included in a broadcast;
- (ii) the doing of any of the aforesaid acts by way of parody, pastiche or caricature;
- (iii) the reproduction and distribution of copies, or the inclusion in a film or broadcast, of any artistic work situated in a place where it can be viewed by the public;
- (iv) the incidental inclusion of an artistic work in a film or broadcast;
- (v) the inclusion in a collection of literary or musical works which includes not more than two short passages from the work in question if the collection is designed for use in any school registered in accordance with the provisions of the Education Act or university and includes an acknowledgment of the title and authorship of the work;
- (vi) the broadcasting of a work if the broadcast is intended to be used for educational purposes;
- (vii) any use made of a work enumerated in section 3 (1) of this Act in any school registered in accordance with the provisions of the Education Act or any university for the educational purposes of that school or university:

Provided that if a reproduction be made for the purposes of this paragraph such reproduction shall be

destroyed before the end of the period of twelve calendar months immediately following the making of the reproduction;

- (viii) the making or importing of a sound recording of a literary or musical work and the reproduction of such sound recording if intended for retail sale in Kenya and provided that a fair compensation is paid to the owner of the relevant part of the copyright in the work in accordance with regulations made under section 15 of this Act;
- (ix) the reading or recitation in public or in a broadcast by one person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgment;
- (x) any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific institutions as may be prescribed, where such use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work thus used;
- (xi) the reproduction of a work by or under the direction or control of a broadcasting authority where such reproduction or any copies thereof are intended exclusively for lawful broadcast by that broadcasting authority and are destroyed before the end of the period of six calendar months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting authority and the owner of the relevant part of the copyright in the work; any reproduction of a work made under this paragraph may, if it is of an exceptional documentary nature, be preserved in the archives of the broadcasting authority, but, subject to the provisions of this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;
- (xii) the broadcasting of a work already lawfully made accessible to the public with which no licensing body referred to under section 14 of this Act is concerned, provided that subject to the provisions of this section the owner of the broadcasting right in the work receives fair compensation determined, in the absence of agreement, by the competent authority appointed under the said section 14;
- (xiii) any use made of a work for the purpose of a judicial proceeding or of any report of any such proceeding.

(2) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original:

Provided that the copyright in any such work shall not include the right to control the reconstruction of a building to which that copyright relates in the same style as the original.

Broadcasting of works incorporated in a cinematograph film

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

(2) Notwithstanding the provisions of subsection (1) of this section where a broadcasting authority broadcasts a cinematograph film in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority:

Provided that in the absence of an agreement the amount of such compensation shall be determined by the competent authority appointed under section 14 of this Act.

Nature of copyright in sound recording

9. — Copyright in sound recording shall be the exclusive right to control in Kenya the direct or indirect reproduction of the whole or a substantial part of the recording either in its original form or in any form recognizably derived from the original:

Provided that the provisions of paragraphs (i), (vii), (x), (xi) and (xiii) of the proviso to section 7 (1) of this Act shall apply *mutatis mutandis* to the copyright in a sound recording.

Nature of copyright in broadcasts

10. — Copyright in a broadcast shall be the exclusive right to control the doing in Kenya of any of the following acts, namely, the recording and the rebroadcasting of the whole or a substantial part of the broadcast and the communication to the public in places where an admission fee is charged of the whole or a substantial part of a television broadcast either in its original form or in any form recognizably derived from the original:

Provided that —

- (i) the provisions of paragraphs (i), (vii), (x) and (xiii) of the proviso to section 7 (1) of this Act shall apply *mutatis mutandis* to the copyright in a broadcast;
- (ii) the copyright in a television broadcast shall include the right to control the taking of still photographs from such broadcasts.

First ownership of copyright

11. — (1) Copyright conferred by sections 4 and 5 of this Act shall vest initially in the author:

Provided that, notwithstanding the provisions of section 12 (6) of this Act, where a work —

- (i) is commissioned by a person who is not the author's employer under a contract of service; or
- (ii) not having been so commissioned, is made in the course of the author's employment,

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

(2) Copyright conferred by section 6 of this Act shall vest initially in the Government or such international bodies or other governmental organizations as may be prescribed, and not in the author.

Assignments and licences

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

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

(3) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing signed by or on behalf of the assignor, or by or on behalf of the licensor, as the case may be.

(4) A non-exclusive licence to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time:

Provided that a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a further contract.

(5) An assignment or licence granted by one copyright owner shall have effect as if granted by his co-owners also, and, subject to any contract between them, fees received by the grantor shall be divided equitably between all the co-owners. For the purposes of this subsection persons shall be deemed to be co-owners—

- (a) if they share a joint interest in the whole or any part of a copyright; or
- (b) if they have interests in the various copyrights in a composite production, that is to say, a production consisting of two or more works.

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

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

Infringement

13. — (1) Copyright shall be infringed by any person who does, or causes any other person to do, an act the doing of which is controlled by the copyright without the licence of the owner of the copyright.

(2) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement all

such relief, by way of damages, injunction, accounts or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

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

(a) that an infringement was committed, but

(b) that at the time of the infringement the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work to which the action relates,

the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

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

(a) the flagrancy of the infringement; and

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

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

(5) No injunction shall be issued in proceedings for infringement of copyright which requires a completed or partly built building to be demolished or prevents the completion of a partly built building.

(6) In this section—

“action” includes a counter-claim, and references to the plaintiff and to the defendant in an action shall be construed accordingly;

“court” means the High Court;

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

Appointment of competent authority and duties of such authority

14. — (1) In any case where it appears to the competent authority that a licensing body—

(a) is unreasonably refusing to grant licences in respect of copyright; or

(b) is imposing unreasonable terms or conditions on the granting of such licences,

the competent authority may direct that, as respects the doing of any act relating to a work with which the licensing body is concerned, a licence shall be deemed to have been granted by the licensing body at the time the act is done provided the

appropriate fees fixed by such competent authority are paid or tendered before the expiration of such period or periods as the competent authority may determine.

(2) In this section—

“competent authority” means an authority of not more than three persons appointed by the Attorney-General for the purpose of exercising jurisdiction under the provisions of this Act whenever any matter requires to be determined by such authority;

“licensing body” means an organization which has as its main object, or one of its main objects, the negotiation or granting of licences in respect of copyright works.

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

Regulations and extensions of application of Act

15. — The Attorney-General may make regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing such regulations may prescribe anything to be prescribed or which may be prescribed under this Act, and may extend the application of this Act in respect of any or all of the works referred to in section 3(1) of this Act—

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

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

(c) to sound recordings made in,

a country which is a party to a treaty to which Kenya is also a party and which provides for copyright in works to which the application of this Act extends.

Application to works made before commencement of Act

16. — This Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter.

Abrogation of common law rights

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

Repeal of Copyright Act, 1956

18. — The Copyright Act, 1956, of the United Kingdom and the Copyright (Kenya) Order, 1963, in so far as they form part of the laws of Kenya shall cease to have effect in Kenya.

CORRESPONDENCE

Letter from Great Britain

dealing with copyright and related matters which have occurred in Great Britain in 1965

(My twenty-fifth "Letter", a "Letter" published annually from 1942 to 1966, both years included)

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