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PRO. ARTHUR PETER MUTHARIKA

PRESIDENT

1st September, 2016

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An Act to make provision for copyright in literary, dramatic, musical and artistic works, audio-visual works, sound recordings and broadcasts; the rights of performers; technological measures and rights management information; the establishment of the Copyright Society of Malawi and the Creativity Promotion Fund; and matters connected therewith or incidental thereto.

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Copyright Act, 2016, and shall come into operation on such date as the Minister shall appoint, by notice published in the *Gazette*. Short title and commencement

2.—(1) In this Act, unless the context otherwise requires— Interpretation
 “adaptation”—

(a) in relation to a dramatic work, means conversion of the work from non-dramatic form to its dramatic form, whether the work is in its original language or not ;

(b) in relation to a literary work, whether in a non-dramatic form or in a dramatic form, means—

(i) a translation of the work, including in relation to a computer programme, a version of the programme in which it is converted into or out of a computer language or code or into a different computer language or code;

(ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures;

(iii) in relation to a computer programme or a compilation of data, a rearrangement or altered version of the original programme or compilation; or

(c) in relation to a musical work, an arrangement or transcription of the work;

“artistic work”, irrespective of artistic quality, includes—

(a) etchings paintings, drawings, sketches, lither crafts,

woodcrafts, engravings, etching, products of photographs and prints;

(b) photographs;

(c) maps, plans, charts or diagrams;

(d) sculptures;

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

(f) work of applied art, whether handicraft or produced on an industrial scale;

“association” means an association of persons whose works are protected under this Act;

“audio-visual work” means a fixation in any physical medium of images synchronized with or without sound from which a moving picture may, by any means, be reproduced and includes cinematograph films, videotapes and videograms but does not include a broadcast;

“author” means—

(a) in case of any work other than an audio-visual work, the person who creates the work; or

(b) in case of an audio-visual work, the person by whom arrangements for the making of the work were undertaken;

“broadcast” means the transmission by wireless means of sounds or images, or of representations thereof, over a distance, for direct reception by the general public, or if the signals are encrypted, for direct reception using means for decrypting that are provided to the public by a broadcasting organization or with its consent, and includes broadcast by satellite;

“broadcast by satellite” means the act of introducing, under the control and responsibility of a broadcasting organization, the programme-carrying signals intended for reception by the public, into an uninterrupted chain of communication leading towards the satellite and down towards the earth;

“broadcasting organization” means any person, licensed to carry out broadcasting or content services under the Communications Act or any other written law;

“cable retransmission” means the simultaneous, unaltered and unabridged retransmission by cable or a microwave system for reception by the public of an initial transmission by wire or over the air, including that by satellite, of a broadcast, made by an

entity other than a broadcasting organization making the initial broadcast;

“choreographic work” means a dance composition or design by a dance composer of dance patterns;

“cinematography” means affixation in any physical medium from which a moving picture may, by any means, be reproduced and includes cinematograph films, videotapes and videograms but does not include a broadcast;

“commercial rental” means rental made with the intention of direct or indirect gain;

“commissioned work” means a work created in pursuance of a contract between an author and an individual or a legal entity commissioning a specified work from the author against an agreed author’s fee;

“communication by cable” in relation to a work or related subject matter, means transmission over wires or other paths provided by a material substance of the work or related subject matter, but does not include making it available in a manner so that members of the public can access it from a place and at a time individually chosen by them;

“communication to the public” in relation to a work or related subject matter, means making the work accessible to the public by way of transmission, by wire or wireless means, of images or sounds, and includes broadcasting and communication by cable and any communication made in such manner that members of the public can access the images or sounds from a place and at a time individually chosen by them;

“compilations of data” means gathering of data, whether in machine-readable or other form, which, by reason of the selection or arrangement of the contents, constitute intellectual creations:

Provided that the copyright protection in the compilations does not extend to the data and does not prejudice any copyright in the material contained therein;

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

“copy” means an embodiment in material form, be it permanent or temporary, intransient storage of a work or related subject matter, and includes, except where otherwise stated, the

original in the form of a manuscript or similar object, fixation or recording or in any other material form:

Provided 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 protected under this Act;

“database” means a machine-readable compilation of data;

“derivative work” means a work resulting from adaptation, translation or other transformation of an original work in so far as it constitutes an independent creation;

“display” means the display of tangible copies which shows the work or related subject matter directly without the use of technical aids;

“distribution” means the distribution of tangible copies of a work or related subject matter by way of sale, rental, lease, hire, loan, lending, gift or similar arrangement, and includes the offering for sale, rental, lease, hire, loan or as a gift or similar arrangement;

“dramatic work” includes—

(a) a choreographic show or entertainment in a dumb show;
or

(b) a scenario or script for an audio-visual work but does not include the audio-visual work;

“engraving” means a picture made by cutting a design on a piece of metal or wood and then printing it on paper does not include a photograph;

“expressions of folklore” means subject matter in the literary, dramatic, musical or artistic fields, belonging to the traditional cultural heritage of Malawi, preserved and developed by ethnic or local communities or by unidentified individuals of Malawi, and includes—

(a) folk tales, folk poetry and riddles;

(b) folk songs and instrumental folk music;

(c) folk dances, plays and artistic forms of rituals;

(d) production of folk art, in particular drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, baskets and costumes;

(e) traditional musical instruments; and

(f) any works designated as such by the Minister by notice published in the *Gazette*;

“first published in Malawi” means that a work, sound recording or published edition was first published abroad but

within thirty days thereafter was published in Malawi

“fixation” means the embodiment of images or sounds, or of the representations thereof, in a material form, sufficiently permanent or stable to permit them to be heard, perceived, reproduced or communicated, including through a machine or device;

“infringing copies” means copies of a work or related subject matter produced by any process and in any form the making of which involves infringement of copyright in the work or the rights granted to performers, broadcasters, producers of sound recordings and publishers under this Act, and includes copies the making of which infringes the provisions of this Act relating to expressions of folklore;

“lawfully made available to the public” refers to any public performance or display, any communication or distribution to the public, made with the consent of the owner of the rights concerned or as otherwise permitted under this Act;

“literary work”, irrespective of literary quality, includes any of the following—

- (a) novels, stories or poetry works;
- (b) plays, stage directions, film scenarios or broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays or articles;
- (d) encyclopedias, dictionaries, or anthologies;
- (e) letters, reports or memoranda;
- (f) lectures, addresses or sermons;
- (g) computer programmes; and
- (h) compilation of data or other material;

“Mandatory Mediation Rules” means the High Court (Commercial Division) (Mandatory Mediation) Rules;

“manuscript”, in relation to a work, means an original document embodying the work whether written by hand or otherwise;

“musical work” includes any musical work irrespective of its musical quality, and includes words composed for musical accompaniment;

“performance” means the presentation of a work or expression of folklore by such action as dancing, playing, reciting, singing,

delivering, declaiming or projecting to listeners or spectators, live or by any means whatsoever;

“performer” means actor, singer, declaimer, musician, dancer or other person who performs a work or expression of folklore and includes the conductor of a performance of any such work or expression of folklore;

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

“plate” means any material object in which a work, production, performance or edition has been embodied and by the means of which copies or reproductions of the work, production, performance or edition may be made;

“producer of sound recordings” means a person who makes the initiative and has the responsibility for the first fixation of a sound recording;

“public performance” means a performance before a group of persons that goes beyond the normal circle of the family and closest social acquaintances of the person initiating the performance, and includes performances made within a commercial context to a comparatively large group, whether closed or not;

“published” in relation to related subject matter, has the same meaning as that ascribed to the term “published works”, except where otherwise stated;

“published works” means works which, with the consent of the authors, have been made available to the public in tangible copies in a quantity sufficient to satisfy a reasonable demand for the work;

“rebroadcasting” means the simultaneous or subsequent broadcasting in part or in whole by one broadcasting organization of the broadcast of another broadcasting organization;

“remuneration” means money paid to owners of rights or their representative as a compensation for use of a work with no prior authorization;

“related subject matter” includes expressions of folklore, performances, sound recordings, broadcasts and typographical arrangements;

“rental” means distribution by way of rental, lease, hire or

similar arrangement, and includes exchange of copies that is carried out as an organized activity;

“reproduction” means the making of one or more copies by any means of a work or related subject matter in whole or in part, and includes—

(a) making a fixation from a performance or communication;

(b) permanent or temporary storage in electronic form; and

(c) in the case of an artistic work, includes converting a work into a three-dimensional form or, if existing in a three-dimensional form, converting it into a two-dimensional form;

“royalty” means payment to an author or owners of rights for use of their work where prior authorization was granted;

“Society” means the Copyright Society of Malawi established under section 4;

“sound recording” means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, from which the sounds may be conveyed, regardless of the medium in which the recording is made or the method by which the sounds are conveyed, but does not include, except where otherwise stated, the fixation when incorporated in an audio-visual work;

“tangible copy” means a fixed copy that may be put into circulation as a tangible object;

“work” means a literary, dramatic, musical, artistic or audio-visual work within the meaning of the Berne convention for the Production of Literary and Artistic works, in the form of text notation or related illustrations whether published or otherwise made publicly available in any media;

“works of applied art” means an artistic work applied to objects for practical use whether handicraft or works produced on industrial scale; and

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

3.—(1) Copyright, in accordance with this Act, shall subsist in— Application

(a) literary, dramatic, musical and artistic audio-visual works—

(i) of an author who is a citizen of Malawi or has his habitual residence in, Malawi; or

(ii) which are first published in Malawi, irrespective of the nationality or residence of the authors;

(b) audio-visual works where—

(i) the maker of the work has his habitual residence, or has its headquarters, in Malawi; or

(ii) the work was first published in Malawi; and

(c) works of architecture erected in Malawi or other artistic works incorporated in a building or other structure located in Malawi.

(2) The protection under this Act of expressions of folklore shall apply to expressions of folklore belonging to the traditional or cultural heritage of Malawi developed and maintained by—

(a) ethnic or local communities in Malawi; or

(b) unidentified Malawian individuals.

(3) The rights granted by this Act to performers shall apply to performers, where—

(a) the performer is a citizen of Malawi;

(b) the performance took place in Malawi;

(c) the performance is fixed in a sound recording qualifying for protection under subsection (4); or

(d) the performance, which has not been fixed in a sound recording, is embodied in a broadcast qualifying for protection under subsection (5).

(4) The rights granted by this Act to producers of sound recordings shall apply, where—

(a) the producer of the sound recording is a citizen of Malawi or has his habitual residence or its headquarters in Malawi;

(b) the first fixation of the sound recording was made in Malawi; or

(c) the sound recording was first published in Malawi.

(5) The rights granted by this Act to a broadcasting organization with regard to their broadcasts shall apply where—

(a) the headquarters of the broadcasting organization is situated in Malawi; or

(b) the broadcast was transmitted from a transmitter situated in Malawi.

(6) The rights granted by this Act to publishers with regard to typographical arrangements of published editions shall apply to editions first published in Malawi.

PART II—THE COPYRIGHT SOCIETY OF MALAWI

4.—(1) There is hereby established a Society to be known as the Copyright Society of Malawi (in this Act otherwise referred to as the “Society”).

Establishment of a Copyright Society of Malawi

(2) The Society shall—

(a) be a body corporate having perpetual succession and a common seal;

(b) be capable of suing and being sued in its corporate name;

(c) be capable of acquiring, hiring and disposing of any moveable or immoveable property and do such things and perform such acts as bodies corporate may by law do or perform; and;

(d) have power to perform such functions and exercise such powers as are conferred by this Act.

5.—(1) The Society shall be responsible for the implementation of this Act and shall have the following functions—

Functions of the Society

(a) promote and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers and in particular, to collect and distribute any royalties or other remuneration accruing to them in respect of their rights provided for in this Act;

(b) maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters and publishers;

(c) publicize the rights of owners and give evidence of the ownership of these rights where there is a dispute or an infringement;

(d) print, publish, issue or circulate any information, report, periodical, book, pamphlet, leaflet or any other material relating to copyright, expressions of folklore, rights of broadcasters, performers and producers of sound recordings;

(e) co-operate with any associations in Malawi;

(f) establish and maintain close and continuous working relationships with national, regional and international

organizations or institutions whose objectives are similar to those of the Society, and to negotiate bilateral agreements with collecting societies abroad, in particular as regards use that may be subject to an extended collective licence under section 58;

(g) negotiate and enter into collective agreements as mandated by authors, performers, translators, producers of sound recordings, broadcasters and publishers, or any association thereof, in particular agreements that according to section 58 entail an extended collective licence;

(h) ensure that there is constant improvement and continued effectiveness of legislation on copyright and related rights and implementation thereof;

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

(j) advise the Minister on all matters under this Act.

Powers of the
Society

6. For the better performance of its functions, the Society shall have power to—

Cap. 37:01

(a) subject to the Public Finance Management Act, borrow money whether by way of loan, overdraft or otherwise, on the security of its assets;

(b) accept and administer any trust or donation;

(c) determine minimum rates of royalties to be levied in respect of uses to be made of works registered by the Society;

(d) propose fees and levies for registration of works and associations;

(e) perform such other functions as may be assigned to the Society by the Minister; and

(f) do and perform all such acts or things as it may consider necessary or expedient to achieve the objects of this Act.

Board of the
Society

7.—(1) There shall be a Board of the Society which shall be responsible for directing the affairs of the Society.

(2) The Board shall consist of the following nine members who shall be citizens of Malawi—

(a) a Chairperson appointed by the Minister, from amongst members appointed under paragraph (b);

(b) six persons nominated at the annual general assembly of the Society from members and member Association and appointed by the Minister;

(c) the Secretary responsible for culture or his representative, *ex-officio*;

(d) the Comptroller of Statutory Corporations or his representative, *ex-officio*; and

(e) the Solicitor General or his representative, *ex-officio*.

(3) The Board shall consist of not less than 40 per cent of woman and not more than 60 per cent of any gender, and *ex-officio*, shall hold office for a term of three years and shall be eligible for re-appointment for a further term.

(4) The Minister shall cause to be published in the *Gazette*, a notice of the appointment of members of the Board as first constituted and any other appointment of a member of the Board and shall in such notice, specify the current membership of the Board resulting from such appointment.

(5) A member of the Board shall not, by virtue only of his appointment to the Board, be deemed to be an officer in the public service.

8.—(1) The office of a member of the Board shall become vacant where the member—

Vacation, etc.,
of members
from office

(a) has been declared bankrupt or has assigned his estate for the benefit of, or made a composition or other arrangement with his creditors;

(b) has been absent from three consecutive meetings of the Board of which he has had notice, without the leave of the Chairperson of the Board;

(c) has been convicted of an offence under this Act;

(d) has been convicted within Malawi of a criminal offence, or outside Malawi of an offence by whatever name called which, if committed within Malawi, would have been a criminal offence, and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a pardon; or

(e) is mentally or physically incapable of efficiently performing his duties as member of the Society.

(2) The Minister may suspend from office, a member of the Board of the Board against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed.

(3) A member of the Board may resign from his office by notice in writing to the Minister.

Filling of
vacancies in the
Board

9.—(1) On vacation of office by a member of the Board, the vacancy shall be filled by a person appointed in accordance with section 7:

Provided that where the remaining period is less than six months, the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Board is granted leave of absence by the Board, the Board may, if it considers appropriate, co-opt a person, who belongs to the same profession or calling as the member who has been granted leave, to fill the vacancy during the absence of the member.

Co-opted
persons

10. The Board may at any time and for any period, invite any person to attend any meeting of the Board and take part in the deliberations of at the meeting but such person shall not be entitled to vote at that meeting.

Chairperson
and Vice-
Chairperson

11.—(1) The Board shall elect a Vice-Chairperson from amongst its members at the first meeting of the Board.

(2) The office of the Vice-Chairperson of the Board of the Society shall become vacant if—

(a) the holder resigns his office by notice in writing to the Chairperson of the Board;

(b) the holder of the office ceases to be a member of the Board;
or

(c) the Board so determines.

(3) Whenever the Chairperson of the Board is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairperson shall discharge the functions of the Chairperson.

Meetings of
the Board

12.—(1) The Board shall hold ordinary meetings at least four times in each year.

(2) Notwithstanding subsection (1), an extraordinary meeting of the Board of the Society—

(a) may be convened by the Chairperson of the Board at any time; and

(b) shall be convened within twenty-one days of the receipt by the Chairperson of a request in writing signed by not less than any three members of the Board and specifying the purpose for which the meeting is to be convened.

(3) The quorum at any meeting of the Board shall be five persons.

(4) the Chairperson or, in his absence, the Vice-Chairperson, shall preside at a meeting of the Board:

Provided that in the absence of both the Chairperson and the Vice-Chairperson, the members present and forming the quorum shall elect one among their numbers to preside.

(5) At any meeting of the Board, a decision on any matter shall be that of the majority of the members present and voting at that meeting and in the event of an equality of votes, the Chairperson or the person presiding shall have a casting vote in addition to his deliberative vote.

(6) The Board may make rules for proceedings at its meetings.

13. Members of the Board shall be paid from the funds of the Society, such allowances as the Minister may determine, to cover expenses incurred for the attendance of meetings in connection with business of the Society.

Remuneration and expenses of the Board of Society

14.—(1) The Board shall appoint a Copyright Administrator on such terms and conditions as may be approved by the Minister.

Copyright Administrator

(2) The Copyright Administrator shall be the secretary to the Board and the chief executive officer of the Society.

15.—(1) The Copyright Administrator shall be appointed for a term of five years, and may be re-appointed for a further term.

Tenure of office of the Copyright Administrator

(2) The Copyright Administrator shall be removed from office on any of the following grounds—

(a) incompetence;

(b) misconduct that brings the Society into disrepute;

(c) undischarged bankruptcy;

(d) non-disclosure of interest in matters of the Society which he ought to disclose;

(e) if he has been convicted by a competent court of a crime which is punishable with imprisonment without an option of a fine;

(f) involvement in active politics; or

(g) incapability to perform his duties as Copyright Administrator by reason of mental or physical infirmity.

(3) The Copyright Administrator shall not be removed from office unless he has been given an opportunity to be heard.

Powers and functions of the Copyright Administrator

16.—(1) The Copyright Administrator shall have the following powers and functions—

- (a) implementing the decisions of the Board of the Society;
- (b) keeping the Board informed of the activities of the Society;
- (c) submitting strategic plans, action plans and budget support programmes to the Board for approval;
- (d) implementing the strategic plans, action plans and budget support programmes;
- (e) ensuring that activities of the Society comply with relevant laws and policies;
- (f) acting on behalf of the Society; and
- (g) generally perform such functions and duties as may be assigned to him by the Board of the Society.

(2) The Copyright Administrator or, in his absence, such other employee of the Society as he may designate, shall attend meetings of the Board and of any committees of the Board of the Society and may address such meetings, but shall not vote on any matter.

Other staff of the Society

17.—(1) The Board may appoint such other staff as it considers necessary for the discharge of functions of the Society and on such terms and conditions as the Board may determine:

Provided that the Board may delegate to the Copyright Administrator power to appoint other staff below the level of director.

(2) The Copyright Administrator, in consultation with the Chairperson of the Board, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by written law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Society at its next meeting.

Disclosure of conflict of interest

18.—(1) Any member of the Board who is present at a meeting of the Board at which any matter in which he has or may have an interest is being considered, that member shall disclose such interest as soon as is practicable after the commencement of the meeting and the member shall not take part in any consideration or discussion of, or vote on, any question relating to the matter.

(2) The Copyright Administrator shall disclose to the Chairperson of the Board any interest he has in any matter that is under consideration by the Board, and shall not attend any meeting of the Board or of any committee of the Board while any question related to the matter is being discussed.

(3) Any employee of the Society or any consultant, adviser or sub-contractor of the Society shall disclose to the Copyright Administrator any interest that he has or that may arise in the course of duties related to the operations of the Society, and the Copyright Administrator or the Board in the case of the Copyright Administrator, shall make decisions considered appropriate in each case and submit a report thereon to the Board.

19.—(1) A person shall not publish or disclose to any entity, other than in the course of the entity's duties, the contents of any document, communication or information which has come to the person's knowledge in the course of his duties under this Act. Confidentiality

(2) Any member of the Board, employee, consultant, adviser or sub-contractor of the Society who holds confidential information, or any person who has directly or indirectly, obtained any such information from a member of Board, employee, consultant, adviser or sub-contractor of the Society, whom that person knows or has reasonable cause to believe held the information by virtue of his office, and who—

(a) deals in any contract or proposed contract to which the information relates and in which the Society is involved;

(b) counsels or instigates anyone else to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that the other entity would deal in such contract or proposed contract; or

(c) communicates to anyone else the information held or, as the case may be, obtained by him if he knows or has reasonable cause to believe that such other entity or any other entity would make use of the information for the purpose of dealing in, or counselling or causing anyone else to deal in, any contract or proposed contract to which the information relates, and in which the Society is involved,

commits an offence and shall on conviction, be liable to a fine of K5,000,000 and imprisonment for two years.

(3) This section shall apply to any information that—

(a) a member of the Board, employee, consultant, adviser or sub-contractor of the Society holds by virtue of his office or dealings with the Society;

(b) would not be expected, or would not be reasonable for the information to be disclosed by a member of the Board, employee, consultant, adviser or sub-contractor of the Society except in the proper performance of the functions of his office; or

(c) the member of the Board, employee, consultant, adviser or sub-contractor of the Society holding the information knows or ought to have known that it is unpublished information in relation to any contract or proposed contract of the Society.

(4) The provisions of this section shall continue to apply to any member of the Board, employee, consultant, adviser or subcontractor of the Society, notwithstanding the expiry or termination of the term of office of the member or the employment of the employee, consultant, adviser or subcontractor of the Society, as the case may be.

Oath of secrecy

20. A member of the Board, an employee, a consultant, an adviser and a subcontractor of the Society, shall sign an oath of secrecy upon being appointed to the Board or being engaged by the Society, as the case may be.

Delegation of powers

21.—(1) The Board may delegate some of its functions under this Act to the Copyright Administrator, any member of the Board, or member of staff of the Society.

(2) The Copyright Administrator may, with the approval of the Board of the Society, delegate any power or function assigned to him under this Act, to any member of staff of the Society.

Funds of the Society

22.—(1) The operational and financial costs of the Society shall be provided through—

(a) all fees payable under this Act, except levies and fees payable to the Society under Part XIII.

(b) administrative penalties paid to the Society under this Act;

(c) grants or donations received by the Society;

(d) such moneys as may be appropriated to the Society by Parliament; and

(e) such other moneys and assets as may vest and accrued to the Society.

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(3) Subject to the Public Finance Management Act, the Society may borrow such moneys as it may require for the performance of its functions under this Act.

(4) The Society may invest with any bank or financial institution in Malawi, any of its moneys that are not immediately required for the performance of its functions under this Act.

(5) All the moneys of the Society which, at the end of each financial year, are in excess of the Society’s budgetary requirements for that year shall be paid into the Consolidated Fund, but the

Society may, subject to agreement with the Minister of Finance, retain such sums as it may reasonably require for operations of the Society.

23.—(1) The Society shall maintain proper books of accounts and other records relating to its accounts. Accounts and audit

(2) The Society shall appoint independent auditors to audit the accounts of the Society annually and a copy of the audited accounts shall be sent to the Auditor General for examination before final presentation to the Minister.

(3) The financial year of the Society shall be the same as the financial year of the Government.

24.—(1) As soon as practicable, but not more than six months after the expiry of each financial year, the Society shall submit to the Minister, a report concerning its activities during that financial year. Annual report

(2) The report shall be in the form and contain such information as prescribed by the Minister.

(3) There shall be appended to the report—

(a) an audited statement of financial position;

(b) an audited statement of income and expenditure;

(c) justification for retention of any sums, where applicable; and

(d) such other information as the Minister may consider appropriate.

(4) As soon as practicable, but not more six months after the expiry of the financial year, the Minister shall lay the report before Parliament.

PART III—COPYRIGHT

25. An author of any work shall, by the mere fact of its creation, enjoy an exclusive property right in the work. Copyright

26.—(1) Literary, dramatic, musical or artistic work shall not be eligible for copyright under this Part unless— Eligibility for copyright

(a) it is original in character; or

(b) it is a derivative work.

(2) A work shall be eligible for copyright under this Act irrespective of its form of expression, its quality or purpose for which it was created.

(3) For purposes of this Part, a work is original if it is the product of the independent efforts of the author.

27.—(1) The following derivative works, in so far as they Derivative

constitute independent creations, shall be subject to copyright protection as if they were original works—

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

(b) collections of works, such as encyclopedias and anthologies, which, by reason only of the selection or arrangements of their contents, constitute intellectual creations.

(2) The protection of any work referred to under subsection (1) shall be without prejudice to any other protection of a pre-existing work or expression of folklore.

Works not
subject to
copyright
protection

28.—(1) Copyright protection shall not extend to—

(a) written laws and decisions of courts and administrative bodies and to official translations thereof;

(b) news published, broadcast or communicated to the public by any other means; or

(c) a report made by a commission appointed by the Government or any agency thereof and which the Government has made available to the public.

(2) Works that have not been made especially for use in documents as mentioned in subsection (1), and which are quoted or reproduced in the documents or made available through news reports, shall be subject to copyright protection.

Economic
rights

29.—(1) Subject to Part IV, an author of any work eligible for copyright under this Part, shall have the exclusive right in respect of such work, to do, or authorize any other person to do, the following acts in relation to the whole work or any part thereof—

(a) reproduction of the work;

(b) distribution by way of sale, commercial rent or lending of the work to the public;

(c) public display of the work;

(d) public performance of the work;

(e) communication of the work to the public;

(f) translation, adaptation, arrangement or any other transformation of the work in relation to a translation, adaptation, arrangement or other transformation of the work; or

(g) any of the actions in paragraphs (a), (b), (c), (d) and (h) in relation to a translation, adaptation, arrangement or other transformation of the work.

(2) Tangible copies of a work which have been sold or otherwise assigned by, or with the consent of, the author may, regardless of whether the transfer of the copy occurred in Malawi or elsewhere, be distributed to the public:

Provided that the author shall retain—

(a) the right of commercial rental of the work, except in the case of objects for practical use and works or architecture in the form of a building;

(b) the right of commercial rental in the case of computer programmes, except where the programme itself is not the essential object of the rental or lending; and

(c) the right of lending of machine-readable copies of a computer program audio-visual work embodied in sound recording, database or musical work in form of notation;

(3) Tangible copies of a work which have been sold or otherwise assigned by, or with the consent of the author may be displayed to the public regardless where the transfer of the copy took place.

30.—(1) An author of any work eligible for copyright under this Act shall have the exclusive right to— Moral rights

(a) claim authorship of his work and in particular, to demand that his name or pseudonym be mentioned in the manner required by proper usage when any of the acts referred to in section 29 (1) is done in relation to such work;

(b) object to, and to seek relief in connection with, any alteration, distortion, mutilation or other modification of the work where—

(i) such act would be or is prejudicial to his honour or reputation; or

(ii) the work is discredited thereby.

(2) Whenever a work is made available to the public in a prejudicial manner as stated in subsection (1) (b) (i), the author shall have a right to demand that he be not mentioned as the author of the work, or that it be stated that the alteration does not derive from him.

(3) The right of the author stated in subsection (2) shall—

(a) apply regardless of the author having consented to the use; and

(b) not be subject to waiver.

(4) The rights conferred by subsection (1)—

(a) shall not be transferable except on and by reason of the death of the author; and

(b) may not be waived except for a use which is limited in nature and extent.

(5) On the death of an author, the rights conferred by subsection (1) shall be exercisable by his heirs or legal representatives.

(6) The director of any audio-visual work shall have the right to—

(a) be identified as the director of the work and in particular, to demand that his name or pseudonym be mentioned in the manner required by proper usage when any of the acts referred to in section 29 (1) is done in relation to such work;

(b) object to, and to seek relief in connection with, any alteration, distortion, mutilation or other modification of the work where—

(i) such act would be or is prejudicial to his honour or reputation; or

(ii) the work is discredited thereby, except where such act is done under authority of the author of the work.

(7) Subsections (2), (3), (4) and (5) shall apply, *mutatis mutandis*, to the director of an audio-visual work.

Right to share
in proceeds of
sale

31.—(1) Notwithstanding any assignment or sale of original work, an author of a graphic work, three-dimensional work and manuscript shall have an inalienable right to share in the proceeds of any sale of that work or manuscript by public auction, through a dealer whatever the method used by the latter to carry out the operation.

(2) The right conferred by this section shall apply to originals of such work.

(3) The conditions for the exercise of the right conferred by this section shall be prescribed by regulations made by the Minister under section 118.

Alteration of
buildings and
objects for
practical use
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32. Subject to the Monuments and Relics Act, buildings and objects for practical use may be altered without the consent of the author when this is done for technical reasons or for practical purposes, irrespective of section 30 (1) (b).

33.—(1) In determining the person vested with copyright under this Part, the following principles shall apply—

Ownership of copyright

(a) where one person is the author of the work, the rights shall vest in that person;

(b) where two or more persons are the authors of the work of joint ownership, the rights shall vest in them jointly; and

(c) where there is no proof to the contrary, the author of the work is the individual whose name or generally known pseudonym, mark or symbol is indicated in the usual manner on the work as its author.

(2) In the case of published anonymous or pseudonymous works other than those referred to in subsection (1) (c), the publisher whose name appears on the work shall, in the absence of proof to the contrary, be deemed to represent the author and may act on behalf of the author until the author reveals his identity and establishes his claim to authorship of the work.

34.—(1) Unless there is evidence to the contrary, when a work is created by an author in the course of his employment or as a commissioned work, the rights of the author in respect of the work shall vest in the employer or the party that commissioned the work.

Works by employed authors and commissioned works

(2) Nothing in subsection (1) shall derogate from the rights of the author as set out in section 30.

35.—(1) Unless otherwise expressly provided in this Act, the rights referred to in sections 29 and 30 shall be protected—

Duration of copyright

(a) during the life of the author and for fifty years after his death;

(b) in the case of a work of joint ownership, during the life of the last surviving author and for fifty years after his death;

(c) in the case of anonymous or pseudonymous works, for a period of fifty years from the date on which such work was first published or otherwise lawfully made available to the public, whichever date is the latest, or if the work has not thus been made available to the public within fifty years of it having been created, for a period of fifty years from the date on which the work was created:

Provided that where the author, before the expiration of such period, discloses his identity, or the pseudonym leaves no doubt as to the identity of the author, protection shall be for the duration specified in paragraph (a) or (b), as the case may be;

(d) in the case of any audio-visual work, until the expiration of

fifty years from the date on which such work is first published or otherwise made available to the public with the consent of the author, whichever date is the latest, or if the work has not thus been made available to the public within fifty years from the making of the work fifty years from the making of the work;

(e) in the case of a work owned by the Government, for fifty years commencing from the date on which the work was first made available to the public, or, if the work has not thus been made available to the public within fifty years from the making of the work, fifty years from the making of the work; or

(f) in the case of a work of applied art which is subject to production on an industrial scale, until the expiration of twenty-five years from the date on which the work was first published, or, if the work has not been published within fifty years of it having been made, for a period of fifty years from the date on which the work was made.

(2) Every period specified in this section shall run to the end of the calendar year in which it would otherwise expire.

PART IV—PERMITTED FREE USES OF WORKS

Permitted free uses of a work

36.—(1) The uses of a work in accordance with this Part shall be permissible without the consent of the author and without the obligation to pay remuneration for the use of such work.

(2) When a work is made available to the public pursuant to this section, the original work or a translation thereof, may be rendered in the dimensions and form required for that purpose, with the requirement that the character of the work not to be altered or prejudiced:

Provided that the source and the name of the author shall be mentioned in the manner required by proper usage.

Transient and incidental copies

37.—(1) The making of a copy of a work which is transient and incidental to a technological process shall be permitted when the reproduction is an integral and essential part of the technological process and the sole purpose is to enable—

(a) a transmission of the work in a network between third parties by an intermediary; or

(b) a lawful use of the work:

Provided that the copy shall have no independent economic significance.

(2) The reproduction permitted under subsection (1) shall be

subject to the following exceptions—

(a) where the work is a work of architecture, the copy is not made in the form of construction of a building;

(b) where the work is a computer programme or database, the copy made is not a machine-readable copy;

(c) where the copy made is a recording of a musical work or of an audio-visual work, the reproduction is not made by—

(i) using technical equipment made available to the public in libraries, on business premises, or in other places accessible to the public; or

(ii) a person outside the normal circle of the user’s family and closest social acquaintances;

unless assistance is necessary on account of the user being disabled; and

(d) where the copy made is an object of applied art, a sculpture, a pictorial weaving or other artistic reproduction of an artistic work, the reproduction shall not be made by a person outside the normal circle of the user’s family and closest acquaintances.

38. The reproduction, translation, adaptation, arrangement or other transformation of a work exclusively for the user’s own personal or private use of a work which has already been lawfully made available to the public, shall be permitted:

Reproduction, etc., of a work for user’s private use

Provided that it is made on the basis of a representation that is authorized under this Act, at the initiative of the user and not for purposes of gain and only in single copies.

39. The inclusion of quotations from a work in another work, including quotations from newspaper articles and periodicals in the form of press summaries, shall be permitted:

Inclusion of quotations

Provided that the work from which the quotation is made, has already been lawfully made available to the public, and that such quotations are compatible with fair practice and their extent of use does not exceed that justified by the purpose.

40. Artistic works may be used to the extent required for the purposes of, and in connection with the text of critical or scientific presentations which have not been prepared for commercial purposes:

Critical or scientific presentations, artistic works and literary works

Provided that the work has already been lawfully made available to the public, and that the use is comparable with fair practice.

Use of a work by way of illustration

41. The use of a work by way of illustration in publications, broadcasts or programmes communicated to the public by cable, audio-visual works for teaching or sound recordings for teaching, shall be permitted to the extent justified for that purpose:

Provided that—

(a) the work has already been lawfully made available to the public;

(b) the use is compatible with fair practice; and

(c) there is no requirement for a reproduction licence to be obtained from the Society.

Public performance of a work and public display of copies of a work

42. The public performance of a work and the public display of copies of a work that has already been lawfully made available to the public is permitted when made in an educational context in schools, universities and professional training, at religious services, or at events where the performance or display of works is not the primary feature and the public is admitted free of charge:

Provided that—

(a) the performance is not made in a dramatic form;

(b) the work is not an audio-visual work; and

(c) there is no gainful intent for the performance or display.

Simultaneous and unaltered cable transmission of a work broadcast

43. The simultaneous and unaltered cable retransmission of any work broadcast is permitted where the beneficiaries of the cable retransmission live in one and the same building or group of buildings none of which is separated from another building by a public street or road:

Provided that—

(a) the beneficiaries are not more than twenty five households or other closed entities; and

(b) the cable retransmission originates in such building or group of buildings and is done without direct or indirect gainful intent.

Reproduction in the press, etc, of articles on current topics

44. The reproduction in the press, broadcast and communication to the public by cable of any article on current economic, political, social or religious topics, which, with the consent of the author, has already been lawfully made available to the public in a newspaper or periodical, and of any work of the same character broadcast, shall be permitted, unless the article, when first made available, or the work, when first broadcast, was accompanied by an express condition prohibiting such reproduction, broadcasting or communication:

Provided that the source of the article or the work when used in such manner is clearly indicated.

45. Reproduction of a work and making available to the public of any work that can be seen or heard in the course of a current event, for the purpose of reporting on the current event, by means of photography, cinematography or other means of communication, is permitted to the extent justified for an informative purpose.

Reporting on current events

46. The reproduction and making available to the public by photography, cinematography, drawing or similar means of depiction of an artistic work is permitted when the work is—

Photography, cinematography, drawings, etc.

(a) included in the picture or recording by way of background or as incidental, to the essential matters represented;

(b) a work of architecture in the form of a building; or

(c) a work of art permanently located in a place outdoors where it can be viewed by the public:

Provided that pictures or recordings in which the work of art clearly is the principal motif, shall not be commercially exploited without the consent of the author.

47. Artistic works which form part of a collection or which are exhibited, or are offered for sale, may be depicted in inventories of the collection or exhibition and in notices of the exhibition or sale:

Artistic work forming part of a collection

Provided that any such inventory which is made available to the public, shall be made only in printed form.

48.—(1) The Minister may, by notice published in the *Gazette*, designate libraries, archives, museums, scientific institutions and educational establishments to make copies of works.

Libraries, archives, museums, scientific and educational institutions

(2) The libraries, archives, museums, scientific institutions and educational establishments designated pursuant to subsection (1) shall abide by the following conditions—

(a) reproduction of works shall not be made with intent of direct or indirect gain, and that the number of copies made and the use thereof, shall be limited to the needs of the regular activities of the body reproducing the work which may be to—

(i) conserve or safeguard works contained in its collections;

(ii) complete a copy contained in its collection, parts of which have been damaged or lost;

(iii) obtain copies of such works as are subject to the Printed Publications Act whenever the library, archive, museum,

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scientific institution or educational establishment is a beneficiary of the Printed Publications Act and copies of the work cannot be obtained from a sales outlet, the publisher, the producer or the importer;

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(iv) assist a particular personal and individual research or study in which case reproduction shall be limited to making copies in a paper format, including printouts, of articles in a collection of works such as encyclopedias or anthologies, or from a publication such as newspapers or journals, or short excerpts from other works in its collections, and only one copy of the work may be delivered to the individual requesting access thereto, either directly or to another body designated, by notice published in the *Gazette*, to which the individual made the request;

(b) except in the case of subparagraph (a) (i), the work has already been lawfully made available to the public;

(c) except—

(i) in the case of subparagraph (a) (i);

(ii) as provided for in subparagraph (a) (iv); or

(iii) by permission from the Minister for a particular research, the copies are made in the same form as the copy from which the reproduction was made:

Provided the making of printouts from machine-readable material shall be permitted except when otherwise provided;

(d) where in the case of paragraph (c), the copy is delivered against payment, a licence from the Society shall be required;

(e) where the work is a computer programme, the copy made is not a machine-readable copy;

(f) the number of copies made from a sound or audio-visual recording does not exceed the number of copies of the recording already contained in the collection;

(g) machine-readable copies and copies of sound or audio-visual recordings shall be used only on the premises of the body having made the reproduction, or on individual request, on the premises of another body designated by the Minister, in which case, that body shall be under the obligation to—

(i) return the copy;

(ii) delete the copy; or

(iii) destroy the copy; and

(h) whenever machine-readable copies, sound or audio-visual recordings are made available to the public, no access to a facility for reproduction shall be provided.

(3) An institution designated pursuant to subsection (1) may use terminals on its own premises to make works in its collections available to individuals when this is done for the purpose of research or private study and not for direct or indirect gain:

Provided that—

(a) the work has already been lawfully made available to the public;

(b) the work has not been obtained pursuant to—

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(i) the Printed Publications Act; or

(ii) subsection (1) (a) (iii); and

(c) no access to a facility for digital reproduction or transmission is provided to the public.

(3) The making of any copy under this section shall be subject to the provisions of subsection (1) and subsection (2) shall not imply a permission to make machine-readable copies for the purpose of making work available on a terminal.

49. The reproduction of a published literary, artistic or musical work in a form specifically intended for visually impaired persons or persons with print disabilities people with disabilities who, due to the nature of their disability, are not able to access or enjoy the work in any of the forms in which it is commercially available, shall be permitted:

Reproduction of a work for people with disabilities

Provided that the reproduction and the making available of the copies is not made on a commercial basis and that the copies shall be made available only to such disabled people for which they are intended, and that—

(a) the reproduction is not made from copies which are made for the same purpose;

(b) where it is a reproduction of a musical work, it is not made in the form of a sound or audio-visual recording; and

(c) where the reproduction is made in the form of a sound or audio-visual recording, the copies shall be made available only by way of lending to people who, due to their disability, may access and enjoy the work only in this form.

50.—(1) The reproduction in the press or the communication to the public of—

Reproduction in the press

- (a) any political speech delivered in public;
- (b) any speech delivered during legal proceedings; or
- (c) any lecture, address, sermon or other work of the same nature delivered in public:

shall be permitted on the condition that—

(i) the use is exclusively for the purpose of publication of current information; and

(ii) the author shall retain the exclusive right to make a collection of such works, and, unless otherwise permitted under this Act, any document quoted or used as evidence or expert opinion in such proceedings, shall not be reproduced or made available to the public except to the extent necessary in order to narrate the proceedings and at a comparable with fair practice

Recordings by
a broadcasting
organization of
its own
broadcasts

51.—(1) Any broadcasting organization shall be permitted to make recordings of its own broadcasts and by means of its own facilities, in one or several copies of any work which it is authorized to broadcast:

Provided that all copies of such recording shall be destroyed within six months of the making thereof or within any longer period agreed to by the author.

(2) Notwithstanding subsection (1), where the recording has an exceptional documentary character, one copy of it may be preserved official archives of the broadcasting organization and section 29 shall not be applicable in such a case.

Use of a
computer
programme

52.—(1) A person who has the right to use a computer programme shall be entitled to—

(a) make such copies of the programme and such translation, adaptation, arrangement or transformation of the programme as are necessary for the person in order to use the computer programme in accordance with its intended purpose, including the correction of errors;

(b) make a back-up copy in so far as it is necessary for the use of the programme; and

(c) observe, study or test the functioning of the programme in order to determine the ideas and principles which underlie any element of the programme, if he does so while performing any acts such as loading, displaying, running, transmitting or storing the programme which he is entitled to.

(2) Any contractual limitation of use set out in subsection 1 (b)

and (c) shall be null and void.

(3) Notwithstanding any contractual obligation to the contrary, a user may be permitted to make a copy of the code of a computer programme and translate the form of the code when this is indispensable in order to obtain the information necessary to achieve the interoperability of an independently created computer programme with other programmes:

Provided that—

(a) these acts are performed by the user of a copy of a computer programme, or on his behalf, by a person authorized to do so;

(b) the information necessary to achieve interoperability has not previously been readily available to the persons referred to in paragraph (a); and

(c) these acts are confined to the parts of the original programme which are necessary to achieve interoperability.

(4) The information obtained in accordance with subsection (2) shall not be—

(a) used for purposes other than to achieve the interoperability of the independently created computer programme;

(b) given to other persons, except when this is necessary in order to achieve the interoperability of the independently created computer programme; or

(c) used for the development, production or marketing of a computer programme substantially similar to the original in its expression, or for any other act which infringes copyright in the programme.

(5) Notwithstanding any contractual obligation to the contrary, any person having a right to use a compilation of data in the form of a database may perform such acts as are necessary to access and make normal use of the contents of the database.

53. This Act shall not prevent a work from being used in connection with an investigation or as evidence in administrative or judicial proceedings

Evidence in administrative or judicial proceedings

PART V—TRANSFER OF COPYRIGHT

54.—(1) Any right under this Act shall be transferable and may be so transferred by assignment, testamentary disposition or by operation of law except as limited or restricted by this Act.

Transferability of copyright

(2) A contract which requires the total transfer of the economic

rights specified in section 29, shall be limited in scope, to the use provided for in the contract.

(3) An assignment of copyright under this Act shall be in writing, and shall be signed by the owner, or by the person authorized by him for that purpose.

(4) A licence to do any act falling within a copyright shall be in writing.

(5) In case of work of joint authorship, an assignment or licence in respect of the work shall be subject to authorization of the joint authors.

(6) Where a work is work of joint authorship, and one of the joint authors withholds his consent to an assignment or the granting of a licence, the matter shall be referred to the Society to determine whether consent should be granted in respect of the assignment or licence and conditions thereof.

(7) The Society shall state reasons for its decision under subsection (6) and any appeal against the decision shall lie to the High Court.

(8) An assignment, a licence or testamentary disposition may be made or granted in respect of a future or existing work.

(9) Where under a bequest, whether specific or general, a person is entitled to a manuscript of a literary, dramatic, musical or artistic work which was not published before the death of the testator, the bequest shall be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death, unless a contrary intention is indicated in the testator's will or codicil thereto.

Contracts for
authorization
of use of
rights under
this Act

55.—(1) An owner of a work shall grant authorization in writing for the use of the work by a contract conferring on the user, the rights required for the envisaged use on such conditions as may be stipulated in the contract.

(2) A contract made pursuant to subsection (1) shall clearly specify the rights conferred on the user and such rights shall be non-exclusive unless the contract clearly specifies that they are exclusive rights.

(3) The user of rights under a contract made pursuant to subsection (1) shall not be entitled to such rights except where the transfer is made under a contract in writing and subject to the prior consent in writing of the owner of the rights.

(4) Where a contract has been entered into and it is found that there is a gross disproportion between the remuneration paid by the user of the work and the income derived by the user from the use thereof, the owner of the copyright may request an amendment of the contract so as to secure for himself, an equitable share of income, corresponding to standards generally prevailing in similar cases, but such claim shall not be made in advance of the use of the work, and it shall not be enforceable after the lapse of two years from the time when the owner of the copyright work first received knowledge of the circumstances which give rise to the claim:

Provided that the owner of the copyright shall not claim to have received such knowledge after the expiration of six years from the date of the contract to be amended.

(5) Where the user does not exercise an exclusive right conferred on him by the owner of the copyright, the owner may revoke the right if the non-exercise thereof, is prejudicial to his legitimate interest.

(6) The right of revocation under subsection (5) may be exercised only after the period of delay stipulated in the contract for commencing the exercise of the exclusive right by the person to whom it is granted has expired but, in any case, not earlier than two years—

(a) from the grant of such right; or

(b) where the work to be used was supplied subsequent to the grant of the right, from the date of its delivery.

(7) In each of the cases under subsection (6), the owner of the copyright shall notify the user of the proposed revocation, allowing him a reasonable additional time in which to exercise the exclusive right, but where the exercise of the right by the user has become in exercisable or the user has refused the right, the owner's right of revocation may be exercised in accordance with subsection (6).

(8) A contract on future grant of rights for the use of works to be created thereafter and not specified in detail, but only mentioned in general or by reference to their nature, may be terminated by either party with six months' notice after a period of four years from the conclusion of the contract.

56.—(1) Notwithstanding section 55 (5), (6) and (7), an author who, by way of a publishing agreement, has assigned an exclusive right to publish a work in printed form may, if the publisher does not—

Publishing
contracts

(a) within a reasonable period of time, publish the work and

ensure that it is distributed in the usual manner; or

(b) after the work has been published, ensure that copies of the publication are distributed to the public within a reasonable period of time after having been requested to do so by the author, terminate the agreement and retain any fee received and demand compensation for any damage resulting from default:

Provided that such compensation shall be subject to the default not being due to an obstacle beyond the control of the publisher and which the publisher could not reasonably have been expected to have taken into consideration at the time the agreement was made or to avoid or overcome the consequences thereof.

(2) Any agreement which significantly deviates from subsection (1) and negatively affects the rights of the author shall not be valid.

(3) Subsection (1) shall not apply to—

(a) contributions to newspapers and periodicals;

(b) contributions to collections of works;

(c) contributions which are to be used as illustration in works that are to be published; or

(d) translations.

(4) When fifteen years have passed since the expiry of the year in which the publisher first published the work in accordance with an agreement under subsection (1), the author shall have the right to include the work in an edition of his collected or selected literary works.

(5) The right to publish the edition referred to in subsection (4) shall be offered to—

(a) the publisher; or

(b) if the works of the author have been published by different publishers, the publisher who may be considered as his main publisher.

Commissioned
work

57.—(1) When a contract is in respect of commissioned work, the user shall be under an obligation to make a declaration with regard to acceptance of the work within sixty days from the date on which the work is handed over or, if such work is regulated under any written law other than this Act, within such period as is prescribed for acceptance under the law, and if the user fails to make such declaration within such period he shall be deemed to have accepted the work

(2) Within the time allowed under subsection (1) for acceptance of commissioned work, the user may, once or repeatedly, return the work to the author and require him to amend or correct the work taking into consideration the purpose for which the creation of the work was agreed upon and such requests shall be made in writing and fix reasonable dates by which the amendment or correction shall be done.

(3) Where the author fails to comply with a request made under subsection (2), or if the amended or corrected work is still not suitable for the stipulated purpose, the user may terminate the contract:

Provided that the user shall be obliged to pay the author, in consideration of the work done, an appropriate fee which shall be less than the agreed remuneration for use of the commissioned work.

PART VI—LICENCES

58.—(1) A broadcasting organization that is authorized by an agreement with the Society to broadcast literary, musical or artistic works, may, subject to the terms and conditions of the agreement, also broadcast works of authors whom it does not represent:

Extended
collective
licences

Provided that—

(a) the work is of the same nature as works that are covered by the agreement;

(b) the work has already been lawfully made available to the public;

(c) the author has not himself by notice to the broadcasting organization and the Society, prohibited the broadcast of the work;

(d) the work is not broadcast in dramatic form;

(e) if the broadcast is made by satellite, it simulcasts a terrestrial broadcast by the same broadcasting organization; and

(f) the licensing under this section does not exonerate the organization from meeting its licensing requirements under any written law.

(2) When simultaneous and unaltered rebroadcasting or cable retransmission of the broadcast of works is permitted through an agreement with the Society, and is made with the consent of the broadcasting organization concerned, the rebroadcasting or retransmission may, subject to the terms and conditions of the agreement, include works of authors whom the broadcasting organization does not represent:

Provided that the works are of the same nature as works that are covered by the extended collective licence.

(3) A collective licence agreement permitting the use of works of authors represented either directly or through their associations by the Society, representing, as confirmed by the Minister, a substantial part of the authors concerned whose habitual residence is in Malawi, shall, subject to the terms and conditions of the agreement, extend to the use of works of authors whom the Society does not represent:

Provided that such works are of the same nature as works that are covered by the extended collective licence and limited to the uses permitted by the extended collective licence, in so far as the permission regards—

(a) the reproduction, in the original or in translation, in a collection consisting of works by a large number of authors, which is intended for use in religious services or in education of minor parts of literary, dramatic or musical works, or short works in these categories, and for the purpose of illustration of artistic works that are pertinent to the text, unless the author has notified the Society that any such use is subject to the author's authorization, such notification to be made in writing and to be communicated to the licensed user:

Provided that—

(i) the work has already been lawfully made available to the public;

(ii) if the collection is intended for use in education, the work reproduced was not created for educational use; and

(iii) such use is compatible with fair practice;

(b) the reproduction of a work, or the fixation of a broadcast of a work, by an establishment or organization and its students, for use within the educational activities of said body:

Provided that—

(i) the copy made renders the work in the same form as the copy from which the reproduction was made and in which the work has already been lawfully made available to the public and the electronic scanning of printed material and the making of printouts from machine-readable material shall be permissible;

(ii) any fixation made from a broadcast shall not include an audio-visual work that must be perceived as also intended for uses other than presentation via broadcast, unless only minor parts thereof are used in the broadcast from which the fixation

was made; and

(iii) in case of a fixation from a broadcast or a copy of an audio visual work or a sound recording, that it is not to be made by a student nor distributed or made available to students for use in their private studies:

Provided that any copy made according to this paragraph shall not be used for music accompaniment in educational activities pertaining to dance, music, gymnastics or similar activities and shall to be made available outside the premises of the establishment or organization except as part of educational activities which it normally carries out outside its own premises;

(c) the reproduction of a work, or the fixation of a broadcast of a work, by a public or private institution, organization or enterprise:

Provided that—

(i) the copy made renders the work in the same form as the copy from which the reproduction was made and in which the work has already been lawfully made available to the public, and the electronic scanning of printed material and the making of printouts from machine-readable material shall be permitted;

(ii) any fixation made from a broadcast does not include an audio-visual work that is perceived as also intended for uses other than presentation via broadcast, unless only minor parts thereof are used in the broadcast from which the fixation was made; and

(iii) the copies are to be used only within the circle of employees and close associates of the institution, organization or enterprise, or in particular proceedings, and only for purposes that have no direct gainful intent, and any copy made according to this paragraph shall not to be used for music accompaniment to activities such as dance and gymnastics or similar activities;

(d) the reproduction by a library, archive or museum designated under section 48 of works in its collections for the purpose of making the works available to the public, unless the author has notified the Society in writing that any such use is subject to the author's authorization and such notification shall be communicated to the licensed user:

Provided that the reproduction renders the work in the same form as the copy from which the reproduction was made and in which the work has already been lawfully made available to the

public, and any electronic scanning of printed material and the making of printouts from machine-readable material shall be permitted; and

(e) the use of an artistic work in connection with the text of a critical or scientific presentation for commercial purposes, a text-book intended for teaching or a generally informative presentation:

Provided that the work has already been lawfully made available to the public and that the presentation is not made available to the public in machine-readable form unless the author has notified the Society in writing that any such use is subject to the author's authorization, and such notification shall be communicated to the licensed user.

(4) The authority given to the Society to enter into agreements that entail an extended collective licence is without prejudice to the authority of the owner of the relevant rights to grant licences for any use as set out in this section except that the right of simultaneous and unaltered rebroadcasting and cable retransmission of the broadcast of works shall not be exercised except through the Society.

(5) Irrespective of any agreement, the decision by the Society or an association that the Society has entrusted with the collection and distribution of remuneration for the permitted use, shall also be binding on owners of rights who are not members of or represented by the organization or the association, such that—

(a) if the remuneration is collected and distributed on a title specific basis, the owners of rights shall have the same rights as owners of rights who are members of or represented by the Society or such association to partake in the distribution of remuneration;

(b) if the remuneration is collected on a non-title specific basis, the owners of rights shall have the same rights as owners of rights who are members of, or represented by the Society or the association to share in any funds and benefits that are distributed or largely financed from the remuneration; or

(c) when an owner of rights can substantiate that his work has been used pursuant to this section, he shall as an alternative to benefiting from the remuneration in the manner set out in paragraphs (a) and (b), be entitled to claim that the corresponding remuneration be paid to him and the claim shall be made within three years from the end of the year in which the use took place, and to be directed exclusively to the Society except when

according to the agreement, the distribution shall be made by the user.

(6) Whenever an agreement as to the remuneration claimed by an individual owner of right in accordance with subsection (5) is not reached, either party may request that the claim be settled in accordance with subsection (8).

(7) Where agreement entailing an extended collective licence pursuant to this section is not be concluded, or a party refuses to enter into negotiations with the another party concerning such agreement, either party may request that the disagreement be settled in accordance with subsection (8).

(8) Any dispute arising in the exercise of the parties of the rights under this section shall be resolved by way of arbitration conducted according to the Arbitration Act.

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(9) This section shall not apply to the copyright that a broadcasting organization holds in its own broadcasts:

Provided that if an agreement with a broadcasting organization concerning permission to make use of the organization's broadcasts as provided for herein is not concluded, subsection (7) shall apply.

(10) The Minister may make regulations regarding the supervision of associations and other entities that receive remuneration for distribution.

59.—(1) An institution which is responsible for arranging public examinations may, for this purpose, reproduce works that have already lawfully been made available to the public:

Compulsory
licence for
public
examinations

Provided that such reproduction is done subject to compulsory licensing conditions specified in this section.

(2) An institution which is responsible for arranging public examinations shall, immediately upon the finalization of the examination, report to the Society on the reproduction of the work, the number of copies made, the name of the author and the source from which the reproduction was made, and the report shall be accompanied by two copies of the examination paper.

(3) The reproduction under this section shall be limited to the number of copies necessary to conduct the examination and the documentation thereof.

(4) The institution shall pay remuneration in accordance with tariffs set by the Society, and the remuneration shall be collected, and distributed to the author, by the Society.

Compulsory
translation
licence

60.—(1) Where a work is expressed exclusively in words, the right to make a translation of that work and to publish it in Malawi may be subject to compulsory licensing conditions specified in this section.

(2) A person who is a citizen of Malawi or has his habitual residence in Malawi may, subject to the provisions of this section, apply to the Minister for a non-exclusive licence to make a translation of a work, which is expressed exclusively in words, into any language in general use in Malawi, be it a foreign language or a local language of Malawi, and to publish or authorize the publication of the translation in copies.

(3) No application for a licence under this section shall be filed until the expiration of a period of—

(a) three years commencing from the date of the first publication of the work in copies, if the licence is for translation into a foreign language of Malawi; or

(b) one year commencing from the date of the first publication of the work in copies, if the licence is for translation into any other language of Malawi.

(4) A licence under this section shall not be granted unless the Minister is satisfied that—

(a) no translation of the work into the language in question has ever been published in copies by or under the authority of the owner of the right of translation, or that all previous editions in that language are out of print;

(b) following the expiration of the relevant period specified in subsection (3), the applicant has requested the owner of the right of translation for consent to translate the work but has been refused or, in spite of genuine efforts made by the applicant, he has been unable to locate the owner;

(c) the applicant, at the time of making the request referred to in paragraph (b), sent a notice of his request to the International Information Centre established by the United Nations Educational, Scientific and Cultural Organization (hereinafter referred to as “UNESCO”), or to a national or regional copyright information centre identified as such in a notification deposited with the Director General of UNESCO or with the Director General of the World Intellectual Property Organization (hereinafter referred to as WIPO) by the state in which the publisher is believed to have his principal place of business; or

(d) where the applicant cannot locate the owner of the right of translation, he has by registered mail, sent copies of his application to the publisher whose name appears on the work and also to the centres specified in paragraph (c).

(5) For the purpose of subsection (4) (c), the Society shall keep and maintain addresses of national and regional copyright information centres for ease of reference or contact by interested persons.

(6) A licence under this section shall not be granted, unless the following periods from the date of the application and from the date on which the applicant complies with the requirements mentioned in subsection (4) (b) and (d) have expired—

(a) in the case of an application for a licence required for translation into a foreign language of Malawi, six months; and

(b) in the case of an application for a licence required for translation into another local language of Malawi, nine months.

(7) If, during any period specified in subsection (6) a translation of the work in the language in question is published in copies by or under the authority of the owner of the right of translation, then, no licence shall be granted for translation of the work.

(8) When a work is composed mainly of illustrations, a licence to translate the text and to reproduce the illustrations shall not be granted except if the conditions prescribed under section 63 are also fulfilled.

(9) Where the author of a work has withdrawn all copies of the work from circulation, no licence shall be granted in respect of the work under this section.

61.—(1) A licence granted under section 60 shall—

(a) be limited to the non-exclusive right to translate the work into the language in respect of which it is granted and to publish copies of the translation in Malawi;

(b) be for a translation required only for the purpose of teaching, scholarship or research;

(c) not be transferable by the licensee;

(d) not authorize the exportation of copies of the translation prepared under the licence;

(e) be valid only for publication in Malawi; and

(f) provide for just compensation to the owner of the work, consistent with standards of royalties normally payable in the

Conditions of
a compulsory
translation
licence

case of licences freely negotiated between a person in Malawi and the owner of the right of translation in any other country.

(2) Where a licence is granted under section 60, the licensee shall ensure that the work in respect of which the licence is granted is correctly translated and that all published copies include—

(a) the original title and name of the author of the work;

(b) a notice in the language of the translation stating that copies of the translated version of the work are available for distribution in Malawi only; and

(c) a reprint of the copyright notice, namely, the symbol ©, accompanied with the name of the owner of the copyright and the year of the first publication of the work and the place where the work of which the translation is made is published with the copyright notice.

(3) A licence granted under section 60 shall terminate if a translation of the work in the same language and with substantially the same content as the edition for which the licence is granted is published in copies in Malawi by or under the authority of the owner of the right of translation at a price reasonably related to that normally charged in Malawi for comparable work:

Provided that any copies already published before the licence is terminated may continue to be distributed until the stock is exhausted.

62.—(1) Subject to the provisions of sections 60 and 61, a licence to translate a work published in printed or analogous form of reproduction may be granted under this section to a broadcasting organization having its headquarters in Malawi, where the translation is—

(a) made from a copy made or acquired in accordance with this Act;

(b) for use only in broadcasts intended exclusively for teaching or for the dissemination of the result of specialized research to experts in a particular profession; and

(c) in fact used exclusively for the purpose specified in paragraph (b) through broadcasts that are lawfully made and are intended for reception in Malawi, including broadcasts made from audio-visual works or sound recordings that are lawfully made for the sole purpose of such broadcasts.

(2) A translation under this section of an audio-visual work or sound recording shall not be exchanged except between

departments or divisions of the broadcasting organization.

(3) A licence may also be granted under this section to a broadcasting organization to translate any text incorporated in an audio-visual work that is itself prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

(4) A translation made under a licence issued under this section shall not be used for commercial purposes.

63.—(1) Where a literary, dramatic, musical or artistic work is published in printed or analogous form, the exclusive right to reproduce the work and publish it in copies may be subject to a compulsory licence under the conditions specified in this section.

Compulsory
reproductio
n licence

(2) A person who is a citizen of Malawi or has his habitual residence in Malawi may, subject to the provisions of this section, apply to the Minister for a non-exclusive licence to reproduce a particular edition of a work referred to in subsection (1) and to publish or authorize the publication of such reproduction in copies.

(3) A licence under this section shall not be granted—

(a) until the expiration of a period of—

(i) three years commencing from the date of publication of a work in the field of technology or of a natural or physical science including mathematics;

(ii) seven years commencing from the date of publication of a work of fiction, poetry, drama or music or a book of art; or

(iii) five years commencing from the date of publication of any other work; and

(b) unless the Minister is first satisfied that—

(i) after the expiration of the relevant period, there has never been a sale or other distribution authorized by the owner of the reproduction right, of copies of the particular edition in Malawi, to the general public or in connexion with systematic instructional activities, at a price reasonably related to that charged in Malawi for comparable works, or there has been no such sale or other distribution during the six months immediately preceding the application;

(ii) the applicant has requested from the owner of the right of reproduction for his authorization to reproduce the work and has been refused or, in spite of genuine efforts made by the applicant, he has been unable to locate the owner;

(iii) the applicant, at the time of making the requests referred

to in subparagraph (ii), sent a notice of his request either to the International Copyright Information Centre established by the UNESCO, or a national or regional copyright information centre identified as such in a notification deposited with that organization or with the WIPO by the state in which the publisher is believed to have his principal place of business; or

(iv) where the applicant cannot locate the owner of the right of reproduction, the applicant has by registered mail sent copies of the application to the publisher whose name appears in the work and also to the centres specified in subparagraph (iii).

(4) For the purpose of subsection (3) (b) (iii), the Society shall keep and maintain addresses of such centres for easy reference or contact by interested persons.

(5) A licence under this section shall not be granted in respect of any application made until the expiration of a period of six months commencing from the date of—

(a) the request referred to in subsection 3 (b) (iii); or

(b) the dispatch of the copies of the application referred to in subsection (3) (b) (iv).

(6) If, during the period of six months referred to in subsection (5), a distribution or an offer for sale as described in subsection (3) (b) (i) has taken place, no licence shall be granted.

(7) A licence to reproduce and publish a translation of a work shall not be granted under this section—

(a) where the translation was not published by the owner of the right of translation or with his authorization; or

(b) where the translation is not in a language in general use in Malawi.

(8) Where the author of a work has withdrawn all copies of an edition of the work from circulation, no licence shall be granted under this section in respect of the edition.

(9) In subsection (3), “the date of publication” refers to the particular edition to be reproduced.

64.—(1) A licence granted under section 63 shall—

(a) be limited to the non-exclusive right to reproduce the particular edition of the work in respect of which it is granted, and to publish copies of the reproduction in Malawi for use in connection with systematic instructional activities, but the price

at which the reproduced copies are sold shall be at a level not higher than such amount as is reasonably related to the price normally charged in Malawi for comparable work;

(b) not be transferable by the licensee;

(c) not authorize the exportation of copies of the particular edition of the work in respect of which it is granted;

(d) be valid for publication in Malawi only; and

(e) provide for just compensation to the owner of the work, consistent with standards of royalties normally payable in the case of licences negotiated between persons in Malawi and owners of the right of reproduction in any other country.

(2) Where a licence is granted under section 63, the licensee shall ensure that the particular edition of the work in respect of which the licence is granted is accurately reproduced and that all published copies include the following—

(a) the title of the particular edition of the work and the name of the author;

(b) a notice in the appropriate language stating that copies of the reproduced version of the work are available for distribution in Malawi only; and

(c) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

(3) A licence granted under section 63 shall terminate—

(a) whenever copies of an edition of the work in respect of which the licence is granted are distributed to the general public in Malawi; or

(b) whenever copies of the edition of the work are distributed in Malawi in connection with systematic instructional activities, by or under the authority of the owner of the right of reproduction at a price reasonably related to that normally charged in Malawi for comparable work, if such edition is in the same language and is substantially the same in content as the edition published under the licence:

Provided that any copies already made before the licence is terminated may continue to be distributed until the stock is exhausted.

65.—(1) The Minister may, upon application in writing made to him by any person and subject to the terms set out in section 63, grant a licence authorizing the person to—

Compulsory
reproduction
licence for
audio-visual
works

(a) reproduce in audio-visual form a lawfully made audio-visual work, including any protected work incorporated in it; or

(b) translate any text incorporated in such work into any language in general use in Malawi, be it a foreign language or any other language of Malawi.

(2) No licence shall be granted under this section unless the audio-visual work is prepared or published for the sole purpose of being used in connection with systematic instructional activities.

(3) A licence granted according to this section shall comply with the conditions set out in section 64.

Production of
recording of
musical works

66.—(1) A manufacturer of sound recordings may make a sound recording of any musical work including any literary work the recording of which together with the musical work has already been authorized by the author of the literary work, if—

(a) copies of a sound recording of the musical work have previously been made in or imported into Malawi for the purpose of retail sale, and were so made with the licence of, or so imported by, the owner of the copyright in such work; and

(b) before the making of the sound recording, the manufacturer gives the owner of the copyright work notice of his intention to make the recording and the address at which he intends to make the recording.

(2) Sound recordings made according to this section may be in the form of an adaptation of the musical work as previously recorded:

Provided that the two adaptations are similar in that the adaptations do not differ substantially in their treatment of the work, in respect of style or, apart from a difference in number, in respect of the performers required to perform the adaptations.

(3) The manufacturer shall, not later than fifteen days before the sale of any of the copies made by him under this section, send to the owner of the copyright or the person authorized by him for that purpose, by registered post notice of his intention to sell or otherwise distribute the copies made and such notice shall contain—

(a) the name and address of the manufacturer;

(b) the title of the work to which the notice under subsection (1) (b) relates, with a description sufficient to identify the author of the work and the publisher thereof;

(c) the type of sound recording on which the manufacturer

intends to produce the work and an estimate of the number of copies he initially intends to sell;

(d) the ordinary selling price of the copies the manufacturer intends to reproduce and the amount of royalty payable in respect of them; and

(e) the earliest date on which any of the copies may be available for sale.

(4) The manufacturer shall, within ninety days after he has sent the notice referred to in subsection (3), pay royalties to the owner of the copyright and shall have affixed to each copy of the sound recording made by him an adhesive label issued by the Society as evidence of the payment.

(5) The royalty payable by the manufacturer under subsection (4) shall be an amount not less than ten per centum of the ordinary retail selling price of each copy of the sound recording or its similar adaptation.

(6) It shall be an infringement of copyright where the manufacturer exhibits for sale or sells, without the adhesive label referred to in subsection (4) affixed thereto, any copy of a sound recording or its similar adaptation made by him under this section.

PART VII—EXPRESSIONS OF FOLKLORE

67.—(1) Copyright in expressions of folklore shall vest in perpetuity in the Government on behalf of, and for the benefit of the people of Malawi.

Right in expressions of folklore to vest in Government

(2) The provisions of this Part shall apply whether or not the expressions of folklore are fixed in material form.

(3) Expressions of folklore shall be protected in perpetuity.

68. The following uses of the expressions of folklore shall be subject to prior written authorization by the Minister when they are made for gainful purposes or outside their traditional and customary context—

Certain uses of expressions of folklore to be subject to authorization

(a) any publication, reproduction and any distribution of copies of expressions of folklore; or

(b) any communication to the public, including recitation, performance, broadcasting or distribution by cable, of expressions of folklore.

69. The provisions of section 68 shall not apply to any use of the expressions of folklore in the following cases—

Free uses of expressions of folklore

(a) for the purposes of education;

(b) by way of illustration in an original work of an author provided that the extent of such use is compatible with fair practice;

(c) use of expressions of folklore for creation of an original work by an author inspired by folklore; and

(d) incidental use of expressions of folklore, including—

(i) that which can be seen or heard in the course of a current event by means of photography, broadcasting or audio-visual work or sound recording;

Provided that the extent of such use is justified by the informative purposes thereof; and

(ii) use of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the use consists in the inclusion of their image in a photograph, a film or a television broadcast.

Source of expressions of folklore to be acknowledged

70. A user of the expression of folklore shall acknowledge the source from where the expressions of folklore used by him in any printed publication or communication to the public except for uses referred to in section 69 (c) and (d).

Authorization for use of expressions of folklore

71.—(1) Authorization of any use of expressions of folklore may be general or specific and may be granted upon application in writing to the Minister.

(2) The refusal by the Minister to grant an application shall not act as a bar to any subsequent application in respect of the same expression of folklore for which authorization was not granted or other expression of folklore.

Non-hindrance of development of folklore

72. The protection of expressions of folklore under this Act shall not in any way be construed so as to hinder the normal use, maintenance and development of expressions of folklore.

Protection under this Part is additional

73. Protection of expressions of folklore conferred by this Part shall be additional to, and shall not in any way limit or prejudice protection on such expressions conferred by any other written law or treaty to which Malawi is a party.

PART VIII—PERFORMERS, PRODUCERS OF SOUND RECORDINGS, BROADCASTERS AND PUBLISHERS

74. The protection granted under this Part relating to rights of performers, producers of sound recordings, broadcasters and publishers shall not in any way, affect copyright in a work under this Act and no provision in this Part shall be construed so as to affect copyright in any such work, nor shall the protection granted under this Part to rights of one category of owners of rights affect rights of another category.

Rights of performers, etc., of sound recordings and publishers not to affect copyright

75.—(1) Subject to section 83, performers shall enjoy the exclusive right to do, or authorize any other person to do, any of the following acts—

Exclusive rights of performers

(a) broadcasting or other communication to the public of their unfixed performance except where the performance thus used is itself a broadcast performance and the broadcast or communication is made or authorized by the organization initially broadcasting the performance;

(b) fixation of their unfixed performance;

(c) reproduction in any manner or form of their performance in any of the following cases—

(i) where the performance was initially fixed without the performer’s consent;

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

(iii) where the performance was initially in accordance with the provisions of section 83 but the reproduction is made for purposes different from any of those referred to in that section;

(d) the distribution by way of sale and lending to the public of their performance fixed in a sound recording;

(e) communication to the public of their performance fixed in a sound or audio-visual fixation , when the communication is made in such a way that members of the public may access the performance from a place and at a time individually chosen by them and;

(f) making available to the public, of his fixed performance by wire or wireless means in such a way that members of the public may access the performance from time to time.

(2) Tangible copies of a performance fixed in a sound recording which have been sold or otherwise assigned by or with the consent of the performers may, regardless of whether the transfer of the copy occurred in Malawi or elsewhere, be distributed to the public:

Provided that the performers shall retain the right of commercial rental.

(3) In the absence of any agreement to the contrary, or of circumstances of employment from which the contrary would ordinarily be inferred—

(a) the authorization to broadcast a performance or to communicate it by cable shall not imply—

(i) an authorization to license another organization to broadcast the performance or communicate it by cable;

(ii) an authorization to fix the performance; or

(iii) an authorization to reproduce the fixation;

(b) the authorization to fix the performance and to reproduce the fixation shall not imply—

(i) an authorization to broadcast or otherwise communicate the performance to the public from the fixation or any reproduction of such fixation; or

(ii) an authorization to distribute copies of the fixation, except when the fixation or reproduction in accordance with the authorization granted is in the form of or is incorporated in a visual or audio-visual fixation; and

(c) the authorization to distribute copies of a performance fixed in a sound recording or audio-visual fixation shall not imply an authorization to distribute copies by way of commercial rental.

(4) Where the performers have authorized the fixation of their performance by the broadcaster and the broadcast or other communication to the public of that fixation, the performer shall have the right to equitable remuneration in respect of any such broadcast or communication whether or not such fixation has been used commercially.

(5) Where the performers have authorized distribution by way of commercial rental of their performances fixed in sound recordings, or audio-visual fixation the performer shall receive equitable remuneration in respect thereof.

(6) Nothing in this section shall be construed so as to deprive performers of the right to agree by contracts on terms and conditions more favourable for them in respect of any use of their performance.

(7) Where a published sound recording or audio-visual fixation of a performance is used for public performance, broadcasting or for any other form of communication to the public except that which is subject to authorization under subsection (1) (e), the provisions in

section 80 regarding remuneration to performers and producers shall apply.

(8) The remuneration in subsection (4), (5) and (7) shall be collected only through the society.

(9) When there is an agreement with the Society permitting reproduction or fixation as set out in section 58 (3) of performances, section 58 shall apply *mutatis mutandis*, to the use of performances of performers who are not represented by the Society:

Provided that the agreement has been entered into by the Society in its capacity of representing, as confirmed by the Minister, a substantial part of the performers concerned whose habitual residence is in Malawi.

(10) The protection under this section shall subsist for fifty years computed from the end of the year in which the performance took place or in which the fixation of the performance was made, or, if the fixation is published within that period, from the end of the year in which the fixation was published for the first time.

76.—(1) A performer shall, as regards his live performances fixed in a sound recording or audio-visual fixation, have the right to claim to be identified as the performer, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his honour or reputation.

Moral rights of performers

(2) The rights conferred by subsection (1) shall subsist for the duration of the rights according to section 75, even after the transfer of any such right, and shall not be transferable except upon and by reason only of the death of the performer and henceforth such rights shall be exercisable by his heirs or legal representative.

77.—(1) A written authorization under section 75 may be given by the performer or by a duly appointed representative to which the performer has in writing granted the right to give such authorization.

Granting of authorization by performers

(2) Any authorization given by the performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the claim or appointment, as the case may be, was not a valid one.

78.—(1) Subject to section 83, a producer of a sound recording or audio-visual fixation shall have the exclusive right to do, or authorize any other person to do, any of the following acts—

Exclusive rights of producers of sound recordings or audio visual fixations.

(a) reproduction of the sound recording or audio-visual fixation;

(b) distribution to the public of the sound recording or audio-visual fixation;

(c) communication to the public of the sound recording or audio-visual fixation in such a way that members of the public may access the recording from a place and at a time individually chosen by them or;

(d) making available to the public of a sound recording or audio-visual fixation by wire or wireless means in such a way that members of the public may access the sound recordings or audio-visual fixation at any time.

(2) Tangible copies of a sound recording or audio-visual fixation which have been sold or otherwise assigned by, or with the consent of the producer may, regardless of whether the transfer of the copy occurred in Malawi or elsewhere, be distributed to the public, and the producer shall retain the right of commercial rental.

(3) For the purposes of this section, a copy of a sound recording or audio-visual fixation shall be unlawful if, with or without imitating the outward characteristics of the original sound recording or audio-visual fixation it incorporates all or part of the producer's sound recording without his authorization.

(4) When there is an agreement with the Society permitting reproduction or fixation, as set out in section 58 (3), of sound recordings or audio-visual fixation section 58 shall apply correspondingly to the use of sound recordings or audio-visual fixation of producers who are not represented by the Society:

Provided that the agreement has been entered into by the Society in its capacity of representing, as confirmed by the Minister, a substantial part of the producers concerned whose habitual residence or headquarters is in Malawi.

(5) Where a published sound recording or audio-visual fixation is used for public performance, for broadcasting or for any other form of communication to the public except that which is subject to authorization under subsection (1) (c), the provisions in section 80 regarding remuneration to the producer and the performers apply.

(6) The protection referred to in subsection (1) shall subsist for fifty years computed from the end of the year in which the sound recording or audio-visual fixation was made, or, if it is published within that period, from the end of the year in which it was published for the first time.

79.—(1) A producer of a sound recording or audio-visual fixation shall state on the label of the recording or on its container—

(a) the names of the author and those of the main performer;

(b) the title of the work;

(c) the name, whether individual or corporate, or distinguishing mark of the producer; and

(d) that the rights accruing to the producer under this Act are reserved, and it shall be sufficient to use any words to that effect.

(2) For the purposes of subsection (1) (a), choirs, orchestras and composers shall be referred to by their proper names and by the name of the leader, if any.

(3) Where copies of a sound recording are made for commercial purposes, there shall be printed on the copies also a notice consisting of—

(a) the symbol © in addition to (P); and

(b) the year of first publication of the sound recording or audio-visual fixation placed in such a manner as to give reasonable notice of claim of protection of the rights of the producer.

(4) Where the copies of the sound recording or audio-visual fixation or their containers do not identify the producer or his licensee in relation thereto by his name, description or trade mark, the label or container notice shall include the name of the owner of copyright in the recording.

(5) Where the notice specified in subsection (3) is printed on a sound recording or audio-visual fixation or the container thereof such notice shall be prima facie evidence of the facts stated thereon for the purposes of any proceedings brought under this Act with respect to the rights of the producer.

(6) Non-compliance with the obligations according to this section shall not in any way affect the rights of the producer of the sound recording or audio-visual fixation under sections 56 and 58.

80.—(1) Performers and producers of sound recordings shall be entitled to a single equitable remuneration—

Remuneration for public performance of sound recordings or audio-visual fixations

(a) where published sound recordings or audio-visual fixation are used for broadcasting or communication to the public that does not, according to this Part, require authorization from the performer or the producer; and

(b) where a public performance of published sound recording takes place, by means of a broadcast, cinematography, jukebox or other apparatus.

(2) The use which is subject to remuneration under this section includes use of a reproduction of the published sound recording, and such reproduction incorporated in an audio-visual fixation.

(3) For the purpose of this section, “published sound recording” includes recordings that by way of communication to the public have been made available to the public in such a way that members of the public may access the recording from a place and at a time individually chosen by them.

(4) Remuneration according to this section may be claimed and collected only through the Society, which shall distribute the remuneration collected for the use of a sound recording in equal shares to the performers and the producer.

(5) The right to claim remuneration according to this section is subject to section 61 and shall apply only to the use of published sound recordings that are protected according to section 53 or section 56.

(6) The right of a performer to collect remuneration under this section shall not be assigned by the performer except to a collecting society.

Exclusive rights
of broadcasting
organizations

81.—(1) Subject to section 83, a broadcasting organization shall have the exclusive right to authorize or prohibit—

- (a) rebroadcasting of its broadcasts;
- (b) the fixation of its broadcasts;
- (c) reproduction of its fixation of its broadcasts; or
- (d) communication to the public of their television broadcasts.

(2) The protection under this section shall subsist for twenty years computed from the end of the year in which the broadcast took place.

(3) Where an agreement by which the broadcasting organization permits the simultaneous and unaltered rebroadcasting or cable retransmission of its broadcasts as set out in section 58 (2) or the fixation of its broadcasts for any use as set out in section 58 (3) cannot be concluded, or where a party refuse to enter into negotiations with the other party concerning the agreement, the provisions of section 58 (8) on resolution of disputes shall apply *mutatis mutandis* to the disagreement.

Rights in
typographical
arrangements

82.—(1) Without the authorization of a publisher, and unless permitted according to section 83, the following are prohibited—

- (a) reproduction of the typographical arrangement of a published edition of a literary, dramatic or musical work, by way of making a facsimile copy of the whole or any part thereof; and

(b) distribution to the public, otherwise than by way of rental or lending, copies of such published edition or facsimile copy thereof.

(2) Notwithstanding subsection (1) (b), the distribution of copies that, with the consent of the publisher, have been sold or otherwise assigned in Malawi or elsewhere shall be permitted.

(3) Protection according to this section shall not subsist in the typographical arrangement of a published edition if, or to the extent, that it reproduces the typographical arrangement of a previous edition.

(4) The protection of typographical arrangements according to this section shall subsist for a period of twenty-five years from the end of the year when the edition was first published, any subsequent new editions reproducing that same arrangement not giving rise to any prolongation of said period or any renewed protection.

(5) When there is an agreement with the Society permitting, as set out in section 58 (3) (b), (c) or (d), the reproduction of published editions the typographical arrangement of which is protected, section 58 shall in respect of such use apply correspondingly to the use of published editions of publishers who are not represented by the Society:

Provided that the agreement has been entered into by the Society in its capacity of representing, as confirmed by the Minister, a substantial part of the publishers concerned whose habitual residence or headquarters is in Malawi.

83.—(1) The provisions of sections 75, 78, 79, 80, 81 and 82 shall not apply where the acts referred to therein consist of any use of performances, sound recordings audio-visual works broadcasts or typographical arrangements that under Part IV is permitted in regard to works, as long as the conditions set out in Part IV are complied with:

Exceptions
to certain
provisions
under this
Part

Provided that—

(a) quotations from a performance, a sound recording, a broadcast or the typographical arrangement of a published edition may only be in the form of short excerpts that are compatible with fair practice and are justified by the informative purpose of those quotations;

(b) the reporting of current events, including the reporting of them in conjunction with section 44 or 50 shall include no more than short excerpts of a performance, sound recording or broadcast, except if it is itself succinct;

(c) the provision in section 56 shall not be relied upon to make

fixations of a live performance except in the context of reporting of current events, including the reporting of them in conjunction with section 44 or 50;

(d) the provisions in sections 44 and 50 shall not apply to typographical arrangements;

(e) the provisions in section 49 shall not apply.

(2) Section 59 shall apply, *mutatis mutandis*, to performances, sound recordings audio-visual works broadcasts and typographical arrangements.

PART IX—PUBLIC DOMAIN

Works and related subject matter in the public domain

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

(a) works whose terms of protection have expired;

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

(c) foreign works that do not enjoy protection in Malawi.

(2) For the purpose of subsection (1) (b), renunciation by an author or his successor in title of his moral rights referred to in section 30 shall be in writing and made public:

Provided that any such renunciation shall not be contrary to any previous contractual obligation relating to the work.

(3) When a work is in the public domain the provisions of this Act shall not prevent or limit its use.

(4) This section shall apply, *mutatis mutandis*, to—

(a) performances, sound recordings audio-visual fixation broadcasts and typographical arrangements whose terms of protection have expired, or to which the owners of the rights have renounced their rights; and

(b) foreign performances, sound recordings audio-visual fixation and broadcast that do not enjoy protection in Malawi.

PART X—TECHNOLOGICAL MEASURES AND RIGHTS MANAGEMENT INFORMATION

Technological measures

85.—(1) Where an effective technological measure is used by, or with the consent of, an owner of copyright or any related, it shall be considered unlawful and an infringement of such rights—

(a) to manufacture, import for distribution to the public, distribute or offer to the public or possess for commercial purposes any device, product, component or means that—

(i) is promoted, advertised or marketed for the purpose of circumventing any device or means intended to prevent or restrict reproduction, communication or performance of a work, an expression of folklore, a performance, a sound recording, a broadcast or a typographical arrangement, or to impair the quality of copies made of any such work or subject matter;

(ii) has only a limited commercially significant purpose other than that mentioned in subparagraph (i); or

(iii) is primarily designed, produced or adapted to circumvent the device as mentioned in subparagraph (i); or susceptible to enable or assist the reception of an encrypted programme which is broadcast or otherwise communicated to the public, by those who are not entitled to receive the programme;

(b) to offer to the public or provide services which have any such effect as set out in paragraph (a); or

(c) to circumvent any such technological measure for the purpose of committing an act which according to this Act is subject to the consent of the owner of the right, except if the circumvention is made for the sole purpose of achieving interoperability of a computer programme with another independently created computer programme, by a person having lawful access to the computer programme, or on his behalf by a person authorized to do so, but then only to the extent of—

(i) identifying and analyzing the specific elements of the computer programme that are not readily available to the person carrying out the circumvention, and that are necessary to achieve such interoperability;

(ii) developing and employing technological means necessary to carry out the activities specified in subparagraph (i); or

(iii) making the information resulting from the activities in subparagraph (i), or the means specified in subparagraph (ii) available to others for the sole purpose of enabling interoperability as described in this subsection.

(2) In the application of sections 94 to 97, any illicit device and means mentioned in subsection (1), shall be associated with infringing copies.

(3) A violation of this section shall be independent of any infringement that might by reason of such violation occur under this Act.

(4) In this section, an “effective technological measure” means any technology, product, device, component or means that is designed to prevent or restrict acts, in respect of works, expressions of folklore, performances, sound recordings or broadcasts or typographical arrangements, which are not authorized by the owner of the respective right, and by which the owner of the right, through an application of an access control or protection process which in its normal course of operation achieves the protection objective, controls the use of such protected work or subject matter.

Use of works, etc., when effective technological measures are employed

86.—(1) An owner of copyright shall ensure that a beneficiary who has legal access to a protected work or other subject matter protected under this Act is able to use the work or other subject matter without impediment of an effective technological protection measure—

(a) pursuant to section 41, 44, 48, 49, 51, 53 and 59;

(b) for performances in an educational context, pursuant to section 42; and

(c) except if it is a sound recording, pursuant to section 49, by way of reproduction or otherwise as the relevant section permits.

(2) Where an owner of the copyright on the request of a beneficiary of a section listed in subsection (1) fails to provide access as described therein, he may, on the beneficiary’s petition addressed to the Society, be ordered to provide information that is necessary to enable the work or other subject matter to be used in accordance with the purpose of the relevant subsection.

(3) The Society may in addition to orders referred to in subsection (2), rule that the beneficiary, regardless of section 85, may circumvent the applied technological protection measures if the owner of rights fails to adhere to the time limit imposed in such order.

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(4) Copies of works or other subject matter protected under this Act, that are deposited under the Printed Publications Act, shall always be equipped with the information necessary to ensure that circumvention of technological protection measures to enable lawful reproduction is possible.

(5) This section shall not apply where a protected work or other protected subject matter on agreed terms is communicated to the public in such a way that the individual can choose the time and place of access to the work or subject matter.

(6) This section shall not apply to computer programmes:

Provided that the Minister may decide that some institutions in the sector of archives, libraries and museums automatically receive the information necessary to ensure that circumvention of technological protection measures to enable lawful reproduction is possible.

87.—(1) The following acts shall be considered unlawful and an infringement of the exclusive rights accorded to owners of works under this Act—

Electronic
rights
management

(a) the removal or alteration of any electronic rights management information from a copy of a protected work or other protected subject matter without authority; and

(b) the distribution or import for distribution to the public, broadcasting or other communication to the public, or public performance of protected works or other protected subject matter, by a person knowing or having reason to know that electronic rights management information has been removed or altered without authority.

(2) In the application of sections 94 to 97, any copy from which electronic rights management information has been removed or in which such information has been altered in contravention of subsection (1) shall be assimilated to infringing copies.

(3) For purposes of this Part, “rights management information” means any information which identifies any of the following—

(a) the author of the work;

(b) the work;

(c) the expression of folklore;

(d) the performer;

(e) the performance of the performer;

(f) the producer of the sound recording or audio-visual fixation;

(g) the sound recording or audio-visual fixation;

(h) the broadcasting organization;

(i) the broadcast; or

(j) the owner of any right protected under this Act, and information about the terms and conditions for use of the work, the expression of folklore, the performance, the sound recording, the broadcast or the typographical arrangement, and any numbers or code that represent such information, when any of these items of information is attached to a copy of a work, an expression of folklore, a fixed performance, a sound recording or a broadcast or a typographical arrangement, or appears in connection with the broadcasting, communication to the public, or public display or

performance of a work, an expression of folklore, a fixed performance, a sound recording audio-visual fixation or a broadcast or a typographical arrangement.

PART XI—INFRINGEMENT OF COPYRIGHT OR RELATED RIGHTS

Infringement of
copyright

88.—(1) A person infringes copyright in respect of any work protected under this Act where, without valid transfer, licence or authorization under this Act, the person does, permits or causes another person to—

(a) reproduce, fix, duplicate, extract or imitate such work or permit or cause it to be reproduced, fixed, duplicated, extracted, or imitated;

(b) distribute copies of such work to the public or permit or cause copies of such work to be distributed to the public, by way of sale, lending, hand-out, gift or like manner, or offer or expose copies of such work for such distribution, except when the copies have been sold or otherwise assigned or elsewhere by or with the consent of the author;

(c) distribute copies of such work, or cause or permit copies of such work to be distributed to the public, by way of commercial hire or rental, or offer or expose copies of such work to the public for such distribution, except in the case of objects for practical use, works of architecture in the form of a building, and computer programmes which in themselves are not the essential object of the hire or rental;

(d) distribute, or cause or permit to be distributed, to the public, machine readable copies of computer programmes by way of lending, or offer or expose such copies for such distribution;

(e) make a public display of copies of such work or permit or cause such public display to be made, except when the copies have been sold or otherwise assigned in Malawi or elsewhere by or with the consent of the author;

(f) make a public performance of such work or permit or cause a public performance of it to be made;

(g) communicate such work, or permit or cause it to be communicated, to the public by way of broadcast, communication by cable or like manner, including communication made in such manner that members of the public may access the work from a place and at a time individually chosen by them; or

(h) import, or permit or cause to be imported, into Malawi copies of such work, which have been made abroad in such

circumstances that if the copies had been made in Malawi, the fixation or reproduction would have been in contravention of this Act, provided that the importation is made for the purpose of making the work available to the public.

(2) For the purposes of this section, the following acts in respect of a work which is protected under this Act, shall be deemed an infringement of the rights of the author—

(a) to make the work available to the public without mention of the name or the pseudonym of the author in the manner required by proper usage;

(b) to use the work in a manner prejudicial to the honour or reputation of the author of the work; or

(c) when making the work available to the public, to mention of the name of the author when the author has demanded that he be not mentioned, or to fail to state that an alteration does not derive from the author, if the author has demanded that such a statement should be made.

(3) Subsection (2) shall apply *mutatis mutandis* to the director of audio-visual works protected under this Act.

89.—(1) A person infringes a performers' rights in a live performance protected under this Act where, without valid transfer, licence or authorization under this Act, the person does, permits or causes another person to—

Infringement of performers' rights

(a) broadcast such performance or otherwise communicate it to the public, or permit or cause it to be broadcast or otherwise communicated to the public, except when the performance is itself a broadcast performance and the broadcast or communication is made or authorized by the organization initially broadcasting the performance; or

(b) make a fixation of such performance or permit or cause a fixation of it to be made.

(2) A person infringes a performer's rights with regard to a fixation of a performance protected under this Act occurs where, without valid transfer, licence or authorization under this Act, the person reproduces, fixes, duplicates or extracts, or permits or causes another person to reproduce, fix, duplicate or extract, such fixation, or permit or cause such fixation to be reproduced, fixed, duplicated or extracted in any of the following cases—

(a) where the performance was initially fixed without the performer's consent;

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

(c) where the performance was initially fixed in accordance with the provisions of section 83:

Provided the reproduction is made for purposes different from any of those referred to in that section.

(3) A person infringes performers' rights in a performance fixed in a sound recording protected under this Act where, without valid transfer, licence or authorization under this Act, the person in respect of the sound recording—

(a) distributes copies of the sound recording or audio-visual fixation to the public, or permits or causes copies of such sound recording to be distributed to the public, by way of sale, lending, hand-out, gift or like manner, or offers or exposes copies of such sound recording for such distribution, except when the copies have been sold or otherwise assigned in Malawi or elsewhere by or with the consent of the producer of the sound recording;

(b) distributes copies of the sound recording, or causes or permits copies of such sound recording to be distributed to the public, by way of commercial hire or rental or offers or exposes copies of such sound recording for such distribution; or

(c) communicates such performance fixed in a sound recording audio-visual fixation or permits or causes it to be communicated, to the public in such manner that members of the public may access the performance from a place and at a time individually chosen by them.

(4) For reproduction the purposes of this section, the following shall constitute an infringement of the performers' right in respect of any performance protected under this Act—

(a) the reproduction broadcast or other communication to the public of a performance from a fixation made without the performer's consent, and the use of such fixation for public performance, when such act is made without the performer's consent and where equitable remuneration is not paid to the performer except if the fixation was made in accordance with section 61 for the purpose of that specific use;

(b) the import into Malawi of copies of a fixation of a performance, which have been made abroad in such circumstances that if the copies had been made in Malawi, the fixation or reproduction would have been in contravention of this Act, provided that the importation is made for the purpose of

making the performance available to the public by way of distribution to the public, broadcasting or other communication to the public or public performance;

(c) the distribution of the infringing copies of a fixation of a performance or of copies which were imported into Malawi in contravention of paragraph (b);

(d) commercially renting performances fixed in sound recording or audio-visual fixation when an equitable remuneration is not paid to the performers;

(e) the direct or indirect use for public performance, for broadcast or for other communication to the public, of an infringing copy of a fixation of a performance, or a copy which was imported into Malawi in contravention of paragraph (b); or

(f) to cause another person to commit or cause or permit any of the acts mentioned in paragraphs (a) to (d) inclusive.

(5) For the purposes of this section, the following acts in respect of a live aural performance or such performance fixed in a sound recording or audio-visual fixation which is protected under this Act shall be deemed an infringement of the moral rights of the performer—

(a) to make such performance available to the public without mention of the name or the pseudonym of the performer, except where omission of such mention is dictated by the manner of the use of the performance; and

(b) to use such performance in a manner whereby it is distorted, mutilated or otherwise modified in a manner which is prejudicial to the reputation of the performer.

90—A person infringes producers' rights in sound or audio-visual fixation recordings where, without valid transfer, licence or authorization under this Act, the person, in respect of a sound recording or audio-visual fixation protected under this Act, does, permits or causes another person to—

Infringement of rights of producers of sound recordings

(a) reproduce, fix, duplicate or extract such recording or fixation or permit or cause it to be reproduced, fixed, duplicated or extracted;

(b) distribute copies of such recording or fixation to the public, or permit or cause copies of such recording to be distributed to the public, by way of sale, lending, hand-out, gift or like manner, or offer or expose copies of such recording for such distribution, except when the copies have been sold or otherwise assigned in Malawi or elsewhere by or with the consent of the producer of the sound recording;

(c) distribute copies of such recording, or cause or permit copies of such recording to the distributed, to the public, by way of commercial hire or rental, or offer or expose copies of such recording for such distribution;

(d) communicate such recording to the public in such manner that members of the public may access it from a place and at a time individually chosen by them, or permit or cause a sound recording to be thus communicated to the public without payment of equitable remuneration;

(e) import, or permit or cause to be imported, into Malawi copies of such sound recording or audio-visual fixation which have been made abroad in such circumstances that if the copies had been made in Malawi, the reproduction would have been in contravention of this Act, provided that the importation is made for the purpose of making the recording available to the public; or

(f) distribute to the public, or directly or indirectly use for public performance, broadcast or other communication to the public, copies of a such sound recording or audio-visual fixation or cause or permit that copies of such recording are thus distributed or used, if—

(i) the copies were made without the producer's consent; or

(ii) the copies have been imported into Malawi in contravention of paragraph (e).

Infringement
by parallel
imports

91. Any person who, without the consent of the producer, imports into Malawi copies of audio-visual works or sound recordings with the intention of making them available to the public for gain, or causes or permits such imports, commits an infringement of the rights of the producer, except when copies of the same production are not being offered or promoted to the public in Malawi with the consent of the producer.

Infringement
of broadcasting
organizations'
rights

92. An infringement of a broadcasting organization's rights occurs where, without valid transfer, licence or authorization under this Act, a person, in respect of a broadcast protected under this Act, does, permits or causes another person to—

(a) make a fixation of such broadcast, or permit or cause a fixation of such broadcast to be made;

(b) reproduce, fix, duplicate or extract a fixation of such broadcast, or permit or cause such fixation to be reproduced, fixed, duplicated or extracted;

(c) rebroadcast such broadcast, or retransmit it by cable, or

permit or cause such rebroadcasting or retransmission;

(d) otherwise communicate to the public such television broadcast, or cause or permit such television broadcast to be communicated to the public;

(e) import, or permit or cause to be imported, into Malawi copies of a fixation of such broadcast, which have been made abroad in such circumstances that if the copies had been made in Malawi, the reproduction would have been in contravention of this Act, provided that the importation is made for the purpose of making the fixation of the broadcast available to the public; or

(f) broadcast or otherwise communicate to the public, or use for public performance, a fixation of a broadcast, or distribute to the public by way of sale, hire, rental, lending, hand-out, gift or like manner, copies of such fixation, if—

(i) the fixation or the copies were made without the consent of the broadcasting organization; or

(ii) the copies have been imported into Malawi in contravention of paragraph (e).

93. A person infringes rights in typographical arrangements in published editions occurs where, without valid transfer, licence or authorization under this Act, the person, in respect of a typographical arrangement in a published edition protected under this Act, does, permits or causes another person to—

Infringement of publishers' rights in typographical arrangements

(a) reproduce such arrangement by way of making a facsimile copy of the typographical arrangement of the whole or any part of a published edition of a literary, dramatic or musical work, or permit or cause such reproduction to be made;

(b) distribute or permit or cause to be distributed in Malawi by way of sale, hire, rental, lending, hand-out, gift or like manner any facsimile copy made in contravention of paragraph (a);

(c) offer or expose to the public for distribution by way of sale, hire, rental, lending, hand-out, gift or otherwise any facsimile copy made in contravention of paragraph (a); or

(d) import or permit or cause to be imported into Malawi facsimile copies of a published edition which have been made abroad in such circumstances that if the copies had been made in Malawi, the reproduction would have been in contravention of this Act:

Provided that the importation is made for the purpose of making the copies available to the public.

PART XII—INSPECTION

Inspectors

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

(2) In addition to inspectors appointed under subsection (1), any member of the Society, a customs officer and a police officer of the rank of sub-inspector and above shall perform the functions of an inspector under this Act.

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

Entry into premises

95. An inspector may, at any reasonable time and on production of his certificate of authority and identification, enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connection with those premises, ship, aircraft or vehicle any contravention of this Act.

Mode of inspection

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

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

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

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

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

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

(4) Any substance, article or work seized under this section shall be retained by the Society until the case in connection with which the substance, article or work was seized has been concluded or a decision not to prosecute has been made:

Provided that—

(a) where any person has been tried and convicted or where a person fails to claim the seized substance, article or work after being acquitted, the substance, article or work shall be disposed of at the discretion of the Copyright Administrator; and

(b) where a decision has been made not to prosecute, the seized substance, article or work may be returned to the owner.

(5) Any person who—

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

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

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

(d) in giving any such information as is mentioned in subparagraph (c), makes any statement which he knows to be false,

commits an offence and shall on conviction be liable to a fine of K5,000,000 and to imprisonment for two years.

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

Inspectors not personally liable

PART XIII—THE COPYRIGHT FUND

98. There is hereby established a fund to be known as the Copyright Fund (in this Act otherwise referred as the “Fund”), which shall be administered by the Society, and shall become operational on such a date as the Minister shall appoint, by notice published in the *Gazette*.

Establishment of the Copyright Fund

99. The Fund shall be used for—

(a) enforcement of copyright law;

(b) promotion and improvement of—

(i) creativity; and

(ii) artistic skills;

(c) promotion and preservation of works which depict a cultural identity of Malawi; and

(d) payment of proceeds from the fines paid for infringement of the rights under this Act; and

(e) Civic education

Objectives of the Fund

Vesting of the Fund
Cap. 37:01
Cap. 37:02

100.—(1) The Fund shall vest in the Society and, subject to this Act, shall be administered in accordance with the Public Audit Act and the Public Finance Management Act.

(2) The Minister shall approve the provisions drawn up by the Society on the operation and management of the Fund.

Financing of the Fund

101.—(1) The Fund shall be financed through levies on the following acts—

(a) performances, sound recordings, broadcasts and typographical arrangements;

(b) importing, manufacturing or placing of devices for digital storage materials on the market;

(c) public sale or auction of original works of art; and

(d) offering to the public of paper used for reproduction by the application of photocopiers or electronic copiers on commercial terms.

(2) Notwithstanding the sources in subsection (1), the Minister shall determine and specify annually a fee which is to be awarded from the Government budget to the Fund for the use of works and related subject matter in public libraries which offer their collections to the general public for lending or consultation free of charge.

(3) The levies and fees pursuant to this section shall be paid directly to the Society.

(4) For purposes of this section “public libraries “means the libraries which are wholly or partly funded by the Government.

Levy on storage devices

102.—(1) The levy on the placing of devices for digital storage of material pursuant to section 101 shall apply in regard to—

(a) devices integrated in computers or other specialised computer equipment; and

(b) stand alone storage devices such as compact disks and memory sticks as specified in regulations.

(2) It shall be presumed that the placing of the said devices on the market is for consumers unless circumstances or evidence clearly proves that it is for commercial purposes.

(3) The levy shall be paid by the manufacturers or importers of devices for the digital storage of material

(4) The levy shall be specified by the Minister of Finance in consultation with the Minister responsible for culture, by order published in the *Gazette*.

103.—(1) The levy on resale of original works of art pursuant to section 101 shall apply to—

Levy on public sale of original works of art

(a) all acts of sale involving as sellers, buyers or intermediaries art market professionals, such as salesrooms, art galleries and, in general, any dealers in works of art; and

(b) any purchase of artistic works, which is made for the purpose of decoration of buildings and areas accessible to the general public, regardless of whether the work is an existing work or a commissioned work.

(2) The above shall apply only where the work sold is a—

(a) work of graphic or plastic art such as pictures, collages, paintings, drawings, engravings, prints, lithographs, sculptures, carvings, tapestries, ceramics, glassware and photographic art; and

(b) the work is made in limited numbers by the author or with the consent of the author.

(3) The levy shall not apply to the resale of buildings as such.

(4) The seller shall pay the levy.

104.—(1) The levy on the offering to the public of paper reproduction pursuant to section 101 shall apply to the offering of—

Levy on copy shops etc.

(a) services in the form of reprographic reproduction; and

(b) access to photocopiers or electronic copiers without offering the machines themselves;

Provided that the offer is made on commercial terms.

(2) In order to offer a service or access that is subject to the levy under this section, the owner of the operation is obliged to register it with the Society as a copyshop, such registration to include identification of the copiers and their location.

(3) The registered owner of the copyshop shall pay the levy

105. Obligation to pay levies pursuant to this Part does not depend on the works and related subject matter involved in the acts referred to in section 101 being subject to protection under this Act.

Obligation to pay levies independent

106. The Minister may make regulations on the rates of the levies that are established according to section 101.

Determination of the levies

107.—(1) The Fund shall be used for the promotion of copyright activities and production in Malawi in which persons who are resident in Malawi take part, as follows—

Utilization of the Fund

(a) the creation of music, fiction and non-fiction such as poetry, essays, plays and text-books, fine art and audio-visual works, and the production of a particular sound recording or performance of a dramatic work or musical works, etc.; and

(a) the professional improvement of Malawian authors and performers, producers and publishers, and their living or working conditions by the way of offering—

(i) measures such as training courses, seminars, organisational improvement and legal aid, organised or approved by the Society, enforcement activities; and

(ii) grants to individual authors or performers:

Provided that the availability of such measures and grants to be publicly announced.

(2) The right to benefit from the measures and grants referred to in subsection (1) shall be equally enjoyed by such persons as referred to in this section, regardless of whether or not they are members of the Society or an association.

Access to
accounts

108.—(1) The Society shall, on request in writing have access to the accounts of manufacturers or importers of devices for digital storage placed on the market for consumers, sellers of works of art, and copy shops in order to determine whether they comply with the provisions in this Act, this right being limited to the accounts of the last three years before the year in which the request for access is made.

(2) Information gathered by reason of access to the accounts may not be exploited for other purposes, and the Society and the persons whom the Society employs for such purposes, shall observe strict confidentiality with respect to this information except as is necessary in order to enforce the levy schemes pursuant to section 101.

Books and
other records of
accounts
Cap. 37:01
Cap. 37:02

109.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund accordance with the Public Audit Act and the Public Finance Management Act.

(2) The accounts of the Fund shall be audited by the Auditor General in accordance with the Public Audit Act.

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report referred to in subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

110. The financial year of the Fund shall be the same as the financial year of the Government.

Financial year of the Fund

PART XIV – COURT PROCEEDINGS, ADMINISTRATIVE PROCEEDINGS AND PENALTIES

111. Where any offence under this Act is committed by a company or a member of a partnership, firm or business, society or association of persons, every director or officer of the company or any other member of the partnership or other person concerned with the management of such partnership, firm or business, society or association of persons commits an offence unless he proves to the satisfaction of the court that—

Liabilities of members of companies, etc.

- (a) he used due diligence to secure compliance with this Act; and
- (b) the offence was committed without his knowledge, consent or connivance.

112.—(1) Where the Copyright Administrator has reasonable grounds to believe that—

Administrative penalties

- (a) an offence under this Act has been committed by any person;
- (b) the offence is of minor nature; and
- (c) having regard to the previous conduct of the person concerned, it would be appropriate to impose a penalty under this section, he may cause a notice, in writing, in accordance with subsection (2) to be served on that person.

(2) A notice under subsection (1) shall be in a prescribed form and shall specify—

- (a) the nature of the offence and the date of its commission;
- (b) a summary of the facts upon which the allegation that an offence has been committed is based; and
- (c) any other matter that the Copyright Administrator considers relevant to the imposition of a penalty, and shall be endorsed with a statement setting out the provisions of this section.

(3) Any person on whom a notice under subsection (1) is served may, within thirty days after such service, by notice in writing to the Copyright Administrator require that the proceedings in respect of the alleged offence be dealt with by the court or admit the offence.

(4) Where pursuant to subsection (3) a person opts to have the alleged offence dealt with by a court—

(a) no further proceedings shall be taken under this section by the Copyright Administrator; and

(b) nothing in this section shall be construed to prevent proceedings in respect of the alleged offence to be dealt with by the court or the imposition by the court of any penalty or forfeiture under this Act upon such conviction in such proceedings.

(5) Where pursuant to subsection (3) a person opts to admit the alleged offence he may, by notice in writing to the Copyright Administrator—

(a) admit the offence; and

(b) make submissions to the Copyright Administrator as to the matters he wishes the Copyright Administrator to take into account in imposing any penalty under this section.

(6) Where a person on whom a notice under subsection (3) is served does not, within thirty days after the notice is served on him—

(a) require that proceedings in respect of the alleged offence be dealt with by the court; and

(b) admit the offence, he shall, on the expiration of that period, be presumed to have admitted the offence.

(7) Where pursuant to this section a person admits or is presumed to have admitted an offence, the Copyright Administrator may, after taking into account any submissions by the person under subsection (5), impose a monetary penalty on the person in respect of the offence not exceeding one half of the maximum penalty to which the person would be liable if he were convicted of the offence by the court.

(8) Where the Copyright Administrator imposes a penalty on a person under this section in respect of an offence, the Copyright Administrator shall serve that person with a notice in writing in the prescribed form of the particulars of the penalty and place where the penalty should be paid.

(9) A person on whom a penalty is imposed under this section shall pay the penalty to the Society within thirty days after the notice of the penalty is served on him in accordance with subsection (8).

(10) Without prejudice to the requirement of subsection (9), a penalty imposed under this section shall be recoverable by the

Society from the person on whom it has been imposed in the same manner as a fine is recoverable on conviction of an offence.

(11) Where an offence has been admitted or is presumed to have been admitted under this section, no further charge shall be laid in respect of the offence against the person who has admitted or is presumed to have admitted the offence.

(12) This section shall not apply—

(a) in respect of any offence under section; or

(b) to any offence or alleged offence in respect of which a charge has already been preferred.

113.—(1) Any person who infringes any copyright commits an offence and shall on conviction, be liable to a fine of K5,000,000 and to imprisonment for two years and in the case of a continuing offence, to a further fine of K25,000 for each day during which the offence continues.

Offence and penalties

(2) Any person who, without the authorization of the Minister imports, sells, offers or exposes for sale or distribution in Malawi any copy of the following subject matter outside Malawi—

(a) expressions of Malawian folklore; or

(b) translations, adaptations or arrangements of expressions of Malawian folklore,

commits an offence and shall on conviction, be liable to a fine of K10,000,000 and to imprisonment for four years and in the case of a continuing offence, to a further fine of K50,000 for each day during which the offence continues.

(3) Any person who contravenes sections 69, 70 or 71 commits an offence and shall on conviction, be liable to a fine of K2,000,000 and to imprisonment for twelve months.

(4) Any person who has in his possession—

(a) any infringing copy of a work other than for his private or domestic use; or

(b) any machinery, plate, matrix or other device with the intention of using such device to produce infringing copies,

commits an offence and shall be liable to a fine of K10, 000,000 and to imprisonment for four years and in the case of a continuing offence to a further fine of K50,000 for each day during which the offence continues.

(5) For purposes of subsection (4), any person who has in his possession three or more infringing copies of the same work or

related subject matter shall, unless the contrary is proved, be presumed to be in possession of such copies otherwise than for private or domestic use.

(6) Seventy-five per cent (75%) of the fines paid for the infringement of the rights under this Act shall be paid into the Fund.

Compensation
to victims of
offence

114.—(1) Infringement of copyright shall be actionable by the owner of the copyright.

(2) In addition to any penalty imposed by a court in respect of an offence under this Act in any action for an infringement of copyright, all such relief by way of damages, injunction, account of profits or otherwise, shall be available to the plaintiff as in any other corresponding proceedings in respect of infringements of other proprietary rights, and in any such action, the court may give such orders as are necessary to—

(a) enable the plaintiff to obtain evidence of any infringement which he intends to adduce at the trial; or

(b) prohibit the defendant from removing assets from the jurisdiction of the court or otherwise wasting them, to the extent that such assets are necessary to satisfy the plaintiff's claim if he succeeds at the trial.

(3) In any proceedings to which subsection (2) (a) applies—

(a) a person shall not be excused from answering any question put to that person or complying with any order made pursuant to that subsection by reason only that to do so would expose that person to criminal proceedings under this Act; and

(b) no statement of admission made by that person in answer to a question put, or an order made, in accordance with that subsection shall be admissible in criminal proceedings brought under this Act against that person save that nothing in this paragraph shall render any such statement or admission inadmissible in proceedings against that person for perjury or contempt of court.

(4) The Court may order that all reproductions, duplications, extracts, imitations and other materials involved in the infringement and all implements or devices used in such infringement be given to the copyright owner, or, if such material be dangerous to the public, be destroyed by the court.

(5) For purposes of this Part, “owner of copyright” means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

115. Upon the conviction of any person of an offence under this Act the court may, where it considers forfeiture to be necessary, in addition to any other penalty imposed, order any article, substance, work or any other thing used in connection with the commission of the offence to be forfeited to the Government.

Forfeitures as an additional penalty

116. An affidavit made on oath, affirmation or other like manner before a magistrate, commissioner for oaths, notary public or other person competent to administer an oath or affirmation under the law of the country where the oath was made, which—

Proof of facts in proceedings

- (a) purports to have been made by or on behalf of the owner of the copyright or his successor in title; and
 - (b) states all or any of the following-
 - (i) that at the time specified therein, the rights of the owner of the copyright work subsisted;
 - (ii) the nationality of the owner of the copyright;
 - (iii) the place where the work was first made;
 - (iv) the date and place of the first publication of the work and the date of the publication thereof in Malawi, if such publication was not first publication;
 - (v) that the person named therein is the owner of the copyright or his successor in title; and
 - (vi) that a copy of the work exhibited to the affidavit is a true copy of the work,
- shall be admitted without further proof in any proceedings under this Act.

PART XIV—MISCELLANEOUS PROVISIONS

117.—(1) The Minister may, by notice published in the *Gazette*, extend the application of this Act to any works, expressions of folklore, performances, sound recordings, broadcasts or typographical arrangements of published editions that are eligible for protection by virtue of and in accordance with any treaty to which Malawi is a party.

Extension of the application of Act

(2) The Minister may, by notice published in the *Gazette*, determine that this Act shall also apply to works which are first published by specific international organizations and the unpublished works in which such organization owns the publishing rights.

118. When works or performances are broadcast by satellite from a foreign country, this Act shall apply to the broadcast if the satellite that receives signals from Malawi or the broadcast is

Application of this Act to satellite broadcast

commissioned by a broadcasting organization which has its headquarters or principal place of business in Malawi:

Provided that the rules regarding the broadcasting of works and performances in the country from where the broadcast is made do not provide protection corresponding to the protection provided under this Act.

Regulations

119.—(1) The Minister may make regulations for implementation of the provisions of this Act generally.

(2) Without prejudice to the generality of subsection (1), such regulations may—

(a) provide for the registration and deposit of works;

(b) prescribe forms for—

(i) applications to be made;

(ii) licences to be issued; or

(iii) contracts to be concluded, pursuant to the provisions of this Act:

(c) prescribe fees payable under this Act;

(d) prescribe any matter to be prescribed under this Act;

(e) provide for the affiliation of associations to the Society and for the membership with such associations or with the Society of any persons whose works are protected under this Act.

Cap. 1:01

(3) Notwithstanding section 21(e) of the General Interpretation Act, the regulations made under this Act may provide for the contravention of which would have a fine of up to K5, 000, 000 and imprisonment for up to two years.

Repeal and savings
Cap. 49:03

120.—(1) The Copyright Act is repealed.

(2) Any subsidiary legislation made under the repealed Act in force immediately before the commencement of this Act—

(a) shall remain in force unless in conflict with this Act and be deemed to be subsidiary legislation made under this Act; and

(b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

Transitional provisions
Cap. 49:03

121. All licences, valid transfers, authorizations, approvals and exemptions granted or made under the repealed Act shall remain in force until on such a date as the Minister shall appoint by notice published in the *Gazette* and whereupon they shall lapse and holders thereof shall be required to obtain licences in accordance with this Act.

Passed in Parliament this fourteenth day of July, two thousand and sixteen.

FIONA KALEMBA
Clerk of Parliament