

Copyright

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NATIONAL LEGISLATION

REPUBLIC OF SOUTH AFRICA

The Copyright Act, 1965

An Act to consolidate and amend the law relating to copyright and matters incidental thereto

(No. 63, of 1965)¹

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Be it enacted by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Definitions

1. — (1) In this Act and in the Schedules thereto, unless the context otherwise indicates —

(i) “adaptation”, in relation to —

(a) a literary or dramatic work, means —

(i) in the case of a non-dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a dramatic work;

(ii) in the case of a dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a non-dramatic work;

(iii) a translation of the work; or

(iv) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;

(b) a musical work, means any arrangement or transcription of the work,

but without prejudice to the generality of paragraph (a) of sub-section (4) of section three;

(ii) “arbitration” means arbitration in accordance with the provisions of the Arbitration Act, 1965;

(iii) “artistic work” means —

(a) paintings, sculptures, drawings, engravings and photographs irrespective of the artistic quality thereof;

(b) works of architecture, being either buildings or models for buildings; or

(c) works of artistic craftsmanship not falling within either paragraph (a) or (b);

(iv) “author”, in relation to a photograph, means the person who at the time when the photograph is taken, is the owner of the material on which it is taken;

(v) “broadcasting” means broadcasting by means of a broadcasting service as defined in section one of the Radio Act, 1952 (Act No. 3, of 1952);

(vi) “building” includes any structure;

(vii) “cinematograph film” means any sequence of visual images recorded on material of any description (whether translucent or not) so as to be capable, by the use of that material —

(a) of being shown as a moving picture; or

(b) of being recorded on other material (whether translucent or not) by the use of which it can be so shown;

(viii) “construction” includes erection; and references to reconstruction shall be construed accordingly;

(ix) “copy”, in relation to a cinematograph film, means any print, negative, tape or other article on which the film or part of it is recorded;

(x) “copyright”, in relation to a work, means the exclusive right conferred by virtue of and subject to the provisions of this Act, to do and to authorize other persons to do in the Republic such acts in relation to that work as are in any relevant provision of this Act designated as acts restricted by the copyright in a work of that description;

(xi) “Corporation” means the South African Broadcasting Corporation established by the Broadcasting Act, 1936 (Act No. 22, of 1936);

(xii) “country” means a country, including any colony, protectorate or territory subject to the authority or under the suzerainty of any other country, or any territory over which trusteeship is exercised;

(xiii) “dramatic work” includes a choreographic work or entertainment in dumb show if reduced to writing in the form in which the work or entertainment is to be presented, but does not include a cinematograph film as distinct from a scenario or script for a cinematograph film;

(xiv) “drawing” includes any diagram, map, chart or plan;

¹ This Act was published in the *Government Gazette Extraordinary of the Republic of South Africa*, Vol. 16, No. 1128, of June 4, 1965, and came into force on September 11, 1965.

- (xv) "engraving" includes any etching, lithograph, wood-cut, print or similar work, but does not include a photograph;
- (xvi) "future copyright" means copyright which will or may come into existence in respect of any future work or class of works or other subject-matter or on the coming into operation of any provision of this Act or in any other future event; and "prospective owner" shall be construed accordingly and includes, in relation to any such copyright, a person prospectively entitled thereto by virtue of such an agreement as is mentioned in sub-section (1) of section *thirty-seven*;
- (xvii) "infringing copy" —
 - (a) in relation to a literary, dramatic, musical or artistic work or to such a published edition as is mentioned in section *sixteen*, means a reproduction otherwise than in the form of a cinematograph film;
 - (b) in relation to a sound recording, means a record embodying that recording;
 - (c) in relation to a cinematograph film, means a copy of the film; and
 - (d) in relation to a television broadcast or a sound broadcast, means a cinematograph film of it or a copy of a cinematograph film of it or a sound recording of it or a record embodying a sound recording of it,
 being in any such case an article the making of which constituted an infringement of the copyright in the work, edition, recording, film or broadcast or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in the place into which it was imported;
- (xviii) "judicial proceedings" means proceedings before any court, tribunal or person having by law power to hear, receive and examine evidence on oath;
- (xix) "licence" in Chapter IV means a licence granted by or on behalf of the owner or prospective owner of the copyright in a literary, dramatic or musical work or in a sound recording or a television broadcast, being —
 - (a) in the case of a literary, dramatic or musical work, a licence to perform in public or to broadcast or to record the work or an adaptation thereof or to cause the work or an adaptation thereof to be transmitted to subscribers to a diffusion service;
 - (b) in the case of a sound recording, a licence to make a record embodying it; and
 - (c) in the case of a television broadcast, a licence to cause it, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
- (xx) "licence scheme", in relation to licences of any description, means a scheme prepared by one or more licensing bodies, setting out the classes of cases in which they are willing or the person on whose behalf they act is willing to grant licences of that description, and the charges, if any, and terms and conditions subject to which licences may be granted in those classes of cases, and includes anything in the nature of such a scheme, whether described as a scheme or as a tariff or by any other name;
- (xxi) "licensing body" —
 - (a) in relation to such licences as are mentioned in paragraph (a) of the definition of "licence", means a society or other organization which has as one of its objects the negotiation or granting of such licences, either as owner or prospective owner of copyright or as agent for the owners or prospective owners thereof;
 - (b) in relation to such licences as are mentioned in paragraph (b) of that definition, means any owner or prospective owner of copyright in sound recordings or any person or body of persons acting as agent for any owners or prospective owners of copyright in sound recordings in relation to the negotiation or granting of such licences; and
 - (c) in relation to such licences as are mentioned in paragraph (c) of that definition, means the Corporation or any organization appointed by it in accordance with the provisions of the Fifth Schedule;
- (xxii) "literary work" includes any written table or compilation;
- (xxiii) "maker", in relation to a cinematograph film, means the person by whom the arrangements necessary for the making of the film are undertaken;
- (xxiv) "manuscript", in relation to a work, means the original document embodying the work, whether written by hand or not;
- (xxv) "Minister" means the Minister of Economic Affairs;
- (xxvi) "newsreel", in relation to a cinematograph film, means films consisting wholly or mainly of images which at the time they were taken were means of communicating news;
- (xxvii) "performance" includes generally, but subject to the provisions of sub-section (6), any mode of visual or acoustic presentation of a work, including any such presentation by the operation of radio apparatus or the exhibition of a cinematograph film or by the use of a record or by any other means, and in relation to lectures, addresses, speeches and sermons includes delivery thereof; and references to performing a work or an adaptation of a work shall be construed accordingly;
- (xxviii) "photograph" means any product of photography or of any process akin to photography, but does not include any part of a cinematograph film;
- (xxix) "place of public entertainment" includes any premises which are occupied mainly for other purposes, but are from time to time made available for hire

to such persons as may desire to hire them for purposes of public entertainment;

- (xxx) "plate" includes any stereotype, stone, block, mould, matrix, transfer, negative or other appliance;
- (xxxix) "prescribed" means prescribed by or under this Act;
- (xxxii) "publication", in relation to a cinematograph film, means the sale, letting on hire or offer for sale or hire of copies of the film to the public;
- (xxxiii) "qualified person", for the purposes of any provision of this Act which specifies the conditions under which copyright may subsist in any description of work or other subject-matter, means —
 - (a) in the case of an individual, a person who is a South African citizen or is domiciled or resident in the Republic; and
 - (b) in the case of a body corporate, a body incorporated under the laws of the Republic;
- (xxxiv) "radio apparatus" means radio apparatus within the meaning of the Radio Act, 1952 (Act No. 3, of 1952);
- (xxxv) "record" means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable of being automatically reproduced therefrom with or without the aid of some other instrument; and references to a record of a work or other subject-matter shall be construed as references to a record as herein defined by means of which it can be performed;
- (xxxvi) "regulation" means a regulation made under this Act;
- (xxxvii) "reproduction" —
 - (a) in relation to a literary, dramatic or musical work, includes a reproduction in the form of a record or of a cinematograph film; and
 - (b) in relation to an artistic work, includes a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form, and references to reproducing a work shall be construed accordingly;
- (xxxviii) "Republic" includes the territory;
- (xxxix) "sculpture" includes any cast or model made for purposes of sculpture;
- (xl) "sound broadcast" means sounds broadcasts otherwise than as part of a television broadcast;
- (xli) "sound recording" means the aggregate of the sounds embodied in and capable of being reproduced by means of a record of any description, other than a sound-track associated with a cinematograph film;
- (xlii) "television broadcast" means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images;
- (xliii) "territory" means the territory of South-West Africa including the Eastern Caprivi Zipfel referred to in section *three* of the South-West Africa Affairs Amendment Act, 1951 (Act No. 55, of 1951);
- (xliv) "this Act" includes regulations and rules made under this Act;

(xlv) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors;

(xlvi) "writing" includes any form of notation, whether by hand or by printing, typewriting or any similar process.

(2) For the purposes of this Act a television broadcast or sound broadcast shall be deemed to be made by the body by which and at the time when and from the place from which the visual images or sounds in question or both such visual images and such sounds are broadcast.

(3) Any reference in this Act to a sound-track associated with a cinematograph film shall be construed as a reference to any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded or which is issued by the maker of the film for use in conjunction with such an article.

(4) References in this Act to the transmission of a work or other subject-matter to subscribers to a diffusion service shall be construed as references to the transmission thereof in the course of a service of distributing broadcast programmes or other programmes (whether provided by the persons operating the service or other persons) over wires or other paths provided by a material substance to the premises of subscribers to the service, and where a work or other subject-matter is so transmitted —

- (a) the person operating the service, that is to say, the person who in the agreements with subscribers to the service undertakes to provide them with the service shall, whether he is the person who transmits the programmes or not, for the purposes of this Act be deemed to be the person causing the work or other subject-matter to be so transmitted; and
- (b) no person, other than the person operating the service shall for the said purposes be deemed to be causing the work or other subject-matter to be so transmitted, notwithstanding that he provides any facilities for the transmission of the programmes:

Provided that no account shall, for the purposes of this sub-section and of references to which this sub-section relates, be taken of a service of distributing broadcast or other programmes where the service is only incidental to a business of keeping or letting premises where persons reside or sleep and is operated as part of the amenities provided exclusively or mainly for residents or inmates therein.

(5) References in this Act to the doing of any act by the reception of a television broadcast or sound broadcast made by the Corporation shall be construed as references to the doing of that act by means of receiving the broadcast —

- (a) either from the transmission whereby the broadcast is made by the Corporation; or
- (b) from a transmission made by the Corporation otherwise than by way of broadcasting, but simultaneously with the transmission mentioned in the preceding paragraph,

whether the reception of the broadcast is in either case directly from the transmission in question or from a retransmission thereof made by any person from any place, whether in the Republic or elsewhere, and for the purposes of this sub-section "retransmission" means any retransmission, whether over paths provided by a material substance or not, including any retransmission made by making use of any record, print, negative, tape or other article on which the broadcast in question has been recorded.

(6) For the purposes of this Act, broadcasting or the causing of a work or other subject-matter to be transmitted to subscribers to a diffusion service shall not be deemed to constitute performance or to constitute causing visual images or sounds to be seen or heard, and where visual images or sounds are displayed or emitted by any receiving apparatus to which they are conveyed by the transmission of electromagnetic signals (whether over paths provided by a material substance or not), the operation of any apparatus whereby the signals are transmitted directly or indirectly to the receiving apparatus shall not be deemed to constitute performance or to constitute causing the visual images or sounds to be seen or heard, but in so far as the display or emission of the images or sounds constitutes a performance or causes them to be seen or heard, the performance or the causing of the images or sounds to be seen or heard, as the case may be, shall be deemed to be effected by the operation of the receiving apparatus.

(7) The provisions of this Act shall apply with reference to any act or omission outside the territorial limits of the Republic by or on any ship or aircraft registered under any law in the Republic in the same manner as it applies with reference to acts or omissions within the territorial limits of the Republic.

CHAPTER I

Copyright in original works

Nature of copyright under this Act

2. — (1) Subject to the provisions of this Act, the copyright in a work is infringed by any person, not being the owner of the copyright, who without the licence of the owner thereof does or authorizes another person to do in the Republic any of the acts which are in the relevant provisions of this Act designated as acts restricted by copyright in a work of that description in relation to that work.

(2) Any reference in the definition of "copyright" in section one to any relevant provision of this Act, in relation to a work of any description, shall be construed as a reference to the provision of this Act whereby it is provided that (subject to compliance with the conditions specified therein) copyright shall subsist in works of that description.

(3) The preceding provisions of this section shall apply, in relation to any subject-matter (other than a work) of a description to which any provision of Chapter II of this Act relates, as they apply in relation to a work.

Copyright in literary, dramatic and musical works

3. — (1) Copyright shall subsist, subject to the provisions of this Act, in every original literary, dramatic or musical

work which is unpublished and of which the author was a qualified person at the time when the work was made or, if the making of the work extended over a period, for a substantial part of that period.

(2) Where an original literary, dramatic or musical work has been published, copyright in the work shall, subject to the provisions of this Act, subsist or (if copyright therein subsisted immediately before its first publication) continue to subsist if, but only if —

- (a) the first publication of the work took place in the Republic; or
- (b) the author of the work was a qualified person at the time when the work was first published; or
- (c) the author had died before that time, but was a qualified person immediately before his death.

(3) Subject to the provisions of sub-section (2), copyright subsisting in a work by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the author died, and shall then expire.

(4) The acts restricted by copyright in a literary, dramatic or musical work are —

- (a) reproducing the work in any material form;
- (b) publishing the work;
- (c) performing the work in public;
- (d) broadcasting the work;
- (e) causing the work to be transmitted to subscribers to a diffusion service;
- (f) making any adaptation of the work;
- (g) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (e), inclusive, of this sub-section:

Provided that in the case of a musical work incorporating a literary text or choreography, an act referred to in paragraph (c), (d) or (e) of this sub-section which has been authorized by the author of the music shall not be deemed to be restricted by copyright within the meaning of this section in so far as such act relates to such literary text or choreography, but such authorization by the author of the music shall not prejudice the right of the author of the literary text or choreography to claim an equitable remuneration: Provided further that the equitable remuneration referred to in the foregoing proviso shall be determined by agreement between the parties or, in default of agreement, by arbitration.

Copyright in artistic work

4. — (1) Copyright shall subsist, subject to the provisions of this Act, in every original artistic work which is unpublished and of which the author was a qualified person at the time when the work was made or, if the making of the work extended over a period, for a substantial part of that period.

(2) Where an original artistic work has been published, copyright in the work shall, subject to the provisions of this Act, subsist or (if copyright therein subsisted immediately before its first publication) continue to subsist if, but only if —

- (a) the first publication of the work took place in the Republic; or
- (b) the author of the work was a qualified person at the time when the work was first published; or
- (c) the author had died before that time, but was a qualified person immediately before his death.

(3) Subject to the provisions of sub-section (2), copyright subsisting by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year —

- (a) in which, in the case of a work other than a photograph, the author died; or
- (b) in which, in the case of a photograph, it was first published.

and shall then expire.

(4) The acts restricted by the copyright in an artistic work are —

- (a) reproducing the work in any material form;
- (b) publishing the work;
- (c) including the work in a television broadcast;
- (d) causing a television or other programme which includes the work to be transmitted to subscribers to a diffusion service.

Ownership of copyright in literary, dramatic, musical and artistic works

5. — (1) Subject to the provisions of this section, the author of a work shall be entitled to any copyright subsisting in the work by virtue of this Chapter.

(2) Where a literary, dramatic or artistic work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall be entitled to the copyright in the work in so far as the copyright relates to publication of the work in any newspaper, magazine or similar periodical or to reproduction of the work for the purpose of its being so published, but in all other respects the author shall be entitled to any copyright subsisting in the work by virtue of this Chapter.

(3) Where a person commissions the making of an artistic work and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the person who so commissioned the work shall, subject to the provisions of sub-section (2), be entitled to any copyright subsisting therein by virtue of this Chapter.

(4) Where in a case not falling within either sub-section (2) or (3) a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be entitled to any copyright subsisting in the work by virtue of this Chapter.

(5) Sub-sections (2), (3) and (4) shall have effect subject in any particular case to any agreement excluding the operation thereof.

(6) The preceding provisions of this section shall have effect subject to the provisions of Chapter VI of this Act.

Infringements by importation, sale and other dealings

6. — (1) Without prejudice to the general provisions of section two as to infringement of copyright, the provisions of this section shall have effect in relation to copyright subsisting by virtue of this Chapter.

(2) The copyright in a literary, dramatic, musical or artistic work is infringed by any person who without the licence of the owner of the copyright —

- (a) imports an article (otherwise than for his private or domestic use) into the Republic, if to his knowledge the making of that article constituted an infringement of that copyright or would have constituted such an infringement if the article had been made in the place into which it is so imported; or
- (b) sells, lets for hire or by way of trade offers or exposes for sale or hire any article or by way of trade exhibits any article in public, if to his knowledge the making of the article constituted an infringement of that copyright, or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it was imported.

(3) Paragraph (b) of sub-section (2) shall apply in relation to the distribution of any article either —

- (a) for purposes of trade; or
- (b) for any other purpose to such an extent that the owner of the copyright in question is prejudicially affected, as it applies in relation to the sale of an article.

(4) The copyright in a literary, dramatic or musical work is also infringed by any person who permits a place of public entertainment to be used for a performance in public of the work where the performance constitutes an infringement of the copyright in the work: Provided that this sub-section shall not apply in a case where the person permitting the place of public entertainment to be so used —

- (a) was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright; or
- (b) gave the permission gratuitously or for a nominal consideration or a consideration which did not exceed an amount representing a reasonable estimate of the expenses to be incurred by him in consequence of the use of such place for the performance.

General exceptions from protection of literary, dramatic and musical works

7. — (1) No fair dealing with a literary, dramatic or musical work —

- (a) for purposes of research or private study or personal or private use of the person so dealing with that work; or
- (b) for purposes of criticism or review of that work or of another work; or
- (c) for the purpose of reporting current events —
 - (i) in a newspaper, magazine or similar periodical; or
 - (ii) by means of broadcasting or in a cinematograph film,

shall constitute an infringement of the copyright in that work, provided in the case referred to in paragraph (b) or sub-

paragraph (i) of paragraph (c) such dealing with the work is accompanied by a sufficient acknowledgment.

(2) The copyright in a literary, dramatic or musical work is not infringed by reproducing it for the purposes of judicial proceedings, or for the purposes of a report of judicial proceedings.

(3) The reading or recitation in public or the broadcast of any reasonable extract from a published literary or dramatic work, if accompanied by a sufficient acknowledgment, shall not constitute an infringement of the copyright in the work.

(4) The copyright in a published literary or dramatic work is not infringed by the inclusion of a short passage therefrom in a collection intended for the use of schools, if —

- (a) the collection is described in its title, and in any advertisements thereof issued by or on behalf of the publisher, as being so intended; and
- (b) the work in question was not published for the use of schools; and
- (c) the collection consists mainly of material in which no copyright subsists; and
- (d) the inclusion of the passage is accompanied by a sufficient acknowledgment:

Provided that this sub-section shall not apply in relation to the copyright in a work if in addition to the passage in question two or more other excerpts from works by the author thereof (being works in which copyright subsists at the time when the collection is published) are contained in that collection or are contained in that collection taken together with every similar collection (if any) published by the same publisher within the period of five years immediately preceding the publication of that collection.

(5) (a) Where by virtue of an assignment or licence or the provisions of this Act a person or the Corporation is authorized to broadcast a literary, dramatic or musical work of which but for the provisions of this sub-section he or it would not be entitled to make reproductions in the form of a record or of a cinematograph film, the copyright in the work is not infringed by making such reproductions of the work by means of his or its own facilities solely for the purpose of broadcasting the work: Provided that, notwithstanding the absence of an assignment or licence authorizing the broadcast of any such work, the Corporation may, if the author has permitted the performance of his work by any person in the Republic, make and broadcast such reproductions on condition that the author or his assignee is not thereby deprived of his right to a just remuneration for the broadcasting of the work: Provided further that if any such reproduction is not of an exceptional documentary character, this sub-section shall not apply if the reproduction is not destroyed before the end of the period of six months commencing on the day on which any of the reproductions is first made for broadcasting the work, or within such extended period (if any) as may be agreed upon between the person who made the reproduction and the person who in relation to the making of reproductions

of the description in question is the owner of the copy-right.

(b) Reproductions made by the Corporation under the provisions of this sub-section may on the grounds of their exceptional documentary character be preserved in the archives of the Corporation, which are hereby designated "official archives" for the purpose, but shall, subject to the provisions of this Act, not be used for broadcasting or for any public performance without the consent of the holder of the relevant rights in the work.

(c) The just remuneration referred to in paragraph (a) shall be determined by agreement between the parties or, in default of agreement, by arbitration.

(6) The preceding provisions of this section shall apply to the doing of any act in relation to an adaptation of a work as they apply in relation to the doing of that act in relation to the work itself.

(7) The provisions of this section shall apply where a work or an adaptation of a work is caused to be transmitted to subscribers to a diffusion service as they apply where a work or adaptation is broadcast.

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

Special exceptions as respects libraries and archives

8. — (1) The copyright in an article contained in a periodical publication is not infringed by the making or supplying of a copy of the article, if the copy is made or supplied by or on behalf of the librarian of a library of a class prescribed by the Minister by regulations (which he is hereby empowered to make) and with due observance of the conditions prescribed in such regulations.

(2) In making any regulations for the purposes of sub-section (1) the Minister shall make such provision as he may consider appropriate for ensuring —

- (a) that the libraries to which the regulations apply are not established or conducted for profit;
- (b) that the copies in question are supplied only to persons satisfying the librarian or a person acting on his behalf that they require them for purposes of research or private study and will not use them for any other purpose;
- (c) that no person is furnished under the regulations with two or more copies of the same article;
- (d) that no copy extends to more than one article contained in any one publication; and
- (e) that persons to whom copies are supplied under the regulations are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production, and may impose such other requirements (if any) as may appear to the Minister to be expedient.

(3) The copyright in a published literary, dramatic or musical work, other than an article contained in a periodical

publication, is not infringed by the making or supplying of a copy of part of the work, if the copy is made or supplied by or on behalf of the librarian of a library of a class prescribed by the Minister by regulations (which he is hereby empowered to make) and with due observance of the conditions prescribed in such regulations: Provided that this sub-section shall not apply if at the time when the copy is made the librarian concerned knows or could by reasonable inquiry ascertain the name and address of a person entitled to authorize the making of the copy.

(4) The provisions of sub-section (2), except paragraph (d) thereof, shall also apply with reference to any regulations made for the purposes of sub-section (3), and any such regulations shall include such provision as the Minister may consider appropriate for ensuring that no copy to which the regulations apply extends to more than a reasonable portion of the work in question.

(5) The copyright in a published literary, dramatic or musical work is not infringed by the making or supplying of a copy of the work or of any part of it by or on behalf of the librarian of a library of a class prescribed by the Minister by regulations (which he is hereby empowered to make), if —

- (a) the copy is supplied to the librarian of any library of a class so prescribed;
- (b) at the time when the copy is made the librarian by or on whose behalf it is supplied does not know and could not by reasonable enquiry ascertain the name and address of any person entitled to authorize the making of the copy; and
- (c) any other conditions prescribed by the regulations are complied with:

Provided that the provisions of paragraph (b) shall not apply in the case of an article contained in a periodical publication.

(6) Where at a time more than fifty years from the end of the calendar year in which the author of a literary, dramatic or musical work died, and more than one hundred years after the time or the end of the period at or during which the work was made —

- (a) copyright subsists in the work;
- (b) the work has not been published; and
- (c) the manuscript or a copy of the work is kept in a library, museum or other institution where it is (subject to any provisions regulating the institution in question) open to public inspection,

the copyright in the work is not infringed by a person who reproduces the work for purposes of research or private study or with a view to publication.

(7) Where a published literary, dramatic or musical work (in this sub-section referred to as “the new work”) incorporates the whole or any part of a work (in this sub-section referred to as “the old work”) in respect of which the circumstances specified in sub-section (6) existed immediately before the new work was published, the publication of the new work or any subsequent publication thereof, whether in the same or in an altered form, shall —

- (a) if before the new work was published such notice of the intended publication as may be prescribed by the Minister

by regulations (which he is hereby empowered to make) had been given; and

- (b) if immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publisher of the new work,

not in so far as such publication constitutes a publication of the old work, for the purposes of this Act be regarded as an infringement of the copyright in the old work or as an unauthorized publication of the old work: Provided that this sub-section shall not apply to a subsequent publication incorporating a part of the old work which was not included in the new work as originally published, unless the circumstances specified in sub-section (6) and in paragraphs (a) and (b) of this sub-section existed immediately before that subsequent publication.

(8) In so far as the publication of a work or of part of a work is by virtue of sub-section (7) not regarded as an infringement of the copyright in the work, a person who subsequently broadcasts the work or that part thereof, as the case may be, or causes it to be transmitted to subscribers to a diffusion service or performs it in public or makes a record of it, does not thereby infringe the copyright in the work.

(9) The provisions of this section shall also apply in relation to an article or other work which is accompanied by one or more artistic works provided for explaining or illustrating it (in this sub-section referred to as “illustrations”), and for that purpose —

- (a) any reference to the copyright in any article or other work shall be construed as including a reference to copyright in any such illustration;
- (b) the references in sub-sections (1) and (2) to a copy of an article shall be construed as including references to a copy of the article together with a copy of the illustrations or any of them;
- (c) the references in sub-sections (3) to (5) to a copy of the work shall be construed as including references to a copy of the work together with a copy of the illustrations or any of them, and references to a copy of part of the work shall be construed as including references to a copy of that part of the work together with a copy of any of the illustrations which were provided for explaining or illustrating that part; and
- (d) the references in sub-sections (6) and (7) to the doing of any act in relation to the work shall be construed as including references to the doing of that act in relation to the work together with any of the illustrations.

(10) Any reference in this section to an article which is the subject of copyright shall be construed as including a reference to any item of any description.

Special exception in respect of records of musical works

9. — (1) The copyright in a musical work is not infringed by a person (in this section referred to as “the manufacturer”) who makes a record of the work or of an adaptation thereof, whether from an imported disc, tape, matrix or otherwise, in the Republic, if —

- (a) records of the work or of a similar adaptation of the work have previously been made in or imported into the

Republic for the purposes of retail sale, and were so made or imported by or with the licence of the owner of the copyright in the work;

- (b) before making the record the manufacturer gave to the owner of the copyright the prescribed notice of his intention to make it;
- (c) the manufacturer intends to sell the record by retail or to supply it for the purpose of its being sold by retail by another person or to use it for making other records which are to be so sold or supplied; and
- (d) in the case of a record which is sold by retail, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, a royalty of an amount ascertained in accordance with the following provisions of this section.

(2) Subject to the following provisions of this section, the royalty mentioned in paragraph (d) of sub-section (1) shall be at the rate of five per cent of the ordinary retail selling price of the record, calculated in the prescribed manner: Provided that if the amount so calculated includes a fraction of one half of one cent, that fraction shall be reckoned as one half of one cent, and if, but for the provisions of this proviso, the amount of the royalty would be more than one half of one cent, the amount thereof shall be one cent.

(3) If at any time after the end of the period of one year from the commencement of this section it appears to the Minister that the ordinary rate of royalty or the minimum amount thereof calculated in accordance with the provisions of sub-section (2) or in accordance with those provisions as last varied by an order under this sub-section, has ceased to be equitable, either generally or in relation to any class of records, the Minister may direct that an inquiry be held in the prescribed manner, and if in consequence of such an inquiry he is satisfied of the need to do so, he may make an order prescribing such different rate or amount, either generally or in relation to any one or more classes of records, as he may consider just: Provided that—

- (a) no order shall be made under this sub-section unless a draft of the order has been laid upon the Table in, and has been approved by resolution by, the Senate and the House of Assembly; and
- (b) where an order affecting any class of records has been made under this sub-section, no further order affecting that class of records shall be made unless a period of five years has elapsed since the date on which the first-mentioned order was made.

(4) In the case of a record which comprises two or more musical works (with or without other material and either in their original form or in the form of adaptations) in which copyright subsists—

- (a) the minimum royalty shall be one half of one cent in respect of each of those works or, if a higher or lower amount is prescribed by an order under sub-section (3) as the minimum royalty, the amount so prescribed in respect of each of those works; and
- (b) if the owners of the copyright in the works are different persons, the royalty shall be apportioned among them in

such manner as may be agreed upon by them or as may in default of agreement be determined by arbitration.

(5) Where a record comprises (with or without other material) a performance of a musical work or of an adaptation of a musical work in which words are sung or are spoken incidentally to or in association with the music, and no copyright subsists in that work or, if such copyright subsists, the conditions specified in sub-section (1) are fulfilled in relation to that copyright, and—

- (a) the words consist or form part of a literary or dramatic work in which copyright subsists; and
- (b) such previous records as are referred to in paragraph (a) of sub-section (1) were made or imported by or with the licence of the owner of the copyright in that literary or dramatic work; and
- (c) the conditions specified in paragraphs (b) and (d) of sub-section (1) are fulfilled in relation to the owner of that copyright,

the making of the record shall not constitute an infringement of the copyright in the literary or dramatic work: Provided that this sub-section shall not be construed as requiring more than one royalty to be paid in respect of a record, and if copyright subsists both in the musical work and in the literary or dramatic work and their owners are different persons, the royalty shall be apportioned among such owners, and any other persons who are in terms of sub-section (4) entitled to share therein, in such manner as may be agreed upon by them or as may in default of agreement be determined by arbitration.

(6) For the purposes of this section an adaptation of a work shall be deemed to be similar to an adaptation thereof contained in previous records if the two adaptations do not substantially differ in their treatment of the work, either in respect of style or (apart from any difference in number) in respect of the performers required to perform them.

(7) A manufacturer may for the purposes of paragraph (a) of sub-section (1) make the prescribed enquiries in order to ascertain whether previous records such as are referred to in that paragraph have been made or imported as therein mentioned, and if the owner of the copyright fails to reply to those inquiries within the prescribed period, the previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

(8) The preceding provisions of this section shall apply in relation to records of part of a work or an adaptation as they apply in relation to records of the whole of it: Provided that sub-section (1) shall not apply in respect of—

- (a) a record of the whole of a work or an adaptation unless the previous records referred to in paragraph (a) of that sub-section were records of the whole of the work or of a similar adaptation; or
- (b) a record of part of a work or an adaptation unless those previous records were records of or include that part of the work or of a similar adaptation.

(9) The provisions of this section, except paragraph (a) of sub-section (1), paragraph (b) of sub-section (5), sub-sections (6) and (7) and the proviso to sub-section (8), shall apply

also in relation to musical works published before the first day of January, 1917: Provided that this sub-section shall not be construed so as to extend the operation of sub-section (5) to a record in respect of which the condition specified in paragraph (b) of that sub-section is not fulfilled, unless the words comprised in the record (as well as the musical work) were published before the first day of January, 1917, and were so published as words to be sung to or spoken incidentally to or in association with the music.

(10) Nothing in this section shall be construed as authorizing the importation of records (not being discs, tapes, matrixes or devices in which sounds are embodied and which are imported not for retail sale but for the purpose of manufacturing records) which but for the provisions of this section could not lawfully be imported, and if in the application of any provision of this Act relating to imported articles the question arises whether the making of a record made outside the Republic would have constituted an infringement of copyright if the record had been made in the Republic, that question shall be determined as if sub-section (1) of this section had not been enacted.

(11) The Minister may make regulations prescribing any matter required to be prescribed for the purposes of this section, and any such regulations made for the purposes of paragraph (d) of sub-section (1) may provide that the taking of such steps as may be specified in the regulations (being steps which the Minister considers most convenient for ensuring the receipt of the royalties by the owner of the copyright) shall constitute payment of the royalties in accordance with that paragraph.

General exceptions from protection of artistic works

10. — (1) No fair dealing with an artistic work —

- (a) for purposes of research or private study or personal or private use of the person so dealing with such work; or
- (b) for purposes of criticism or review of that work or of another work,

shall constitute an infringement of the copyright in that work, provided in the case referred to in paragraph (b) such dealing is accompanied by a sufficient acknowledgment.

(2) The copyright in a work referred to in paragraph (a) or (c) of the definition of "artistic work" in section one, which is on view in a public place or in premises open to the public or in a work of architecture, is not infringed by the making or by the publication for the purpose of reporting current events of a painting, drawing, engraving or photograph of the work or the inclusion of the work in a cinematograph film or in a television broadcast: Provided that in the case of a work referred to in paragraph (a) or (c) of the definition of "artistic work" in section one, which is permanently situated in a public place, or in the case of a work of architecture, the making or the publication of a painting, drawing, engraving or photograph of the work or the inclusion thereof in a cinematograph film or in a television broadcast whether for reporting current events or not, shall not constitute an infringement of copyright in such work.

(3) Without prejudice to the provisions of sub-section (2) the copyright in an artistic work is not infringed by the inclusion of any work referred to therein in a cinematograph film or in a television broadcast, if its inclusion therein is solely by way of background or is otherwise merely incidental to the principal matters represented in the film or broadcast.

(4) The copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film if by virtue of the provisions of sub-section (3) the making of that painting, drawing, engraving, photograph or film did not constitute an infringement of the copyright.

(5) The copyright in an artistic work is not infringed by reproducing it for the purposes of judicial proceedings or for the purposes of a report of such proceedings.

(6) Where copyright subsists in a building as a work of architecture, the copyright is not infringed by any reconstruction of that building, and where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists and has been so constructed by or with the licence of the owner of that copyright, any subsequent reconstruction of the building by reference to those drawings or plans shall not constitute an infringement of that copyright.

(7) (a) Without prejudice to the preceding provisions of this section, the copyright in an artistic work is not infringed where a person or the Corporation being by virtue of an assignment or a licence or the provisions of this Act authorized to include that work in a television broadcast, makes in the form of a cinematograph film reproductions of such work which but for the provisions of this sub-section it would not be entitled to make, by means of its own facilities solely for the purpose of including such work in a television broadcast: Provided that, notwithstanding the absence of an assignment or licence authorizing the inclusion of such work in a television broadcast, the Corporation may, if the author has permitted the performance of his work by any person in the Republic, make and broadcast such reproductions on condition that the author or his assignee is not thereby deprived of his right to a just remuneration for the inclusion of the work in a television broadcast: Provided further that if any such reproduction is not of an exceptional documentary character, this sub-section shall not apply if the reproduction is not destroyed before the end of the period of six months beginning with the day on which any of the reproductions is first made for including the work in a television broadcast, or within such extended period (if any) as may be agreed upon between the person who made the reproduction and the person who in relation to the making of reproductions of the description in question is the owner of the copyright.

(b) The provisions of paragraph (b) of sub-section (5) of section seven shall *mutatis mutandis* apply to any reproduction made in terms of this sub-section.

(c) The just remuneration referred to in paragraph (a) shall be determined by agreement between the parties or, in default of agreement, by arbitration.

(8) The provisions of this section shall apply in relation to a television programme which is caused to be transmitted to subscribers to a diffusion service as they apply in relation to a television broadcast.

Special exception in respect of industrial designs

11. — (1) Where copyright subsists in an artistic work and a corresponding design is registered under the Designs and Copyright Act, 1916 (Act No. 9, of 1916), in this section referred to as “the Act of 1916”, it shall not be an infringement of the copyright in the work —

- (a) to do anything during the subsistence of the copyright in the registered design under the Act of 1916 which is within the scope of the copyright in the design; or
- (b) to do anything after the copyright in the registered design has come to an end, which if it had been done while the copyright in the design subsisted would have been within the scope of that copyright as extended to all associated designs and articles:

Provided that this sub-section shall have effect subject to the provisions of the First Schedule in cases falling within that Schedule.

(2) Where copyright subsists in an artistic work, and —

- (a) a corresponding design is applied industrially by or with the licence of the owner of the copyright in the work; and
- (b) articles to which the design has been so applied are sold, let for hire or offered for sale or hire; and
- (c) at the time when those articles are sold, let for hire or offered for sale or hire they are not articles in respect of which the design has been registered under the Act of 1916,

the following provisions of this section shall apply.

(3) (a) Subject to the provisions of sub-section (4) it shall not be an infringement of the copyright in a work to do anything —

- (i) during the relevant period of fifteen years, which at the time when it is done would have been within the scope of the copyright in the design if the design had immediately before that time been registered in respect of all relevant articles; or
- (ii) after the end of the relevant period of fifteen years, which at the time when it is done would, if the design had been registered immediately before that time, have been within the scope of the copyright in the design as extended to all associated designs and articles.

(b) In this sub-section “the relevant period of fifteen years” means the period of fifteen years beginning with the date on which articles such as are mentioned in paragraph (b), of sub-section (2) were first sold, let for hire or offered for sale or hire in the circumstances mentioned in paragraph (c) of that sub-section, and “all relevant articles”, in relation to any time within that period, means all articles falling within the said paragraph (b), which had before that time been sold, let for hire or offered for sale or hire in those circumstances.

(4) For the purposes of this section references to the scope of the copyright in a registered design shall be construed as references to the aggregate of the things which by virtue of the Act of 1916 the registered proprietor of the design has the exclusive right to do, and references to the scope of the copyright in a registered design as extended to all associated designs and articles shall be construed as references to the aggregate of the things which by virtue of that Act the registered proprietor would have had the exclusive right to do if —

- (a) when that design was registered, there had at the same time been registered every possible design consisting of that design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, and the said proprietor had been registered as the proprietor of every such design; and
- (b) the design in question and every other design such as is mentioned in the preceding paragraph, had been registered in respect of all the articles to which it was capable of being applied.

(5) In this section “corresponding design”, in relation to an artistic work, means a design which when applied to an article results in a reproduction of that work.

Provisions as to anonymous and pseudonymous works, and works of joint authorship

12. — (1) The preceding provisions of this Chapter shall in relation to works published anonymously or pseudonymously have effect subject to the modifications specified in the Second Schedule.

(2) The provisions of the Third Schedule shall apply with respect to works of joint authorship.

CHAPTER II

Copyright in sound recordings, cinematograph films, broadcasts, etc.

Copyright in sound recordings

13. — (1) Copyright shall subsist, subject to the provisions of this Act, in every sound recording which is made in the Republic or of which the maker was a qualified person at the time when the recording was made.

(2) Copyright subsisting in a sound recording by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the recording is made, and shall then expire.

(3) Subject to the provisions of this Act, the maker of a sound recording shall be entitled to any copyright subsisting in the recording by virtue of this section: Provided that where a person commissions the making of a sound recording and pays or agrees to pay for it in money or money's worth, and the recording is made in pursuance of that commission, such person shall, subject to the provisions of Chapter VI, in the absence of any agreement to the contrary be entitled to any copyright subsisting in the recording by virtue of this section.

(4) The act restricted by copyright in a sound recording, whether a record embodying the recording is utilized directly or indirectly in doing such act, is the making of a record em-

bodying the recording: Provided that the act so restricted by copyright shall be limited to the extent that the general exceptions from copyright protection in respect of literary, dramatic and musical works provided by section *seven* shall *mutatis mutandis* apply with reference to such act, and the copyright in sound recordings provided by this sub-section shall be subject in all respects to the provisions of that section: Provided further that the provision in paragraph (a) of sub-section (1) of section *seven*, which permits fair dealing for the purpose of personal or private use, shall not be deemed to authorize the making of a record embodying a recording made directly from another record.

(5) The copyright in a sound recording is not infringed by a person who does any act referred to in sub-section (4) in the Republic in relation to a sound recording or part of a sound recording, if —

- (a) records embodying that recording or that part of the recording, as the case may be, have previously been issued to the public in the Republic; and
- (b) at the time when those records were so issued neither the records nor the containers in which they were so issued bore a label or other mark indicating the year in which the recording was made:

Provided that this sub-section shall not apply if it is shown that the records in question were not issued by or with the licence of the owner of the copyright or that the owner of the copyright had taken all reasonable steps for ensuring that records embodying the recording or part thereof would not be issued to the public in the Republic without such a label or mark either on the records themselves or on their containers.

(6) For the purposes of this Act a sound recording shall be deemed to be made at the time when the first record embodying the recording is produced, and the maker of a sound recording is the person who owns the record at the time when the recording is made.

Copyright in cinematograph films

14. — (1) Copyright shall subsist, subject to the provisions of this Act, in every cinematograph film of which the maker was a qualified person for the whole or a substantial part of the period during which the film was made, or in every cinematograph film which has been published and of which the first publication took place in the Republic.

(2) Copyright subsisting in a cinematograph film by virtue of this section —

- (a) in the case of a film which has been approved by the Board of Censors under the provisions of the Entertainments (Censorship) Act, 1931 (Act No. 28, of 1931), or by the Publications Control Board under the provisions of the Publications and Entertainments Act, 1963 (Act No. 26, of 1963), shall continue to subsist from the date of such approval and thereafter until the end of the period of fifty years from the end of the calendar year in which it was so approved;
- (b) in the case of a film which is not so approved, shall continue until the film is published and thereafter until the

end of the period of fifty years from the end of the calendar year which includes the date of its first publication or, if copyright in the film subsists by virtue only of having been first published in the Republic, as from the date of first publication until the end of the period of fifty years from the end of the calendar year which includes that date,

and shall then expire.

(3) Subject to the provisions of this Act, the maker of a cinematograph film shall be entitled to any copyright subsisting in the film by virtue of this section: Provided that where a person commissions the making of a cinematograph film and pays or agrees to pay for it in money or money's worth, and the film is made in pursuance of that commission, that person shall subject to the provisions of Chapter VI, in the absence of any agreement to the contrary, be entitled to such copyright.

(4) The acts restricted by the copyright in a cinematograph film are —

- (a) making a copy of the film;
- (b) causing the film, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public;
- (c) broadcasting the film;
- (d) causing the film to be transmitted to subscribers to a diffusion service.

(5) The copyright in a cinematograph film is not infringed by making a copy of it for the purpose of judicial proceedings or a report of judicial proceedings or by causing it to be seen or heard in public for the purpose of such proceedings.

(6) Where by virtue of this section copyright has subsisted in a cinematograph film, a person who after that copyright has expired causes the film to be seen or to be seen and heard in public or to be broadcast shall not be deemed thereby to infringe any copyright subsisting by virtue of Chapter I in any literary, dramatic, musical or artistic work.

(7) The authorization to use a work, other than a musical work, for the making of a cinematograph film shall, in the absence of agreement to the contrary, include the right to broadcast such film.

(8) The copyright in a newsreel film is not infringed by causing it to be seen or heard in public or broadcasting it or causing it to be transmitted to subscribers to a diffusion service after the end of the period of twenty-five years from the end of the calendar year in which the principal events depicted in the film occurred.

(9) For the purposes of this Act a cinematograph film shall be taken to include the sounds embodied in any sound-track associated with the film, and references to a copy of a cinematograph film shall be construed accordingly: Provided that where such sounds are also embodied in a record, other than such a sound-track or a record derived directly or indirectly from such a sound-track, the copyright in the film is not infringed by any use made of that record.

Copyright in television broadcasts and sound broadcasts

15. — (1) Copyright shall subsist, subject to the provisions of this Act —

(a) in every television broadcast made by the Corporation; and

(b) in every sound broadcast made by the Corporation.

(2) Subject to the provisions of this Act, the Corporation shall be entitled to any copyright subsisting in a television broadcast or sound broadcast made by it, and any such copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the broadcast is first made, and shall then expire.

(3) The acts restricted by the copyright in a television broadcast or sound broadcast are —

(a) in the case of a television broadcast in so far as it consists of visual images, the making, otherwise than for personal or private use of the person so using such broadcast, of —

- (i) a cinematograph film of it or a copy of such film; or
- (ii) a photograph of an individual image of it or a copy of such photograph, if, but only if, the photograph is a means of communicating news;

(b) in the case of a sound broadcast or of a television broadcast in so far as it consists of sounds, the making, otherwise than for personal or private use of the person so using such broadcast, of a sound recording of it or a record embodying such a recording;

(c) in the case of a television broadcast, causing it, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public: Provided that this paragraph shall not apply if the television broadcast is seen or heard —

- (i) in a place to which admittance is restricted to residents or inmates therein; or
- (ii) in a club or society where admittance is restricted to its members;

(d) in the case of either a television broadcast or of a sound broadcast, rebroadcasting it or transmitting it to subscribers to a diffusion service.

(4) The restrictions imposed by virtue of sub-section (3) in relation to a television broadcast or sound broadcast made by the Corporation shall apply whether the act in question is done by the reception of the broadcast or by making use of any record, print, negative, tape or other article on which the broadcast has been recorded.

(5) In relation to copyright in television broadcasts, in so far as they consist of visual images, the restrictions imposed by virtue of sub-section (3) shall apply to any sequence of images sufficient to be seen as a moving picture, or, in the case of photographs used as a means of communicating news, to any individual image thereof, and for the purpose of establishing an infringement of such copyright it shall not be necessary to prove that the act in question extended to more than such a sequence of images or an individual image, as the case may be.

(6) The copyright in a television broadcast or sound broadcast is not infringed by anything done in relation to the broadcast for the purposes of judicial proceedings or a report of judicial proceedings.

Copyright in published editions of works

16. — (1) Copyright shall subsist, subject to the provisions of this Act, in every published edition of any one or more literary, dramatic or musical works where either —

(a) the first publication of the edition took place in the Republic; or

(b) the publisher of the edition was a qualified person at the date of the first publication thereof:

Provided that this sub-section shall not apply to an edition which reproduces the typographical arrangement of a previous edition of the same work or works.

(2) Subject to the provisions of this Act, the publisher of an edition shall be entitled to any copyright subsisting in the edition by virtue of this section, and any such copyright shall continue to subsist until the end of the period of twenty-five years from the end of the calendar year in which the edition was first published, and shall then expire.

(3) The act restricted by the copyright subsisting by virtue of this section in a published edition is the making by any photographic or similar process of a reproduction of the typographical arrangement of the edition.

(4) The copyright under this section in a published edition is not infringed by the making by or on behalf of a librarian of a reproduction of the typographical arrangement of the edition, if he is the librarian of a library of a class prescribed by regulations (which the Minister is hereby empowered to make) and the conditions prescribed by those regulations are complied with.

Supplementary provisions for purposes of Chapter II

17. — (1) The provisions of this section shall have effect with respect to copyright subsisting by virtue of this Chapter in sound recordings, cinematograph films, television broadcasts and sound broadcasts and in published editions of literary, dramatic and musical works, and references in the said provisions to the relevant provision of this Chapter in relation to copyright in a subject-matter of any of those descriptions shall be construed as references to the provisions of this Chapter whereby it is provided that (subject to compliance with the conditions specified therein) copyright shall subsist in that description of subject-matter.

(2) Any copyright subsisting by virtue of this Chapter is infringed by any person who without the licence of the owner of the copyright imports an article (otherwise than for his private or domestic use) into the Republic, if to his knowledge the making of that article constituted an infringement of that copyright or would have constituted such an infringement if the article had been made in the place into which it is so imported.

(3) Any such copyright is also infringed by any person who in the Republic and without the licence of the owner of the copyright —

(a) sells, lets for hire or by way of trade offers or exposes for sale or hire any article; or
 (b) by way of trade exhibits any article in public, if to his knowledge the making of the article constituted an infringement of that copyright or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it was imported.

(4) Sub-section (3) shall apply in relation to the distribution of any articles either —

(a) for purposes of trade; or
 (b) for any other purposes to such an extent that the owner of the copyright in question is prejudicially affected, as it applies in relation to the sale of an article.

(5) Sub-sections (2), (3) and (4) shall have effect without prejudice to the general provisions of section *two* of this Act as to infringements of copyright.

(6) Where by virtue of this Chapter copyright subsists in a sound recording, cinematograph film, broadcast or other subject-matter, nothing in this Chapter shall be construed as affecting the operation of Chapter I in relation to any literary, dramatic, musical or artistic work from which that subject-matter is wholly or partly derived, and copyright subsisting by virtue of this Chapter shall be additional to and independent of any copyright subsisting by virtue of Chapter I: Provided that this sub-section shall have effect subject to the provisions of sub-section (6) of section *fourteen*.

(7) The subsistence of copyright under any of the preceding sections of this Chapter shall not affect the operation of any other of those sections under which copyright can subsist.

CHAPTER III

Remedies for infringements of copyright

Action by owner of copyright for infringement

18. — (1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright, and in any action for such an infringement all such relief by way of damages, interdict, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

(2) Where in an action for infringement of copyright it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work or other subject-matter to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement but shall be entitled to an account of profits in respect of the infringement whether any other relief is granted under this section or not.

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

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

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

(4) In an action for infringement of copyright in respect of the construction of a building, no interdict or other order shall be made —

(a) after the construction of the building has been begun so as to prevent it from being completed; or
 (b) so as to require the building, in so far as it has been constructed, to be demolished.

(5) In this Chapter “action” includes a counterclaim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.

Rights of owner of copyright in respect of infringing copies, etc.

19. — (1) Subject to the provisions of this Act, the owner of any copyright shall be entitled to all such rights and remedies, in respect of the conversion or detention by any person of any infringing copy or of any plate used or intended to be used for making infringing copies, as he would be entitled to if he were the owner of every such copy or plate and had been the owner thereof since the time when it was made: Provided that any rights of such owner of the copyright as are provided by this section shall become extinguished by prescription after a lapse of thirty years from the time when such right arose.

(2) A plaintiff shall not be entitled by virtue of this section to any damages or to any sum of money (except costs) by way of relief if it is proved or admitted that at the time of the conversion or detention in question of the infringing copy or plate —

(a) the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work or other subject-matter to which the action relates; or
 (b) where the articles converted or detained were infringing copies, the defendant believed and had reasonable grounds for believing that they were not infringing copies; or
 (c) where the article converted or detained was a plate used or intended to be used for making any articles, the defendant believed and had reasonable grounds for believing that the articles so made or intended to be made were not or (as the case may be) would not be infringing copies.

Proceedings in case of copyright subject to exclusive licence

20. — (1) The provisions of this section shall have effect as to proceedings in the case of any copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

(2) Subject to the following provisions of this section —
 (a) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies under section *eighteen* as

if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section;

- (b) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action and be entitled to the same remedies by virtue of section *nineteen* as if the licence had been an assignment; and
- (c) the owner of the copyright shall not have any rights of action or be entitled to any remedies by virtue of section *nineteen* which he would not have had or been entitled to if the licence had been an assignment.

(3) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section *eighteen* relates wholly or partly to an infringement in respect of which the owner and the licensee have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant: Provided that this sub-section shall not affect the granting of an interim interdict on the application of either the owner or the licensee.

(4) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a defendant in the action, if this section had not been enacted and the action had been brought by the owner of the copyright, shall be available to that defendant as against the exclusive licensee.

(5) Where an action is brought in the circumstances mentioned in sub-section (3) and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court shall, in assessing damages in respect of any such infringement as is mentioned in that sub-section, take into account —

- (a) if the plaintiff is the exclusive licensee, any liabilities (in respect of royalties or otherwise) to which the licensee is subject; and
- (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, any sum of money already awarded by way of relief to the other party under section *eighteen* in respect of that infringement or, as the case may require, any right of action exercisable by the other party concerned under that section in respect thereof.

(6) Where an action in so far as it is brought under section *eighteen* relates wholly or partly to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, the court shall, subject to any agreement of which the court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, apportion the profits between them as the court may consider just and give such directions as the court may consider appropriate for giving effect to that apportionment.

(7) In an action brought either by the owner of the copyright or by the exclusive licensee —

- (a) no judgment or order for the payment of damages in respect of an infringement of copyright shall be given or made under section *eighteen* if a final judgment or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and
- (b) no judgment or order for an account of profits in respect of an infringement of copyright shall be given or made under that section if a final judgment or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

(8) Where in an action brought in the circumstances mentioned in sub-section (3), whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff either at the commencement of the action or subsequently, but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(9) In this section “exclusive licensee” means a licence in writing signed by or on behalf of an owner or prospective owner of copyright, authorizing the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of the copyright, and “exclusive licensee” shall be construed accordingly, and “the other party”, in relation to the owner of the copyright, means the exclusive licensee, and, in relation to the exclusive licensee, means the owner of the copyright.

Onus of proof in actions

21. — (1) Where in the case of a literary, dramatic, musical or artistic work a name purporting to be that of the author appeared on copies of the work as published or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared shall, if it was his true name or a name by which he was commonly known, in any action brought by virtue of this Chapter be presumed, unless the contrary is proved —

- (a) to be the author of the work; and
- (b) to have made the work in circumstances not falling within sub-section (2), (3) or (4) of section *five* of this Act.

(2) In the case of a work alleged to be a work of joint authorship, sub-section (1) shall apply in relation to each person alleged to be one of the authors of the work as if references in that sub-section to the author were references to one of the authors.

(3) Where in an action brought by virtue of this Chapter with respect to a literary, dramatic, musical or artistic work which is anonymous or pseudonymous it is established —

- (a) that the work was first published in the Republic and was so published within the period of fifty years ending with the beginning of the calendar year in which the action was brought; and

(b) that a name purporting to be that of the publisher appeared on copies of the work as first published, then, unless the contrary is shown, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication: Provided that this sub-section shall not apply if the actual name of the author of a pseudonymous work is commonly known.

(4) Where in an action brought by virtue of this Chapter with respect to a literary, dramatic, musical or artistic work, it is proved or admitted that the author of the work is dead, the work shall be presumed to be an original work unless the contrary is proved.

(5) Sub-section (4) shall also apply where a work has been published, and —

- (a) the publication was anonymous or was under a name alleged by the plaintiff to have been a pseudonym; and
- (b) it is not shown that the work has ever been published under the true name of the author or under a name by which he was commonly known, or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry.

(6) If in any action brought by virtue of this Chapter with respect to copyright in a sound recording, it is proved that records embodying that recording or part thereof have been issued to the public and at the time when those records were so issued they bore a label or other mark comprising any one or more of the following statements, that is to say —

- (a) that a person named on the label or mark was the maker of the sound recording;
- (b) that the recording was first made in a year specified on the label or mark; or
- (c) that the recording was first made in a country specified on the label or mark,

that label or mark shall be sufficient evidence of the facts so stated except in so far as the contrary is proved.

Penalties and proceedings in respect of dealings which infringe copyright

22. — (1) Any person who at a time when copyright subsists in a work —

- (a) makes for sale or hire; or
- (b) sells or lets for hire or by way of trade offers or exposes for sale or hire; or
- (c) by way of trade exhibits in public; or
- (d) imports into the Republic otherwise than for his private or domestic use; or
- (e) distributes for purposes of trade or for any other purpose to such an extent that the owner of the copyright is prejudicially affected,

articles which he knows to be infringing copies of the work, shall be guilty of an offence.

(2) Any person who at a time when copyright subsists in a work makes or has in his possession a plate knowing that it is to be used for making infringing copies of the work, shall be guilty of an offence.

(3) Sub-sections (1) and (2) shall apply in relation to copyright subsisting in any subject-matter by virtue of Chapter II as they apply in relation to copyright subsisting by virtue of Chapter I.

(4) Any person who causes a literary, dramatic or musical work to be performed in public, knowing that copyright subsists in the work and that performance constitutes an infringement of the copyright, shall be guilty of an offence.

(5) Any person who causes a television broadcast, in so far as it consists of visual images, to be seen in public or, in so far as it consists of sounds, to be heard in public, knowing that copyright subsists in the television broadcast and that its performance constitutes an infringement of copyright, shall be guilty of an offence.

(6) A person convicted of an offence under sub-section (1) or under that sub-section as applied by sub-section (3) shall be liable —

- (a) in the case of a first conviction, to a fine not exceeding four rand for each article to which the offence relates;
- (b) in any other case to such a fine or to imprisonment for a period not exceeding two months:

Provided that the total fine imposed by virtue of this sub-section shall not exceed one hundred rand in respect of articles comprised in the same transaction.

(7) A person convicted of an offence under sub-section (2), including that sub-section as applied by sub-section (3), or under sub-section (4) or (5), shall be liable —

- (a) in the case of first conviction to a fine not exceeding one hundred rand;
- (b) in any other case to such a fine or to imprisonment for a period not exceeding two months.

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

Provision for restricting importation of printed copies

23. — (1) The owner of the copyright in any published literary, dramatic or musical work may give notice in writing to the Secretary for Customs and Excise (in this section referred to as "the Secretary") —

- (a) that he is the owner of the copyright in the work; and
- (b) that he requests the Secretary to treat as prohibited goods, during a period specified in the notice, copies of the work to which this section applies:

Provided that the period specified in a notice under this sub-section shall not extend beyond the end of the period for which the copyright is to subsist; Provided further that the Secretary shall not be bound to act in terms of any such notice unless the owner of the copyright furnishes him with security in such form and for such amount as he may require to secure the fulfilment of any liability and the payment of any expense which he may incur by reason of the detention by him of any

copy of the work to which the notice relates or as a result of anything done by him in relation to a copy so detained.

(2) This section shall apply, in the case of a work, to any printed copy made outside the Republic which if it had been made in the Republic would be an infringing copy of the work.

(3) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation into the Republic at a time before the end of the period specified in the notice of any copy of the work to which this section applies shall be prohibited: Provided that this sub-section shall not apply to the importation of any article by a person for his private or domestic use.

(4) Notwithstanding anything contained in the Customs and Excise Act, 1964 (Act No. 91, of 1964), a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason of the fact that any goods are treated as prohibited goods by virtue of this section.

CHAPTER IV

Copyright Tribunal

Establishment of tribunal

24. — (1) The judge or acting judge who is from time to time designated as Commissioner of Patents in terms of section four of the Patents Act, 1952 (Act No. 37, of 1952) shall also be the Copyright Tribunal (hereinafter referred to as the tribunal) for the purposes of this Act.

(2) The provisions of the Fourth Schedule to this Act shall have effect with respect to the tribunal.

(3) The Minister may appoint such officers and servants for the purposes of the tribunal, as he may in consultation with the Minister of Finance determine, at such remuneration as he may so determine: Provided that the remuneration of any such officer or servant who is an officer or employee in the public service shall be determined in accordance with the laws governing the public service.

(4) The remuneration of any officers and servants appointed under sub-section (3), and such other expenses of the tribunal as the Minister may determine in consultation with the Minister of Finance, shall be paid out of moneys appropriated by Parliament for the purpose.

General provisions as to jurisdiction of tribunal

25. — Subject to the provisions of this Chapter, the function of the tribunal shall be to determine disputes arising between licensing bodies and persons requiring licences or organizations claiming to be representative of such persons, either —

- (a) on the reference of a licence scheme to the tribunal; or
- (b) on the application of a person requiring a licence either in accordance with a licence scheme or in a case not covered by a licence scheme.

Reference of licence schemes to tribunal

26. — (1) Where at any time while a licence scheme is in operation a dispute arises with respect to the scheme between the licensing body operating the scheme and —

- (a) an organization claiming to be representative of persons requiring licences in cases of a class to which the scheme applies; or
- (b) any person claiming that he requires a licence in a case of a class to which the scheme applies,

the organization or person in question may refer the scheme to the tribunal in so far as it relates to cases of that class.

(2) The parties to a reference under this section shall be —

- (a) the organization or person at whose instance the reference is made;
- (b) the licensing body operating the scheme to which the reference relates; and
- (c) such other organizations or persons (if any) as apply to the tribunal to be made parties to the reference and are in accordance with sub-section (3) made parties thereto.

(3) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to a reference, and the tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the tribunal may, if it thinks fit, make that organization or person a party to the reference.

(4) The tribunal shall not entertain a reference under this section by an organization unless the tribunal is satisfied that the organization is reasonably representative of the class of persons which it claims to represent.

(5) Subject to the provisions of sub-section (4), the tribunal shall on any reference under this section consider the matter in dispute and after giving the parties to the reference an opportunity of presenting their respective cases, make such order, either confirming or varying the scheme in so far as it relates to cases of the class to which the reference relates, as the tribunal may determine to be reasonable in the circumstances.

(6) An order of the tribunal under this section may, notwithstanding anything contained in the licence scheme to which it relates, be made so as to be in force either indefinitely or for such period as the tribunal may determine.

(7) Where the tribunal has made an order in respect of a licence scheme which has been referred to it, such scheme shall, notwithstanding anything contained therein, in so far as it relates to the class of cases in respect of which the order was made, thereafter remain in operation subject to the terms of the order: Provided that this sub-section shall not apply in relation to a reference as respects any period after the reference has been withdrawn or has been discharged by virtue of sub-section (4) of this section.

Further reference of scheme to tribunal

27. — (1) Where the tribunal has made an order under section twenty-six with respect to a licence scheme —

- (a) the licensing body operating the scheme; or
- (b) any organization claiming to be representative of persons requiring licences in cases of the class to which the order applies; or

(c) any person claiming that he requires a licence in a case of that class,

may, subject to the provisions of sub-section (2), at any time while the order is in force, again refer the scheme to the tribunal in so far as it relates to cases of the class in respect of which the order applies.

(2) A licence scheme shall not, except with the special leave of the tribunal, again be referred to the tribunal under sub-section (1) —

(a) where the relevant order was made so as to be in force indefinitely or for a period exceeding fifteen months, before the expiration of a period of twelve months from the date on which the order was made; or

(b) where such order was made so as to be in force for a period not exceeding fifteen months, at any time more than three months before the date of expiry of the order.

(3) The provisions of section *twenty-six* shall *mutatis mutandis* apply in respect of any reference under this section or any order made thereon, and the tribunal shall have power to make such order on any such reference as it deems just.

Applications to tribunal

28. — (1) For the purposes of this Chapter a case shall be taken to be covered by a licence scheme if in accordance with a licence scheme for the time being in operation licences would be granted in cases of the class to which that case belongs: Provided that where in accordance with the provisions of a licence scheme —

(a) the licences which would be so granted would be subject to terms and conditions whereby particular matters would be excepted from the licences; and

(b) the case in question relates to one or more matters falling within such an exception,

that case shall be taken not to be covered by the scheme.

(2) Any person who claims that in a case covered by a licence scheme the licensing body operating the scheme has refused or failed to grant him a licence in accordance with the provisions of the scheme or to procure the grant to him of such a licence, may apply to the tribunal for an order under this section.

(3) An application for such an order may also be made by any person who claims that he requires a licence in a case not covered by a licence scheme, and either —

(a) that a licensing body or person has refused or failed to grant the licence or to procure the grant thereof, and that in the circumstances it is unreasonable that the licence should not be granted; or

(b) that any charges, terms or conditions subject to which a licensing body proposes that the licence should be granted are unreasonable.

(4) Where an organization (whether claiming to be representative of persons requiring licences or not) or a person (whether requiring a licence or not) applies to the tribunal to be made a party to an application under sub-section (2) or (3), and the tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the

tribunal may if it thinks fit make that organization or person a party to the application.

(5) On any application under sub-section (2) or (3) the tribunal shall give the applicant and the licensing body in question and every other party to the application an opportunity of presenting his case, and if the tribunal is satisfied that the claim of the applicant is well-founded, it shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms and conditions and subject to the payment of such charges (if any) as the tribunal may —

(a) in the case of an application under sub-section (2), determine to be applicable in accordance with the licence scheme; or

(b) in the case of an application under sub-section (3), determine to be reasonable in the circumstances.

(6) Any reference in this section to failure to grant or procure the grant of a licence shall be construed as including a reference to a failure to grant it or to procure the grant thereof within a reasonable time after being requested to do so.

Diffusion Service

29. — In a dispute concerning the transmission of broadcasts to subscribers to a diffusion service in the Republic, the tribunal shall disallow any claim under this Act —

(a) in the case of broadcasts of the Corporation, to the extent to which the Corporation's licences under this Act provide for or include such transmission to subscribers to a diffusion service;

(b) in the case of broadcasts of an organization other than the Corporation, to the extent to which the licences of such other organization provide for or include such transmission to subscribers to a diffusion service.

Effect of orders of tribunal, and supplementary provisions relating thereto

30. — (1) Any person who complies with the conditions of an order made by the tribunal under this Chapter or who has given a satisfactory undertaking to the owner or prospective owner of the copyright to comply with such conditions, shall be deemed to be the holder of a licence under this Act.

(2) In the exercise of its jurisdiction in respect of licences relating to television broadcasts, the tribunal shall have regard *inter alia* to any conditions imposed by the promoters of any entertainment or other event which is to be comprised in the broadcasts, and in particular the tribunal shall not hold a refusal or failure to grant a licence to be unreasonable if it could not have been granted consistently with those conditions.

Review of proceedings

31. — (1) Any decision, ruling or order by the tribunal shall be final, but subject to the right of any party, within ninety days after any such decision, ruling or order was given or made or within such further time as the tribunal may allow, to bring the same under review by a full bench of the provincial division of the Supreme Court having jurisdiction.

(2) Any reference in this Chapter to the giving of an opportunity to any person of presenting his case shall be construed as a reference to the giving to that person of an opportunity at his option of submitting representations in writing or of being heard or of submitting representations in writing and being heard.

CHAPTER V

Extension or restriction of operation of Act

Application of Act to countries to which it does not extend

32. — (1) The State President may by proclamation in the *Gazette* provide that any provision of this Act specified in the proclamation shall in the case of any country so specified apply—

- (a) in relation to literary, dramatic, musical or artistic works, cinematograph films or editions first published, and sound recordings first made, in that country, as it applies in relation to literary, dramatic, musical or artistic works, cinematograph films or editions first published, and sound recordings first made, in the Republic;
- (b) in relation to persons who at a material time are citizens or subjects of that country as it applies in relation to persons who at such a time are South African citizens;
- (c) in relation to persons who at a material time are domiciled or resident in that country as it applies in relation to persons who at such a time are domiciled or resident in the Republic;
- (d) in relation to bodies incorporated under the laws of that country as it applies in relation to bodies incorporated under the laws of the Republic;
- (e) in relation to television broadcasts and sound broadcasts made from places in that country or by one or more organizations constituted in or under the laws of that country as it applies in relation to television broadcasts and sound broadcasts made by the Corporation.

(2) A proclamation under this section may provide—

- (a) that any provisions referred to therein shall apply subject to such exceptions or modifications as may be specified in the proclamation;
- (b) that such provisions shall so apply either generally or in relation to such classes of works or classes of cases as may be so specified.

(3) No proclamation shall be issued under this section in respect of any country which is not a party to a convention relating to copyright to which the Republic is also a party, unless the State President is satisfied that, in respect of the class of works or other subject-matter to which the proclamation relates, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

Provisions as to international organizations

33. — (1) Where it appears to the State President that one or more sovereign powers or the government or governments thereof are members of an organization, and that it is expedient that the provisions of this section should apply to that organization, he may by proclamation in the *Gazette*

declare that the organization is one to which this section applies.

(2) Where an original literary, dramatic, musical or artistic work is made by or under the direction or control of an organization to which this section applies, under circumstances in which but for the provisions of this section copyright would not subsist in the work but would, if the author had been a South African citizen at the time when it was made, have subsisted immediately after it was made and would thereupon have vested in the organization, copyright shall subsist in the work as if the author had been a South African citizen when it was made, and shall continue to subsist so long as the work remains unpublished, and the organization shall, subject to the provisions of this Act, be entitled to that copyright.

(3) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an organization to which this section applies, in such circumstances that, but for the provisions of this sub-section, copyright would not subsist in the work immediately after the first publication thereof and either—

- (a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright (if any) in the work; or
 - (b) the work was made in such circumstances that if it had been first published in the Republic the organization would have been entitled to the copyright in the work,
- copyright in the work shall subsist or (if copyright therein subsisted immediately before its first publication) continue to subsist, as if it had been first published in the Republic, until the end of the period of fifty years from the end of the calendar year in which it was first published, and the organization shall, subject to the provisions of Chapter VI, be entitled to that copyright.

(4) The provisions of Chapter I, except the provisions thereof relating to the subsistence, duration or ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section as they apply in relation to copyright subsisting by virtue of the said Chapter.

(5) An organization to which this section applies, which otherwise has not or at some material time otherwise had not the legal capacity of a body corporate, shall have and shall be deemed at all material times to have had the legal capacity of a body corporate for the purposes of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

Extended application of provisions relating to broadcasts

34. — The State President may make regulations providing that, subject to such exceptions and modifications (if any) as may be specified therein, such provisions of this Act relating to television broadcasts or to sound broadcasts as may he so specified shall apply in relation to the operation of radio apparatus by way of the emission (as opposed to reception) of electro-magnetic energy—

- (a) by such persons or classes of persons, other than the Corporation, as may be specified in the regulations; and

(b) for such purposes (whether involving broadcasting or not) as may be so specified, as they apply in relation to television broadcasts or, as the case may be, to sound broadcasts made by the Corporation.

Denial of copyright to citizens of countries not giving adequate protection to the work of South African citizens

35. — (1) If it appears to the State President that the laws of any country fail to give adequate protection to works of South African citizens to which this section applies or fail to give such protection in the case of one or more classes of such works (whether the lack of protection relates to the nature of the work or the country of its author or both), the State President may make regulations as provided in this section with reference to such works in respect of that country.

(2) Regulations under this section may provide that copyright in works to which this section applies which were first published after a date specified in the regulations, shall not subsist, either generally or in such classes of cases as may be so specified, if at the time of their first publication the authors thereof —

- (a) were citizens or subjects of the country in question and were not at that time domiciled or resident in the Republic; or
- (b) were bodies incorporated under the laws of that country.

(3) In making regulations under this section the State President shall have regard to the nature and extent of the lack of protection for works of South African citizens in consequence of which the regulations are made.

(4) This section shall apply in respect of literary, dramatic, musical and artistic works, sound recordings and cinematograph films.

(5) In this section —

“work of a South African citizen” means a work of which the author at the time when the work was made was a qualified person for the purposes of the relevant provisions of this Act;

“author”, in relation to a sound recording or a cinematograph film, means the maker of the recording or film.

CHAPTER VI

Miscellaneous and supplementary provisions

Assignments and licences in respect of copyright

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

(2) An assignment of copyright may be limited in any of the following ways or in any combination of two or more of those ways, that is to say —

- (a) so as to apply to one or more, but not all, of the classes of acts which by virtue of this Act the owner of the copyright has the exclusive right to do, including any one or more classes of acts not separately designated in this Act as being restricted by the copyright, but falling within any of the classes of acts so designated;

(b) so as to apply to any one or more, but not all, of the countries in relation to which the owner of the copyright has by virtue of this Act that exclusive right;

(c) so as to apply to part, but not the whole, of the period for which the copyright is to subsist,

and any reference in this Act to a partial assignment shall be construed as a reference to an assignment so limited.

(3) No assignment of copyright, whether total or partial, shall have effect unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence relates, is the owner of the copyright shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser, and any reference in this Act to the doing in relation to any copyright of anything with or without the licence of the owner of the copyright shall be construed accordingly.

Prospective ownership of copyright

37. — (1) Where by an agreement made in relation to any future copyright and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright wholly or partially to another person (in this sub-section referred to as “the assignee”), then if, on the coming into existence of the copyright, the prospective owner or a person claiming under him would but for the provisions of this sub-section be entitled as against all other persons to require the copyright to be vested in him (wholly or partially), as the case may be, the copyright shall on its coming into existence vest in the assignee or his successor in title.

(2) Where at the time when any copyright comes into existence the person who, if he were then living, would be entitled to the copyright, is dead, the copyright shall devolve as if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) Sub-section (4) of section *thirty-six* shall apply in relation to a licence granted by a prospective owner of any copyright as it applies in relation to a licence granted by the owner of a subsisting copyright, as if any reference in that sub-section to the owner's interest in the copyright included a reference to his prospective interest therein.

(4) The provisions of the Fifth Schedule shall have effect with respect to assignments and licences in respect of copyright (including future copyright) in television broadcasts.

Copyright to pass under will with unpublished work

38. — Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic or musical work or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil thereto, 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.

Provisions as to the State

39. — (1) Copyright shall subsist in any original literary, dramatic, musical or artistic work made by or under the direction or control of the Government in which but for the provisions of this section such copyright would not subsist, and shall be vested in the State.

(2) The State shall, subject to the provisions of this Chapter, be entitled —

- (a) to the copyright in every original literary, dramatic or musical work first published in the Republic, if so published by or under the direction or control of the State;
- (b) to the copyright in every original artistic work first published in the Republic, if so published, by or under such direction or control.

(3) Copyright in a literary, dramatic or musical work to which the State is entitled in accordance with sub-section (1) shall —

- (a) where the work is unpublished, continue to subsist so long as the work remains unpublished; and
- (b) where the work is published, subsist or (if copyright in the work subsisted immediately before its first publication) continue to subsist until the end of the period of fifty years from the end of the calendar year in which the work was first published, and shall then expire.

(4) Copyright in an artistic work to which the State is entitled in accordance with the provisions of sub-section (1) or (2) shall continue to subsist until and expire —

- (a) in the case of such a work other than an engraving or a photograph, at the end of the period of fifty years from the end of the calendar year in which the work was made; or
- (b) in the case of an engraving or a photograph, at the end of the period of fifty years from the end of the calendar year in which the engraving or photograph was first published.

(5) Copyright shall subsist in any sound recording or cinematograph film made by or under the direction or control of the State in which but for the provisions of this section such copyright would not subsist and shall be vested in the State, and the period of subsistence of such copyright shall be the same period as if it were copyright subsisting by virtue of and owned in accordance with the provisions of section *thirteen* or *fourteen*, whichever is applicable.

(6) The preceding provisions of this section shall have effect subject to any agreement made by or on behalf of the State with the author of the work or the maker of the sound recording or cinematograph film, as the case may be, whereby it is agreed that the copyright in the work, recording or film shall vest in the author or maker or in another person designated in the agreement in that behalf.

(7) In relation to copyright subsisting by virtue of this section —

- (a) in the case of a literary, dramatic, musical or artistic work, the provisions of Chapter I, with the exception of provisions thereof relating to the subsistence, duration or ownership of copyright; and
- (b) in the case of a sound recording or cinematograph film, the provisions of Chapter II with the exception of provisions thereof relating to the subsistence or ownership of copyright,

shall apply as those provisions apply in relation to copyright subsisting by virtue of Chapter I or Chapter II, whichever is applicable.

(8) For administrative purposes copyright which vests in the State shall be deemed to vest in such officer as may be designated by the State President by proclamation in the *Gazette*: Provided that until such time as it is otherwise provided by proclamation under this section, the Government Printer shall continue to exercise the authority vested in him by Government Notice No. 1976 dated November 25, 1938, in terms of which the copyright in publications by the Government is vested in him on behalf of the State.

(9) In this section "State" includes the Administration of the territory.

Broadcasts and demonstrations of sound recordings and cinematograph films, and diffusion of broadcast programmes

40. — (1) Where a television broadcast or sound broadcast is made by the Corporation, and the broadcast is an authorized broadcast, any person who by the reception of the broadcast causes a cinematograph film to be seen or heard in public shall be in the like position in any proceedings for infringement of the copyright (if any) in the film under section *fourteen*, as if he had been the holder of a licence granted by the owner of that copyright to cause the film to be seen or heard in public by the reception of the broadcast.

(2) Where a television broadcast or sound broadcast is made by the Corporation, and the broadcast is an authorized broadcast, any person who by the reception of the broadcast causes a programme to be transmitted to subscribers to a diffusion service being a programme comprising a literary, dramatic or musical work or an adaptation of such a work or an artistic work or a cinematograph film shall be in the like position in any proceedings for infringement of the copyright (if any) in the work or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation or film in any programme caused to be transmitted by him to subscribers to that service by the reception of the broadcast.

(3) If in the circumstances mentioned in sub-section (1) or (2) the person causing the cinematograph film to be seen or heard or the programme to be transmitted, as the case may be, infringed the copyright in question by reason of the fact that the broadcast was not an authorized broadcast, no proceedings shall be brought against that person in respect of his infringement of that copyright, but such infringement shall be taken into account in assessing damages in any proceedings against the Corporation in respect of the infringement of that copyright in so far as that copyright was infringed by it in making the broadcast.

(4) For the purposes of this section a broadcast shall be deemed, in relation to a work or cinematograph film, to be an authorized broadcast if, but only if, it is made by or with the licence of the owner of the copyright in the work or film or by virtue of this Act.

(5) A person licensed to deal in apparatus capable of —

- (a) receiving broadcasts; or
- (b) making sound recordings or cinematograph films or causing them to be seen or heard in public; or
- (c) causing records to be heard in public,

does not infringe any copyright by *bona fide* demonstrations on his premises of such apparatus or records to a specific client.

Use of copyright material for education

41. — (1) Where copyright subsists in a literary, dramatic, musical or artistic work, sound recording, cinematograph film or broadcast, the copyright shall not be taken to be infringed by reason only that the work or subject-matter is reproduced or an adaptation of the work or subject-matter is made or reproduced —

- (a) in the course of instruction, whether at a school or elsewhere, where the reproduction or adaptation is made by a teacher or pupil otherwise than by the use of a duplicating process; or
- (b) as part of the questions to be answered in an examination or in an answer to such a question.

(2) Where a literary, dramatic or musical work —

- (a) is performed in class or otherwise in the presence of an audience; and
- (b) is so performed in the course of the activities of a school by a person who is a teacher in or a pupil in attendance at the school,

the performance shall not be deemed for the purposes of this Act to be a performance in public if the audience is limited to persons who are teachers in or pupils in attendance at the school or are otherwise directly connected with the activities of the school.

(3) For the purposes of sub-section (2) a person shall not be deemed to be directly connected with the activities of a school by reason only that he is a parent or guardian of a pupil in attendance at the school.

(4) Sub-sections (2) and (3) shall apply in relation to cinematograph films and television broadcasts as they apply in relation to literary, dramatic and musical works, as if any reference to performance were a reference to the act of causing the sounds or visual images in question to be heard or seen.

(5) Nothing in this section shall be construed —

- (a) as extending the operation of any provisions of this Act as to the acts restricted by copyright of any description; or
- (b) as derogating from the operation of any exemption conferred by any provision of this Act other than this section.

(6) In this section “school” includes any institution established for the training or education of students, and “duplicating process” means any process involving the use of an appliance for producing multiple copies.

Special provisions as to public records

42. — Where any work in which copyright subsists or a reproduction of any such work is comprised in any records belonging to the State which are under the charge and superintendence of any State Department or the Administration of the territory and are open to public inspection, the copyright in the work is not infringed by the making or the supplying to any person of any reproduction of the work by or under the direction of any officer in whose custody such records may be.

False attribution of authorship

43. — (1) The provisions of this section shall have effect in relation to any literary, dramatic, musical or artistic work, and any reference in this section to a work shall be construed as a reference to such a work.

(2) A person (in this sub-section referred to as “the offender”) shall be deemed to have contravened the restrictions imposed by this section in relation to any other person if without the licence of that other person he does any of the following acts in the Republic, that is to say —

- (a) inserts or affixes that other person’s name in or on a work of which that person is not the author or in or on a reproduction of such a work in such a way as to imply that such other person is the author of the work; or
- (b) publishes or sells or lets for hire or by way of trade offers or exposes for sale or hire or by way of trade exhibits in public, a work in or on which that other person’s name has been so inserted or affixed, if to the offender’s knowledge that other person is not the author of the work; or
- (c) does any of the acts mentioned in paragraph (b) in relation to or distributes reproductions of a work, being reproductions in or on which that other person’s name has been so inserted or affixed, if to the offender’s knowledge that other person is not the author of the work; or
- (d) performs in public or broadcasts a work of which that other person is not the author, as being a work of which he is the author, if to the offender’s knowledge that other person is not the author of the work.

(3) Sub-section (2) shall apply where a work is contrary to the facts represented as being an adaptation of the work of another person as it applies where a work is so represented as being the work of another person.

(4) In the case of an artistic work which has been altered after the author parted with the possession of it, the restrictions imposed by this section shall be deemed to have been contravened in relation to the author by a person who in the Republic without the licence of the author —

- (a) publishes, sells or lets for hire or by way of trade offers or exposes for sale or hire the work as so altered, as being the unaltered work of the author; or
- (b) publishes, sells or lets for hire or by way of trade offers or exposes for sale or hire a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author,

if to his knowledge it is not the unaltered work, or, as the case may be, a reproduction of the unaltered work of the author.

(5) Sub-sections (2), (3) and (4) shall apply with respect to anything done in relation to the work of any other person after that person's death, as if any reference to that person's licence were a reference to a licence given by him or by his personal representatives: Provided that nothing in those sub-sections shall apply to anything done in relation to a person more than twenty years after that person's death.

(6) In the case of an artistic work in which copyright subsists the restrictions imposed by this section shall also be deemed to have been contravened in relation to the author of the work by a person who in the Republic —

(a) publishes or sells or lets for hire or by way of trade offers or exposes for sale or hire or by way of trade exhibits in public a reproduction of the work as being a reproduction made by the author of the work; or

(b) distributes reproductions of the work as being reproductions made by the author of the work,

if (in any such case) the reproduction or reproductions was or were to his knowledge not made by the author.

(7) Sub-sections (1) to (6), inclusive, of this section shall *mutatis mutandis* apply with respect to acts done in relation to two or more persons in connection with the same work.

(8) The restrictions imposed by this section shall not be enforceable by any criminal proceedings, but any contravention of those restrictions in relation to a person shall be actionable at his suit or, if he is dead, at the suit of his personal representatives.

(9) Any damages recovered under this section by personal representatives in respect of a contravention committed in relation to a person after his death, shall devolve as part of his estate as if the right of action had subsisted and had been vested in him immediately before his death.

(10) Nothing in this section shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this section: Provided that any damages recovered by virtue of this section shall be taken into account in assessing damages in proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

(11) In this section "name" includes initials or a monogram.

Savings

44. — (1) Nothing in this Act shall affect any right or privilege of the State subsisting otherwise than by virtue of any law or any right or privilege of the State or of any other person under any law not expressly repealed, amended or modified by this Act.

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

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

(4) Subject to the preceding provisions of this section, no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

General provisions as to proclamations and regulations

45. — Where a power to issue any proclamation or make any regulation or rule is conferred by any provision of this Act, any such proclamation, regulation or rule may be made either in respect of all or in respect of any one or more of the matters to which the provision relates, and different provision may be made in respect of different classes of cases to which the proclamation, regulation or rule applies.

Delivery of copies of books to certain libraries

46. — (1) The publisher of every book first published in the Republic, whether printed therein or not, shall within one month after the day on which such book is first delivered out of the press for issue, deliver free of any charge one copy or (if such book is out of print or sold out) one facsimile copy thereof, bound, sewed or stitched on the best paper and in the best manner in which such book is issued, to each of the following libraries, namely, the Library of Parliament, Cape Town, the South African Public Library, Cape Town, the Library of the Natal Society, Pietermaritzburg, the State Library, Pretoria and the Bloemfontein Public Library, and in the case of an encyclopaedia, newspaper, review, magazine or work published in series of numbers or parts, copies of all such numbers or parts whenever published shall likewise be delivered.

(2) Any publisher who fails to comply with this section shall be guilty of an offence and liable on conviction to a fine not exceeding ten rand, which shall be payable to the authority to which the book in question was required to be delivered together with an amount equal to the value of such book.

(3) For the purposes of this section, a certificate given under the hand of the librarian of a library referred to in sub-section (1) that a book has not been received shall be *prima facie* evidence of the facts stated in the certificate.

(4) For the purposes of this section the expression "book" includes every part or division of a book, pamphlet, sheet of letterpress, sheet of music, map, plan, chart or table separately published, whatever process may be used to reproduce the written words, but shall not include any second or subsequent edition of a book unless such edition contains additions or alterations either in the letterpress or in maps, prints or other engravings belonging thereto.

Supplementary provisions as to interpretation

47. — (1) Except in so far as the context otherwise requires, any reference in this Act to the doing of an act in relation to a work or other subject-matter shall be deemed to include a reference to the doing of that act in relation to a substantial part thereof, and any reference to a reproduction, adaptation or copy of a work or a record embodying a

sound recording shall be deemed to include a reference to a reproduction, adaptation or copy of a substantial part of the work or a record embodying a substantial part of the sound recording, as the case may be: Provided that the provisions of this sub-section shall not apply in respect of any reference in sub-section (1) or (2) of section *three*, sub-section (1) or (2) of section *four*, sub-section (2) or (3) of section *thirty-three*, section *thirty-eight* or sub-section (2), (3) or (4) of section *thirty-nine*, to the publication or absence of publication of a work.

(2) With regard to publication, the following provisions shall apply, that is to say—

- (a) the performance or the issue of records of a literary, dramatic or musical work, the exhibition of an artistic work, the construction of a work of architecture, and the issue of photographs or engravings of a work of architecture or of a sculpture, shall not constitute publication of the work;
- (b) except in so far as it may constitute an infringement of copyright or a contravention of any restriction imposed by section *forty-three*, a publication which is merely colourable and not intended to satisfy the reasonable requirements of the public shall be disregarded;
- (c) subject to the preceding paragraphs, a literary, dramatic or musical work or an edition of such a work or an artistic work, shall be deemed to have been published if, but only if, reproductions of the work or edition have been issued to the public;
- (d) a publication in the Republic or in any other country shall not be regarded as being other than the first publication by reason only of an earlier publication elsewhere, if the two publications took place within a period of not more than thirty days,

and in determining for the purposes of paragraph (c) whether reproductions of a work or edition have been issued to the public, sub-section (1) shall not apply.

(3) In determining for the purposes of any provision of this Act—

- (a) whether a work or other subject-matter has been published; or
- (b) whether a publication of a work or other subject-matter was the first publication thereof; or
- (c) whether a work or other subject-matter was published or otherwise dealt with in the lifetime of a person,

no account shall be taken of any unauthorized publication or of the doing of any other unauthorized act; and a publication or other act shall subject to sub-section (7) of section *eight* for the purposes of this sub-section be deemed to have been unauthorized—

- (i) if copyright subsisted in the work or other subject-matter and the act in question was done otherwise than by or with the licence of the owner of the copyright; or
- (ii) if copyright did not subsist in the work or other subject-matter and the act in question was done otherwise than by or with the licence of the author or (in the case of a sound recording or a cinematograph film or an edition of a literary, dramatic or musical work, the maker or

publisher, as the case may be) a person lawfully claiming under him:

Provided that nothing in this sub-section shall affect any provision of this Act as to the acts restricted by copyright or as to acts constituting infringements of copyright or any provision of section *forty-three*.

(4) Any reference in this Act to the time at which or the period during which a literary, dramatic or musical work was made shall be construed as a reference to the time or period at or during which it was first reduced to writing or some other material form.

(5) In the case of any copyright to which (whether in consequence of a partial assignment or otherwise) different persons are entitled in respect of the application of the copyright—

- (a) to the doing of different acts or classes of acts; or
- (b) to the doing of one or more acts or classes of acts in different countries or at different times,

the owner of the copyright shall for the purposes of this Act be deemed to be the person who is entitled to the copyright in respect of its application to the doing of the particular act or class of acts or, as the case may be, to the doing thereof in the particular country or at the particular time which is relevant to the purpose in question, and, in relation to any future copyright to which different persons are prospectively entitled, references in this Act to the prospective owner of the copyright shall be construed accordingly.

(6) Without prejudice to the generality of sub-section (5), where under any provision of this Act a question arises whether an article of any description has been imported or sold or otherwise dealt with without the licence of the owner of any copyright, the owner of the copyright shall, for the purpose of determining that question, be deemed to be the person entitled to the copyright in respect of its application to the making of articles of that description in the country into which the article was imported or, as the case may be, in which it was sold or otherwise dealt with.

(7) Where the doing of anything is authorized by the grantee of a licence or a person deriving title from the grantee, and it is within the terms (including any implied terms) of the licence for him to authorize it, it shall for the purposes of this Act be deemed to be done with the licence of the grantor and of every other person (if any) upon whom the licence is binding.

(8) References in this Act to deriving title shall be construed as references to deriving title either directly or indirectly.

(9) Where in the case of copyright of any description—

- (a) provisions contained in this Act specify certain acts as being restricted by the copyright or as constituting infringements thereof; and
- (b) other provisions of this Act specify certain acts as not constituting infringements of the copyright,

the omission or exclusion of any matter from the latter provisions shall not be taken to extend the operation of the former provisions.

Transitional provisions and repeals

48. — (1) The transitional provisions contained in the Sixth Schedule shall have effect for the purposes of this Act.

(2) Subject to the said transitional provisions, sections *one hundred and forty-one to one hundred and sixty*, inclusive, of the Designs and Copyright Act, 1916 (Act No. 9, of 1916), and so much of the rest of that Act as relates to copyright are hereby repealed: Provided that any proclamation, regulation or rule having effect under any provision so repealed and in force at the commencement of this Act, shall continue in force and may be repealed, altered or amended as if it had been made under this Act.

(3) The Designs and Copyright Act, 1916, is hereby amended —

- (a) by the substitution in section *one hundred and ninety-five* for the words "Designs and Copyright" of the word "Designs"; and
- (b) by the substitution in the long title for the words "Designs and Copyright" of the word "Designs".

(4) Sections *fourteen to seventeen bis*, inclusive, of the Patents, Designs, Trade Marks and Copyright Proclamation, 1923 (Proclamation No. 17, of 1923), of the territory, and so much of the rest of that Proclamation (except section *eighteen bis*) as relates to copyright are hereby repealed: Provided that any regulation or rule having effect under any provision so repealed and in force in the territory at the commencement of this Act, shall continue in force and may be repealed, altered or amended as if it had been made under this Act.

(5) For the purposes of the application of the Sixth Schedule in the territory, any reference in that Schedule to any provision of the Designs and Copyright Act, 1916, shall be deemed to be a reference to the corresponding provisions of Proclamation No. 17, of 1923, of the territory.

(6) The Patents, Designs, Trade Marks and Copyright Proclamation, 1923, of the territory, is hereby amended —

- (a) by the substitution in paragraph 24 for the words "Trade Marks and Copyright" of the words "and Trade Marks"; and
- (b) by the substitution in the preamble for the words "Trade Marks and Copyright" of the words "and Trade Marks".

Application to South-West Africa

49. — This Act shall apply also in the territory.

Regulation and control of circulation, presentation or exhibition of works

50. — (1) Notwithstanding anything to the contrary in this Act contained, the State President may make such regulations as he may consider necessary in regard to the circulation, presentation or exhibition of any work or production.

(2) Such regulations may empower any person specified therein to prohibit the circulation, presentation or exhibition of any such work or production or to authorize the circulation, presentation or exhibition thereof on such conditions as may be specified in those regulations.

(3) The circulation, presentation or exhibition of any work or production in pursuance of authority granted in terms

of such regulations shall not constitute an infringement of copyright in such work or production, but the author shall not thereby be deprived of his right to a reasonable remuneration, which shall in default of agreement be determined by arbitration.

Short title and commencement

51. — (1) This Act shall be called the Copyright Act, 1965, and shall come into operation upon a date to be fixed by the State President by proclamation in the *Gazette*¹⁾.

(2) Different dates may be so fixed in respect of different provisions of this Act or, in the case of sub-section (2) of section *forty-eight*, in respect of different provisions of the Designs and Copyright Act, 1916, thereby repealed.

FIRST SCHEDULE

False registration of industrial designs

1. The provisions of this Schedule shall have effect where —

- (a) copyright subsists in an artistic work and proceedings are brought under this Act relating to that work;
- (b) a corresponding design has been registered under the Act of 1916, and the copyright in the design subsisting by virtue of that registration has not expired by effluxion of time before the commencement of those proceedings; and
- (c) it is proved or admitted in the proceedings that the person registered as the proprietor of the design was not the proprietor thereof for the purposes of the Act of 1916 and was so registered without the knowledge of the owner of the copyright in the artistic work.

2. For the purposes of such proceedings, but subject to the provisions of paragraph 3, the registration shall be treated as never having been effected, and sub-section (1) of section *eleven* of this Act shall not apply in relation thereto, and nothing in the Act of 1916 shall be construed as affording any defence in such proceedings.

3. Notwithstanding anything contained in paragraph 2, if in the proceedings it is proved or admitted that any act to which the proceedings relate —

- (a) was done in pursuance of an assignment or licence made or granted by the person registered as proprietor of the design; and
- (b) was so done in good faith in reliance upon the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the entry in the register of designs relating thereto,

sub-section (1) of section *eleven* of this Act shall apply in relation to that act for the purposes of the first-mentioned proceedings.

4. In this Schedule "corresponding design" has the meaning assigned to it by sub-section (5) of section *eleven* of this Act and "Act of 1916" means the Designs and Copyright Act, 1916 (Act No. 9, of 1916).

SECOND SCHEDULE

Duration of copyright in anonymous and pseudonymous works

1. Where the first publication of a literary, dramatic or musical work or of an artistic work other than a photograph is anonymous or pseudonymous —

- (a) sub-section (3) of section *three* or, as the case may be, sub-section (3) of section *four* of this Act shall, subject to the following provisions of this Schedule, not apply; and
- (b) any copyright subsisting in the work by virtue of either of those sub-sections shall, subject to the said provisions, continue to sub-

¹⁾ The relevant proclamation No. 224 provided for the entry into force on September 11, 1965.

sist until the end of the period of fifty years from the end of the calendar year in which the work was first published, and shall then expire.

2. Paragraph 1 shall not apply in the case of a work if at any time before the end of the period mentioned in that paragraph it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry.

3. For the purposes of this Schedule a publication of a work under two or more names shall not be taken to be pseudonymous unless all those names are pseudonyms.

THIRD SCHEDULE

Works of joint authorship

1. In relation to a work of joint authorship, the references to the author in sub-sections (1) and (2) of section *three* and sub-sections (1) and (2) of section *four* of this Act and in paragraph 2 of the Second Schedule shall be construed as references to any one or more of the authors.

2. In relation to a work of joint authorship, other than a work to which paragraph 3 applies, references to the author in sub-section (3) of section *three*, sub-section (3) of section *four* and sub-section (6) of section *eight* of this Act shall be construed as references to the author who died last.

3. (1) This paragraph shall apply in respect of any work of joint authorship which was first published under two or more names of which one or more (but not all) were pseudonyms, and also to any work of joint authorship which was first published under two or more names all of which were pseudonyms if at any time within the period of fifty years from the end of the calendar year in which the work was first published it is possible for a person without previous knowledge of the facts to ascertain the identity of any one or more (but not all) of the authors by reasonable inquiry.

(2) In relation to a work to which this paragraph applies, references to the author in sub-section (3) of section *three* and sub-section (3) of section *four* of this Act shall be construed as references to the author whose identity was disclosed or, if the identity of two or more of the authors was disclosed, as references to that one of those authors who died last.

(3) For the purposes of this paragraph the identity of an author shall be taken to have been disclosed if either—

- (a) the name under which the work was published was not a pseudonym; or
- (b) it is possible to ascertain his identity as provided in sub-paragraph (1) of this paragraph.

4. (1) This paragraph shall in respect of any work apply in relation to any person if, had he been the sole author of the work, copyright would not have subsisted in the work by virtue of Chapter I of this Act.

(2) In relation to a work of joint authorship of which one or more of the authors are persons in respect of whom sub-paragraph (1) applies, sub-section (1) of section *five* of this Act shall have effect as if the author or authors, other than persons to whom sub-paragraph (1) applies, had been the sole author or (as the case may be) sole joint authors of the work.

5. In the proviso to sub-section (4) of section *seven* of this Act, the reference to other excerpts from works by the author of the passage in question—

- (a) shall be taken to include a reference to excerpts from works by the author of that passage in collaboration with any other person; or
- (b) if the passage in question is from a work of joint authorship, shall be taken to include a reference to excerpts from works by any one or more of the authors of that passage or by any one or more of those authors in collaboration with any other person.

6. Subject to the preceding provisions of this Schedule, any reference in this Act to the author of a work shall (unless it is otherwise expressly provided) be construed, in relation to a work of joint authorship, as a reference to all the authors of the work.

FOURTH SCHEDULE

Provisions as to Copyright Tribunal

1. The tribunal may order that the costs or expenses of any proceedings before it incurred by any party shall be paid by any other party, and may tax or settle the amount of any costs or expenses to be paid under any such order or direct in what manner they are to be taxed.

2. (1) The Minister may make rules as to the procedure in connection with the making of references and applications to the tribunal and for regulating proceedings before the tribunal and, in consultation with the Minister of Finance, as to the fees chargeable in respect of those proceedings.

(2) Any such rules may in relation to proceedings before the tribunal apply any of the provisions of the laws in force in any province or the territory with respect to the settlement of disputes by arbitration, or alternatively, any of the provisions applicable in the court of the Commissioner of Patents in terms of the Patents Act, 1952 (Act No. 37, of 1952).

(3) Any such rules may include provision—

- (a) for requiring notice of any intended application to the court under section *thirty-one* of this Act to be given to the tribunal and to the other parties to the proceedings;
- (b) for suspending or authorizing or requiring the tribunal to suspend the operation of orders of the tribunal in cases where after giving its decision an application under section *thirty-one* of this Act to any provincial division of the Supreme Court is noted;
- (c) for modifying in relation to orders of the tribunal whose operation is suspended, the operation of any provisions of Chapter IV of this Act as to the effect of orders made thereunder;
- (d) for the publication of notices or the taking of any other steps for ensuring that persons affected by the suspension of an order of the tribunal will be informed of its suspension;
- (e) for regulating or prescribing any other matters incidental to or consequential upon any request, application, order or decision under section *thirty-one* of this Act.

3. Without prejudice to any method available by law for the proof of orders of the tribunal, a document purporting to be a copy of any such order and to be certified by an official of the tribunal to be a true copy thereof shall in any legal proceedings be sufficient evidence of the order unless the contrary is proved.

FIFTH SCHEDULE

Appointment of television copyright Organizations by the Corporation

1. In this Schedule—

- (a) references to a right to which this Schedule applies shall be construed as references to the copyright (including any future copyright) in any television broadcast, in so far as the copyright relates or will when it comes into existence relate to the acts specified in paragraph (c) of sub-section (3) of section *fifteen* of this Act; and
- (b) references to the purposes of this Schedule shall be construed as references to the purposes of negotiating or granting licences in respect of rights to which this Schedule applies.

2. The Corporation may appoint an organization for the purposes of this Schedule, and if it does so, no other organization shall be appointed by it for those purposes until the appointment of such first-mentioned organization has been duly terminated.

3. A right to which this Schedule applies shall not be assignable by the Corporation except to an organization duly appointed for the purposes of this Schedule, and where such a right has been assigned to such an organization, it shall not be assignable by the organization except to the Corporation or to another organization subsequently appointed for the purposes of this Schedule.

4. (1) The Corporation shall not authorize any organization or person, other than any person in its employment under a contract of service, to negotiate or act for it with respect to the granting of licences in respect of rights to which this Schedule applies, except an organization duly appointed for the purposes of this Schedule.

(2) An organization appointed for the purposes of this Schedule shall not authorize any other organization or person, other than any person in its employment under contract of service, to negotiate or act for it or for the Corporation with respect to the granting of licences in respect of rights to which this Schedule applies.

5. The appointment or termination of the appointment of an organization for the purposes of this Schedule shall not have effect unless not less than fourteen days before the appointment or termination is to take effect a notice is published in the *Gazette* specifying the name and address of the organization and the date on which the appointment or termination is to take effect.

6. Where notice of the appointment of an organization for the purposes of this Schedule has been given under paragraph 5, the organization shall be taken for the purposes of this Act to be authorized to act in accordance with the appointment until the appointment is duly terminated in pursuance of a notice published in accordance with that paragraph.

SIXTH SCHEDULE

Transitional provisions

PART I

Provisions relating to Chapter I of Act

Conditions for subsistence of copyright

1. In the application of sections *three* and *four* of this Act to works first published before the commencement of those sections, sub-section (2) of section *three* and sub-section (2) of section *four* shall apply as if in the case of each of those sections paragraphs (b) and (c) thereof had not been enacted.

Duration of copyright

2. In relation to any photograph taken before the commencement of section *four* of this Act, sub-section (3) of that section shall not apply, but, subject to the provisions of sub-section (2) of that section, copyright subsisting in the photograph by virtue of that section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the photograph was taken, and shall then expire.

Ownership of copyright

3. (1) Sub-sections (2) to (4), inclusive, of section *five* of this Act shall not apply—

- (a) to any work made as mentioned in sub-section (2) or (4) of that section, if the work was so made before the commencement of that section; or
- (b) to any work made as mentioned in sub-section (3) of that section, if the work was or is so made in pursuance of a contract made before the commencement of that section.

(2) In relation to any work to which sub-paragraph (1) applies, sub-section (1) of section *five* of this Act shall have effect subject to the proviso to sub-section (1) of section *five* of the Third Schedule to the Act of 1916 as if that proviso had not been repealed.

Infringements of copyright

4. For the purposes of section *six* of this Act, the fact that to a person's knowledge the making of an article constituted an infringement of copyright under the Act of 1916 or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if to that person's knowledge the making of the article had constituted an infringement of copyright under this Act.

5. Sub-section (5) of section *seven* of this Act shall not apply to assignments made or licences granted before the commencement of that section: Provided that any act done pursuant to the provisions of paragraph (vii) of sub-section (1) of section *two* of the Third Schedule to the Act of 1916, read with paragraph (d)*bis* of section *one hundred and forty-four* of the said Act, shall not constitute an infringement of copyright under this Act.

6. (1) References in section *nine* of this Act to records previously made by or with the licence of the owner of the copyright in a work

include references to records previously made by or with the consent of the owner of the copyright in that work under the Act of 1916.

(2) The repeal by this Act of any provision of section *nineteen* of the Third Schedule to the Act of 1916 shall not affect the operation of that provision or of any regulations or order made thereunder in relation to a record made before the repeal: Provided that any copyright in records so made shall comprise only the right, within the meaning of section *thirteen*, to prohibit the making of records embodying the sound recording.

7. (1) In relation to a painting, drawing, engraving, photograph or cinematograph film made before the commencement of section *ten* of this Act, sub-section (4) of that section shall apply, if by virtue of sub-section (2) of that section, the making of the painting, drawing, engraving, photograph or film would not have constituted an infringement of copyright under this Act if it had been in operation at the time when such painting, drawing, engraving, photograph or film was made.

(2) In sub-section (6) of section *ten* of this Act, the reference to construction by or with the licence of the owner of the copyright in any architectural drawings or plans includes a reference to construction by or with the licence of the person who at the time of the construction was the owner of the copyright in the drawings or plans under the Act of 1916 or under any enactment repealed by that Act.

8. (1) Section *eleven* and the First Schedule to this Act shall not apply to artistic works made before the commencement of that section.

(2) Copyright shall not subsist by virtue of this Act in any artistic work made before the commencement of section *eleven* thereof which, at the time when the work was made, constituted a design capable of registration under the Act of 1916 in so far as that Act relates to designs, or under the enactments repealed by that Act, and was used or intended to be used as a model or pattern to be multiplied by any industrial process.

(3) For the purposes of sub-paragraph (2) a design shall be deemed to be used as a model or pattern to be multiplied by an industrial process—

- (a) when the design is reproduced or is intended to be reproduced on more than fifty single articles, unless all the articles on which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in rule 4 of the rules promulgated under Government Notice No. 319, of 1963; or
- (b) when the design is to be applied to—
 - (i) printed paper hangings;
 - (ii) carpets, floor cloths or oil cloths manufactured or sold in lengths or pieces;
 - (iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces; or
 - (iv) lace not made by hand.

9. (1) Where before the repeal by this Act of section *three* of the Third Schedule to the Act of 1916, a person has in the case of a work given the notice requisite under the proviso to section *three* of the Third Schedule to the Act of 1916, that proviso shall, subject to the provisions set out in sub-section (1) of section *sixteen* and section *seventeen* of the said Act, as modified by sub-paragraph (3) of this paragraph, as respects reproductions by that person of that work after the repeal of the said section *three* by this Act, have effect as if it had been re-enacted as a proviso to sub-section (1) of section *two* of this Act with the substitution therein for the references to the board of trade of references to the Minister of Economic Affairs.

(2) For the purposes of the operation of the said proviso in accordance with sub-paragraph (1), any regulations made thereunder before the repeal of section *three* of the Third Schedule to the Act of 1916 shall have effect as if they had been made under this Act, and the power to make further regulations thereunder shall apply as if the proviso had been re-enacted as mentioned in sub-paragraph (1).

(3) For the purposes of this paragraph—

- (a) sub-section (1) of section *sixteen* of the Third Schedule to the Act of 1916 shall be construed as if it read as follows:

“(1) In the case of a work of joint authorship references in this Act to the period after the expiration of any specified number

of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter.”; and

(b) sub-section (1) of section *seventeen* of the Third Schedule to that Act shall be construed as if it read as follows:

“In the case of a literary, dramatic or musical work or engraving in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published and, in the case of a dramatic or musical work, has not been performed in public and, in the case of a lecture, has not been delivered in public before that date, the proviso to section *three* of this Act shall apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.”.

Works of joint authorship

10. (1) Notwithstanding anything contained in section *twelve* or in the Third Schedule to this Act copyright shall not subsist by virtue of Chapter I of this Act in any work of joint authorship first published before the commencement of the said section *twelve*, if the period of copyright had expired before the commencement of that section.

(2) In this paragraph “the period of copyright” means whichever is the longer of the following periods, that is to say—

- (a) the life of the author who died first and a term of fifty years after his death; and
- (b) the life of the author who died last.

PART II

Provisions relating to Chapter II of Act

Sound recordings

11. In the case of a sound recording made before the commencement of section *thirteen* of this Act, sub-section (2) of that section shall apply.

12. Sub-section (5) of section *thirteen* of this Act shall not apply to a sound recording made before the commencement of that section.

13. Notwithstanding anything in section *thirteen* of this Act, copyright shall not subsist by virtue of that section in a sound recording made before the first day of January, 1917, unless immediately before the commencement of that section a corresponding copyright subsisted in relation to that recording by virtue of sub-section (8) of section *nineteen* of the Third Schedule to the Act of 1916.

Cinematograph films

14. Section *fourteen* of this Act shall not apply to cinematograph films made before the commencement of that section.

15. Where a cinematograph film made before the commencement of section *fourteen* of this Act was an original dramatic work as defined in section *thirty-five* of the Third Schedule to the Act of 1916, the provisions of this Act, including the provisions of this Schedule other than this paragraph, shall have effect in relation to the film as if it had been an original dramatic work within the meaning of this Act, and the person who was the author of the work for the purposes of the Act of 1916 shall be taken to be the author thereof for the purposes of the said provisions as applied by this paragraph.

16. The provisions of this Act shall have effect in relation to photographs forming part of a cinematograph film made before the commencement of section *fourteen* of this Act as those provisions have effect in relation to photographs not forming part of a cinematograph film.

Television broadcasts and sound broadcasts

17. Copyright shall not subsist by virtue of section *fifteen* of this Act in any television broadcast or sound broadcast made before the commencement of that section.

Supplementary

18. For the purposes of sub-sections (2) to (4), inclusive, of section *seventeen* of this Act, the fact that to a person's knowledge, whether

constructive under the provisions of paragraph (c) of section *one hundred and forty-four* of the Act of 1916 or otherwise, the making of an article constituted an infringement of copyright under the Act of 1916 or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if to that person's knowledge the making of the article had constituted an infringement of copyright under this Act.

PART III

Provisions relating to Chapter III of Act

19. Nothing in section *eighteen* of this Act shall apply to any infringement of copyright under the Act of 1916 or shall affect any proceedings under that Act, whether begun before or after the commencement of that section.

20. Section *nineteen* of this Act shall not apply with respect to any article made or, as the case may be, imported before the commencement of that section, but notwithstanding the repeal by this Act of section *seven* of the Third Schedule to the Act of 1916, proceedings may (subject to the provisions of that Act) be brought or continued by virtue of the said section *seven* in respect of any article made or imported before the repeal, although the proceedings relate to the conversion or detention thereof after the repeal took effect.

21. Section *twenty* of this Act shall not apply to any licence granted before the commencement of that section, and shall not affect any proceedings under the Act of 1916, whether begun before or after the commencement of that section.

22. For the purposes of section *twenty-two* of this Act the definition of “infringing copy” in section *one* of this Act shall apply as if any reference to copyright in that definition included a reference to copyright under the Act of 1916.

23. Where before the commencement of section *twenty-three* of this Act a notice had been given in respect of a work under section *one hundred and forty-nine* of the Act of 1916, and that notice had not been withdrawn and had not otherwise ceased to have effect before the commencement of the said section *twenty-three*, the notice shall have effect after the commencement of that section as if it had been duly given thereunder: Provided that a notice shall not continue to have effect by virtue of this paragraph after the end of the period of six months beginning with the commencement of the said section *twenty-three*.

PART IV

Provisions relating to Chapter IV of Act

24. The provisions of Chapter IV of this Act shall apply in relation to licence schemes made before the commencement of that Chapter as they apply in relation to licence schemes made thereafter, as if any reference in that Chapter to copyright included a reference to copyright under the Act of 1916.

25. In section *twenty-eight* of this Act references to a refusal or failure to grant or procure the grant of a licence or to a proposal that a licence should be granted shall not include references to a refusal or failure which occurred or a proposal made before the commencement of that section.

PART V

Provisions relating to Chapter V of Act

26. Sub-section (2) of section *thirty-three* of this Act shall not apply to works made before the commencement of that section, and sub-section (3) of that section shall not apply to works first published before the commencement of that section.

PART VI

Provisions relating to Chapter VI of Act

Assignments, licences and bequests

27. (1) Where by virtue of any provision of this Act copyright subsists in a work, any document or event which—

- (a) was made or occurred before the commencement of that provision; and

(b) had any operation affecting the title to copyright in the work under the Act of 1916 or would have had such an operation if the Act of 1916 had continued in force,

shall have the corresponding operation in relation to the copyright in the work under this Act: Provided that if the operation of any such document was or would have been limited to a period specified in the document, it shall not have any operation in relation to the copyright under this Act except in so far as that period extends beyond the commencement of the provision of this Act by virtue of which copyright subsists in the work.

(2) For the purposes of the operation of a document in accordance with sub-paragraph (1) —

(a) expressions used in the document shall be construed in accordance with their effect immediately before the commencement of the provision in question, notwithstanding that a different meaning is assigned to them for the purposes of this Act; and

(b) sub-section (1) of section *thirty-seven* of this Act shall not apply.

(3) Without prejudice to the generality of sub-paragraph (1) of this paragraph, the proviso to sub-section (2) of section *five* of the Third Schedule to the Act of 1916 as modified by sub-paragraph (6) of this paragraph shall apply to assignments and licences having effect in relation to copyright under this Act in accordance with that sub-paragraph as if that proviso had been re-enacted in this Act.

(4) In relation to copyright under this Act in a sound recording or in a cinematograph film, the preceding provisions of this paragraph shall apply subject to the following modifications, that is to say —

(a) in the case of a sound recording, references to the copyright under the Act of 1916 shall be construed as references to the copyright under that Act in records embodying the recording; and

(b) in the case of a cinematograph film, references to the copyright under the Act of 1916 shall be construed as references to any copyright under that Act in the film (in so far as it constituted a dramatic work for the purposes of that Act) or in photographs forming part of the film.

(5) In this paragraph "operation affecting the title", in relation to copyright under the Act of 1916, means any operation affecting the ownership of that copyright or creating, transferring or terminating an interest, right or licence in respect of that copyright.

(6) For the purposes of sub-paragraph (3) the proviso to sub-section (2) of section *five* of the Third Schedule to the Act of 1916 shall be construed as if it read as follows:

"Provided that where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein made by him (otherwise than by will) after the passing of this Act shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, notwithstanding any agreement to the contrary, on the death of the author, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work."

28. (1) Section *thirty-eight* of this Act shall not apply to a bequest contained in the will or a codicil to the will of a testator who died before the commencement of that section.

(2) In the case of an author who died before the commencement of section *thirty-eight* of this Act, the provisions set out in sub-section (2) of section *seventeen* of the Third Schedule to the Act of 1916 shall have effect as if they had been re-enacted in this Act.

The State

29. Sub-section (4) of section *thirty-nine* of this Act shall apply in relation to photographs taken before the commencement of that section as if paragraph (b) of that sub-section had not been enacted.

30. (1) In the application of sub-section (5) of section *thirty-nine* of this Act to a sound recording made before the commencement of that section, that sub-section shall apply as if for the period mentioned in that paragraph there were substituted the period of fifty years from the end of the calendar year in which the recording was made.

(2) With respect to cinematograph films made before the commencement of section *thirty-nine* of this Act —

(a) sub-section (5) of that section shall not apply; but

(b) in the case of a cinematograph film made as mentioned in that sub-section, but before the commencement of that section, if it was an original dramatic work as mentioned in paragraph 15 of this Schedule, the provisions of sub-sections (1), (2) and (3) of that section shall apply in accordance with that paragraph; and

(c) in relation to photographs forming part of such a cinematograph film the provisions of sub-sections (1), (2), (3) and (4) of that section [as modified by sub-paragraph (1)], shall apply as they apply in relation to photographs not forming part of a cinematograph film.

False attribution of authorship

31. (1) Paragraphs (b) and (c) of sub-section (2) of section *forty-three* of this Act shall apply to any such act as is therein mentioned if done after the commencement of that section, notwithstanding that the name in question was inserted or affixed before the commencement of that section.

(2) Subject to the provisions of sub-paragraph (1), no act done before the commencement of section *forty-three* of this Act shall be actionable by virtue of that section.

(3) In this paragraph "name" has the same meaning as in section *forty-three* of this Act.

Other provisions.

32. (1) In the application of sub-section (2) of section *forty-seven* of this Act to a publication effected before the commencement of that section, the reference in paragraph (d) thereof to thirty days shall be treated as a reference to fourteen days.

(2) For the purposes of the application of sub-section (3) of the said section to an act done before the commencement of a provision of this Act to which that sub-section applies, references to copyright shall be construed as including references to copyright under the Act of 1916, and, in relation to copyright under that Act, references to the licence of the owner shall be construed as references to the consent or acquiescence of the owner.

PART VII

Works made before January 1, 1917

33. (1) This Part of this Schedule shall apply to works made before the first day of January, 1917.

(2) In this Part of this Schedule "right conferred by the Act of 1916", in relation to a work, means such a substituted right as, by virtue of section *one hundred and fifty-one* of the Act of 1916, was conferred in place of a right subsisting immediately before the commencement of that Act.

(3) The rights conferred by the Act of 1916 referred to in sub-paragraph (2) shall include the rights conferred by section *one hundred and forty-seven* of that Act.

34. Notwithstanding anything in Part I of this Schedule, neither sub-section (2) or (3) of section *three* nor sub-section (2) or (3) of section *four* of this Act shall apply to a work to which this Part of this Schedule applies, unless a right conferred by the Act of 1916 subsisted in the work immediately before the commencement of the relevant section.

35. (1) Where in the case of a dramatic or musical work to which this Part of this Schedule applies, the right conferred by the Act of 1916 did not include the sole right to perform the work in public, the acts restricted by the copyright shall, in so far as copyright subsists in the work by virtue of this Act, be treated as not including those specified in sub-paragraph (3) of this paragraph.

(2) Where in the case of a dramatic or musical work to which this Part of this Schedule applies, the right conferred by the Act of 1916

consisted only of the sole right to perform the work in public, the acts restricted by the copyright shall, in so far as copyright subsists in the work by virtue of this Act, be treated as consisting only of those specified in sub-paragraph (3) of this paragraph.

(3) The said acts are—

- (a) performing the work or an adaptation thereof in public;
- (b) broadcasting the work or an adaptation thereof;
- (c) causing the work or an adaptation thereof to be transmitted to subscribers to a diffusion service.

36. (1) Without prejudice to the generality of sub-paragraph (1) of paragraph 27 of this Schedule, the provisions of this paragraph shall have effect where—

- (a) the author of a work to which this Part of this Schedule applies had before the commencement of the Act of 1916 made such an assignment or grant as is mentioned in paragraph (a) of the proviso to sub-section (1) of section *one hundred and fifty-one* of that Act; and
- (b) copyright subsists in the work by virtue of any provision of this Act.

(2) If before the commencement of any provision of this Act referred to in item (b) of sub-paragraph (1), any event occurred or notice was given which in accordance with paragraph (a) of the said proviso had any operation affecting the ownership of the right conferred by the Act of 1916 in relation to the work, or creating, transferring or terminating an interest, right or licence in respect of that right, that event or notice shall have the corresponding operation in relation to the copyright in the work under this Act.

(3) Any right which at a time after the commencement of that provision of this Act would by virtue of paragraph (a) of the said proviso have been exercisable in relation to the work, or to the right conferred by the Act of 1916, if this Act had not been passed, shall be exercisable in relation to the work or to the copyright therein under this Act, as the case may be.

(4) If in accordance with paragraph (a) of the said proviso the right conferred by the Act of 1916 would have reverted to the author or his personal representatives on the date referred to in that paragraph, and the said date falls after the commencement of the provision of this Act whereby copyright subsists in the work, then on that date—

- (a) the copyright in the work under this Act shall revert to the author or his personal representatives, as the case may be; and
- (b) any interest of any other person in that copyright which subsists on that date by virtue of any document made before the commencement of the Act of 1916 shall thereupon determine.

PART VIII

General and supplementary provisions

37. (1) The provisions of this paragraph shall have effect for the construction of any reference in any provision of this Act—

- (a) to countries to which that provision extends; or
- (b) to qualified persons.

(2) Where at any time after the commencement of any provision of this Act, a provision which contains such a reference has not been applied in the case of any country by virtue of section *thirty-two* of this Act, the reference shall, with respect to any time before the provision is so applied, be construed as if the provision did apply to that country.

(3) For the purpose of determining whether copyright subsists in any work or other subject-matter at a time when a provision containing such a reference has been extended to a country other than the Republic, the reference shall be construed, in relation to past events, as if that provision had always been in operation and had always extended to that country.

(4) In relation to photographs taken before the commencement of section *four* of this Act, and to sound recordings made before the commencement of section *thirteen* thereof, the definition of “qualified person” in section *one* of this Act shall apply as if, in paragraph (b) of that definition, for the words “body incorporated under the laws of” there were substituted the words “body corporate which has established a place of business in”.

38. (1) The provisions of sub-paragraphs (2) and (3) of this paragraph shall apply where—

- (a) immediately before the date on which any provision of the Act of 1916 (in this paragraph referred to as “the repealed provision”) is repealed by this Act, the repealed provision has effect as applied by a proclamation made in respect of a foreign country under paragraph (g) of section *one hundred and forty-four* read with sub-section (2) of section *thirty* of the Third Schedule to the Act of 1916 or section *one hundred and forty-six* of that Act; and
- (b) no proclamation under section *thirty-two* of this Act, applying any provision of this Act in the case of that country, is made so as to come into force on or before that date.

(2) The repealed provisions, as applied by the proclamation under paragraph (g) of section *one hundred and forty-four* read with sub-section (2) of section *thirty* of the Third Schedule to the Act of 1916, or section *one hundred and forty-six* of that Act, or by that proclamation as varied by any subsequent proclamation thereunder, shall continue to have effect, notwithstanding the repeal, until the occurrence of whichever of the following events first occurs, that is to say—

- (a) the revocation of the proclamation under the Act of 1916;
- (b) the coming into operation of a proclamation under section *thirty-two* of this Act applying any of the provisions of this Act in the case of the foreign country in question; or
- (c) the expiration of the period of two years beginning with the date mentioned in sub-paragraph (b).

(3) For the purposes of continuing, varying or terminating the operation of the repealed provisions in accordance with item (c) of sub-paragraph (2), and for the purposes of any proceedings arising out of the operation of those provisions in accordance with that sub-paragraph, all the provisions of the Act of 1916 (including the power to revoke or vary proclamations under that Act) shall be treated as continuing in force as if none of those provisions had been repealed by this Act.

39. For the purposes of the application, by virtue of any of the preceding paragraphs of this Schedule, of any applicable provision of the Act of 1916—

- (a) the expressions of which definitions are set out in section *thirty-five* of the Third Schedule to that Act shall, notwithstanding anything contained in this Act, be construed in accordance with those definitions; and
- (b) where for those purposes any of those provisions is to be treated as if re-enacted in this Act, it shall be treated as if it had been so re-enacted with the substitution, for the words “this Act”, wherever the reference is to the passing or the commencement of the Act of 1916, of the words “the Designs and Copyright Act, 1916 (Act No. 9, of 1916)”.

40. Without prejudice to the operation of any of the preceding provisions of this Schedule—

- (a) any enactment or other document referring to an enactment repealed by this Act shall be construed as referring (or as including a reference) to the corresponding provision of this Act;
- (b) any enactment or other document referring to copyright or to works in which copyright subsists, if but for the provisions of this Act it would be construed as referring to copyright under the Act of 1916 or to works in which copyright subsists under that Act, shall be construed as referring (or as including a reference) to copyright under this Act or, as the case may be, to works or any other subject-matter in which copyright subsists under this Act;
- (c) any reference in an enactment or other document to the grant of an interest in copyright by licence shall be construed, in relation to copyright under this Act, as a reference to the grant of a licence in respect of that copyright.

41. (1) Except in so far as it is otherwise expressly provided in this Schedule, the provisions of this Act apply in relation to things existing at the commencement of those provisions as they apply in relation to things coming into existence thereafter.

(2) For the purposes of any reference in this Schedule to works, sound recordings or cinematograph films made before the commencement

of a provision of this Act, a work, recording or film the making of which extended over a period shall not be taken to have been so made unless the making of it was completed before the commencement of that provision.

42. In this Schedule "photograph" has the meaning assigned thereto in section *thirty-five* of the Third Schedule to the Act of 1916, and the expression "the Act of 1916" means the Designs and Copyright Act, 1916 (Act No. 9, of 1916).



CORRESPONDENCE



Letter from South Africa

Copyright Act No. 63, of 1965

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
May 2 to 5, 1966 Geneva	Committee of Experts Designs Classification	To establish a Draft new Agreement	All Member States of the Paris Union	List to be announced later
May 16 to 27, 1966 Geneva	Second Committee of Governmental Experts on Administration and Structure	To study drafts in view of the Stockholm Conference of 1967	All Member States of the Paris and Berne Unions	United Nations; World Health Organization; International Labour Organization; Unesco; International Patent Institute; Council of Europe; Organization of American States; European Economic Community; European Free Trade Association; Latine American Free Trade Association; International Association for the Protection of Industrial Property; International Chamber of Commerce; Inter-American Association of Industrial Property; International Federation of Patent Agents; International Literary and Artistic Association; International Bureau for Mechanical Reproduction; International Confederation of Societies of Authors and Composers; International Writers Guild
May 30 to June 6, 1966 Madrid	Hispano-American Meeting on Copyright: Session on Legal Studies, convened by the Institute of Hispanic Culture, under the auspices and in collaboration with BIRPI	The study of legal and administrative problems for the protection of copyright in Hispano-American countries	Experts invited in their personal capacity from the following countries: Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, Peru, Spain, Venezuela	Unesco; International Confederation of Societies of Authors and Composers; Inter-American Institute of International Legal Studies
September 26 to 29, 1966 Geneva	Interunion Coordination Committee	Program and Budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Rumania, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union; United Nations
September 26 to 29, 1966 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (2nd Session)	Program and Budget (Paris Union)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union; United Nations
October 30 to November 4, 1966 ¹⁾ Budapest	East/West Industrial Property Symposium	Discussion of practical questions of industrial property	Open. Registration required, see announcement on page 22	
November 7 to 11, 1966 Geneva	Committee of Experts on a Model Law for Trademarks	To draft a Model Law on Trademarks for developing countries	List to be announced later	List to be announced later
December 13 to 16, 1966 Geneva	<i>Ad hoc</i> Conference of the Directors of National Industrial Property Offices and Committee of Directors of the Madrid Union	Adoption of the Transitional Regulations of the Madrid Agreement (Trademarks)	All Member States of the Madrid Agreement (Trademarks)	All other Member States of the Paris Union

¹⁾ The date announced in the January issue has been changed to the date indicated above.

Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
The Hague	March 1 and 2, 1966	International Patent Institute (IPI)	Administrative Council
Paris	March 25, 1966	International Literary and Artistic Association (ALAI)	Executive Committee and Annual General Assembly
Paris	March 28 to April 2, 1966	International Confederation of Societies of Authors and Composers (CISAC)	Legislative Committee, Confederal Council, Federal Bureaux
Tokyo	April 11 to 16, 1966	International Association for the Protection of Industrial Property (IAPIP)	Congress
Stresa	May 3 to 7, 1966	International Federation of Musicians (FIM)	6th Ordinary Congress
Prague	June 9 to 18, 1966	International Confederation of Societies of Authors and Composers (CISAC)	Congress
The Hague	October 10 to 21, 1966	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	6th Annual Meeting

INVITATION FOR APPLICATIONS FOR A POST IN BIRPI

BIRPI announces a vacancy for the following post:

Translator, Editorial assistant (English)

Qualifications required:

English mother tongue; university degree or equivalent qualification; thorough knowledge of French; experience in translation. Knowledge of legal technical terms in French and English desirable.

Principal duties:

Translation of legal texts from French into English; correction of English texts from the point view of language (editing); correction of printers' proofs; contacts with printers.

Nationality:

Candidates must be nationals of one of the member States of the Berne or Paris Unions. Preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI.

Conditions of employment:

Appointment will be in grade P. 2 or P. 3, according to qualifications and experience. Probationary period of two years; permanent appointment after satisfactory completion of the probationary period.

Starting salaries per annum: 31,480 (P. 2) or 38,400 (P. 3) Swiss francs, subject to deduction of approx. 8.5 % in respect of pension fund contributions.

Annual post adjustment: 1,400 Swiss francs (with dependants) or 933 Swiss francs (without dependants) for grade P. 2 and, respectively, 1,659 or 1,106 Swiss francs for grade P. 3.

Family allowance annual: 1,728 Swiss francs for spouse and 1,296 Swiss francs per child.

Conditions also include annual salary increases, home leave, full benefits of pension fund if under 35 and medical benefit scheme.

Salary, post adjustment and family allowances are tax free.

An upper age limit of 50 will apply.

Compulsory medical examination.

Applications:

Candidates should apply to Head of personnel, BIRPI, 32, chemin des Colombettes, Geneva, Switzerland, for application forms. These forms duly completed must reach BIRPI before March 31, 1966.

Geneva, February 15, 1966.