

PART B

THE COPYRIGHT AND NEIGHBOURING RIGHTS ACT, 2018
(Act No. 4 of 2018)

I ASSENT
MSWATI III
King of Swaziland
....., 2018

AN ACT
ENTITLED

AN ACT to repeal and replace the Copyright Act, 1912 and to provide for incidental matters.
ENACTED by the King and the Parliament of Swaziland

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PART I

PRELIMINARY

Citation and Commencement

- 1. (1) This Act may be cited as the Copyright and Neighboring Rights Act, 2018.
- (2) This Act shall come into operation on a date to be appointed by the Minister by Notice in the Gazette.

Interpretation

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

“architectural work” means a building or a model of or for a building”

“artistic work” means-

(a) a graphic work, photograph, sculpture or collage, irrespective of its artistic quality; or

(b) an architectural work; or

(c) a work of artistic craftsmanship which is not described in paragraph (a) or (b);

“association” mean a legally recognized body in Swaziland representing artists and authors;

“audiovisual work” means a recording or fixation on any medium from which a moving image, together with any sounds associated with the image, may be produced by any means, but does not include a computer program or broadcast;

“author” in relation to a work, means the individual who first makes or creates the work;

“broadcast” means the communication of a work or performance to the public by means of a radio communication service, including its transmission by satellite;

“copy”, in relation to-

(a) a literary or musical work, includes a copy in the form of a record or an audio visual work;

(b) an artistic work, includes a version produced by converting the work into a three dimensional form or, if it is already in three dimensions, by converting it into a two-dimensional form;

(c) an audio-visual work or a broadcast, includes a still photograph made from the audio visual work or broadcast;

(d) an architectural work, does not include anything that is not a building or a model of or for a building;

(e) any work, includes-

(i) a copy held in electronic form; and

(ii) a copy made from a copy of the work;

“Copyright Administrator” means a person holding the office of Copyright Administrator in terms of section 71;

“computer programme” means a set of instructions which is fixed or stored in a manner and which, when used directly or indirectly in a computer, directs its operation to perform a task or bring about a result;

“designated country” in relation to any provision of this Act, means a country that has been designated for the purposes of that provision in regulations made in terms of section 105;

“distribution”, in relation to a programme carrying signal, means any operation by which such a signal is transmitted to the public or any section of the public;

“dramatic work” includes a work of dance or mime if reduced to the material form in which the work or entertainment is to be presented, but does not include an audio visual work;

“drawing” includes any drawing of a technical nature and any diagram, map chart or plan;

“economic right” in relation to a work in which copyright subsists, means a right referred to in Part III;

“expression of folklore” means a group oriented and tradition based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including –

(a) folktales, folk poetry and folk riddles;

(b) folk songs and instrumental folk music;

(c) folk dances and folk plays; and

(d) production of folk arts, in particular, drawings, paintings, sculptures, pottery, terra cotta, mosaic, woodwork, metal work, jewellery, handicrafts, costumes and indigenous textiles;

“fixation”, in relation to sounds, means the embodiment of the sounds or representations of such sounds in such a way that they can be heard, reproduced or communicated through a machine or device;

“literary work” includes any work which is written, spoken or sung, irrespective of its literary quality or the mode or form in which it is expressed, and includes-

(a) dramatic works, stage directions, film scenarios and broadcasting scripts; and

(b) letters, reports, maps, sketches and memoranda; and

(c) lectures, speeches and sermons; and

(d) computer programmes; and

(e) tables and compilations;

but does not include musical works;

“Minister” means the Minister responsible for Commerce, Industry and Trade or any other Minister to whom the King may, from time to time, assign the administration of this Act;

“moral rights” means the rights referred to in Part VI;

“musical work” means a work consisting of music, but does not include any words or action intended to be sung, spoken or performed with the music;

“owner” in relation to any copyright, means the person to whom the copyright is vested and includes an assignee in relation to the rights held by him under the assignment;

“public performance” means public representation of a work or expression of folklore, by live action or by any technical means to listeners or spectators in their presence;

“performers” means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works including expressions of folklore, and variety and circus artistes as well as puppeteers;

“producer of a sound recording” means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representatives of sounds;

“programme” includes any item of information included in a programme that is broadcast or transmitted by a cable programme service or embodied in a programme carrying signal;

“published” means a work or sound recording-

(a) copies of which has been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies;

(b) which has been made available to the public by means of an electronic retrieval system provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of the copyright, and in the case of a sound recording, with the consent of the producer of the sound recording or his successor in title;

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

“rebroadcasting” means the simultaneous or deferred broadcasting and includes broadcasting by one broadcasting organisation of the broadcast or self contained part of the broadcast, of another broadcasting organisation;

“reproduce” means to make a copy of a work in any manner or form, and includes storing the work permanently or temporarily in electronic form;

“rights management information” is any information which identifies the author, the work, the performer, the performance of the performer, the producer of the sound recording, the sound recording, the broadcaster, the broadcast, the owner of any right under this Act, or information about the terms and conditions of use of the work, the performance, the sound recording or the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance, a sound recording or a fixed broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast;

“royalties” means the money paid by the society to the owners of the respective work;

“Society” means the Copyright and Neighbouring Rights Society of Swaziland established in terms of section 77;

“sound recording” means the fixation of the sounds of a performance or of other sounds or of a representation of sounds, other than in the form of a fixation incorporated in an audio visual work;

“Tribunal” means the Swaziland Intellectual Property Tribunal established by the Swaziland Intellectual Property Tribunal Act;

“work” means any literary, musical, artistic or audio-visual work, sound recording, broadcast, programme carrying signal or published edition;

“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, but does not include a collective work;

“works first published in Swaziland” includes works first published abroad but thereafter published in Swaziland within 30 days;

PART 11 COPYRIGHT IN ORIGINAL WORKS

Works eligible for copyright

3. (1) Subject to this Act, the following works, if they are original, shall be eligible for copyright-

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) audio-visual works;
- (e) sound recordings;
- (f) broadcasts;
- (g) programme carrying signals;
- (h) published editions.

(2) A work, other than a broadcast or programme carrying signal, shall not be eligible for copyright unless it has been reduced to writing, recorded or reduced to material form.

(3) A broadcast or a programme carrying signal shall not be eligible for copyright until-

- (a) in the case of a broadcast, it has been broadcast;
- (b) in the case of a programme carrying signal, it has been transmitted by satellite.

Works ineligible for copyright

4 (1) The following matters and things shall not be eligible for copyright-

- (a) ideas, procedures, systems, methods of operation, concepts, principles, discoveries, facts or figures, even if they are explained and embodied in a work;
- (b) news of the day that are mere items of press information;
- (c) speeches of a political nature;
- (d) speeches delivered in the course of legal proceedings:

Provided that the author of any speeches referred to in paragraphs (c) or (d) shall have the exclusive right to make a collection of them.

(2) The following public documents shall not be eligible for copyright-

- (a) official texts of enactments;
- (b) official texts of Bills prepared for presentation in Parliament;
- (c) official records of judicial proceedings and decisions;
- (d) notices, advertisements and other material published in the Gazette;
- (e) official texts of international conventions, treaties and agreements to which Swaziland is a party;
- (f) entries in, and documents that form part of, any register which is kept in terms of an enactment and is open to public inspection;
- (g) such other documents of a public nature as may be prescribed:

Provided that this subsection shall not be taken to limit the provisions of any other law which may prohibit or restrict the reproducing, publishing or altering of any such public document.

Copyright by virtue of author's nationality, domicile or residence

5. (1) A work that is eligible in terms of section 3 shall qualify for copyright protection if, at the material time, the work's author or, in the case of a work of joint authorship, any one of its authors, was-

- (a) a citizen of Swaziland or a designated country; or
- (b) domiciled or ordinarily resident in Swaziland or a designated country; or
- (c) in the case of a body corporate, incorporated under the law of Swaziland or a designated country.

(2) The material time in relation to-

- (a) an unpublished literary, musical or artistic work, is when the work or a substantial part of the work was first made;
- (b) a published literary, musical or artistic work, is when the work was first published, or if the author died before that time, immediately before this death;
- (c) a cable programme, is when the programme was included in the cable programme service;
- (d) an audio-visual work, a sound recording or a broadcast, is when it was first made;
- (e) a published edition, is when the edition was first published.

(3) The author of-

- (a) an architectural work that is erected in Swaziland; or
 - (b) any other artistic work that is incorporated in a building in Swaziland;
- shall be deemed, for the purposes of this section, to have been ordinarily resident in Swaziland when the work was made, no matter where he may actually have resided.

Copyright in works by State or designated international organisations

6. A work that is eligible in terms of section 3 shall qualify for copyright protection if it is made by or under the direction of the State or an international organisation designated as such by regulations made by the Minister.

Ownership of copyright

7. (1) Ownership of any copyright shall vest in the author of the work concerned or, in the case of a work of joint authorship, in the co-authors of the work.

(2) The ownership of any copyright in a collective work shall vest in the person at whose instance and under whose direction the work was created or made.

(3) Where a literary or artistic work is made-

(a) by an 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

(b) for the purpose of publication in a newspaper, magazine or similar periodical;

The proprietor shall be the owner of the copyright in the work in so far as the copyright relates to publishing the work in any newspaper, magazine or similar periodical or to reproducing the work for the purpose of its being so published, but in all other respects the author shall be the owner of the copyright.

(4) Where a person commissions-

(a) the taking of a photograph;

(b) the painting or drawing of a portrait;

(c) the making of an audio visual work;

(d) the making of a sound recording; or

(e) the making of a graphic work;

and pays or agree to pay for it in money or money's worth and the work is made in pursuance of that commission, that person shall, subject to subsection (2), be the owner of any copyright subsisting in the work.

(5) Where a work is made in the course of the author's employment by another person under a contract of employment or apprenticeship, that other person shall be the owner of any copyright subsisting in the work.

(6) Ownership of any copyright conferred by section 6 shall initially vest in the State or the international organisation concerned, and not in the author.

Duration of Copyright

8. (1) Subject to this section, the duration of copyright shall be, in the case of-

(a) an audio-visual work, a collective work, a photograph or a computer programme, fifty years from the end of the year in which the work is made available to the public with the consent of the owner of the copyright or, failing such an event, fifty years from the end of the year in which the work was made;

(b) a sound recording, fifty years from the end of the year in which the recording is first published;

(c) a broadcast, fifty years from the end of the year in which the broadcast first takes place;

(d) a programme carrying signal, fifty years from the end of the year in which the signal is first emitted to a satellite;

- (e) a published edition, fifty years from the end of the year in which the edition is first published;
- (f) any other literary, musical or artistic work, the life of the author and fifty years from the end of the year in which the author dies.
- (2) The copyright conferred on the State or an international organisation by section 6 shall subsist-
 - (a) in the case of an audio-visual work, a photograph, a computer programme, a sound recording, a broadcast, a programme-carrying signal or a published edition, for the period specified in respect of such work in subsection (1);
 - (b) in the case of any other literary, musical or artistic work, for fifty years from the end of the year in which the work was first published.
- (3) The copyright in an anonymous or pseudonymous literary work, other than a work referred to in subsection (2), shall subsist for fifty years from the end of the year in which the work is made available to the public with the consent of the owner of the copyright or from the end of the year in which it is reasonable to presume that the author died, whichever period is the shorter: Provided that, in the event of the identity of the author becoming known before the expiry of that period, the term of the copyright shall be calculated in accordance with subsection (1).
- (4) In the case of a work of joint authorship, the references in paragraph (f) of subsection (1) and subsection (3) to the death of an author shall be taken to refer to the author who dies last, whether or not he is a qualified person in terms of subsection (1) of section five.

PART III ECONOMIC RIGHTS

Acts restricted by copyright in literary and musical works

9. Subject to this Act, copyright in a literary or musical work shall vest in the owner the exclusive right to do or to authorise the doing of any of the following acts in Swaziland-
- (a) reproducing the work;
 - (b) publishing the work;
 - (c) importing the work into Swaziland or exporting it from Swaziland, otherwise than for the personal and private use of the person importing or exporting it;
 - (d) performing the work in public;
 - (e) broadcasting the work;
 - (f) causing the work to be transmitted in a cable programme service, unless the service transmits a lawful broadcast, including the work, and is operated by the original broadcaster;
 - (h) except in the case of a computer programme, making an adaptation of the work;
 - (g) in the case of a computer programme-
 - (i) publishing an adaptation of the programme;
 - (ii) by way of business, directly or indirectly selling or letting for hire a copy of the programme or offering or exposing a copy of the programme for sale or hire.

Acts restricted by copyright in artistic works

10. Subject to this Act, copyright in an artistic work shall vest in the owner the exclusive right to do or to authorise the doing of any of the following acts in Swaziland-
- (a) reproducing the work;

- (b) publishing the work;
- (c) importing the work into Swaziland or exporting it from Swaziland, otherwise than for the personal and private use of the person importing or exporting it;
- (d) including the work in an audio-visual work or a broadcast;
- (e) causing a programme which includes the work to be transmitted in a cable programme service, unless the service transmits a lawful broadcast, including the work, and is operated by the original broadcaster;
- (f) making an adaptation of the work.

Acts restricted by copyright in audio visual works

11. Subject to this Act, copyright in audio-visual work shall vest in the owner the exclusive right to do or to authorise the doing of any of the following acts in Swaziland-

- (a) reproducing the work, including making a still photograph from it;
- (b) causing the work, in so far as it consists of images, to be seen in public or, in so far as it consists of sounds, to be heard in public;
- (c) importing the work into Swaziland or exporting it from Swaziland, otherwise than for the personal and private use of the person importing or exporting it;
- (d) broadcasting the work;
- (e) making the work available on a public computer network;
- (f) causing the work to be transmitted in a cable programme service, unless the service transmits a lawful television broadcast, including the work, and is operated by the original broadcaster;
- (g) directly or indirectly selling or letting for hire or offering or exposing for sale or hire, by way of business, a copy of the work;
- (h) making an adaptation of the work.

Acts restricted by copyright in sound recordings

12. Subject to this Act, copyright in a sound recording shall vest in the owner the exclusive right to do or to authorise the doing of any of the following acts in Swaziland-

- (a) making, directly or indirectly, a record embodying the sound recording;
- (b) directly or indirectly selling or letting for hire or offering or exposing for sale or hire, by way of business, a copy of the sound recording;
- (c) importing the sound recording into Swaziland or exporting it from Swaziland, otherwise than for the personal and private use of the person importing or exporting it;
- (d) making the sound recording available on a public computer network;
- (e) causing the sound recording to be transmitted in a cable programme service, unless the service transmits a lawful broadcast, including the sound recording, and is operated by the original broadcaster;
- (f) making an adaptation of the sound recording.

Acts restricted by copyright in broadcasts

13. Subject to this Act, copyright in a broadcast shall vest in the owner the exclusive right to do or to authorise the doing of any of the following acts in Swaziland-

- (a) reproducing the broadcast directly or indirectly, including, in the case of a television broadcast, making a still photograph from it;

- (b) rebroadcasting the broadcast;
- (c) making the broadcast available on a public computer network;
- (d) causing the broadcast to be transmitted in a cable programme service, unless the service is operated by the original broadcaster.

Acts restricted by copyright in programme carrying signals

14. Subject to this Act, copyright in a programme-carrying signal shall vest in the owner the exclusive right to undertake or to authorise the direct or indirect distribution of the signal in Swaziland or from Swaziland.

Acts restricted by copyright in published editions

15. Subject to this Act, copyright in a published edition shall vest in the owner the exclusive right to do or to authorise the doing of any of the following acts in Swaziland-

- (a) reproducing the published edition;
- (b) importing the published edition into Swaziland or exporting it from Swaziland, otherwise than for the personal and private use of the person importing or exporting it;
- (c) making the published edition available on a public computer network.

PART IV PERMITTED ACTS IN RELATION TO COPYRIGHT WORKS

Fair dealing for purposes of research or private study

16. (1) The copyright in a work shall not be infringed by any fair dealing for the purposes of research or private study by the person using the work.

(2) Reproducing a work shall not constitute fair dealing for the purposes of subsection (1) if the person who reproduces it knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time.

Educational use of copyright material

17. (1) Subject to this section, the copyright in a work shall not be infringed by the use of the work by way of illustration in any publication, broadcast or record for teaching if—

- (a) the use is compatible with fair practice; and
- (b) the extent of the use is justified by the purpose; and
- (c) sufficient acknowledgement is given.

(2) The copyright in a work shall not be infringed by anything done for the purposes of an examination by way of setting questions, communicating the questions to the candidates or answering the questions.

(3) The inclusion of a short passage from a published literary work in a collection which-

- (a) is intended for use in educational establishments and is so described in its title and in any advertisement issued by or on behalf of the publisher; and
- (b) consists mainly of material in which no copyright subsists;

© shall not infringe the copyright in the work if the work itself is not intended for use in such establishments and its inclusion is accompanied by a sufficient acknowledgement:

Provided that not more than two such excerpts from copyright works by the same author shall be included in such collections published by the same publisher in any period of five years.

(4) The performance of a dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the establishment's activities shall not be regarded as a public performance for the purposes of infringement of copyright if the performance is given-

- (a) by a teacher or pupil in the course of the establishment's activities; or
- (b) at the establishment by any person for the purposes of instruction:

Provided that a person shall not be regarded as directly connected with the establishment's activities for the purposes of this subsection simply because he is a parent of a pupil.

(5) The playing or showing of an audio-visual work, a sound recording, a broadcast or a cable programme before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the establishment's activities shall not be regarded as a public performance of the work for the purposes of infringement of copyright if the work is played or shown for the purposes of instruction:

Provided that a person shall not be regarded as directly connected with the establishment's activities for the purposes of this subsection simply because he is a parent of a pupil.

(6) Copyright in a literary or musical work shall not be infringed by an educational establishment which, by reprographic copying, makes copies of passages from the work for the purposes of instruction:

Provided that-

- (i) the extent of such copying shall not exceed such limits as may be prescribed; and
- (ii) no such copying shall be authorised by this subsection if, or to the extent that, a licence or a licence scheme is available authorising the copying in question and the person making the copies knew or ought to have been aware of that fact.

(7) No act shall be regarded as permitted by this section if it conflicts with a normal exploitation of the work concerned or prejudices unreasonably the legitimate interests of the owner of copyright in the work.

Copies made to replace or conserve library or archival copies of works

18. (1) The copyright in a work in the permanent collection of a library or archive shall not be infringed by a librarian or archivist who makes a copy of the work-

- (a) in order to preserve or replace the work by placing the copy in the permanent collection in addition to or in place of it; or
- (b) in order to replace in the permanent collection of another library or archive an item which has been lost, destroyed or damaged:

Provided that this subsection shall not apply-

- (a) where it is reasonably practicable to purchase a copy of the work in question rather than reproducing it; or
- (b) in such other circumstances as may be prescribed.

(2) The copyright in an unpublished work in the permanent collection of a library or archive shall not be infringed by a librarian or archivist who makes and supplies a copy of the work, if-

- (a) the copy is supplied to a person who satisfies the librarian or archivist that he requires it for purposes of research or private study and will not use it for any other purpose; and

- (b) no person is supplied with more than one copy of the work; and
- (c) the owner of the copyright in the work has not expressly prohibited copying of the work.

Use of anonymous or pseudonymous works

19. The copyright in a work shall not be infringed by the doing of anything at a time when, or pursuant to arrangements made at a time when-

- (a) it is not possible by reasonable inquiry to ascertain the identity of the author or, in the case of a work of joint authorship, any of the authors; and
- (b) it is reasonable to assume-
 - (i) that the copyright has expired; or
 - (ii) that the author died fifty years or more before the beginning of the calendar year in which the act is done or arrangements are made, as the case may be.

Use of work for Parliamentary or judicial proceedings or inquiries

20. (1) The copyright in a work shall not be infringed by reproducing or using the work for the purposes of-

- (a) any Parliamentary or judicial proceedings or for the purposes of reporting any such proceedings; or
- (b) any inquiry conducted in terms of any enactment, or for the purposes of reporting the proceedings of any such inquiry.

(2) The issuing to the public of the report of any inquiry referred to in paragraph (b) of subsection (1) shall not infringe the copyright of any work that is reproduced in the report.

Fair dealing for purposes of criticism, review or news reporting

21. (1) The copyright in a work shall not be infringed by any fair dealing-

- (a) for the purposes of criticism or review of that work or of another work or of the performance of a work; or
- (b) subject to subsection (2), for the purposes of reporting current events:

Provided that-

- (i) sufficient acknowledgement of the work shall be given, except where the work is used for the reporting of current events by means of an audio-visual work, a sound recording, a broadcast or a programme carrying signal;
- (ii) the use of a photograph for the purposes of reporting current events shall not constitute fair dealing.

(2) Paragraph (b) of subsection (1) shall not apply so as to authorise the publication of any part of an audiovisual work, a record or a programme-carrying signal representing a sporting event.

Publication of public speeches and articles of topical interest

22. (1) The copyright in a lecture, address, speech or other similar work which is delivered in public shall not be infringed by the work being reproduced in the press or in a broadcast or cable programme, if the reproduction is for the purpose of information:

Provided that the author of any such lectures, addresses, speeches or other works shall have the exclusive right of making a collection of them.

(2) The copyright in an article published in a newspaper or periodical, or in a broadcast, on any current economic, political or religious topic shall not be infringed by the work being reproduced

in the press or in a broadcast or cable programme, if the right of such reproduction has not been expressly reserved and sufficient acknowledgement is given.

(3) No act shall be regarded as permitted by this section if it conflicts with a normal exploitation of the work concerned or prejudices unreasonably the legitimate interests of the owner of the copyright in the work.

Quotations from copyright works

23. The copyright in a literary or musical work shall not be infringed by any quotation from the work, including any quotation from an article in a journal that summarizes the work, if—

- (a) the quotation is compatible with fair practice; and
- (b) the extent of the quotation does not exceed the extent justified by the purpose; and
- (c) sufficient acknowledgement is given.

Public readings and recitations

24. The copyright in a published literary work shall not be infringed by-

- (a) the reading or recitation in public by one person of a reasonable extract from the work, if it is accompanied by a sufficient acknowledgement; or
- (b) the broadcasting or inclusion in a cable programme service of a reading or recitation referred to in paragraph (a), if the broadcast or programme, as the case may be, consists mainly of material in relation to which it is not necessary to rely on this section.

Reconstruction of architectural works

25. The copyright in an architectural work or in the relevant architectural drawings shall not be infringed by the reconstruction of that work on the same site and in the same style as the original.

Ephemeral recordings

26. The copyright in a literary or musical work shall not be infringed by a broadcaster reproducing the work using his own facilities, where the resultant copy-

- (a) is intended exclusively for broadcasting with the consent of the owner of the copyright in the work; and
- (b) is destroyed within six months immediately following the making of the copy, or within such longer period as may be agreed with the owner of the copyright in the work:

Provided that, if any such copy is of an exceptional documentary nature, it may be preserved in the broadcaster's archives but, subject to this Act, may not be used for broadcasting or any other purpose without the consent of the owner of the copyright.

Reproducing artistic work for purpose of advertising its sale

27. The copyright in an artistic work shall not be infringed by copies which are made and issued to the public for the purpose of advertising the sale of the work:

Provided that if such a copy is subsequently sold, let for hire, exhibited in public, distributed or otherwise dealt with for any other purpose it shall be treated as an infringing copy for the purposes of that dealing and, if that dealing infringes copyright, for all subsequent purposes.

Use of work for demonstration purposes

28. The copyright in a literary or musical work shall not be infringed by the use of the work in a bona fide demonstration of a radio or television receiver or computer or any type of recording equipment or playback equipment to a client by a dealer in such equipment.

Computer programs.

29. (1) Subject to this section, a person who is in lawful possession of a computer program, or a copy of such a program, may do any of the following things without infringing copyright in the program.

- (a) make copies of the program to the extent reasonably necessary-
 - (i) for back-up purposes; or
 - (ii) to correct errors in it; or
 - (iii) for the purposes of decompilation in terms of paragraph (b); or
 - (iv) for the purpose of testing the program to determine its suitability for the person's use; or
 - (v) for any other purpose that is not prohibited under any licence or agreement whereby the person is permitted to use the program;
 - (b) decompile the program, that is to say, convert the program into a version expressed in a different programming language, code or notation, for the purpose of obtaining information needed to enable the program to operate with other programs;
 - (c) let the program on hire together with a computer or other device, where the program itself is not the essential object of the lease.
- (2) Any copy made in terms of paragraph (a) of subsection (1) shall-
- (a) be used only for the purpose for which it was made; and
 - (b) be destroyed when the person's possession of the computer program in question, or of the copy of the program, ceases to be lawful.

Recording of programmes and broadcasts for purposes of subsequent viewing or listening

30. (1) The copyright in-

- (a) a broadcast or cable programme; or
 - (b) any work contained in a broadcast or cable programme;
- shall not be infringed by the broadcast or programme being recorded for the sole purpose of enabling it to be viewed or listened to at a more convenient time.
- (2) Any recording made in terms of subsection (1) shall be used only for the purpose for which it was made and, in particular, shall not-
- (a) be distributed, whether by way of business or otherwise, to any person outside the family of the person who made it; or
 - (b) be performed in public.

Private recording of musical works and sound broadcasts

31. (1) Subject to this section, the copyright in-

- (a) a sound recording or a musical work embodied in a sound recording; or
 - (b) a sound broadcast or any work embodied in such a broadcast;
- shall not be infringed by the sound recording, musical work or broadcast being recorded by a person for the private use of himself and members of his family.
- (2) Any recording made in terms of subsection (1) shall be used only for the purpose for which it was made and, in particular, shall not-
- (a) be distributed, whether by way of business or otherwise, to any person outside the

family of the person who made it; or
(b) be performed in public.

Acts done under statutory authority

32. The copyright in a work shall not be infringed by the doing of anything that is specifically authorised by any enactment.

Prescribed dealings in copyright works

33. In addition to any other reproduction permitted in terms of this Act, the reproduction of a work shall be permitted in such manner and circumstances as may be prescribed by the Minister:

Provided that-

- (i) such prescription shall not permit any such reproduction to be in conflict with a normal exploitation of the work or unreasonably to prejudice the legitimate interests of the owner of the copyright;
- (ii) in making any regulations referred to in proviso (i), the Minister shall have regard to the obligations of Swaziland under any international convention, treaty or agreement.

PART V TRANSMISSION AND ASSIGNMENT OF COPYRIGHT AND GRANT OF LICENCES

Ways in which copyright may be transmitted

34. Subject to this Act, copyright may be transmitted as incorporeal movable property by assignment, testamentary disposition or operation of law.

Assignment of copyright

35. (1) Subject to this section, an owner of copyright in a work may assign his economic rights in the work to any other person.

(2) An assignment in terms of subsection (1) may be limited so as to apply-

- (a) to some only of the assignor's economic rights; or
 - (b) to a part only of the term of the copyright; or
 - (c) to a specified country or other geographical area;
- and may be absolute or subject to conditions.

(3) No assignment in terms of subsection (1) shall have effect unless it is in writing and signed by or on behalf of the assignor.

(4) An assignment in terms of subsection (1) shall not be construed as extending to any rights that are not expressly referred to in the assignment.

(5) An assignment in terms of subsection (1) may be registered with the Copyright Office in terms of Part X.

Testamentary disposition of copyright

36. (1) A testamentary disposition of the economic rights vested in an owner of copyright may be limited so as to apply-

- (a) to some only of the testator's economic rights; or
- (b) to a part only of the term of the copyright; or

(c) to a specified country or other geographical area;
and may be absolute or subject to conditions.

(2) Where under a testamentary disposition a person becomes entitled to an original document or other material thing recording or embodying a work which was not published before the testator's death, the disposition shall be construed, in the absence of a stipulation to the contrary, as including any copyright in the work which was vested in the deceased at the time of his death.

Vesting of copyright by operation of law

37. Upon the liquidation, insolvency or death of an owner of any copyright, the copyright shall vest in the owner's liquidator or the trustee or executor of the owner's estate, as the case may be.

Licences

38. (1) Subject to this section, an owner of copyright in a work may, by licence, authorise another person to exercise any of his economic rights in the work.

(2) A licence referred to in subsection (1) may be-

(a) an exclusive licence, that is to say a licence authorising the licensee to the exclusion of all other persons, including the person granting the licence, to exercise the economic right that is the subject of the licence; or

(b) a non-exclusive licence, that is to say, a licence that does not preclude the person granting the licence from granting a similar licence to some other person.

(3) An exclusive licence shall not have effect unless it is in writing and signed by or on behalf of the person granting the licence.

(4) A non-exclusive licence may be written or oral or inferred from conduct and, unless otherwise provided in the licence or in any contract by which the licence was granted, may be revoked at any time.

(5) A licence, whether exclusive or non-exclusive, may be registered.

(6) A licence granted by the owner of the copyright to which the licence relates shall be binding upon the owner's successors in title.

(7) Unless otherwise provided in the licence concerned or in any contract by which the licence was granted, a licensee may grant a sub-licence authorising another person to do anything which the licensee is permitted to do by the licence, and this section shall apply, mutatis mutandis, in respect of any such sub-licence as if it were a licence.

Transmission of future copyright

39. (1) An assignment, testamentary disposition or licence may be made or granted in respect of the copyright in a future work, or the copyright in an existing work in which copyright does not subsist but will come into being in the future, and the future copyright in any such work shall be transmissible as incorporeal movable property.

(2) If, when any future copyright referred to in subsection (1) comes into existence and the person who, if he were 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) The provisions of this Act relating to the transmission of copyright shall apply, mutatis mutandis, to the transmission of future copyright referred to in subsection (1).

PART VI INFRINGEMENT AND REMEDIES FOR INFRINGEMENT

Infringement

40. (1) Copyright is infringed by any person who is not the owner of the copyright and who, without the owner's authority, does or causes any other person to do an act in Swaziland which the owner has the exclusive right to do or to authorise.

(2) Without derogation from subsection (1), the copyright in a work is infringed by any person who, without the authority of the owner of the copyright, does any of the following things in Swaziland-

(a) in relation to an article which is an infringing copy and which the person knows or has reason to believe is an infringing copy-

(i) makes it; or

(ii) otherwise than for his personal and private use, imports it into Swaziland or exports it from Swaziland; or

(iii) in the course of business, possesses it or exhibits it in public or distributes it; or

(iv) sells it or lets it for hire or offers or exposes it for sale or hire; or

(v) otherwise than in the course of business, distributes it to such an extent that the owner of the copyright is prejudicially affected;

(b) in relation to an article which is specifically designed or adapted for making copies of the work and which the person knows or has reason to believe is likely to be used for that purpose-

(i) makes it; or

(ii) imports it into Swaziland or exports it from Swaziland; or

(iii) possesses it in the course of business; or

(iv) sells it or lets it for hire or offers or exposes it for sale or hire.

(3) Without derogation from subsection (1), the copyright in a work is infringed by a person who, without the authority of the owner of the copyright, transmits the work by means of a public computer network or telecommunication service, otherwise than by broadcasting or inclusion in a cable programme service, if the person knows or has reason to believe that infringing copies of the work are likely to be made by means of the reception of the transmission, whether in Swaziland or elsewhere.

(4) The copyright in a literary or musical work is infringed by any person who permits a place of public entertainment to be used for a performance of the work in public, where the performance constitutes an infringement of the copyright in the work:

Provided that this subsection shall not apply where that person was not aware and had no reasonable grounds for suspecting that the performance would be an infringement of the copyright.

(5) Where the copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, through an apparatus for-

(a) playing sound recordings; or

(b) showing audio-visual works; or

(c) receiving visual images or sounds or other information conveyed by electronic means;

the following persons shall be liable for the infringement, in addition to the person directly responsible for controlling and using the apparatus-

(i) a person who supplied the apparatus or any substantial part of it, if when he

supplied it he knew or had reason to believe that the apparatus was likely to be used so as to infringe copyright; and

(ii) an occupier of premises who gave permission for the apparatus to be brought on to the premises if, when he gave permission, he knew or had reason to believe that the apparatus was likely to be used so as to infringe copyright; and

(iii) a person who supplied a copy of the sound recording or audio-visual work if, when he supplied it, he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be used so as to infringe copyright.

Owner of copyright entitled to remedies for infringement

41. (1) Subject to this Act, an infringement of copyright shall be actionable at the suit of the owner of the copyright.

(2) Subject to this Act, in any proceedings for an infringement of copyright there shall be available to the plaintiff all such remedies by way of damages, interdict, attachment, the rendering of account, the delivery of infringing copies or articles used or intended to be used for making infringing copies or otherwise, as are available in respect of the infringement of any other proprietary right.

Rights and remedies of exclusive licensee

42. An exclusive licensee shall have the same rights of action and be entitled to the same remedies as if the licence were an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under which the licence was granted.

Cases where interdict not available

43. In proceedings 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.

Anton Piller orders

44. (1) If a person who has instituted or intends instituting proceedings for infringement of copyright satisfies the court that, prima facie-

- (a) he has a cause of action against another person which he intends to pursue; and
- (b) the other person has in his possession documents, infringing copies or other things of whatsoever nature which constitute evidence of great importance in substantiation of that cause of action; and
- (c) there is a real and well-founded apprehension that the documents, infringing copies or other things may be hidden, destroyed or rendered inaccessible before discovery can be made in the usual way;

the court may make such order as it considers necessary or appropriate to secure the preservation of the documents, copies or things as evidence.

(2) An order in terms of subsection (1) may be granted without notice to the person who is allegedly in possession of the documents, infringing copies or other things to which the order relates, and the court may sit in camera for the purpose of hearing an application for such an order:

Provided that the Court shall not grant an order without such notice unless it is satisfied that there is a real possibility that the documents, copies or things will be hidden, destroyed or rendered inaccessible if notice is given.

(3) An order in terms of subsection (1) may be granted on such conditions, including the giving of security by the applicant, as the court may fix.

(4) This section shall not be taken to limit any power a court may have under its ordinary jurisdiction to grant orders such as are referred to in this section.

Offences and penalties in respect of infringement

45. (1) A person shall be guilty of an offence if, at a time when copyright subsists in a work, he does any of the following things in Swaziland, without the authority of the owner of the copyright in the work-

(a) in relation to an article which is an infringing copy and which the person knows or has reason to believe is an infringing copy-

(i) he makes it; or

(ii) otherwise than for his personal and private use, he imports it into Swaziland or exports it from Swaziland; or

(iii) in the course of business, he possesses it or exhibits it in public or distributes it; or

(iv) he sells it or lets it for hire or offers or exposes it for sale or hire; or

(v) otherwise than in the course of business, he distributes it to such an extent that the owner of the copyright is prejudicially affected;

(b) in relation to an article which is specifically designed or adapted for making copies of the work and which the person knows or has reason to believe is to be used for that purpose-

(i) he makes it; or

(ii) he imports it into Swaziland or exports it from Swaziland; or

(iii) he possesses it in the course of business; or

(iv) he sells it or lets it for hire or offers or exposes it for sale or hire.

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

(3) Any person who causes a broadcast to be re-broadcast or transmitted in a cable programme service, knowing that copyright subsists in the broadcast and that the re-broadcast or transmission constitutes an infringement of the copyright, shall be guilty of an offence.

(4) Any person who causes a programme-carrying signal to be distributed without the authority of the owner of the copyright in the signal, knowing that copyright subsists in the signal and that the re-broadcast constitutes an infringement of the copyright, shall be guilty of an offence.

(5) A person guilty of an offence under this section shall be liable to a fine not exceeding twenty thousand Emalangeneni (E20 000) or to imprisonment for a period not exceeding three (3) years or to both such fine and such imprisonment in respect of each article to which the offence relates.

Restriction on importation or exportation of infringing copies

46. (1) If the owner of the copyright in any work, by written notice to the Commissioner of Customs-

- (a) informs him that he is the owner of the copyright in the work; and
- (b) satisfies him that there are reasonable grounds for suspecting that copies of the work which-
 - (i) are infringing copies; or
 - (ii) would be infringing copies if they had been made in Swaziland;
 - (iii) have been or may be imported into or exported from Swaziland; and
- (c) requests him to treat the copies referred to in paragraph (b) as prohibited goods; and
- (d) describes the copies concerned with sufficient particularity to make them readily identifiable;

The Commissioner of Customs shall forthwith comply with the request and ensure that no such copy is imported into or exported from Swaziland, and that any such copy that has been imported but not yet entered is not released to the importer:

Provided that the Commissioner need not comply with such a request until the owner of the copyright furnishes him with security in such form and for such amount as the Commissioner may require to secure the fulfillment of any liability and the payment of any expense which he may incur as a result of the detention of any copy of the work to which the request relates or as a result of anything done in relation to a copy so detained.

(2) Where a request has been made under subsection (1) and has not been withdrawn, the importation into or exportation from Swaziland of any copy of the work to which the request relates shall be prohibited for a period of ten working days from the date on which the Commissioner of Customs complies with the request:

Provided that-

- (i) if within that period the owner of the copyright concerned has instituted proceedings for an order in terms of subsection (3), or proceedings for any other order leading to a decision on the merits of the matter, the importation or exportation of the copies concerned shall continue to be prohibited until the determination of those proceedings or until the court orders otherwise;
- (ii) this subsection shall not apply to the importation or exportation of a single copy of the work by a person for his personal and private use.

(3) If the owner of the copyright in any work satisfies the court that-

- (a) he is the owner of the copyright in the work; and
 - (b) there are reasonable grounds for believing that infringing copies of the work or copies of the work which, if they had been made in Swaziland, would be infringing copies are being or may be imported into or exported from Swaziland;
- the court may issue an order directing the Commissioner of Customs to prevent the importation or exportation, as the case may be, of every such copy of the work.

(4) An order under subsection (3)-

- (a) shall describe the copies of the work concerned with sufficient particularity to make them readily identifiable; and
- (b) may be granted subject to conditions, including the giving of security by the applicant and the inspection of the copies concerned.

(5) The Commissioner of Customs shall take all necessary steps to inform an importer or exporter or intended importer or exporter of goods whose importation or exportation is prohibited by virtue of this section of the reasons for the prohibition.

(6) While any goods are detained pursuant to a request or an order under this section-

(a) the person at whose instance the request or order was made; and

(b) the importer of the goods;

shall be given an adequate opportunity to inspect the goods in order to determine whether or not they are infringing copies.

PART VII MORAL RIGHTS

Right to be identified as author or director

47. (1) Subject to this Part, the author of a literary, artistic or musical work shall, have the right to be identified as the work's author for so long as copyright subsists in the work, whenever-

(a) the work is published commercially, performed in public, broadcast or included in a cable programme service; or

(b) copies of an audio-visual work or a sound recording including the literary work are issued to the public.

Right not to be identified as author or director

48. (1) The author of a literary, artistic or musical work has the right, for so long as copyright subsists in the work, not be identified as its author-

(a) on any copies that are issued to the public; or

(b) in the case of a building, by any means visible to persons entering or approaching the building.

(2) The director of an audio-visual work has the right, for so long as copyright subsists in the work, not to be identified whenever the work is shown in public, broadcast or included in a cable programme service, or whenever copies of the work are issued to the public.

Right to object to derogatory treatment of work

49. (1) In this section-

“derogatory treatment”, in relation to a work, means any alteration, modification or adaptation of a work which amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of its author or director.

(2) Subject to this Part, the author of a literary, musical or artistic work, and the director of an audio-visual work, has the right, for so long as copyright subsists in the work, not to have a derogatory treatment of his work published commercially, performed or shown in public, broadcast or included in a cable programme service.

(3) The right conferred by subsection (2) shall not apply in relation to-

(a) an architectural work in the form of a building:

Provided that, where the author of such a work is identified on the building and it is subjected to derogatory treatment, he shall have the right to have the identification removed; or

(b) an audio-visual work, a computer program or any computer-generated work, where the alteration, modification or adaptation of the work is necessary on technical

grounds or for the purpose of its commercial exploitation; or

(c) publication in-

(i) a newspaper, magazine or similar periodical; or

(ii) an encyclopaedia, dictionary, yearbook or other collective work of reference;

of a literary, dramatic or artistic work made for the purposes of such publication or made available with the consent of the author for the purposes of such publication; or

(d) anything to which the author or director concerned has consented or in regard to which he has waived his right; or

(f) anything done for the purpose of avoiding the commission of an offence or complying with a duty imposed by or under an enactment:

Provided that, where such a thing is done, a clear and reasonably prominent indication shall be given that the work has been subjected to treatment to which the author or director has not consented.

Right to privacy with regard to certain photographs and audio-visual works

50. (1) Subject to this Part, a person who, for private and domestic purposes commissions the taking of a photograph or the making of an audio-visual work has the right, for so long as copyright subsists in the work, not to have-

(a) copies of the work issued to the public; or

(b) the work exhibited or shown in public; or

(c) the work broadcast or included in a cable programme service.

(2) The right conferred by subsection (1) shall not apply in relation to anything to which the person concerned has consented or in regard to which he has waived his right.

Transmission of moral rights

51. Moral rights shall not be transmissible during the lifetime of the person in whom they vest in terms of section 34 as the case may be, but they may be transmitted by testamentary disposition or by operation of law on that person's death.

Enforcement of moral rights

52. Moral rights may be enforced under this Act in all respects as if the persons in whom they vest were owners of copyright and infringements of the rights were infringements of that copyright.

PART VIII NEIGHBOURING RIGHTS

Acts requiring authorisation of performers

53. (1) Without the authorisation of a performer, no person shall do any of the following acts-

(a) make a recording of a performance; or

(b) broadcast a performance live or include it live in a cable programme service; or

(c) by means of an illicit recording, broadcast a performance or includes it in a cable programme service; or

(d) import an illicit recording of a performance into Swaziland or exports it from Swaziland, other than for his personal and private use; or

(e) in the course of a business, sells or lets for hire, offers or exposes for sale or distributes an illicit recording of a performance.

(2) In the absence of any agreement to the contrary or of circumstances of employment from which the contrary would ordinarily be inferred-

(a) the authorisation to broadcast or distribute by cable shall not imply an authorisation-

(i) to license other organisations to broadcast or distribute the performance by cable; or

(ii) to fix the performance; or

(iii) to reproduce the fixation; and

(b) the authorisation to fix the performance and to reproduce the fixation shall not imply an authorisation to broadcast or distribute the performance by cable from the fixation or any reproduction of such fixation.

(3) Where the performers have authorised the fixation of their performance by a broadcaster or by broadcast or distribution by cable, the performance shall be deemed to have been used commercially.

(4) Nothing in this section shall be construed so as to deprive performers of the right to conclude contracts containing more favourable terms and conditions in respect of the use of their performances.

(5) The rights under this section shall subsist for twenty (20) years computed from the end of the year in which-

(a) in the case of a performance, the performance took place; or

(b) in the case of a broadcast, the broadcast took place; or

(c) in the case of sound recordings, the fixation was made.

Granting of authorisation by performers

54. (1) A binding authorisation under section 53 may be given by a performer or by a duly appointed representative to whom he has granted, in writing, the right to give such authorisation.

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

Acts requiring authorisation of producers of sound recordings

55. Without the authorisation of the producer of a sound recording, no person shall do any of the following acts-

(a) directly or indirectly reproduce the sound recording, in any manner or form;

(b) import copies of the sound recording for distribution to members of the public;

(c) distribute to the public copies of the sound recording; or

(d) communicate the sound recording to the public by performance or other means.

(e) make available the sound recording, by wire or wireless means, in such a way that members of the public may access it from the place or at a time individually chosen by them.

(2) For the purposes of this section, a copy of a sound recording shall be unlawful if with, or without imitating the outward characteristics of the original work it incorporates all or part of the producers' sound recording without his authorisation.

(3) Where a sound recording is published for commercial purposes or a reproduction thereof is used for broadcasting or for any other form of communication to the public, the user shall, in respect of the use thereof, pay to the producer of the sound recording such remuneration as it is equitable to the producer and performers.

(4) The protection referred to in subsection (1) shall subsist for twenty years (20) computed from the end of the year in which the sound recording was published for the first time or, failing such publication, within twenty (20) years from the date on which the fixation of the sound recording was made.

Obligations of producers of sound recordings

56. (1) The producer of a sound recording shall state on the label of the recording or on its container-

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

(b) the title of the words;

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

(d) that the rights accruing to the producer in terms of this Act are reserved.

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

Equitable remuneration for use of sound recordings

57. (1) Where a sound recording that was published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting, distribution by cable or for other communication to the public, the user shall pay the producer a single equitable remuneration for such use.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received from the producer under subsection (1) shall be paid to the performers.

(3) The amount received from the producer under subsection (2) shall be divided amongst the performers as agreed among them.

(4) The right to an equitable remuneration under this section shall subsist for twenty (20) years computed from the end of the year in which the sound recording was published for the first time, or, failing that, from the date on which the sound recording was initially made.

(5) This section shall not apply where a broadcast is made for non-profit making purposes or where communication to the public in public places is not for commercial gain.

Notice of protection of a sound recording

58. (1) Where copies of a sound record are made for commercial purposes, there shall be printed on the copies, a notice consisting of-

(a) the symbol (P); and

(b) the date of the first publication of the sound recording, placed in such manner as to give reasonable notice of claim of protection of the rights of the producer.

(2) Where the copies or their containers do not identify the producer by carrying his name, trade mark or other appropriate designation, the notice shall also include the name of the owner of the copyright in the recording.

(3) Where the notice specified in subsection (1) is printed on a sound recording or on the container thereof, such notice shall be “prima facie” evidence of the facts stated thereon for the purpose of any proceedings brought in terms of this Act with respect to the rights of the producer.

(4) Non compliance with the provisions of this section shall not affect the legal protection provided under this Part.

Acts requiring authorisation of a broadcasting organisation

59. (1) A broadcasting organisation shall have the exclusive right to carry out or to authorise the –

- (a) rebroadcast of its broadcast or parts of it;
- (b) distribution by cable of its broadcast or parts of it;
- (c) fixation of its broadcast or parts of it;
- (d) communication to the public of its television broadcast; and
- (e) reproduction of a fixation of its broadcast or parts of it.

(2) The protection under this section shall subsist for twenty years (20) computed from the end of the year in which the broadcast was made.

Protection of performances in public places

60. Where, in a public place, by means of broadcasting, cinematography, jukebox or other apparatus, a sound recording or other devices are used in a public performance, the authors, performers and the producers of that sound recording shall be entitled to royalties in terms of this Act.

Limitation of protection

61. (1) Sections 53, 55, 57 and 58 shall not apply where the acts referred to in those sections are made for-

- (a) private use;
- (b) the reporting of current events;
- (c) teaching or research;
- (d) quotation in the form of short excerpts of a performance, sound recording or broadcast which are compatible with fair practice and are justified by the informative purpose of those quotations; and
- (e) for such other purposes as to constitute exceptions in respect of copyright works under Part II of this Act.

(2) The requirements for authorisation under sections 53, 55, and 58 for making fixations of performances and broadcast, for reproducing such fixations and for reproducing sound recordings published for commercial purposes, respectively, shall not apply where the fixation or reproduction is made by a broadcasting organisation by means of its own facilities and for its broadcasts.

Works belonging to the public domain

62. (1) The following works shall belong to the public domain-

- (a) works whose term of protection have expired;
- (b) works in respect of which authors have renounced their rights; and
- (c) foreign works which do not enjoy protection in Swaziland.

(2) For the purposes of paragraph (b), renunciation by an author or his successor in title of his rights shall be in writing and made public;

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

(3) Subject to payment of fees that the Minister may prescribe in relation thereto, a work which has fallen into the public domain may be used without any restriction.

Enforcement of rights

63. The rights conferred by this Part may be enforced under this Act in all respects as if the persons in whom they are vested were owners of copyright and infringements of the rights were infringements of that copyright.

Criminal liability for infringement of rights of performers and holders of recording rights

64. (1) Any person who-

- (a) makes an illicit recording of a performance; or
- (b) imports an illicit recording of a performance into Swaziland or exports from Swaziland, otherwise than for his personal and private use; or
- (c) in the course of business, possesses an illicit recording of a performance or exhibits it in public or distributes it; or
- (d) sells an illicit recording of a performance or lets it for hire or exposes it for sale or hire;

Knowing or having reasonable grounds for believing that it is an illicit recording, shall be guilty of an offence and liable to a fine not exceeding twenty five thousand Emalangeni (E25 000) or to imprisonment for a period not exceeding five (5) years or to both such fine and such imprisonment.

(2) Any person who causes an illicit recording to be performed in public, knowing or having reasonable grounds for believing that it is an illicit recording, shall be guilty of an offence and liable to a fine not exceeding ten thousand Emalangeni (E10 000) or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Any person who causes an illicit recording to be broadcast or transmitted in a cable programme service, knowing or having reasonable grounds for believing that it is an illicit recording, shall be guilty of an offence and liable to a fine not exceeding ten thousand Emalangeni (E10 000) or to imprisonment for a period not exceeding two (2) years or to both such fine and such imprisonment.

(4) Any person who falsely represents that he is authorised to give consent for the purposes of this Part in relation to a performance shall be guilty of an offence and liable to a fine not exceeding fifteen thousand Emalangeni (E15 000) or to imprisonment for a period not three years or to both such fine and such imprisonment.

PART IX PROTECTION OF EXPRESSIONS OF FOLKLORE

For the purposes of this Part, “expression of folklore” means a literary, musical or artistic work, whether or not it is recorded, of which-

- (a) no person can claim to be the author; and
 - (b) the form or content is embodied in the traditions peculiar to one or more communities in Swaziland;
- and includes-
- (i) folk tales, folk poetry and traditional riddles; and
 - (ii) folk songs and instrumental folk music; and
 - (iii) folk dances, plays and artistic forms of ritual; and

- (iv) productions of folk art, in particular drawings, paintings, sculptures, pottery, woodwork, metalwork, jewellery, baskets, costumes, carvings and mosaic; and
- (v) traditional musical instruments.

Copyright in expressions of folklore to vest in Government

65. Subject to the provisions of this Part, copyright in expressions of folklore shall vest in perpetuity in the Government on behalf and for the benefit of the people of Swaziland.

Utilisation subject to authorisation

66. (1) Subject to the provisions of section 67 the following uses of expressions of folklore shall be subject to approval by the Minister, when they are made for gainful purpose or outside their traditional and customary context-

- (a) any publication, adaptation, reproduction and any distribution of copies of expressions of folklore; and
- (b) communication to the public, including recitation, performance, broadcasting or distribution by cable, of expressions of folklore.

Free uses of expressions of folklore

67. Section 66 shall not apply in the following cases-

- (a) utilisation for the purposes of education;
- (b) utilisation by way of illustration in an original work of an author or authors to the extent that such utilisation is compatible with fair practice;
- (c) using expressions of folklore for creating an original work by an author inspired by folklore;
- (d) incidental utilisation of expressions of folklore, including, in particular, utilisation of an expression of folklore that can be seen or heard in the course of a current event for the purpose of reporting on that current event by means of photography, broadcasting or sound or visual recording to the extent that such utilisation is justified for informative purposes;
- (e) use of objects containing the expressions of folklore which are permanently located in a place where they can be viewed by the public, if the use consists in the inclusion of their image in a photograph, film or television broadcast.

Acknowledgement of source of expression of folklore

68. Whenever an identifiable expression of folklore is used in a printed publication or communicated to the public, the source of such expression of folklore shall be indicated in an appropriate manner by mentioning the community or geographic area from where the expression has been derived.

Authorisation for use of expression of folklore

69. (1) Applications for individual or blanket authorisation of any utilisation of expressions of folklore under this Act shall be made in writing to the Minister.

(2) Where the Minister grants authorization, he may fix the amount of such fees corresponding to such tariff as he may determine, which funds shall be appropriated to a central fund to be created for the development and promotion of national culture and folklore.

(3) Appeals against the decisions of the Minister may be made to a court by the person applying for the authorization or a representative of the interested community.

Scope of protection

70. (1) The protection of expressions of folklore under this Act shall in no way be interpreted as to hinder the normal use, maintenance and development of such expressions.

(2) This Part shall be in addition to and not in derogation from the other parts of this Act, or other law applicable to expressions of folklore or international treaties to which Swaziland is a party, relating to the protection of industrial property or any other forms of protection and preservation of expressions of folklore.

Offences and penalties

71. (2) A person who, without the authorisation of the Minister, imports or distributes copies of expressions of folklore derived from Swaziland or copies of translations, adaptations, arrangements or other transformations of such expressions of folklore, made outside Swaziland without the authorisation of the Minister, commits an offence and is liable, on conviction to fine not exceeding twenty five thousand Emalangenani (E25,000.00) or to imprisonment for a period not exceeding five (5) years or to both such fine and such imprisonment.

(3) A person who-

(a) Without the authorisation of the Minister, utilizes an expression of folklore in contravention of section 66; or

(b) contravenes section 68 commits an offence and is liable, on conviction, to a fine not exceeding ten thousand Emalangenani (E10,000.00) or to imprisonment for a period not exceeding two (2) years or to both such fine and such imprisonment.

(4) A person who -

(a) wilfully deceives others in respect of the source of artefacts or subject matter of performance or recitations made available to the public by him in any direct or indirect manner, presenting such artefacts or subject matter as expressions of folklore of a certain community, from where in fact, they have not been derived; or

(b) publicly uses, in any direct or indirect manner, expressions of folklore, wilfully distorting the same in a way prejudicial to the cultural interests of the community; or

(c) gives authorisation on behalf of performers without being a duly appointed representative, or knowingly proceeds with such an unlawful authorisation, commits an offence shall be liable, on conviction, to a fine not exceeding fifteen thousand Emalangenani (E15 000.00) or to imprisonment for a period not exceeding three (3) years or to both such fine and such imprisonment.

PART X**ESTABLISHMENT OF COPYRIGHT OFFICE AND COPYRIGHT SOCIETY**

72. In this Part-

“Board” means the Copyright and Neighbouring Rights Collecting Society of Swaziland Board;

“foreign”, in relation to an author, performer, or society, means an author, performer or society who is not a Swazi citizen or permanent resident;

“inspector” means an inspector appointed in terms of section 96;

“member” means a member of the Society;

“Register” means the register of the Society;

“registering officer” means the registering officer of the Society referred to in section 82;

“registered” means registered in terms of this Part.

Establishment of Copyright Office

73. There is hereby established an office to be known as the Copyright Office, which shall be situated at a place where the Minister may designate and shall be responsible for the registration of copyright and other matters in terms of this Act.

Copyright Assistant Registrar and other Officers

74. (1) There shall be-

(a) a Copyright Registrar; and

(b) such examiners and other officers as may be necessary to carry out the provisions of this act;

whose offices shall be public offices and form part of the Civil Service.

(2) The Registrar shall exercise general supervision and direction over the Copyright Office.

(3) The Registrar shall be responsible for supervising the activities of the Copyright Society and to generally do anything else he is required to do by or under this Act or any other enactment.

Seal of Copyright Office

75. (1) The Copyright Office shall have a seal of a design approved by the Minister.

(2) Where a document bears an impression of the seal referred to in subsection (1), it shall be presumed, unless the contrary is proved that the document was issued by the Registrar for the purposes of this Act.

Functions of the Copyright Office

76. (1) The Copyright Office shall –

(a) be responsible for all matters affecting copyright in Swaziland;

(b) supervise the activities of the Copyright Society as provided for in this Act;

(c) advise Government and its agencies on all matters pertaining to copyright;

(d) monitor the position of Swaziland in relation to international conventions, treaties or agreements relating to copyright and to advise Government thereon;

(e) advise Government on the conclusion of bilateral and multilateral agreements on copyright between Swaziland and other countries;

(f) advise the Minister on all matters set out in this Act.

(g) organise outreach and awareness creation programmes to inform, educate and sensitize the public on matters relating to copyright;

(h) maintain an effective database on copyright matters and authors and their works;

(i) maintain a register of works, productions and associations of authors and performers in Swaziland; and

(j) be responsible for such matters relating to copyright, as the Minister may, from time to time, direct for the better carrying out of the purposes and provisions of this Act.

Annual report

77. (1) The Copyright Office shall, not later than three (3) months after the end of each financial year, submit to the Minister, an annual report of its activities for the year for which the report relates.

(2) The Minister shall, not more than six (6) months of his receipt of the annual report, submit the report to Parliament with such accompanying statement as he may consider necessary.

(3) The Copyright Office shall, at the request of the Minister, submit any other report so requested.

Establishment of Copyright and Neighbouring Rights Society of Swaziland

78. There is hereby established a Society to be known as the Copyright and Neighbouring Rights Society of Swaziland which shall be a non-profit making body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

Functions and Powers of the Society

79. (1) The Society shall-

(a) represent and defend the interests of the owners of copyright in the various categories of works protected in terms of this Act in Swaziland and abroad;

(b) maintain a register of works, productions and associations of authors and performers;

(c) put in place rules and regulations which contain such provisions as are necessary to ensure the protection of the interests of its members;

(d) be responsible for the negotiation and granting of licences; and

(e) be responsible for the collection and distribution of royalties to appropriate right owners;

(f) enter into reciprocal agreements with foreign societies of authors and performers for the exclusive authorisation in respect of the use of their members' work and for the collection and distribution of royalties deriving from those works;

(g) help in the preparation of standard forms of contracts of assignment of copyright or of licence for the benefit and use of its members;

(h) provide its members with information and advice on all matters relating to copyright;

(i) act for its members in the management of their rights in terms of this Act;

(j) represent authors and performers in the negotiation and administration of licence schemes;

(k) negotiate for the grant of licences as agent for the members;

(l) provide members with information and advice on all matters relating to copyright;

(m) foster such harmony and understanding between members and the users of their work, as shall be necessary for the protection of their rights;

(n) determine the rates of royalties to be levied in respect of registered works;

(o) levy fees on registered works and associations;

(p) distribute royalties on an equitable basis to its members, whether local or foreign;

(q) perform any other function as may be assigned to the Society by the Copyright Office; and

(r) exercise such power and perform such other function as may be required by this Act.

(2) The operations of the Society shall be controlled and managed by the Copyright and Neighbouring Rights Society of Swaziland Board.

(3) The Board shall consist of-

(a) two members appointed by the Minister of whom one shall be a representative from the Ministry and the other a registered legal practitioner;

- (b) two representatives of an association considered by the Minister to be representative of authors, appointed by the Minister after consultation with the association;
 - (c) two representatives of an association considered by the Minister to be representative of performers, appointed by the Minister after consultation with the association;
 - (d) one representative from the Ministry responsible for Information;
 - (e) one representative from the Ministry responsible for Culture;
 - (f) one representative from the Ministry responsible for Education; and
 - (g) one representative from the traditional leadership.
- (4) The First Schedule shall apply to the qualifications of members of the Board, their terms and conditions of office, vacation of office and the procedure to be followed by the Board at its meetings.
- (5) The Second Schedule shall govern the financial and other aspects of the operations of the Society.
- (6) The Minister shall appoint the Chairman for the society from the members as outlined above.

Funds of the Society

80. The funds of the Society shall consist of-

- (a) a prescribed portion of royalties or licence fees collected on behalf of members; and
- (b) any moneys that may be payable to the Society from moneys appropriated for the purpose by an Act of Parliament; and
- (c) any loans, donations or grants made to the Society with the approval of the Minister by any person or authority or by the government of any country; and
- (d) any other moneys that may accrue to the Society, whether in the course of its operations or otherwise.

Society to maintain register

81. (1) The Society shall maintain a register of registered works, productions and associations of authors, artists and performers.
- (2) The publisher of a work in Swaziland may cause that work to be registered in the register kept by the Society within three (3) months of publication of such work and a copy of the best edition shall be deposited at the office of the Society.
- (3) The register shall be open to inspection at all convenient times by members of the public, on payment of the prescribed fee, if any.
- (4) The Society shall provide a certified copy of an entry in the register to any person who requests it and who pays the prescribed fee.

Accounts and Audit

82. (1) The Society shall-

- (a) keep proper accounts and other records in respect of the funds received and collected and shall in every respect comply with the provisions of the Finance and Audit Act, 1967;
- (b) submit to the Copyright Office annually or as often as the Office may direct, audited accounts in respect of finances and property, and an estimate of income and expenditure for the following financial year;
- (c) submit a report of its operations and performance during the year in question.

- (2) The accounts of the Society shall be examined and audited annually by auditors appointed by the Society and approved by the Minister.
- (3) The financial year of the Society shall be a period of twelve months beginning on 1st April every year and ending on 31st March the following year.
- (4) The first financial year of the Society may be such longer period not exceeding eighteen months from the date of commencement of this Act and as the Minister may approve.

Registering officer of the Society

83. (1) The Society shall appoint a registering officer to enable it to carry out its functions in terms of this Part.

(2) The Society shall establish a register, to be known as the Register of the Copyright and Neighboring Rights Society of Swaziland.

(3) The Registering Officer of the Society shall be responsible, subject to any directions given to him by the Copyright Office, for maintaining the Register and ensuring that entries are made in the Register recording-

(a) the name and such other particulars as may be prescribed of each author and performer who has been registered; and

(b) particulars of the cancellation or suspension of any person's registration or restoration of any such cancelled registration or the termination of any such suspension; and

(c) particulars of the work of the author or performer in respect of which the society may collect royalties or licence fees or negotiate the granting of licences on behalf of the author or performer; and

(d) any necessary corrections or alterations to any particulars or facts referred to in paragraph (a), (b) or (c); and

(e) any other particulars that may be prescribed or that the office may determine.

(4) Any person may inspect the Register and make copies of any entry therein at all reasonable times on payment of such fee as may be prescribed:

Provided that no such fee shall be payable by-

(a) a police officer or a member of the Public Service acting in the course of his or her duty as such; or

(b) any other person whom the office has authorised to inspect the register free-of-charge.

Application for membership of Society and registration of works of authors and performers

84. (1) Any-

(a) author or performer whose work is eligible in terms of this Act for protection may;

(b) foreign author or performer whose work is eligible in terms of the law of any foreign country for protection may, on payment of the prescribed fee; apply for registration in terms of this section.

(2) An author or performer shall become a member of the Society by virtue of registering his work with the Society in terms of this section.

(3) An application for registration in the register of-

(a) any work of an author or performer may be made, subject to this Part, by or on behalf of the author or performer;

(b) an assignment or licence of work of an author or performer may be made, subject

to this Part, by or on behalf of the author or performer or by or on behalf of the licensee or assignee, as the case may be.

(4) An application under subsection (3) shall be made in the prescribed form and manner and within the prescribed period, if any, and shall be accompanied by-

(a) such documents and other information as may be prescribed or as the registering officer may reasonably require; and

(b) in the case of foreigners, the prescribed fee.

(5) The registering officer shall accept an application under paragraph (a) or (b) of subsection (3) for the registration of a work of an author or performer or of any assignment or licence of such work, if he is satisfied that-

(a) all the prescribed requirements have been met with regard to the application; and

(b) the work concerned enjoys protection in terms of this Act or in terms of the law of any foreign country; and

(c) in the case of an assignment or licence, it has been duly granted in accordance with this Act;

and, subject to subsection (6), if the registering officer is not so satisfied he shall refuse the application.

(6) If an applicant has not been able to satisfy the registering officer as to any matters referred to in subsection (4) or (5) but the registering officer considers that he will be able to do so before a final decision is made on the application, the registering officer may accept the application subject to such modifications, conditions or limitations as may be appropriate.

(7) The registering officer may at any time, whether before or after acceptance of the application, correct any error in or in connection with an application under subsection (3).

(8) At the request of a person whose application under subsection (3) has been refused or accepted subject to modifications, conditions or limitations, and on payment of the prescribed fee, the registering officer shall provide him, in writing, with the grounds for his decision and the information he used in arriving at that decision.

(9) Where the registering officer has provided an applicant with grounds for his decision in terms of subsection (8), in any appeal to the Tribunal arising out of that decision-

(a) the appeal shall be determined on the information which the registering officer stated he used in arriving at his decision and on any further information the applicant may have laid before him; and

(b) the registering officer may take no further grounds of objection to the application other than those stated by him, except with the leave of the Tribunal, and where the Tribunal gives the registering officer such leave the applicant shall be entitled, on giving the prescribed notice, to withdraw his appeal without payment of costs.

Advertisement of accepted application

85. (1) Where the registering officer has accepted an application under section 83, whether absolutely or subject to conditions or limitations, the applicant shall, without delay cause the application as accepted to be advertised in the prescribed manner, and the advertisement shall set forth any conditions and limitations subject to which the application was accepted:

Provided that the registering officer may require an application to be advertised before acceptance in any case where he or she considers that there are exceptional circumstances which make it

expedient to do so, and where an application has been so advertised the registering officer may, if he thinks fit, require it to be advertised again after it has been accepted.

(2) After advertisement in terms of subsection (1), the application and any documents that were lodged in support of the application may be inspected by members of the public, on payment of the prescribed fee, at all convenient times during office hours at the office of the registering officer.

(3) If an application is not advertised in terms of subsection (1) within six months after the registering officer has accepted the application, or within such longer period as the registering officer may allow, it shall be deemed to have been abandoned.

Opposition to registration

86. (1) Within two months after an application has been advertised in terms of section 84, or within such longer period as the registering officer may allow, any person may give notice to the registering officer of opposition to the registration, which notice shall-

- (a) be given in writing in the prescribed manner; and
- (b) set out the grounds of opposition.

(2) The registering officer shall send the applicant a copy of any notice of opposition in terms of subsection (1) and, within one month after receiving it or within such longer period as the registering officer may allow, the applicant may send to the registering officer, in the prescribed manner a response to the opposition, setting out the grounds on which it should be dismissed.

(3) If an applicant does not send the registering officer a response in terms of subsection (2) he shall be deemed to have abandoned his application.

(4) As soon as possible after receiving a response in terms of subsection (2), the registering officer shall send a copy of it to every person who gave notice of opposition to the application.

Decision on application for registration

87. (1) If, after an application has been advertised in terms of section 84-

- (a) the registering officer has not received a notice of opposition in terms of section 85 within the period specified in that section; and
 - (b) the registering officer is satisfied as to the matters and circumstances referred to in subsection (5) and (6), as the case may be, of section 83;
- he shall proceed to register the author or performer concerned.

(2) If the registering officer has received a notice of opposition and response in terms of section 85, he shall consider the submissions made therein and, if he considers it necessary or if he is required to do so by either party, he shall hear any evidence the parties wish to adduce, and thereupon without delay shall proceed to-

- (a) reject the application concerned; or
- (b) register the work, assignment or licence concerned; or
- (c) refer the matter to the Tribunal in terms of subsection (3).

(3) Where-

- (a) the registering officer considers that it is desirable to do so because of any point of law involved or the unusual importance or complexity of the matter; or
 - (b) the applicant and all persons who have given notice of opposition so request;
- the registering officer shall refer an application to the Tribunal for decision and shall thereafter act in the matter in accordance with the Tribunal's decision.

(4) When entering in the register the registration of an assignment or licence that has been granted for a limited term, the registering officer shall specify its duration.

(5) The registering officer may register any work, assignment or licence in terms of this section subject to such modifications, conditions or limitations as may be prescribed.

(6) On registering any work, assignment or licence in terms of this section, the registering officer shall issue the applicant with a certificate of registration in the prescribed form.

Effective date and duration of registration

88. (1) Where the registering officer registers any right or matter in terms of section 86, he shall do so with effect from the date on which the application for its registration was lodged, and that date shall be deemed to be the date of its registration for the purposes of this Part.

(2) The registration of authors and performers shall continue until the registration is deleted or cancelled in terms of section 88 or 89.

Power of registering officer to allow amendments to applications and documents

89. (1) Where rights under an assignment or licence which is the subject of a pending application for registration under this Part have been transferred to another person after the application has been lodged, the registering officer may, on application allow the transferee to be substituted as applicant.

(2) At any time before the registration of any right or matter under this Part, the registering officer may allow the amendment of the application or of any document relating to the application, on such terms as he thinks fit.

Proceedings before registering officer

90. (1) Evidence in any proceedings before the registering officer under this Part shall be given by affidavit:

Provided that the registering officer may, if he thinks fit in any particular case, take oral evidence on oath in lieu of or in addition to such evidence.

(2) The registering officer may, in any proceedings before him under this Part-

(a) allow any witness to be cross-examined on his affidavit or oral evidence;

(b) decide the hours, times and places at which he will sit.

(3) For the purposes of any proceedings before him under this Part, the registering officer shall have the same powers, rights and privileges as are conferred upon a commissioner by the Commissions of Inquiry Act, 1963, other than the power to order a person to be detained in custody, and sections 11 to 15 of that Act shall apply, with necessary changes, in relation to the hearing and determination of any matter before the registering officer under this Part and to any person summoned to give evidence or giving evidence before him.

Duty of registering officer to give opportunity to make representations

91. The registering officer shall not exercise any discretionary power given to him under this Part in a manner which adversely affects the rights of any person unless he has given that person a reasonable opportunity to make representations in the matter, either personally or by his agent.

Power of registering officer to rectify Register

92. (1) Subject to section 90, the registering officer may, on his own initiative or on application by any interested person, alter any entry in the Register by-

(a) correcting any error in any name or address recorded therein;

(b) altering the name or address of a person who has changed his name or address;

(c) canceling the registration of any right, assignment or licence, where he is satisfied that it has ceased to exist; or

(d) deleting any erroneous entry; or

(e) correcting any other error in the entry concerned.

(2) An application for the correction of an entry under subsection (1) shall be made in the prescribed form and manner and shall be accompanied by the prescribed fee.

Power of Tribunal to rectify Register

93. (1) Any interested person who maintains that-

(a) an entry was made in the register without sufficient cause; or

(b) an entry wrongly remains in the register; or

(c) there is an error or defect in the register;

may apply to the Tribunal for the rectification of the register by the deletion or correction of the entry concerned.

(2) If the registering officer is satisfied that any entry in the register-

(a) has been secured by fraud or misrepresentation; or

(b) was made without sufficient cause or wrongly remains on the register;

he may apply to the Tribunal for an order rectifying the register by the deletion or correction of the entry concerned.

(3) In an application under subsection (1) or (2), the Tribunal may decide any question that may be necessary or expedient for it to decide in connection with the rectification of the register, and may make such order in connection with the application as it thinks fit.

(4) An order of the Tribunal rectifying the register shall be directed to the registering officer and, on being notified of the order, the registering officer shall rectify the register accordingly.

Certified copies of entries in register

94. The registering officer shall provide a copy of any entry in the register, certified with a seal to any person who requests it and who pays the appropriate fee.

Right of registering officer to appear in proceedings regarding register

95. In any proceedings before the Tribunal or any court in which the relief sought includes an alteration or rectification of the register, the registering officer shall have the right to appear and be heard, and shall appear if so directed by the Tribunal or court, as the case may be.

Penalty for false entries and false statements

96. Any person who-

(a) knowingly makes a false entry in the register or causes such an entry to be made; or

(b) prepares or causes to be prepared a document which falsely purports to be a copy of an entry in the register or a statement of the registering officer; or

(c) produces or tenders in evidence, or causes to be so produced or tendered, an entry or document referred to in paragraph (a) or (b), knowing the entry or document to be false; or

(d) makes a false statement or representation, knowing it to be false, for the purpose of-

(i) deceiving the registering officer in the execution of his functions under this

Part; or

(ii) procuring or influencing the doing or omission of anything in relation to this Part;

shall be guilty of an offence and liable to a fine not exceeding ten thousand Emalangeni or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.

Appointment of Inspectors

97. (1) The Society may appoint persons employed by it to be inspectors for the purposes of this Act and shall furnish each person so appointed with a certificate signed by it stating that he has been appointed as an inspector.

(2) An inspector may require a person whom he has reasonable cause to suspect is a person required in terms of this Act to possess a licence to use works of performers and authors for commercial gain to produce his licence.

(3) If a person referred to in subsection (2)-

(a) is unable to produce his licence on demand; or

(b) cannot be located at his usual or last known place of abode or business;

the inspector concerned may serve on the person a notice in the prescribed form requiring that person to produce that notice and his licence to the police officer in charge of a police station within a period of seven days from the date of service of that notice.

(4) A police officer to whom a notice and a licence have been produced in terms of subsection (3) shall forthwith-

(a) issue to the person who produced the notice and the licence a receipt in the prescribed form; and

(b) notify the inspector who served the notice that the notice and licence have been produced.

(5) If a person who has been served with a notice in terms of subsection (2)-

(a) fails to comply with the requirement contained in that notice, he shall be presumed, until the contrary is proved, not to be the holder of a licence, referred to in the notice;

(b) is subsequently prosecuted for failing to comply with the requirement contained in that notice, he shall be presumed, unless the contrary is proved, not to have produced that notice and his licence, in compliance with the notice.

(6) Subject to subsection (7), an inspector may at all reasonable times enter premises on which he has reasonable cause to suspect an offence against this Act has been committed and shall have power to make such search, inspection and inquiry to ascertain whether compliance has been made with this Act.

(7) The power of entry and inspection conferred by this section shall not be exercised—

(a) except with the consent of the person in charge of the premises concerned or in accordance with a search warrant issued in terms of section 46 of the Criminal Procedure and Evidence Act, 1938; or

(b) except with the consent of the person in charge of the premises concerned, unless there are reasonable grounds for believing that it is necessary to exercise them for the prevention, investigation or detection of an offence in terms of this Act or for obtaining of evidence relating to such an offence.

(8) An inspector shall, on demand by any person affected by the exercise of the powers conferred upon him by this section, exhibit the certificate issued to him in terms of subsection (1).

PART XI

APPEALS TO TRIBUNAL AGAINST DECISIONS OF REGISTERING OFFICER

For the purposes of this Part, “Tribunal” refers to the Swaziland Intellectual Property Tribunal established in terms of the Swaziland Intellectual Property Tribunal Act.

Right of appeal to Tribunal against decisions of Registering Officer

98. Any person who is aggrieved by a decision of the registering officer-

- (a) in regard to the registration of any right under Part X, including a decision-
 - (i) to impose any modification, condition or limitation on his acceptance of an application under section 81; or
 - (ii) to refuse to allow an applicant further time within which to advertise an application in terms of section 82; or
 - (iii) to register or not to register any right or matter under section 84;
 - (iv) to impose any modification, condition or limitation on the registration of any right or matter under section 84; or
 - (v) to refuse to allow the amendment of an application or a document in terms of section 88; or
 - (vi) to rectify the Register under section 88; or
 - (vii) to refuse to allow a person further time to file any document;

may appeal to the Tribunal against the decision concerned.

Noting of appeal

99. An appeal in terms of section 94 shall be noted by lodging a written notice of appeal with the Registrar of the Tribunal and with the Registering Officer within twenty days from the date on which the appellant was notified of the decision which is the subject of the appeal.

Powers of Tribunal on appeal

100. In an appeal in terms of section 94, the Tribunal may-

- (a) exercise the same discretionary powers in relation to the decision or order in issue as are conferred on the Registering Officer by the relevant provisions of this Act;
- (b) remit the matter to the Registering Officer with instructions for the taking of further evidence or the setting out of further information;
- (c) order the parties, or any of them, to produce such further evidence or information as the Tribunal may specify;
- (d) confirm, vary or set aside the decision appealed against or give such other decision as in its opinion the Registrar ought to have given;
- (e) make such order as to costs as it thinks fit.

PART XII GENERAL PROVISIONS

Devices designed to circumvent copy-protection

101. (1) In this section-

“copy-protection” means a device or arrangement of any description which is designed to prevent or restrict the making of unauthorised copies of a work or to impair the quality of any such copies made.

(2) If a person, knowing or having reason to believe that the device concerned will be used to make infringing copies-

(a) makes, imports, exports, sells or lets for hire or offers or exposes for sale or hire any device specifically designed or adapted to circumvent a form of copy-protection that is employed or incorporated in a work in which copyright exists and which is issued to the public in electronic form; or

(b) in the course of business, possesses a device referred to in paragraph (a); or

(c) publishes information intended to enable or assist persons to circumvent a form of copy-protection that is employed or incorporated in a work in which copyright exists and which is issued to the public in electronic form;

he shall be guilty of an offence and liable to a fine not exceeding fifteen thousand Emalangeni or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment.

(3) Whether or not a person who contravenes subsection (2) is prosecuted for an offence under that subsection, the owner of the copyright in the work concerned and the person who issued copies of the work to the public shall have the same rights against him as if-

(a) he had infringed the copyright in the work; and

(b) the device concerned were an infringing copy of the work.

(4) It shall be a defence to a prosecution for an offence under subsection (2) or to proceedings brought for infringement under subsection (3) for the accused person or defendant, as the case may be, to prove that his act was reasonably incidental to any use of or dealing with the work concerned which did not amount to an infringement of copyright in the work.

(5) If, in a prosecution for an offence under paragraph (b) of subsection (2) or in proceedings brought for infringement in respect of a contravention of that paragraph, it is proved that the accused person or defendant, as the case may be-

(a) was found in possession of a device specifically designed or adapted to circumvent a form of copy protection that is employed or incorporated in a work in which copyright exists and which is issued to the public in electronic form; and

(b) in the course of business sold, let for hire or distributed copies of works such as the work referred to in paragraph (a);

it shall be presumed, unless the contrary is proved, that he possessed the device for the purpose of making infringing copies of the work.

Removal of rights-management information

102. (1) In this section-

“rights management information” means any name, mark, code, number or other information which is attached to or incorporated in or appears with a copyright work and which-

(a) identifies the work, the author of the work or the owner of any right in the work; or

(b) provides information about the terms and conditions under which the work may be

used in terms of any licence.

(2) Any person who, with the intention of infringing copyright in the work concerned—

(a) removes, erases or alters any rights management information which is attached to or incorporated in or appears with a work; or

(b) sells or lets for hire or offers or exposes for sale or hire any work from which rights management information has been removed, erased or altered;

shall be guilty of an offence and liable to a fine not exceeding ten thousand Emalangeni (E10 000) or to imprisonment for a period not exceeding two (2) years or to both such fine and such imprisonment.

(3) It shall be a defence, in a prosecution for an offence under subsection (2), for the accused person to prove that the removal, erasure or alteration of the rights management information concerned was reasonably incidental to any use of or dealing with the work concerned which did not amount to an infringement of any copyright in the work.

(4) If, in a prosecution for an offence under paragraph (a) of subsection (2), it is proved that the accused person—

(a) removed, erased or altered any rights management information which was attached to or incorporated in or appeared with any work; and

(b) used or dealt with the work in a manner which infringed copyright in the work;

it shall be presumed, unless the contrary is proved, that he removed, erased or altered the rights management information with the intention of infringing copyright in the work.

(5) If, in a prosecution for an offence under paragraph (b) of subsection (2), it is proved that the accused person—

(a) was found in possession of a work from which rights management information was removed, erased or altered; and

(b) in the course of business sold, let for hire or distributed copies of works such as the work referred to in paragraph (a);

it shall be presumed, unless the contrary is proved, that he possessed the work for the purpose of offering or exposing it for sale or hire.

Fraudulent reception of transmissions

103. (1) In this section—

“decoder” means any device, component or arrangement which is designed to circumvent the device or arrangement referred to in paragraph (b) of the definition of “encrypted programme”;

“encrypted programme” means a programme which—

(a) is included in a broadcasting service or a cable programme service broadcast or transmitted from a place in Swaziland or a designated country; and

(b) incorporates or employs a device or arrangement of any description which is designed to prevent persons from viewing, listening to or receiving the programme—

(i) without paying the fee, however imposed, which the person who broadcasts or transmits the programme charges for viewing, listening to or receiving the programme; or

(ii) otherwise without the authority of the person who broadcasts or transmits the programme.

(2) If a person, without the authority of the broadcaster or operator of the cable programme service concerned—

(a) makes, imports, exports or sells a decoder or lets a decoder for hire or offers or

exposes a decoder for sale or hire; or

(b) in the course of business, possesses a decoder; or

(c) uses a decoder to view, listen to or receive an encrypted programme; or

(d) publishes information which is calculated to enable or assist persons to view, listen to or receive encrypted programmes-

(i) without paying the fee, however imposed, which the person who broadcasts or transmits the programme charges for viewing, listening to or receiving the programme; or

(ii) otherwise without the authority of the person who broadcasts or transmits the programme;

he shall be guilty of an offence and liable to a fine not exceeding ten thousand Emalangeni (E10 000) or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(3) Whether or not a person who contravenes subsection (2) is prosecuted for an offence under that subsection, the broadcaster or the operator of the cable programme service concerned, as the case may be, shall have the same rights against him as if-

(a) he had infringed the copyright in the encrypted programme concerned; and

(b) the decoder were an infringing copy of the encrypted programme.

(4) It shall be a defence to any proceedings brought for an infringement referred to in subsection (1) or to a prosecution for an offence under subsection (2) for the defendant or accused person, as the case may be, to prove that he did not know, and had no reasonable grounds for knowing, that the decoder concerned would be used to circumvent the encryption of any encrypted programme.

Application of Act to works made and contracts concluded before commencement of Act

104. (1) Subject to this section, this Act shall apply in relation to works made before the commencement of this Act as it applies in relation to works made thereafter.

(2) No act done before the commencement of this Act shall constitute-

(a) an infringement of any copyright or other right conferred by this Act; or

(b) an offence in terms of this Act.

(3) This Act shall not affect any contract concluded before the commencement of this Act in relation to any work or performance.

(4) The rights conferred by Part VII shall not subsist in any performance that took place before the fixed date.

Act not to affect certain other rights

105. Nothing in this Act shall affect-

(a) any privilege or right of the State or any other person under any other law that is not expressly repealed or modified by this Act; or

(b) the right of the State or any person deriving title from the State to sell, use or otherwise deal with anything forfeited under any enactment, including this Act; or

(c) any rule of law relating to confidential or privileged information, unlawful competition or personality rights.

Regulations

106. (1) Subject to this section, the Minister may, by regulations provide for all matters which by this Act are required or permitted to be prescribed or which, in his opinion, are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations made in terms of subsection (1) may-

(a) designate countries and international organisations for the purposes of any provision of this Act;

(b) provide for the issue of compulsory licences permitting-

(i) the reproduction, publication, performance or circulation, by educational institutions, of any work; or

(ii) the translation of any work for the purpose of teaching, scholarship or research or for use in a broadcast for any such purpose:

Provided that the acts authorised by such a licence shall not conflict with a normal exploitation of the work concerned, nor shall any such licence unreasonably prejudice the legitimate interests of the owner of the copyright in the work concerned;

(c) confer powers on the Copyright Administrator in regard to the settlement of disputes regarding infringement of copyright or the terms and conditions of any licence or any assignment of copyright;

(d) prescribe fees payable in respect of any notice given to the Commissioner of Customs under section 46, and the reimbursement of the Commissioner of Customs for any expenses incurred in detaining any articles in consequence of any notice or order under that section.

(e) provide for authorization for use of expressions of folklore;

(f) the composition and procedure of the Copyright Society; and

(g) the forms and licences required to be used under this Act.

(3) When making any regulations in terms of subsection (1) the Minister shall have regard to Swaziland's obligations under any international convention, treaty or agreement relating to copyright.

Repeal of the Copyright Act, 1912 and savings

107. (1) Subject to subsection (2), the Copyright Act, 1912 is repealed.

(2) Any assignment, licence or scheme which had effect under the Copyright Act 1912, immediately before the date of commencement of this Act shall continue to have the same effect, mutatis mutandis, in terms of the appropriate provisions of this Act.

(3) Any copyright, and any assignment of or licence issued in respect of any copyright, which subsisted immediately before the date of commencement of this Act may be registered in terms of Part V:

Provided that any application for such registration shall be made within one year after the date of commencement of Part V.

FIRST SCHEDULE

(Section 78 (4))

PROVISIONS APPLICABLE TO THE COPYRIGHT AND NEIGHBOURING RIGHTS SOCIETY OF SWAZILAND BOARD

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Disqualifications for membership of Board.
2. Terms of office and conditions of service of members of the Board.
3. Vacation of office by appointed member.
4. Filling of vacancies on Board.
5. Chairperson and vice-chairperson of the Board.
6. Meetings and procedure of Board.
7. Staff of Board.

Disqualifications for membership of Board

1. (1) The Minister shall not appoint a person as a member and no person shall be qualified to hold office as an appointed member of the Board if-
 - (a) he is neither a citizen of Swaziland nor ordinarily resident in Swaziland; or
 - (b) he has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or
 - (c) he has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or
 - (d) within a period of five years immediately preceding his proposed appointment he has been sentenced-
 - (i) in Swaziland, in respect of an offence; or
 - (ii) outside Swaziland, in respect of conduct which, if committed in Swaziland, would have constituted an offence;
 to a term of imprisonment of not less than six months imposed without the option of a fine, whether or not any portion has been suspended, and has not received a free pardon; or
 - (e) he has been convicted-
 - (i) in Swaziland of an offence involving dishonesty; or
 - (ii) outside Swaziland, in respect of any conduct which, if committed in Swaziland, would have constituted an offence involving dishonesty;
 and sentenced to a fine of any amount or to a term of imprisonment of any duration, whether or not any part of the sentence has been suspended.
- (2) A person who is-
 - (a) a member of Parliament; or
 - (b) a member of two or more other bodies;
 shall not be appointed as a member of the Board nor shall he be qualified to hold office as a member.

Terms of office and conditions of service of members of Board

2. (1) An appointed member shall hold office for such period, not exceeding three years, as the Minister may fix at the time of his appointment.
- (2) On the expiry of the period for which an appointed member has been appointed he shall continue to hold office until he has been re-appointed or his successor has been appointed: Provided that a member shall not continue to hold office in terms of this subsection for more than six months.
- (3) A person who ceases to be a member of the Board shall be eligible for re-appointment.
- (4) Members shall be paid such remuneration or allowances as the Minister may, in consultation with the Minister responsible for Finance, prescribe.

Vacation of office by appointed members

3. (1) An appointed member shall vacate his office and his office shall become vacant-
- (a) one month after the date he gives notice in writing to the Minister of his intention to resign his office or after the expiry of such other period of notice as he and the Minister may agree; or
 - (b) on the date he begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine-
 - (i) in Swaziland, in respect of an offence; or
 - (ii) outside Swaziland, in respect of conduct which, if committed in Swaziland, would have constituted an offence; and
 - (c) if he becomes disqualified in terms of subparagraph (a), (b) or (c) of subparagraph (1) of paragraph 1 or in terms of paragraph 2 of that paragraph; or
 - (d) if he is mentally or physically incapable of efficiently exercising his functions as a member.
- (2) The Minister on the recommendation of the Board, may require an appointed member to vacate his office if the Minister is satisfied that the member has been absent without the consent of the chairman of the Board from three consecutive meetings of the Board, of which he has been given at least seven days' notice, and that there was no just cause for the member's absence.

Filling of vacancies on Board

4. Within three months after an appointed member's death or vacation of office, the Minister may appoint a person to fill the vacancy.

Chairperson and vice-chairperson of Board

5. (1) The Minister shall designate one of the appointed members as chairperson and another appointed member as vice-chairperson of the Board.
- (2) The chairperson and vice-chairperson of the Board may at any time, by written notice to the Minister, resign their offices as such.
- (3) The vice-chairperson shall perform the functions of the chairperson whenever the chairperson is unable to perform them or the office of the chairperson is vacant.

Meetings and procedure of Board

6. (1) The Board shall hold its first meeting on a date and place fixed by the Minister, and thereafter shall meet for the dispatch of business and adjourn, close and otherwise regulate its meetings and procedures as it thinks fit:

Provided that the Board shall meet at least four times in each financial year.

(2) The chairperson of the Board-

(a) may convene a special meeting of the Board at any time; and

(b) shall convene a special meeting of the Board on the written request of the Minister or not fewer than three members, of the Board, which meeting shall be convened for a date not sooner than seven days nor later than thirty days after receipt of such request.

(3) Written notice of a special meeting convened in terms of subparagraph (2) shall be sent to each member of the Board not later than forty-eight hours before the meeting and shall specify the business for which the meeting has been convened.

(4) No business shall be discussed at a special meeting convened in terms of subsection (2) other than-

(a) such business as may be determined by the chairperson of the Board, where he convened the meeting in terms of paragraph (a) of subparagraph (2); or

(b) the business specified in the request for the meeting, where the chairperson of the Board convened the meeting in terms of paragraph (b) of subparagraph (2).

(5) The chairperson of the Board or, in his absence the vice-chairperson, shall preside at meetings of the Board:

Provided that, if the chairperson and vice-chairperson are both absent from any meeting of the Board, the members present may elect one of their number to preside at that meeting as chairperson.

(6) A majority of members shall form a quorum at any meeting of the Board.

(7) All acts, matters or things authorised or required to be done by the Board may be decided by a majority vote at a meeting of the Board at which a quorum is present.

(8) At all meetings of the Board each member present shall have one vote on each question before the Board:

Provided that-

(a) in the event of an equality of votes, the chairperson or person presiding shall have a casting vote in addition to his deliberative vote;

(b) no member shall take part in the consideration or discussion of, or vote on, any question before the Board which relates to his vacation of office as a member.

(9) Any proposal circulated among all members of the Board and agreed to by a majority of them shall have the same effect as a resolution passed at a duly constituted meeting of the Board and shall be incorporated in the minutes of the next succeeding meeting of the Board:

Provided that, if a member requires that any such proposal be placed before the Board, this subsection shall not apply to the proposal.

Staff of Board

7. (1) The Board shall appoint on such terms and conditions as it thinks fit-

(a) a Director who shall be responsible for-

(i) the efficient management of the activities, funds and properties of the Board;

(ii) general authority over the conduct and discipline of the Board's staff.

(b) such number of inspectors and other officers as it considers necessary to carry out inspections and ensure the enforcement of this Act.

(2) The Board shall ensure that every inspector is provided with a document identifying him as an inspector.

(3) Inspectors and other officers shall exercise their functions under this Act to ensure through monitoring, that-

- (a) there is no abuse or infringement of the copyright or neighbouring rights;
- (b) restrictions on importation or exportation of copies of reserved works of folklore are observed; and
- (c) licensing procedure of reserved works of folklore are adhered to; and
- (d) to ensure that copyright fees from users of a work are collected in time.

(4). Subject to this paragraph, an inspector may, for purposes of enforcing this Act, at all reasonable times and without warrant or previous notice-

- (a) enter any land, premise, vessel vehicle or any other place in Swaziland to determine whether the provisions of this Act are being complied with;
- (b) take or remove samples or articles for purposes of test:

Provided that the owner or occupier of any land, premises, vessel, vehicle or other place shall be notified of any samples so taken or removed;

- (c) seize any article or other thing which is believed to have been used in the commission of an offence under this Act;
- (d) require the production of and, inspect, examine or make copies of any licence, records or other documents issued or required to be kept in terms of this Act.

(5). The powers of an inspector under subparagraph (a) of subparagraph (4) shall not be used in respect of any place that is a private dwelling or any part of a place that is designed to be used and is being used as a dwelling place except-

- (a) with the consent of the occupier of the dwelling place; or
- (b) in terms of a warrant issued in terms of section 50 of the Criminal Procedure and Evidence Act, 1938.

SECOND SCHEDULE
(Section 78(5))
PROVISIONS APPLICABLE TO FINANCES RELATING TO THE COPYRIGHT AND
NEIGHBOURING RIGHTS SOCIETY OF SWAZILAND BOARD
ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Funds of the Board.
2. Investment of moneys not immediately required by the Board.
3. Financial year of Board.
4. Books of accounts and audit.

Funds of the Board

1. (1) The Board shall establish a general fund where-
 - (a) moneys received by the Society shall be deposited;
 - (b) payments required to be made by the Society may be effected.
- (2) The Board may in the discharge of its functions and in accordance with the terms and conditions upon which its funds may have been obtained or derived, charge to the general fund all remunerations, allowances, salaries, fees, gratuities, working expenses and other charges properly arising.
- (3) There shall be seed money which shall be appropriated to the Society by Parliament.

Investment of moneys not immediately required by Board

2. Moneys not immediately required by the Board may be invested in such manner as the Board may approve.

Financial year of Board

3. The financial year of the Board shall be the period of twelve months ending on the 31st March in each year.

Books of accounts and audit

4. (1) The Board shall ensure that-
 - (a) proper accounts and other records relating to such accounts are kept in relation to all the financial transactions; and
 - (b) in respect of each financial year-
 - (i) a balance sheet; and
 - (ii) a statement of the transactions referred to in paragraph (a);
 are prepared without undue delay.
- (2) The accounts of the Board shall be audited by the Auditor-General, who shall have all the powers conferred upon him by sections 9 and 10 of the Audit Act, 2005 as though the assets of the Board were public moneys or State property.