

## CHAPTER 26:05

# COPYRIGHT AND NEIGHBOURING RIGHTS ACT

*Act 11/2000, 22/2001 (s. 4), 32/2004.*

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## **AN ACT to provide for copyright and neighbouring rights and to provide for matters connected with or incidental to the foregoing.**

[Date of commencement: 10th September, 2004.]

## PART I

### PRELIMINARY

#### **1 Short title and date of commencement**

This Act may be cited as the Copyright and Neighbouring Rights Act [*Chapter 26:05*].

#### **2 Interpretation**

In this Act—

“adaptation”, in relation to—

- (a) a literary work, includes any of the following—
  - (i) a translation of the work;
  - (ii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;
  - (iii) in the case of a dramatic work, a version of the work, whether in its original language or in a different language, in which it is converted into a non-dramatic work;
  - (iv) in the case of a non-dramatic work, a version of the work, whether in its original language or in a different language, in which it is converted into a dramatic work;
  - (v) in the case of a computer program—
    - A. a version of the program in a programming language, code or notation different from that of the original program;
    - B. a fixation of the program in or on a medium different from the medium of fixation of the original program;

unless the difference is occasioned incidentally in the course of running the program;

- (b) a musical work, includes an arrangement or transcription of the work;
- (c) an artistic work, includes a transformation of the work in such a manner that the work’s original or substantial features remain recognisable;
- (d) a sound recording, includes a fixation of the recording in or on a medium different from the medium of fixation of the original recording;

“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);

“audio-visual 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 a 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 radiocommunication service, including its transmission by satellite, and “broadcaster” and “broadcasting” shall be construed accordingly;

“building” includes a fixed structure and any part of a building or fixed structure;

“business” includes a trade or profession;

“cable programme service” means a service which consists wholly or mainly in sending information by means of a telecommunication service, other than a radiocommunication service, for reception at two or more places, whether simultaneously or at different times, but does not include—

- (a) a service run for the purposes of a business where—
  - (i) no person except the person carrying on the business is concerned in the control of the apparatus comprised in the system; and
  - (ii) the information is conveyed by the system solely for purposes internal to the running of the business and not by way of rendering a service or providing an amenity for others; and
  - (iii) the system is not connected to any other telecommunication system;

or

- (b) a service run by a single individual, where—
  - (i) all the apparatus comprised in the system is under his control; and
  - (ii) the information conveyed by the system is conveyed solely for his domestic purposes; and
  - (iii) the system is not connected to any other telecommunication system;

or

- (c) a service where—
  - (i) all the apparatus comprised in the system is situated in, or connects, premises which are in single occupation; and
  - (ii) the system is not connected to any other telecommunication system; and
  - (iii) the service is not operated as part of the amenities provided for residents or inmates of premises run as a business;

or

- (d) such other service as may be prescribed;

“collecting society” means a society or organisation which has any or all the following main objects—

- (a) acting for owners of copyright in the management of their rights in terms of this Act;
- (b) the representation of owners of copyright in the negotiation and administration of licence schemes;
- (c) the negotiation or granting of licences, either as owner or prospective owner of copyright or as agent for the owner or prospective owner;

but does not include a society or organisation whose object is the management of the rights of only one such owner, the representation of only one such owner or the granting of licences covering the works of only one such owner;

“collective work” means a work created or made by two or more individuals at the instance and under the direction of another person, whether an individual or a body corporate, on the understanding that the work will be published by that other person under his name and that the identity of the authors will not be indicated;

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

“Controller” means the Controller of Copyright referred to in paragraph (a) of subsection (1) of section *eighty-nine*;

“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” has the meaning given to it in section *nine*;
- “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 *one hundred and thirty-five*;
- “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 section *seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two or twenty-three*, as the case may be;
- “educational institution” means a school, technical college, university college, university or similar institution;
- “electronic form” means a form usable only if actuated by electric, magnetic, electro-magnetic, electro-chemical or electro-mechanical energy;
- “exclusive licence” means—
- (a) a licence referred to in paragraph (a) of subsection (2) of section *forty-nine*; or
  - (b) a sub-licence conferring on the sub-licensee the same exclusive rights as the holder of a licence referred to in paragraph (a);
- and “exclusive licensee” shall be construed accordingly;
- “fixation”, in relation to sounds, means the embodiment of the sounds or representations of the sounds in such a way that they can be heard, reproduced or communicated through a machine or device;
- “fixed date”, in relation to any provision of this Act, means the date fixed in terms of subsection (2) of section *one* as the date of commencement of that provision;
- “graphic work” includes—
- (a) a painting, drawing, diagram, map, chart or plan; and
  - (b) an engraving, etching, printed circuit, lithograph, woodcut or similar work;
- “individual”, when used as a noun, means a natural person;
- “information” includes words, signs, symbols, images and sounds;
- “infringing copy”, in relation to a work, means a copy the making of which constituted an infringement of copyright in the work or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in Zimbabwe:
- Provided that, where a work has been reproduced for a purpose that is permitted under this Act but the resultant copy is subsequently used or dealt with for a different purpose without any authority required under this Act, that copy shall thereupon be regarded as an infringing copy;
- “judicial proceedings” means proceedings before any court, tribunal or person having authority to decide any matter affecting a person’s legal rights and liabilities;
- “licence” means—
- (a) an exclusive licence or a non-exclusive licence; or
  - (b) a compulsory licence granted in terms of regulations made under section *one hundred and thirty-five*;
- and “licensee” shall be construed accordingly;
- “licence scheme” means a scheme setting out—
- (a) the classes of case in which a collecting society, or a person on whose behalf a collecting society acts, is willing to grant licences; and
  - (b) the charges, if any, and the terms and conditions subject to which licences will be granted in those classes of case;
- and includes anything in the nature of such a scheme, whether described as a scheme or as a tariff or by any other name;
- “literary work” means 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 and memoranda; and
  - (c) lectures, speeches and sermons; and
  - (d) computer programs; and
  - (e) tables and compilations;
- but does not include musical works;
- “Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;
- “moral rights” means the rights conferred by sections *sixty-one*, *sixty-three*, *sixty-four* and *sixty-five*;
- “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;
- “non-exclusive licence” means—
- (a) a licence referred to in paragraph (b) of subsection (2) of section *forty-nine*; or
  - (b) a sub-licence conferring on the sub-licensee the same exclusive rights as the holder of a licence referred to in paragraph (a);
- and “non-exclusive licensee” shall be construed accordingly;
- “owner”, in relation to any copyright, means the person in whom the copyright is vested and, subject to section *five*, includes an assignee in relation to the rights held by him under the assignment;
- “performance”, subject to section *sixty-eight*, includes—
- (a) any mode of visual or acoustic presentation of a work, including any such presentation by—
    - (i) the operation of a radiocommunication service; or
    - (ii) the exhibition of an audio-visual work; or
    - (iii) the use of a loudspeaker or record;
 and
  - (b) in relation to a lecture, speech, address or sermon, delivery thereof;
- “photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, and which is not part of an audio-visual work;
- “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;
- “programme-carrying signal” means a signal which embodies a programme and which passes through a satellite;
- “public computer network” means a group of interlinked computers to which the public or a section of the public have access, whether on payment of a fee or otherwise, and includes the computer network commonly known as the Internet;
- “public lending” means the lending of a copy of a work for a limited period to a member of the public by a public library or archive or other such non-profit-making institution;
- “publication” has the meaning assigned to it in section *three*;
- “published edition” means a published edition of the whole or any part of one or more literary or musical works;
- “radiocommunication service” means the transmission, emission or reception of information of any description whatsoever wholly or partly by means of electromagnetic waves of frequencies between ten kilohertz and three million megahertz propagated in space without artificial guide;
- “record” means any disc, tape, perforated roll or other device in or on which information is or can be embodied so as to be capable, with or without the aid of some other instrument, of being automatically reproduced;
- “Register” means—
- (a) the Copyright Register kept in terms of subsection (1) of section *eighty-eight*; or
  - (b) the appropriate register or the appropriate part of the Copyright Register kept in accordance with subsection (2) of section *eighty-eight*;
- as the case may be
- “registered” means registered in the Register;
- “Registrar” means—
- (a) the Controller; or
  - (b) a registrar of copyright referred to in paragraph (b) of subsection (1) of section *eighty-nine*; or
  - (c) an examiner or other officer referred to in paragraph (c) of subsection (1) of section *eighty-nine*, in relation to any function that has been assigned to him in terms of subsection (4) of that section;
- “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;

“reprographic copying” means a process—

- (a) for making facsimile copies; or
- (b) involving the use of an apparatus for making multiple copies;

and includes, in relation to a work held in electronic form, any reproducing by electronic means, but does not include the making of an audio-visual work or a sound recording;

“satellite” means any device in extraterrestrial space capable of transmitting signals;

“sculpture” includes a cast or model made for purposes of sculpture;

“signal” means an electronically generated carrier capable of transmitting programmes;

“Society” means the Copyright and Neighbouring Rights Collecting Society of Zimbabwe established in terms of section *ninety-seven*;

[Definition inserted by section 2 of Act 32 of 2004]

“sound recording” means any fixation of sounds on a record, but does not include a sound-track associated with an audio-visual work;

“sound-track associated with an audio-visual work” means any recording of sounds which is incorporated in any print, negative, tape or other article on which the audio-visual work or part of it, in so far as it consists of visual images, is recorded, or which is issued by the author of the audio-visual work for use in conjunction with such an article;

“sufficient acknowledgement” means an acknowledgement identifying the work in question by its title or other description, and identifying the author unless—

- (a) the work is anonymous; or
- (b) the author has previously agreed or required that no acknowledgement of his name should be made; or
- (c) it is not possible to ascertain the identity of the author by reasonable inquiry;

“Tribunal” means the Intellectual Property Tribunal established by section 3 of the Intellectual Property Tribunal Act [*Chapter 26:06*];

“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;

“writing” includes any form of notation or code, whether by hand or otherwise, and regardless of the method by which, or medium in or on which, it is recorded.

### **3 Meaning of publication**

(1) Subject to this Act, a work shall be regarded as published—

- (a) if copies of the work are issued to the public; or
- (b) if the work is made available to the public—
  - (i) by means of an electronic retrieval system; or
  - (ii) through a public computer network; or
  - (iii) by a public library or archive or other such non-profit-making institution for the purposes of public lending.

(2) In the case of an architectural work in the form of a building, or an artistic work incorporated in a building, construction of the building shall be treated as equivalent to publication of the work.

(3) Without derogation from subsection (1), in the case of an audio-visual work or a sound recording or a copy thereof, selling or offering to sell the work, or letting it on hire or offering to let it on hire, shall be treated as equivalent to publication of the work.

(4) The following shall not constitute publication for the purposes of this Act—

- (a) in the case of a literary or musical work—
  - (i) the performance of the work; or
  - (ii) the broadcasting of the work; or
  - (iii) the inclusion of the work in a cable programme service, otherwise than for the purpose of an electronic retrieval system;
- (b) in the case of an artistic work—
  - (i) the exhibition of the work; or
  - (ii) the issuing to the public of drawings or photographs of an architectural work, a sculpture or a work of artistic craftsmanship; or
  - (iii) the issuing to the public of copies of an audio-visual work including the artistic work; or
  - (iv) the broadcasting of the artistic work; or

- (v) the inclusion of the artistic work in a cable programme service, otherwise than for the purpose of an electronic retrieval system;
  - (c) in the case of an audio-visual work or a sound recording—
    - (i) the playing or showing of the work in public; or
    - (ii) the inclusion of the work in a cable programme service, otherwise than for the purpose of an electronic retrieval system;
  - (d) in the case of any work, the distribution, sale, letting on hire or loan of copies which have previously been put into circulation in Zimbabwe or a designated country.
- (5) Except in so far as it may constitute an infringement of copyright, a publication which is merely colourable and not intended to satisfy the reasonable requirements of the public shall be disregarded.
- (6) For the purposes of this section, no account shall be taken of any unauthorised act.

#### **4 Construction of references to when work was made**

- (1) A work, other than a broadcast or a programme-carrying signal, shall be deemed for the purposes of this Act to have been made when it was first reduced to writing, recorded or reduced to material form.
- (2) A broadcast shall be deemed to have been made when it was first broadcast.
- (3) A programme-carrying signal shall be deemed to have been made when it was first transmitted to a satellite.

#### **5 Construction of references to owner of copyright**

- (1) Where different persons are entitled to different aspects of copyright in a work, whether as a result of a partial assignment or otherwise, the owner of the copyright shall be deemed to be the person who is entitled to the aspect of copyright relevant for that purpose.
- (2) Where copyright, or any aspect of copyright, is owned by two or more persons jointly, references in this Act to the owner of the copyright shall be construed as references to all the owners.

#### **6 Construction of references regarding transmission of works through cable programme services and through broadcasting**

- (1) Where a work is transmitted to subscribers to a cable programme service—
  - (a) the person operating the service, that is to say, the person who in the agreements with the subscribers to the service undertakes to provide them with the service, shall be deemed to be the person causing the work to be so transmitted, whether or not he transmits the programmes;
  - (b) no person, other than the person referred to in paragraph (a), shall be deemed to be causing the work to be so transmitted, notwithstanding that he provides any facilities for the transmission of the programme.
- (2) Where a work that is broadcast or included in a cable programme service is performed by the operation of any—
  - (a) radio, television or other receiving apparatus; or
  - (b) loudspeaker or other apparatus for reproducing information by the use of a record;
 which is provided by or with the consent of the occupier of the premises where the apparatus is situated, the occupier shall, for the purposes of this Act, be deemed to be the person giving the performance, whether or not he is the person operating the apparatus.

(3) Any reference in this Act to the reception of a broadcast shall be construed as including its reception directly from the broadcaster's transmission or from a re-transmission made by any person from any place, whether in Zimbabwe or elsewhere.

(4) In subsection (3)—

“re-transmission” means any re-transmission, whether over paths provided by a material substance or not, including any re-transmission made by making use of any record on which the broadcast in question has been recorded.

#### **7 References to works to include adaptations and parts thereof**

Unless the context otherwise requires, a reference in this Act to doing anything in relation to a work or a copy of a work shall be deemed to include a reference to doing that thing in relation to—

- (a) an adaptation of the work; or
- (b) a substantial part of the work or copy, as the case may be:

Provided that this section shall not apply for the purposes of determining—

- (a) whether or not a work has been published; or
- (b) where and when a published work was first published.

#### **8 Act to bind State**

This Act shall bind the State.

## PART II

### COPYRIGHT IN ORIGINAL WORKS

#### 9 Nature and vesting of copyright

(1) Copyright is a real right which subsists in a work by virtue of this Act and which entitles its owner exclusively to do in Zimbabwe and to authorise others to do in Zimbabwe the things which this Act designates in relation to that work.

(2) Copyright subsists in a work if it is eligible for copyright in terms of section *ten* and if any or all of the following requirements are met—

- (a) the author of the work is a qualified person by virtue of section *eleven*;
- (b) the work qualifies for copyright protection in terms of section *twelve* by virtue of the country in which it was published or made;
- (c) the work was made under the direction or control of the State or a designated international organisation as provided in section *thirteen*.

#### 10 Works eligible for copyright

(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 a satellite.

(4) A work shall not be ineligible for copyright solely because the making of the work, or the doing of any act in relation to the work, involved an infringement of copyright in some other work.

(5) 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, illustrated or 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 paragraph (c) or (d) shall have the exclusive right to make a collection of them.

(6) 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) applications, specifications and other matters published in the Patent and Trade Marks Journal referred to in section 95 of the Patents Act [*Chapter 26:03*];
- (f) official texts of international conventions, treaties and agreements to which Zimbabwe is a party;
- (g) entries in, and documents that form part of, any register which is kept in terms of an enactment and is open to public inspection;
- (h) 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.

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

(1) A work that is eligible in terms of section *ten* shall qualify for copyright protection if, at the material time as defined in subsection (2), the work's author or, in the case of a work of joint authorship, any one of its authors, was—

- (a) a citizen of Zimbabwe or a designated country; or
- (b) domiciled or ordinarily resident in Zimbabwe or a designated country; or

- (c) in the case of a body corporate, incorporated under the law of Zimbabwe 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 his death;
  - (c) an audio-visual work, a sound recording or a broadcast, is when it was first made;
  - (d) a cable programme, is when the programme was included in the cable programme service;
  - (e) a published edition, is when the edition was first published.
- (3) The author of—
  - (a) an architectural work that is erected in Zimbabwe; or
  - (b) any other artistic work that is incorporated in a building in Zimbabwe;

shall be deemed, for the purposes of this section, to have been ordinarily resident in Zimbabwe when the work was made, no matter where he may actually have resided.

## **12 Copyright by virtue of country of first publication**

(1) A work that is eligible in terms of section *ten* shall qualify for copyright protection if it is first published in Zimbabwe or in a designated country.

(2) Without derogation from subsection (1)—

- (a) a computer program, audio-visual work or broadcast that is eligible in terms of section *ten* shall qualify for copyright protection if it is made in Zimbabwe or a designated country;
- (b) a programme-carrying signal that is eligible in terms of section *ten* shall qualify for copyright protection if it is emitted to a satellite from a place in Zimbabwe or a designated country.

(3) For the purposes of subsection (1), a publication of a work shall not be treated as being other than the first publication solely because of an earlier publication elsewhere if the two publications took place within thirty days of each other.

## **13 Copyright in works by State or designated international organisations**

A work that is eligible in terms of section *ten* shall qualify for copyright protection if it is made by or under the direction of the State or an international organisation designated in regulations made in terms of section *one hundred and thirty-five*.

## **14 Ownership of copyright**

(1) Subject to this section and section *five*, the 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) Subject to this section and section *five*, 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; or
- (b) the painting or drawing of a portrait; or
- (c) the making of a gravure; or
- (d) the making of an audio-visual work; or
- (e) the making of a sound recording;

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

(5) Where in a case not falling within subsection (3) or (4), 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 *thirteen* shall initially vest in the State or the international organisation concerned, and not in the author:

Provided that any such State copyright shall for administrative purposes be deemed to vest in such public officer or employee of the State as the President may designate by statutory instrument.

(7) Subsections (2), (3), (4), (5) and (6) shall have effect, in any particular case, subject to any agreement excluding the operation of those subsections.

## **15 Duration of copyright**

- (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 program, 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 within fifty years from the making of the work, fifty years from the end of the year in which the work is 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 *thirteen* shall subsist—
- (a) in the case of an audio-visual work, a photograph, a computer program, 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 *eleven*.

## **16 Protection of works that have been adapted or embodied in other works**

(1) Subject to any agreement to the contrary, the copyright in an adaptation of a work shall be without prejudice to any copyright in the original work.

(2) The copyright in any work shall be without prejudice to the protection under Part VIII of any work of folklore embodied or utilised in the work.

## **17 Acts restricted by copyright in literary and musical works**

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 Zimbabwe—

- (a) reproducing the work;
- (b) publishing the work;
- (c) importing the work into Zimbabwe or exporting it from Zimbabwe, 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;
- (g) except in the case of a computer program, making an adaptation of the work;
- (h) in the case of a computer program—
  - (i) publishing an adaptation of the program;
  - (ii) by way of business, directly or indirectly selling or letting for hire a copy of the program or offering or exposing a copy of the program for sale or hire.

## **18 Acts restricted by copyright in artistic works**

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 Zimbabwe—

- (a) reproducing the work;
- (b) publishing the work;
- (c) importing the work into Zimbabwe or exporting it from Zimbabwe, 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.

### **19 Acts restricted by copyright in audio-visual works**

Subject to this Act, copyright in an 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 Zimbabwe—

- (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 Zimbabwe or exporting it from Zimbabwe, 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.

### **20 Acts restricted by copyright in sound recordings**

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 Zimbabwe—

- (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 Zimbabwe or exporting it from Zimbabwe, 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.

### **21 Acts restricted by copyright in broadcasts**

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 Zimbabwe—

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

### **22 Acts restricted by copyright in programme-carrying signals**

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 Zimbabwe or from Zimbabwe.

### **23 Acts restricted by copyright in published editions**

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 Zimbabwe—

- (a) reproducing the published edition;
- (b) importing the published edition into Zimbabwe or exporting it from Zimbabwe, 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 III**

### PERMITTED ACTS IN RELATION TO COPYRIGHT WORKS

### **24 Fair dealing for purposes of research or private study**

(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.

## **25 Educational use of copyright material**

(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:

Provided that this subsection shall not extend to making a copy of the score of a musical work for use by an examination candidate in performing the work.

(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.

## **26 Copies made to replace or conserve library or archival copies of works**

(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.

### **27 Use of anonymous or pseudonymous works**

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.

### **28 Use of work for Parliamentary or judicial proceedings or inquiries**

(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.

### **29 Fair dealing for purposes of criticism, review or news reporting**

(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 audio-visual work, a record or a programme-carrying signal representing a sporting event.

### **30 Publication of public speeches and articles of topical interest**

(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.

### **31 Quotations from copyright works**

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 summarises 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.

### **32 Public readings and recitations**

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.

### **33 Records made from sound-tracks**

Where sounds embodied in a sound-track associated with an audio-visual work are also embodied in a record other than that sound-track, the copyright in the audio-visual work shall not be infringed by the use of that record.

### **34 Reconstruction of architectural works**

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.

### **35 Reproduction of artistic works in public places**

The copyright in an artistic work which is permanently situated in a street, square or other public place or in premises open to the public shall not be infringed by—

- (a) the work being included in a graphic work, a photograph, an audio-visual work, a broadcast or a cable programme;
- (b) the making of copies of the work, where the copies are greatly reduced in scale.

### **36 Incidental inclusion of copyright material**

(1) The copyright in a work shall not be infringed by its incidental inclusion in an artistic work, a sound recording, an audio-visual work, a broadcast or a cable programme, or by the publication, playing, performance or other use of such a sound recording, audio-visual work, broadcast or cable programme.

(2) If a musical work or words spoken or sung to music are deliberately included in another work, they shall not be regarded for the purposes of subsection (1) as having been included incidentally.

### **37 Ephemeral recordings**

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.

### **38 Reproducing artistic work for purpose of advertising its sale**

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.

### **39 Use of work for demonstration purposes**

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.

### **40 Computer programs: back-up copies, decompilation, etc.**

(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.

#### **41 Recording of programmes and broadcasts for purposes of subsequent viewing or listening**

- (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.

#### **42 Private recording of musical works and sound broadcasts**

- (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.

#### **43 Acts done under statutory authority**

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

#### **44 Prescribed dealings in copyright works**

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

Provided that—

- (i) regulations made under section *one hundred and thirty-five* 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 Zimbabwe under any international convention, treaty or agreement.

### **PART IV**

#### **TRANSMISSION AND ASSIGNMENT OF COPYRIGHT AND GRANT OF LICENCES**

#### **45 Ways in which copyright may be transmitted**

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

#### **46 Assignment of copyright**

(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 in terms of Part XI.

#### **47 Testamentary disposition of copyright**

(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.

#### **48 Vesting of copyright by operation of law**

Without derogation from the expression "operation of law" in section *forty-five*, 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.

#### **49 Licences**

(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) 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) 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.

(6) A licence, whether exclusive or non-exclusive, may be registered in terms of Part XI.

(7) A licence granted by the owner of the copyright to which the licence relates shall be binding upon the owner's successors in title, except a purchaser in good faith and without notice, actual or constructive, of the licence or a person deriving title from such a purchaser, and any reference in this Act to the doing of anything with or without the licence of the owner of the copyright shall be construed accordingly.

(8) Where the doing of anything is authorised by a licensee or a person deriving title from the licensee, and it is within the terms, including any implied terms, of the licence for him to authorise it, it shall be deemed, for the purposes of this Act, to be authorised by the person who granted the licence.

(9) 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.

#### **50 Transmission of future copyright**

(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, 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 V**

#### **INFRINGEMENT AND REMEDIES FOR INFRINGEMENT**

#### **51 Infringement**

(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 Zimbabwe 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 Zimbabwe—

- (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 Zimbabwe or exports it from Zimbabwe; 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 Zimbabwe or exports it from Zimbabwe; 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 Zimbabwe 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.

## **52 Owner of copyright entitled to remedies for infringement**

(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.

## **53 Rights and remedies of exclusive licensee**

(1) 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.

(2) If an exclusive licensee intends to exercise the option contemplated in subsection (1) of section *fifty-five*, he shall give written notice of his intention to the owner of the copyright concerned.

## **54 Forum in which remedies for infringement may be sought**

Subject to any regulations referred to in paragraph (f) of subsection (2) of section *one hundred and thirty-five*, proceedings in respect of an infringement of copyright may be instituted—

- (a) in the Tribunal; or
- (b) in the High Court; or
- (c) subject to the jurisdictional limits provided for in the Magistrates Court Act [*Chapter 7:10*], in a magistrates court:

Provided that the Tribunal shall not have jurisdiction to entertain criminal proceedings.

## **55 Damages in infringement proceedings**

(1) Damages for infringement of copyright may, at the option of the person seeking them, be calculated on the basis of the amount of a reasonable royalty which would have been payable under the circumstances by a licensee in respect of the copyright concerned:

Provided that, if the person seeking damages intends to exercise this option, he shall give notice of his intention, in writing, to any exclusive licensee of the copyright concerned.

(2) In determining the amount of damages referred to in subsection (1), the Tribunal or court shall take the following factors into account, in addition to all other material considerations—

- (a) the extent and nature of the infringement; and
- (b) the market value of the work concerned; and
- (c) the amount which could be payable to the owner in respect of the exercise of copyright by some other person.

(3) Where in proceedings for infringement of copyright it is established that an infringement was committed and the Tribunal or court, having regard to—

- (a) the flagrancy of the infringement; and
- (b) the market value of the work concerned; and
- (c) any benefit shown to have accrued to the person responsible for the infringement as a result of it; and
- (d) the need to deter persons from committing further infringements;

is satisfied that effective relief would not otherwise be available to the plaintiff or applicant, the Tribunal or court shall have power to award such additional damages as it thinks fit.

(4) Where in proceedings for infringement of copyright it is established that an infringement was committed but that at the time of the infringement the person responsible for it was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the proceedings relate, the plaintiff or applicant shall not be entitled under this section to any damages against that person in respect of the infringement.

## **56 Cases where interdict not available**

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.

## **57 Anton Piller orders**

(1) If a person who has instituted or intends instituting proceedings for infringement of copyright satisfies the Tribunal or a 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 Tribunal or court, as the case may be, 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 Tribunal or court may sit *in camera* for the purpose of hearing an application for such an order:

Provided that the Tribunal or 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 Tribunal or 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.

## **58 Additional rights of owner of copyright in respect of infringing copies**

Without derogation from section *fifty-two*, the owner of the copyright in any work shall be entitled to all the rights and remedies in regard to the possession and use of—

- (a) every infringing copy of the work; and
- (b) any article which is specifically designed or adapted for making copies of the work and which is being or has been used to make infringing copies thereof;

that he would be entitled to if he were the owner of the infringing copy or article.

### **59 Offences and penalties in respect of infringement**

(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 Zimbabwe 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 Zimbabwe or exports it from Zimbabwe; 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 Zimbabwe or exports it from Zimbabwe; 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 level ten or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment in respect of each article to which the offence relates.

[Subsection amended by section 4 of Act 22 of 2001]

### **60 Restriction on importation or exportation of infringing copies**

- (1) If the owner of the copyright in any work, by written notice to the Director of Customs and Excise—
    - (a) informs the Director that he is the owner of the copyright in the work; and
    - (b) satisfies the Director 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 Zimbabwe;
- have been or may be imported into or exported from Zimbabwe; and
- (c) requests the Director 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 Director shall forthwith comply with the request and ensure that no such copy is imported into or exported from Zimbabwe, and that any such copy that has been imported but not yet entered is not released to the importer:

Provided that the Director 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 Director may require to secure the fulfilment 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 Zimbabwe 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 Director of Customs and Excise 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 or tribunal concerned 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 Tribunal or a 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 Zimbabwe, would be infringing copies are being or may be imported into or exported from Zimbabwe;

the Tribunal or court may issue an order directing the Director of Customs and Excise 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) For so long as an order in terms of subsection (3) is in force, the Director of Customs and Excise shall treat the copies to which the order relates as if—

- (a) they were prohibited from importation in terms of section 47 of the Customs and Excise Act [Chapter 23:02]; or
- (b) their exportation was prohibited for the purpose of section 61 of the Customs and Excise Act [Chapter 23:02];

as the case may be.

(6) The Director of Customs and Excise 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.

- (7) 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.

(7) Notwithstanding anything in the Customs and Excise Act [Chapter 23:02], a person shall not be liable to any penalty under that Act, other than forfeiture of the goods, as a result of their importation or exportation being prohibited by virtue of this section.

## PART VI

### MORAL RIGHTS

#### **61 Right to be identified as author or director**

(1) Subject to this Part, the author of a literary work, other than a work consisting of words intended to be sung or spoken with music, has the right to be identified as the work's author for so long as copyright subsists in it, 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.

(2) Subject to this Part, the author of—

- (a) a musical work; or
- (b) a literary work consisting of words intended to be sung or spoken with music;

has the right to be identified as the work's author for so long as copyright subsists in it, whenever—

- (i) the work is published commercially; or
- (ii) copies of a sound recording of the work are issued to the public; or
- (iii) an audio-visual work of which the sound-track includes the musical or literary work is shown in public or copies of such an audio-visual work are issued to the public.

(3) Subject to this Part, the author of an artistic work has the right to be identified as the author of the work for so long as copyright subsists in it, whenever—

- (a) the work is published commercially or exhibited in public, or a visual image of it is broadcast or included in a cable programme service; or
- (b) an audio-visual work including a visual image of the artistic work is shown in public or copies of such an audio-visual work are issued to the public; or
- (c) in the case of—

- (i) an architectural work in the form of a building; or
- (ii) a sculpture; or
- (iii) a work of artistic craftsmanship;

copies of a graphic work representing it, or copies of a photograph of it, are issued to the public.

(4) Subject to this Part, the author of an architectural work in the form of a building has the right, in addition to the rights conferred on him by subsection (3) and for so long as copyright subsists in the work, to be identified on the building as constructed or, where more than one building is constructed to the same design, on the first to be constructed.

(5) Subject to this Part, the director of an audio-visual work has the right, for so long as copyright subsists in it, 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.

(6) The right of identification conferred by this section shall be—

- (a) in the case of commercial publication or the issue to the public of copies of an audio-visual work or a sound recording, the right to be identified in or on each copy of the work or recording or, if that is not appropriate, in some other manner likely to bring the identity of the author or director to the notice of a person acquiring a copy; or
- (b) in the case of identification on a building, the right to be identified by appropriate means visible to persons entering or approaching the building; or
- (c) in any other case, the right to be identified in a manner likely to bring his identity to the attention of a person seeing or hearing the performance, exhibition, showing, broadcast or cable programme in question;

and the identification in each case shall be clear and reasonably prominent.

(7) Any reasonable form of identification may be used for the purposes of this section unless the author or director specifies a pseudonym, initials or some other particular form of identification, in which event that form shall be used.

## 62 Exceptions to right to be identified

The right of identification conferred by section *sixty-one* shall not apply in relation to—

- (a) any of the following descriptions of work—
  - (i) a computer program; or
  - (ii) the design of a typeface; or
  - (iii) any computer-generated work; or
  - (iv) a work made for the purpose of reporting current events; or
  - (v) a work in which copyright originally vested in the State or in an international organisation, unless the author or director has previously been identified as such in or on published copies of the work;

or

- (b) anything done by or with the authority of the owner of the copyright, where copyright in the work originally vested in the author's employer; or
- (c) anything done which would not amount to an infringement of the copyright in the work by virtue of subsection (2) of section *twenty-five* or section *twenty-seven*, *twenty-eight*, *twenty-nine*, *thirty-six*, *forty-one*, *forty-two* or *forty-three*; or
- (d) 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
- (e) anything to which the author or director concerned has consented or in regard to which he has waived his right.

## 63 Right not to be identified as author or director

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

- (a) on any copies of the work 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.

## 64 Right to object to derogatory treatment of work

(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) anything done which would not amount to an infringement of the copyright in the work by virtue of section *twenty-seven*; or

(d) 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

(e) 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.

## **65 Right to privacy in regard to certain photographs and audio-visual works**

(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—

(a) anything done which would not amount to an infringement of the copyright in the work by virtue of section *twenty-seven*, *twenty-eight*, *thirty-six*, *forty-one*, *forty-two* or *forty-three*; or

(b) anything to which the person concerned has consented or in regard to which he has waived his right.

## **66 Transmission of moral rights**

Moral rights shall not be transmissible during the lifetime of the person in whom they vest in terms of section *sixty-one*, *sixty-three*, *sixty-four* or *sixty-five*, as the case may be, but they may be transmitted by testamentary disposition or by operation of law on that person's death.

## **67 Enforcement of moral rights**

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 VII**

## **RIGHTS IN PERFORMANCES**

## **68 Interpretation in Part VII**

(1) In this Part—

“exclusive recording contract” means a contract between a performer and another person under which that person is entitled, to the exclusion of all other persons, including the performer, to make a recording of a performance given by the performer;

“holder of recording rights” means a person who is entitled, under an exclusive recording contract, to make a recording of a performance given by a performer;

“illicit recording”, in relation to a qualifying performance, means a recording of the performance which was made without the consent required by this Part;

“performance” means—

(a) the performance of a dramatic or musical work; or

- (b) the reading or recitation of a literary work; or
  - (c) the performance of a variety act or any similar presentation; or
  - (d) the performance of a work of folklore as defined in section *eighty*;
- to the extent that it is a live performance given by one or more individuals, and “performer” shall be construed accordingly;

“qualifying performance” means a performance to which this Part applies in terms of section *sixty-nine*;

“recording”, in relation to a performance, means an audio-visual work or a sound recording—

- (a) made directly from the live performance; or
- (b) made from a broadcast of, or cable programme including, the performance; or
- (c) made directly or indirectly from another recording of the performance;

and “record” shall be construed accordingly.

(2) Any reference in this Part to the consent of a performer shall be construed, in relation to a performance by a group of performers, to consent given by—

- (a) the member of the group who is generally regarded as the group’s leader; or
- (b) any person to whom the group has given, expressly or impliedly, authority to give such consent.

(3) Any reference in this Part to the doing of anything in relation to a performance includes the doing of that thing in relation to a substantial part of the performance.

## **69 Application of Part VII: qualifying performances**

This Part shall apply to—

- (a) any performance which is given in Zimbabwe or in a designated country; and
- (b) any performance which is given elsewhere than in Zimbabwe or a designated country, if—
  - (i) it is given by a performer who at the time was—
    - A. a citizen of Zimbabwe or a designated country; or
    - B. domiciled or ordinarily resident in Zimbabwe or a designated country;
  - or
  - (ii) it is the subject of an exclusive recording contract under which the holder of recording rights is—
    - A. a citizen of Zimbabwe or a designated country; or
    - B. domiciled or ordinarily resident in Zimbabwe or a designated country; or
    - C. a body corporate incorporated under the law of Zimbabwe or a designated country.

## **70 Performers’ rights**

(1) Subject to this Part, a performer has the right to prevent the unauthorised exploitation of any qualifying performance given by him.

(2) A performer’s right in terms of subsection (1) is infringed by a person who, without the performer’s consent—

- (a) makes a recording of a qualifying performance; or
- (b) broadcasts a qualifying performance live or includes it live in a cable programme service; or
- (c) by means of an illicit recording, broadcasts a qualifying performance or includes it in a cable programme service; or
- (d) imports an illicit recording of a qualifying performance into Zimbabwe or exports it from Zimbabwe, otherwise 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 qualifying performance.

(3) In any proceedings for an infringement of a performer’s right in terms of subsection (1), it shall be a defence for the person responsible for the alleged infringement to show—

- (a) in relation to an infringement specified in paragraph (a) or (b) of subsection (2), that he believed on reasonable grounds that the performer had consented to the recording or broadcast being made or to the performance being included in the cable programme service, as the case may be;
- (b) in relation to an infringement specified in paragraph (c), (d) or (e) of subsection (2), that he did not know and had no reason to believe that the recording concerned was an illicit recording.

## **71 Right of performer to remuneration for commercial use of sound recording of performance**

(1) Subject to this section, where a sound recording of a performance is used for commercial purposes, the performer concerned or, if there are two or more such performers, those performers jointly shall be entitled to half the royalty payable in respect of that use to the owner of any copyright in the sound recording.

(2) The owner of copyright in the sound recording concerned shall be responsible for paying the performer or performers the amount payable to them in terms of subsection (1).

(3) This section shall not apply to any performer who—

- (a) has waived his rights under this section; or

(b) is entitled to a royalty in respect of the use of the sound recording concerned.

(4) For the purposes of this section, a sound recording shall be regarded as used for commercial purposes if it is—

- (a) published; or
- (b) broadcast or included in a cable programme service; or
- (c) played in public;

in the course of business or for the commercial or financial advantage, direct or indirect, of the person by or on whose behalf the recording is so published, broadcast, included or played.

## **72 Rights of holders of recording rights to performances**

(1) Subject to this Part, a holder of recording rights under an exclusive recording contract has the right to prevent the illicit recording of a qualifying performance or the exploitation of any such recording.

(2) The right conferred by subsection (1) on a holder of recording rights is infringed by any person who, without his consent—

- (a) makes a recording of a qualifying performance; or
- (b) broadcasts a qualifying performance live or includes it live in a cable programme service; or
- (c) by means of an illicit recording, broadcasts a qualifying performance or includes it in a cable programme service; or
- (d) imports an illicit recording of a qualifying performance into Zimbabwe or exports it from Zimbabwe, otherwise than for his private and domestic 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 qualifying performance.

(3) In any proceedings for infringement of the right conferred by subsection (1) on a holder of recording rights, it shall be a defence for the person responsible for the alleged infringement to show—

- (a) in relation to an infringement specified in paragraph (a) or (b) of subsection (2), that he believed on reasonable grounds that—
  - (i) the holder of recording rights had consented to the recording or broadcast being made or to the performance being included in the cable programme service, as the case may be; or
  - (ii) the performer concerned had consented to the recording or broadcast being made or to the performance being included in the cable programme service, as the case may be, and that the performer was entitled to give such consent;
- (b) in relation to an infringement specified in paragraph (c), (d) or (e) of subsection (2), that he did not know and had no reason to believe that the recording concerned was an illicit recording.

## **73 Exceptions to rights of performers and holders of recording rights**

(1) The rights of a performer or a holder of recording rights under this Part shall not be infringed by—

- (a) anything done in relation to a performance which would not be an infringement of a copyright work by virtue of subsections (1), (2) and (4) of section *twenty-five* or section *twenty-six, twenty-eight, twenty-nine, thirty, thirty-six, forty-one, forty-two, forty-three* or *forty-four*, or
- (b) such other acts as may be prescribed:

Provided that, when prescribing any such acts, the Minister shall have regard to Zimbabwe's obligations under any international convention, treaty or agreement.

(2) A performance of a work of folklore to which Part VIII applies may be recorded for the purpose of including it in an archive which is not maintained for commercial purposes, and such a recording shall not be regarded as infringing the performer's right under section *seventy*.

## **74 Tribunal's power to give consent on behalf of performer**

(1) Notwithstanding any other provision of this Part, the Tribunal may, on the application of a person who wishes to make a recording from a previous recording of a qualifying performance, give consent on behalf of a performer where—

- (a) the identity or whereabouts of the performer cannot be ascertained by reasonable inquiry; or
- (b) the performer unreasonably withholds his consent.

(2) In deciding whether or not to give consent in terms of subsection (1), the Tribunal shall take into account whether or not—

- (a) the previous recording of the performance was made with the performer's consent and is lawfully in the possession of the person who proposes to make the further recording;
- (b) the making of the further recording is consistent with the purposes for which, or the arrangements under which, the previous recording was made.

(3) The Tribunal shall not give consent in the circumstances referred to in paragraph (b) of subsection (1) unless it is satisfied that the performer's reasons for withholding his consent do not include the protection of any legitimate interest of his:

Provided that, if the performer does not disclose his reasons for withholding his consent, the Tribunal may draw such inferences as it thinks fit.

(4) Consent given by the Tribunal in terms of subsection (1) may be on such terms and conditions, including conditions relating to the payment to be made to the performer concerned, as the Tribunal thinks fit to impose.

(5) Consent given by the Tribunal in terms of subsection (1) shall be deemed, for the purposes of this Part, to have been given by the performer concerned.

#### **75 Duration of rights of performers and holders of recording rights**

(1) Subject to subsection (2), the rights conferred by this Part on performers and holders of recording rights shall continue to subsist in relation to a performance until the end of fifty years from the end of the calendar year in which the performance took place.

(2) A performer's right to payment under section *seventy-one* shall subsist for so long as copyright subsists in the sound recording concerned.

#### **76 Transmission of rights of performers and holders of recording rights**

(1) The right conferred on a performer by section *seventy* shall be personal to the performer:

Provided that he may dispose of it by will and, upon his death, it shall devolve in the same way as any proprietary right.

(2) The right conferred on a holder of recording rights by section *seventy-two* may be transmitted in the same way as any copyright in terms of Part IV.

#### **77 Enforcement of rights of performers and holders of recording rights**

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.

#### **78 Criminal liability for infringement of rights of performers and holders of recording rights**

(1) Any person who—

- (a) makes an illicit recording of a performance; or
- (b) imports an illicit recording of a performance into Zimbabwe or exports it from Zimbabwe, otherwise than for his personal and private use; or
- (b) in the course of business, possesses an illicit recording of a performance or exhibits it in public or distributes it; or
- (c) sells an illicit recording of a performance or lets it for hire or offers 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 level ten or to imprisonment for a period not exceeding two 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 level ten 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 level ten or to imprisonment for a period not exceeding two 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, not having reasonable grounds for believing that he is so authorised, shall be guilty of an offence and liable to a fine not exceeding level ten or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Section amended by section 4 of Act 22 of 2001]

#### **79 Rights under Part VII additional to copyright and moral rights**

The rights conferred on performers and holders of recording rights by this Part shall be independent of and additional to—

- (a) any copyright subsisting in, or right conferred by Part VI relating to—
  - (i) any work performed in any performance; or
  - (ii) any audio-visual work or other record of any performance; or
  - (iii) any broadcast or cable programme including any performance;or
- (b) any other right or obligation arising in respect of a performance otherwise than under this Part.

PART VIII  
WORKS OF FOLKLORE

**80 Interpretation in Part VIII**

In this Part—

“appropriate local authority” means a local authority to which rights in relation to a work of folklore have been reserved in terms of paragraph (b) of subsection (1) of section *eighty-one*;

“community” means a community of persons that has inhabited Zimbabwe continuously since before the year 1890 and whose members share the same language or dialect or the same cultural values, traditions or customs;

“public institution” means any association or body, whether corporate or unincorporated, established by or under an enactment, which is engaged in the promotion, preservation or development of works of folklore, and includes a museum, library, art gallery, arts foundation or arts group;

“reservation” means a reservation under subsection (1) of section *eighty-one* of any rights in relation to a work of folklore;

“reserved work of folklore” means a work of folklore in respect of which a reservation has been made;

“work 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 Zimbabwe;

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 and costumes.

**81 Reservation of rights in works of folklore**

(1) Subject to this section, the Minister may, by notice in the *Gazette*, reserve—

(a) to the President the exclusive right to authorise the doing of any one or more of the things referred to in section *seventeen* or *eighteen* in relation to a work of folklore whose form or content is embodied in the traditions of all communities within Zimbabwe; or

(b) to a local authority the exclusive right to do or authorise the doing of any one or more of the things referred to in section *seventeen* or *eighteen* in relation to a work of folklore whose form or content is embodied in the traditions of any community a substantial number of whose members reside within the area of the local authority:

Provided that, where substantial numbers of members of a particular community reside within the areas of two or more local authorities, the Minister may reserve such rights to any or all of such local authorities, or apportion the rights amongst them.

(2) Before making a reservation, the Minister shall—

(a) consult any Minister responsible for culture and, in the case of a work of folklore peculiar to a particular community, any member of that community engaged in the promotion, preservation or development of such works of folklore; and

(b) publish a notice in the *Gazette*, and in such newspaper or newspapers as he considers appropriate, of his intention to make the reservation.

(3) A notice published in terms of paragraph (b) of subsection (2) shall—

(a) describe as accurately as possible the work of folklore concerned and the rights that are proposed to be reserved; and

(b) specify whether the Minister intends to make the reservation in favour of the President or an appropriate local authority and, in the latter event, identify the local authority; and

(c) invite persons who wish to object to the proposed reservation to submit their objections to the Minister, in writing, within a reasonable period after publication of the notice.

(4) Before the Minister makes a reservation he shall pay due regard to any objections that may be submitted in response to a notice published in terms of paragraph (b) of subsection (2).

(5) A notice embodying a reservation under subsection (1) shall—

(a) describe as accurately as possible the work of folklore in respect of which the reservation is made; and

(b) specify the rights that are reserved in relation to the work of folklore concerned; and

(c) specify whether the reservation is made in favour of the President or an appropriate local authority and, in the latter event, identify the local authority; and

- (d) specify the date from which the rights are reserved, which date shall not be earlier than one month after the date of publication of the notice.

## **82 Effect of reservation**

(1) Subject to this Part—

- (a) no person who is not a public institution or a citizen of Zimbabwe shall do anything or cause anything to be done in Zimbabwe in relation to a reserved work of folklore, where the right to do that thing has been reserved to the President;
- (b) no person who is not a public institution or a member of the community concerned shall do anything or cause anything to be done in Zimbabwe in relation to a reserved work of folklore, where the right to do that thing has been reserved to an appropriate local authority;

except in accordance with a licence under section *eighty-five*.

(2) Any person who contravenes subsection (1) shall be guilty of an offence, unless he satisfies the court that he did not know and had no reason to believe that the work of folklore concerned was a reserved work of folklore.

(3) A person who is guilty of an offence in terms of subsection (2) shall be liable to a fine not exceeding level six or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

[Subsection amended by section 4 of Act 22 of 2001]

## **83 Restriction on importation or exportation of copies of reserved works of folklore**

Section *sixty* shall apply, *mutatis mutandis*, to the importation or exportation of copies of any reserved work of folklore made in contravention of this Part as if—

- (a) the Minister were the owner of the copyright in the reserved work of folklore, where rights in it have been reserved to the President; or
- (b) the appropriate local authority concerned were the owner of the copyright in the reserved work of folklore, where rights in it have been reserved to such an authority.

## **84 Freedom to do certain things in relation to reserved works of folklore**

(1) Notwithstanding any other provision of this Part, anything that may be done in terms of section *twenty-four*, *twenty-five*, *twenty-six*, *twenty-eight*, *twenty-nine*, *thirty-one*, *thirty-six*, *thirty-seven*, *forty-one*, *forty-two*, *forty-three* or *forty-four* without infringing the copyright in a work may be done in relation to a reserved work of folklore without a licence granted under section *eighty-five*.

(2) Any person may do any of the things referred to in section *seventeen* or *eighteen* in relation to a reserved work of folklore —

- (a) otherwise than for gain, if he does not prejudice the rights of any person to whom a licence has been granted under section *eighty-five*; or
- (b) for gain, if—
- (i) where the right to do the thing has been reserved to the President, he is a citizen of Zimbabwe and he does the thing for his personal gain or for the gain of other persons who are citizens of Zimbabwe;
- (ii) where the right to do the thing has been reserved to a community, he is a member of that community and he does the thing for his personal gain or for the gain of other persons who are members of that community.

(3) Any person may use a reserved work of folklore to create an original work.

## **85 Licensing of reserved works of folklore**

(1) Subject to this section—

- (a) the Minister may grant a written licence to any person or class of persons authorising him or them, as the case may be, to do anything in relation to a reserved work of folklore, where the right to do that thing has been reserved to the President;
- (b) the appropriate local authority concerned may grant a written licence to any person or class of persons authorising him or them, as the case may be, to do anything in relation to a reserved work of folklore, where the right to do that thing has been reserved to the appropriate local authority:

Provided that neither the Minister nor an appropriate local authority shall grant an exclusive licence to any person.

(2) A licence granted under subsection (1) may require the licensee to pay a fee for doing anything under the licence, and any such fee shall be paid into—

- (a) the Consolidated Revenue Fund, where the licence is granted by the Minister; and
- (b) the revenues of the appropriate local authority concerned, where the licence is granted by such a local authority:

Provided that the appropriate local authority shall apply the fee in such manner as the appropriate local authority considers will benefit members of the community concerned or any class of such members.

(3) No licence granted under subsection (1) shall have effect unless it is registered in terms of Part XI.

(4) The Minister or an appropriate local authority may, on fourteen days' written notice to the licensee, revoke a licence granted under subsection (1) on such reasonable grounds as the Minister or the appropriate local authority, as the case may be, shall specify in the notice:

Provided that—

- (i) where the licence has been granted to a class of persons, notice of revocation may be given by notice in the *Gazette*;
- (ii) no such revocation shall have effect until it has been recorded in the Register in terms of Part XI.

(5) The Minister or an appropriate local authority may assign his or its right to grant licences under subsection (1) to any public institution, and this section shall apply, *mutatis mutandis*, in relation to any licence granted by that public institution:

Provided that no such assignment shall have effect until—

- (a) its terms have been published in the *Gazette*; and
- (b) it has been registered in terms of Part XI.

(6) For the purposes of any proceedings before the Tribunal, a licence granted under subsection (1) shall be deemed to be a non-exclusive licence granted by the Minister, the appropriate local authority concerned or the public institution referred to in subsection (3), as the case may be.

(7) Any licence granted in terms of this section shall be deemed to have been granted in terms of section *ninety-seven*.

[Subsection inserted by section 3 of Act 32 of 2004]

## **86 Appeal to Tribunal against decisions of Minister or appropriate local authority**

(1) Any person who is aggrieved by any decision of—

- (a) the Minister, in respect of the reservation of a work of folklore; or
- (b) the Minister, an appropriate local authority or a public institution to which rights have been assigned in terms of subsection (5) of section *eighty-five*, in regard to the issue or refusal of a licence in terms of that section or any terms and conditions of such a licence;

may appeal to the Tribunal against that decision.

(2) On an appeal in terms of subsection (1), the Tribunal may confirm, vary or set aside the decision appealed against or make such other order in the matter as it considers appropriate.

(3) Without derogation from subsection (2), on an appeal in terms of subsection (1), the Tribunal may direct the Minister, the appropriate local authority or public institution concerned to grant a licence in terms of section *eighty-five* on such terms and conditions, including terms and conditions as to payment of a fee, as the Tribunal may specify.

## **PART IX**

COPYRIGHT OFFICE, COPYRIGHT REGISTER, CONTROLLER AND OTHER OFFICERS

### **87 Copyright Office**

There shall be an office, to be called the Copyright Office, for the registration of copyright and other matters in terms of this Act.

### **88 Copyright Register**

(1) There shall be kept at the Copyright Office a register to be known as the Copyright Register, in which shall be entered such particulars as may be prescribed in relation to the rights and other matters that are required or permitted in terms of this Act be registered in the Register.

(2) Notwithstanding subsection (1), regulations in terms of section *one hundred and thirty-five* may provide for different registers to be kept in respect of different rights, works or matters or classes thereof, or for the Register to be divided into different parts for the registration of such different rights, works or matters or classes thereof.

(3) Subject to this Act, 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 Registrar shall provide a certified copy of any entry in the Register to any person who requests it and who pays the prescribed fee.

### **89 Controller, Registrar and other officers**

(1) There shall be—

- (a) a Controller of Copyright; and
- (b) one or more registrars of copyright; and
- (c) 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 Public Service.

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

(3) Subject to the directions of the Controller, the Registrar shall be responsible for—

- (a) maintaining the Register; and
- (b) registering collecting societies, rights and other matters in terms of Parts X and XI; and
- (c) considering and dealing with references and applications in terms of Parts X, X and XII; and
- (d) supervising the activities of collecting societies; and
- (e) generally, doing anything else he is required to do by or under this Act or any other enactment.

(4) If the Controller so directs, an officer referred to in paragraph (c) of subsection (1) shall have power to exercise, subject to the Controller's supervision and direction, any function exercisable by the Registrar in terms of this Act or any other enactment.

## **90 Seal of Copyright Office**

(1) The Copyright Office shall have a seal of a design approved by the Minister, and impressions of the seal shall be judicially noticed.

(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.

## **PART X**

### **COLLECTING SOCIETIES OTHER THAN COPYRIGHT AND NEIGHBOURING RIGHTS COLLECTING SOCIETY OF ZIMBABWE**

[Heading amended by section 7 of Act 32 of 2004]

## **91 Collecting societies to be registered**

(1) No person shall operate or carry on the business of a collecting society in Zimbabwe unless the society is registered.

(2) No person shall act as the agent of a collecting society in Zimbabwe unless—

- (a) he knows or has reason to believe that the society is registered; or
- (b) the society is established or constituted outside Zimbabwe and he performs the act in the course of his duties as an officer or employee of a collecting society which is registered.

(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable to a fine not exceeding level six or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[[Subsection as amended by section 4 of Act 22 of 2001]

## **92 Application for registration of collecting society**

(1) An application for the registration of a collecting society may be made, subject to this Part, by any person duly authorised by the society concerned.

(2) An application under subsection (1) shall be made in the prescribed form and manner and shall be accompanied by—

- (a) such documents and other information as may be prescribed or as the Registrar may reasonably require; and
- (b) a list of the classes of works in which the society owns the copyright or whose copyright owners the society intends to act for or represent; and
- (c) the prescribed fee.

(3) The Registrar shall accept an application under subsection (1) if he is satisfied that—

- (a) all the prescribed requirements have been met in regard to the application; and
- (b) the society is controlled by individuals who are citizens of Zimbabwe or ordinarily resident in Zimbabwe; and
- (c) the management of the society is vested in a committee or board consisting of at least five persons elected by members of the society, at least two of whom are authors, artists or performers whose rights are managed by the society; and
- (d) the society—
  - (i) owns the copyright in a substantial number of works of the class or classes specified in the application; or
  - (ii) acts for or represents, either directly or through arrangements with other collecting societies, a substantial number of owners of copyright in works of the class or classes specified in the application;

and

- (e) the society is capable of ensuring the enforcement of the rights of the copyright owners and other persons whom it will act for or represent;

and, subject to subsection (4), if he is not so satisfied he shall refuse the application.

(4) If an applicant has not been able to satisfy the Registrar as to any matter referred to in subsection (3) but the Registrar considers that he will be able to do so before a final decision is made on the application, the Registrar may accept the application subject to such modifications, conditions or limitations as may be appropriate.

(5) The Registrar may at any time, whether before or after acceptance of the application, correct any error in or in connection with an application under subsection (1).

(6) At the request of a person whose application under subsection (1) has been refused or accepted subject to modifications, conditions or limitations, and on payment of the prescribed fee, the Registrar shall provide him, in writing, with the grounds for his decision and the information he used in arriving at the decision.

(7) Where the Registrar has provided an applicant with grounds for his decision in terms of subsection (6), in any subsequent appeal to the Tribunal arising out of that decision—

- (a) the appeal shall be determined on the information which the Registrar stated he used in arriving at his decision and on any further information the applicant may have laid before him; and
- (b) the Registrar 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 Registrar such leave the applicant shall be entitled, on giving the prescribed notice, to withdraw his appeal without payment of costs.

### **93 Duration of registration of collecting society**

Subject to section *ninety-four*, the registration of a collecting society shall continue for so long as the society remains in existence.

### **94 Cancellation of registration of collecting society**

(1) Subject to subsection (2), the Registrar may, on his own initiative or on application by any interested person, cancel or amend the registration of a collecting society if he is satisfied that the society—

- (a) has contravened or failed to comply with any provision of this Act or any direction or order made or given to it under this Act; or
- (a) no longer owns the copyright in any of the classes of works in respect of which it was registered; or
- (b) no longer acts for or represents the copyright owners of any of the classes of works in respect of which it was registered.

(2) Before cancelling or amending the registration of a collecting society in terms of subsection (1), otherwise than at the request of the society concerned, the Registrar shall give the society a reasonable opportunity to make representations in the matter.

### **95 Application of provisions of Part XI to registration of collecting societies**

Sections *one hundred to one hundred and two*, subsection (1) of section *one hundred and three*, subsection (2) of section *one hundred and four*, sections *one hundred and five* and *one hundred and six* and sections *one hundred and eight to one hundred and ten A* shall apply, mutatis mutandis, in respect of the registration of collecting societies in terms of this Part.

## **PART XI**

### **COPYRIGHT AND NEIGHBOURING RIGHTS COLLECTING SOCIETY OF ZIMBABWE**

[Part substituted by section 4 of Act 32 of 2004]

### **96 Interpretation in Part XI**

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

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

“inspector” means an inspector appointed in terms of section *one hundred and ten B*;

“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 *ninety-eight*;

“registered” means registered in terms of this Part.

### **97 Establishment, Constitution, Functions, Powers and Funds of the Copyright and Neighbouring Rights Collecting Society of Zimbabwe**

(1) There is hereby established a Society to be known as the Copyright and Neighbouring Rights Collecting Society of Zimbabwe which shall be a 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.

(2) The functions of the Society shall be—

- (a) to represent and defend the interests of its members in Zimbabwe and abroad;

- (b) to maintain a register of works, productions and associations of authors and performers;
- (c) to contribute by all appropriate means to the promotion of national creativity in the artistic, literary and other creative fields;
- (d) to grant any authorisation which is permitted to be given under this Act;
- (e) to collect royalties from the users of a work on behalf of any members entitled thereto;
- (f) to make reciprocal agreements with foreign societies of authors and performers for the use of exclusive authorisation in respect of their members' work and for the collection and distribution of royalties deriving from those works;
- (g) to act for members in the management of their rights in terms of this Act;
- (h) to represent authors and performers in the negotiation and administration of licence schemes;
- (i) to negotiate the grant of licences as agent for the members;
- (j) to endeavour to obtain the transfer of membership to the Society of Zimbabwean authors and performers who are members of foreign collecting societies;
- (k) to help in the preparation of standards forms of contracts of assignment of copyright or of licence for the benefit and use of its members;
- (l) to foster such harmony and understanding between members and the users of their works, as are necessary for the protection of their rights;
- (m) to provide its members with information and advice on all matters relating to copyright;
- (n) to exercise such power and perform such other function as may be required by this Act.

(3) The operations of the Society shall be controlled and managed by the Copyright and Neighbouring Rights Collecting Society of Zimbabwe Board.

(4) The Board shall consist of—

- (a) three members appointed by the Minister of whom two shall be registered legal practitioners;
- (b) four representatives of an association considered by the Minister to be representative of authors appointed by the Minister after consultation with the association;
- (c) four representatives of an association considered by the Minister to be representatives of performers to be appointed by the Minister after consultation with the association;
- (d) one representative from the Ministry responsible for information and publicity;
- (e) one representative from the Ministry responsible for primary and secondary education;
- (f) one representative from the traditional leadership to be appointed by the Minister after consultation with the Council of Chiefs.

(5) 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 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.

(6) 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.

(7) The Second Schedule shall govern the financial and other aspects of the operations of the Society.

## **98 Registering officer of the Society**

(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 Neighbouring Rights Collecting Society of Zimbabwe.

(3) The registering officer of the Society shall be responsible, subject to any directions given to him or her by the Board, 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 whom the Board has directed shall be 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 Board 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 Board has authorised to inspect the Register free-of-charge.

## **99 Application for membership of Society and registration of works of authors and performers**

(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 or her 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 or she is satisfied that—

- (a) all the prescribed requirements have been met in 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 or she shall refuse the application.

(6) If an applicant has not been able to satisfy the registering officer as to any matter referred to in subsection (4) or (5) but the registering officer considers that he or she 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 or her, in writing, with the grounds for his or her decision and the information he or she used in arriving at the decision.

(9) Where the registering officer has provided an applicant with grounds for his or her 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 or she used in arriving at his or her decision and on any further information the applicant may have laid before him or her; and
- (b) the registering officer may take no further grounds of objection to the application other than those stated by him or her, 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 or her appeal without payment of costs.

## **100 Advertisement of accepted application**

(1) Where the registering officer has accepted an application under section *ninety-nine*, 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 or she 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.

### **101 Opposition to registration**

(1) Within two months after an application has been advertised in terms of section *one hundred*, 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 counter-statement setting out the grounds on which he or she relies in support of his or her application.

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

(4) As soon as possible after receiving a counter-statement 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.

### **102 Decision on application for registration**

(1) If, after an application has been advertised in terms of section *one hundred*—

- (a) the registering officer has not received a notice of opposition in terms of section *one hundred and one* 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 *ninety-nine*;

the registering officer shall proceed to register the author or performer concerned.

(2) If the registering officer has received a notice of opposition and counter-statement in terms of section *one hundred and one*, he or she shall consider the submissions made therein and, if he or she considers it necessary or if he or she is required to do so by either party, 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.

### **103 Effective date and duration of registration**

(1) Where the registering officer registers any right or matter in terms of section *one hundred and two*, 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 *one hundred and seven* or *one hundred and eight*.

### **104 Power of registering officer to allow amendments to applications and documents**

(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 or she thinks fit.

### **105 Proceedings before registering officer**

(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 or she 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 or her under this Part—

- (a) allow any witness to be cross-examined on his or her affidavit or oral evidence;
- (b) decide the hours, times and places at which he or she will sit.

(3) For the purposes of any proceedings before him or her 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 [*Chapter 10:07*], other than the power to order a person to be detained in custody, and sections 9 to 13 and 15 to 19 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 or her.

### **106 Duty of registering officer to give opportunity to make representations**

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

### **107 Power of registering officer to rectify Register**

(1) Subject to section *one hundred and six*, the registering officer may, on his or her 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 or her name or address;
- (c) cancelling the registration of any right, assignment or licence, where he or she 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.

### **108 Power of Tribunal to rectify Register**

(1) Any interested person who maintains that—

- (a) any entry was made in the Register without sufficient cause; or
- (b) any entry wrongly remains in the Register; or
- (c) there is any 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 or she 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.

### **109 Certified copies of entries in Register**

The registering officer shall provide a copy of any entry in the Register, certified with the seal referred to in section *ninety*, to any person who requests it and who pays the appropriate fee.

### **110 Right of registering officer to appear in proceedings regarding Register**

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.

### **110A Penalty for false entries and false statements**

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 or her 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 level four or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.”.

### **110B Appointment of Inspectors**

(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 or she has been appointed as an inspector.

(2) An inspector may require a person whom he or she 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 or her licence.

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

- (a) is unable to produce his or her licence on demand; or
- (b) cannot be located at his or her 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 or her 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 or she 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 or she shall be presumed, unless the contrary is proved, not to have produced that notice and his or her licence, in compliance with the notice.

(6) Subject to subsection (7), an inspector may at all reasonable times enter premises on which he or she 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 50 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]; 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 or her by this section, exhibit the certificate issued to him or her in terms of subsection (1).

## **PART XII**

### **POWERS OF REGISTRAR IN REGARD TO LICENCE SCHEMES AND LICENCES**

#### **111 Reference of licence scheme to Registrar**

(1) If, while a licence scheme is in operation, a dispute arises between the collecting society operating the scheme and—

- (a) a person who claims he requires a licence in a case of a class to which the scheme applies; or
- (b) an organisation that claims to represent persons requiring licences in cases of a class to which the scheme applies;

that person or organisation may refer the scheme to the Registrar in so far as it relates to cases of that class.

(2) If, while a licence scheme is in operation, any person claims that works of a description similar to those covered by the scheme are unreasonably excluded from it, he may refer the scheme to the Registrar.

(3) The Registrar shall consider any scheme referred to him in terms of subsection (1) or (2) and, subject to section *one hundred and fourteen*, shall make such order, either confirming the licence scheme or varying it in so far as it relates to cases of the class to which the reference relates, as he considers to be reasonable in the circumstances.

(4) An order of the Registrar in terms of subsection (3) may be made so as to be in force indefinitely or for such period as he may determine.

(5) The Registrar may direct that an order in terms of subsection (3), in so far as it varies the charges payable for a licence, has effect from the date on which the reference was made or such later date as he may specify.

(6) A licence scheme may be referred to the Registrar in terms of subsection (1) or (2) even if he has previously made an order under this section in regard to the scheme in so far as it relates to the same class of cases:

Provided that no such subsequent reference shall be made within twelve months after the earlier order unless the Registrar, having regard to the special circumstances of the case, grants leave for the reference to be made.

### **112 Application to Registrar regarding grant or refusal of licence or terms thereof**

(1) Where a person claims that—

(a) a collecting society has refused or failed within a reasonable time to grant him a licence or to procure a licence for him, and—

(i) where the grant of such a licence is covered by a licence scheme, that he is entitled to a licence in terms of the scheme; or

(ii) whether or not the grant of such a licence is covered by a licence scheme, that in the circumstances the refusal or failure to grant a licence is unreasonable;

or

(b) the terms and conditions under which a collecting society proposes to issue a licence to him are unreasonable;

he may apply to the Registrar for an order in terms of this section.

(2) If, on an application in terms of subsection (1), and after considering the matters referred to in section *one hundred and fourteen*, the Registrar is satisfied that the applicant's claim is well-founded, he shall make an order declaring that, in respect of the matters specified in the order, the applicant is entitled to a licence on such terms and conditions as the Registrar determines—

(a) are applicable in accordance with the licence scheme concerned; or

(b) are reasonable in the circumstances.

(3) An order of the Registrar in terms of subsection (2) may be made so as to be in force indefinitely or for such period as he may determine.

(4) The Registrar, on application by any interested party, may vary or rescind an order made by him in terms of subsection (2):

Provided that no such application shall be made within twelve months after the order was made unless the Registrar, having regard to the special circumstances of the case, grants leave for the application to be made.

### **113 Reference to Registrar of expiring licence**

(1) A licensee whose licence—

(a) has been granted by a collecting society; and

(b) is due to expire, whether by the passage of time or as a result of notice given by the collecting society;

and who claims that it is unreasonable in the circumstances that his licence should cease to be in force, may apply to the Registrar for an order in terms of this section.

(2) An application shall not be made in terms of subsection (1) until the last three months before the licence concerned is due to expire.

(3) If, on an application in terms of subsection (1), and after considering the matters referred to in section *one hundred and fourteen*, the Registrar is satisfied that the applicant's claim is well-founded, the Registrar shall make an order declaring that the applicant shall continue to be entitled to the benefit of his licence on such terms as the Registrar may determine to be reasonable in the circumstances.

(4) An order of the Registrar in terms of subsection (3) may be made so as to be in force indefinitely or for such period as he may determine.

(5) The Registrar, on application by any interested party, may vary or rescind an order made by him in terms of subsection (3):

Provided that no such application shall be made within twelve months after the order was made unless the Registrar, having regard to the special circumstances of the case, grants leave for the application to be made.

### **114 Factors to be taken into account by Registrar in making orders**

(1) In any reference or application in terms of this Part, the Registrar shall have regard to—

- (a) Zimbabwe's obligations under any international convention, treaty or agreement relating to copyright; and
- (b) any order made by the Industry and Trade Competition Commission established by section 4 of the Competition Act [*Chapter 14:28*].

(2) In determining what is reasonable on a reference or application in terms of this Part relating to a licence scheme or licence, the Registrar shall have regard to—

- (a) the availability of other schemes or the granting of other licences to other persons in similar circumstances; and
- (b) the terms of those other schemes or licences;

and shall exercise his power so as to ensure that the collecting society concerned does not discriminate unreasonably between licensees or prospective licensees.

(3) In a reference or application in terms of this Part relating to the reprographic copying of a work, the Registrar shall have regard to—

- (a) the extent to which published editions or versions of the work concerned are otherwise available; and
- (b) the proportion of the work to be reproduced; and
- (c) the use to which the resultant copies are likely to be put.

(4) In a reference or application in terms of this Part in respect of a sound recording, an audio-visual work, a broadcast or a cable programme which includes any entertainment or other event, the Registrar shall have regard to any conditions imposed by the promoters of the entertainment or event, and in particular shall not regard a refusal or failure to grant a licence to be unreasonable if the licence could not have been granted consistently with any such conditions.

(5) When considering the charges, if any, to be paid by an educational institution for a licence authorising the recording of a broadcast or cable programme which includes copyright works, or the making of a copy of such a recording, the Registrar shall have regard to the extent to which the owners of copyright in the works included in the broadcast or programme have already received or are entitled to receive, payment in respect of the inclusion of those works.

(6) When considering the charges to be paid for letting for hire copies of any sound recording, audio-visual work or computer program, the Registrar shall take into account any reasonable payments which the owner of the copyright in the recording, work or program is liable to make—

- (a) to the owner of copyright in any work included in the recording, work or program; or
- (b) to any performer or other person whose rights under Part VII may be affected by the letting for hire of copies of the recording, work or program.

(7) Nothing in this section shall be construed as preventing the Registrar from considering, in any reference or application in terms of this Part, any relevant factor not mentioned elsewhere in this section.

### **115 Effect of Registrar's orders**

(1) A licence scheme that has been varied by the Registrar under section *one hundred and eleven* shall remain in operation for so long as the Registrar's order remains in force and, while it so remains in operation, a person who, in a class of case to which the order applies—

- (a) pays to the collecting society operating the scheme any charges payable under the scheme for a licence covering that class of case or, if the amount of the charges cannot be ascertained, gives the collecting society an undertaking to pay them when they are ascertained; and
- (b) complies with any other terms and conditions applicable to a licence covering that class of case under the scheme;

shall be in the same position as regards infringement of copyright as if he were the holder of a licence granted by the owner of the copyright in question in accordance with the scheme.

(2) If, while an order of the Registrar under section *one hundred and twelve* or *one hundred and thirteen* remains in force, the person in whose favour it is made—

- (a) pays to the collecting society concerned any charges payable in accordance with the order or, if the amount of the charges cannot be ascertained, gives the collecting society an undertaking to pay the charges when they are ascertained; and
- (b) complies with any other terms and conditions specified in the order;

he shall be in the same position as regards infringement of copyright as if he were the holder of a licence granted by the owner of the copyright in question on the terms specified in the order.

### **116 Application of provisions of Part XI to proceedings regarding licence schemes and licences**

Sections *one hundred and four*, *one hundred and five* and *one hundred and six* shall apply, *mutatis mutandis*, in relation to references and applications in terms of this Part.

## PART XIII

### APPEALS TO TRIBUNAL AGAINST DECISIONS OF REGISTRAR OR REGISTERING OFFICER

[Heading amended by section 7 of Act 32 of 2004]

#### 117 Right of appeal to Tribunal against decisions of Registrar or Registering Officer

[Heading amended by section 7 of Act 32 of 2004]

Any person who is aggrieved by a decision of the Registrar—

- (a) in regard to the registration of a collecting society under Part X, including a decision—
- (i) to accept or not to accept an application under section *ninety-two*; or
  - (ii) to impose any modification, condition or limitation on his acceptance of an application under section *ninety-two*; or
  - (iii) to refuse to allow an applicant further time within which to advertise an application for the registration of a collecting society; or
  - (iv) to register or not to register a collecting society; or
  - (v) to impose any modification, condition or limitation on the registration of a collecting society; or
  - (vi) to cancel or amend the registration of a collecting society under section *ninety-four*; or  
[Subaragraph amended by section 7 of Act 32 of 2004]
  - (vii) to refuse to allow a person further time to file any document;
- or
- (b) in regard to the registration of any right or matter under Part XI, including a decision—
- (i) to accept or not to accept an application under section *ninety-nine*; or
  - (ii) to impose any modification, condition or limitation on his acceptance of an application under section *ninety-nine*; or
  - (iii) to refuse to allow an applicant further time within which to advertise an application in terms of section *one hundred*; or
  - (iv) to register or not to register any right or matter under section *one hundred and two*; or
  - (v) to impose any modification, condition or limitation on the registration of any right or matter under section *one hundred and two*; or
  - (vi) to refuse to allow the amendment of an application or a document in terms of section *one hundred and four*; or
  - (vii) to rectify the Register under section *one hundred and seven*; or
  - (viii) to refuse to allow a person further time to file any document;  
[Paragraph amended by section 7 of Act 32 of 2004]
- or
- (c) in regard to any reference or application under Part XII, including a decision—
- (i) as to the duration of an order in terms of that Part; or
  - (ii) to vary or rescind an order in terms of section *one hundred and twelve* or *one hundred and thirteen*, or refusing such a variation or rescission; or
  - (iii) to refuse to allow a reference to be made under that Part within twelve months after an earlier order; or
  - (iv) to refuse to allow a person further time to file any document;

may appeal to the Tribunal against the decision concerned.

#### 118 Noting of appeal

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

#### 119 Powers of Tribunal on appeal

In an appeal in terms of section *one hundred and seventeen*, the Tribunal may—

- (a) exercise the same discretionary powers in relation to the decision or order in issue as are conferred on the Registrar by the relevant provisions of this Act;
- (b) remit the matter to the Registrar 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 XIV

### EVIDENCE AND PRESUMPTIONS

#### **120 Proof of certain facts by affidavit in infringement proceedings**

In any civil or criminal proceedings for infringement of copyright in any work, evidence to prove—

(a) the subsistence of the copyright in that work; or  
(b) the title of any person in respect of the copyright, whether by way of ownership, assignment or licence;  
may be adduced by way of affidavit, and the production of such an affidavit by any person in those proceedings shall be *prima facie* proof of the relevant facts:

Provided that the Tribunal or the court before which such an affidavit is produced may order the person who made the affidavit to be subpoenaed to give oral evidence in the proceedings, or may cause written interrogatories to be submitted to that person for reply, and any reply purporting to be from that person shall likewise be admissible in evidence in the proceedings.

#### **121 Presumptions in infringement proceedings: literary, musical and artistic works**

(1) This section shall apply to both civil and criminal proceedings.

(2) Where a name purporting to be that of the author or owner of copyright appeared on copies of a literary, musical or artistic work when it was published or on the work when it was made, the person whose name so appeared shall, in any proceedings for infringement of copyright in the work, be presumed to be the author of the work or the owner of copyright in the work, as the case may be, unless the contrary is proved.

(3) Where a work is alleged to be a work of joint authorship, subsection (2) shall apply in relation to each person alleged to be one of the authors of the work.

(4) Where it is established that copies of a literary work as issued to the public bear a statement that the work was first published in a specified year and additionally, or alternatively, in a specified country, the statement shall be admissible as evidence of the facts stated and shall be presumed correct, unless the contrary is proved.

(5) Where, in proceedings for infringement of copyright in a literary, musical or artistic work which is anonymous or pseudonymous, it is established that—

(a) the work was first published or made—

(i) in Zimbabwe or in a designated country referred to in section *eleven*; and

(ii) not more than fifty years before the beginning of the calendar year in which the proceedings were brought;

and

(b) a name purporting to be that of the publisher appeared on copies of the work as first published; then, unless the contrary is proved, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright when the work was first published or made, as the case may be.

Provided that this subsection shall not apply in relation to a pseudonymous work if the actual name of the work's author is commonly known.

(6) Where, in proceedings for infringement of copyright in a literary, musical or artistic work, it is established that the author of the work is dead, the work shall be presumed to be an original work, unless the contrary is proved.

(7) Subsection (6) shall also apply where a work has been published and—

(a) the publication was anonymous or under a name alleged to be a pseudonym by the plaintiff or applicant or, in criminal proceedings, by the State; and

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

(8) A claim contemplated in—

(a) subsection (2), that a person is the owner of copyright in a work, may be made by means of the symbol "C" in conjunction with the name of the person concerned;

(b) subsection (4), that a work was published in a particular year or in a particular country, may be made by means of the symbol "P" in conjunction with the year and additionally, or alternatively, the country in question.

#### **122 Presumption in infringement proceedings: works subject to exclusive licence**

Where, in civil or criminal proceedings for infringement of copyright in any work which is the subject of an exclusive licence, it is proved that the person alleged to have done an act which infringes the copyright did the act without the authority of the exclusive licensee, it shall be presumed, unless the contrary is proved, that he did the act also without the authority of the owner of the copyright.

### **123 Presumptions in infringement proceedings: registered works**

In any civil or criminal proceedings for infringement of any right that is registered in terms of Part XI, it shall be presumed, unless the contrary is proved, that—

- (a) every party to those proceedings had knowledge of the particulars recorded in the Register in regard to the right from the date on which the application to record those particulars was lodged; and
- (b) the person who is alleged to have done an act which infringes the relevant copyright did the act without the required authority.

### **124 Evidence and presumptions in infringement proceedings: audio-visual works, sound recordings and computer programs**

(1) This section shall apply to both civil and criminal proceedings.

(2) Where, in proceedings for infringement of copyright in an audio-visual work, a sound recording or a computer program, it is established that any person who in the course of business sold, let for hire or distributed copies of any such works, was found in possession of a copy of the audio-visual work, sound recording or computer program concerned, it shall be presumed, unless the contrary is proved, that by way of business he offered or exposed it for sale or hire.

(3) Where, in proceedings for infringement of copyright in an audio-visual work, it is established that copies of the work as issued to the public bear a statement—

- (a) that a named person was the author or director of the work; or
- (b) that a named person was the owner of the copyright in the work when the copies were issued; or
- (c) that the work was first published in a specified year and additionally, or alternatively, in a specified country;

the statement shall be admissible as evidence of the facts stated and shall be presumed correct unless the contrary is proved.

(4) Where, in proceedings for infringement of copyright in an audio-visual work or a sound recording, it is established that records issued to the public and embodying the work or recording or part of the work or recording bear a label or other mark stating—

- (a) that a named person is the director or author of the work or recording; or
- (b) that a named person was the owner of the copyright in the work or recording when the records were issued; or
- (c) that the work or recording was first published in a specified year and additionally, or alternatively, in a specified country;

the label or mark shall be admissible as evidence of the facts stated and shall be presumed correct unless the contrary is proved.

(5) Where, in proceedings for infringement of copyright in a computer program, it is established that copies of the program as issued to the public bear a statement—

- (a) that a named person was the owner of the copyright in the program when the copies were issued; or
- (b) that the program was first published in a specified year and additionally, or alternatively, in a specified country;

the statement shall be admissible as evidence of the facts stated and shall be presumed correct unless the contrary is proved.

(6) A claim contemplated in—

- (a) paragraph (b) of subsection (3) or (4) or paragraph (a) of subsection (5) may be made by means of the symbol “C” in conjunction with the name of the person concerned;
- (b) paragraph (c) of subsection (3) or (4) or paragraph (b) of subsection (5) may be made by means of the symbol “P” in conjunction with the year and additionally, or alternatively, the country in question.

### **125 Presumption regarding registered collecting society**

In any civil or criminal proceedings relating to copyright in any work, an entry in the Register showing that a collecting society is registered in terms of Part X in respect of the class of works to which the work concerned belongs shall be *prima facie* proof that the society represents the owner of the copyright in the work concerned.

### **126 Entries in Register to be *prima facie* proof of their contents**

In any civil or criminal proceedings relating to copyright, including applications and appeals under this Part, an entry in the Register showing that—

- (a) a person is the owner of the copyright in a work; or
- (b) the copyright in a work has been assigned to a person; or
- (c) a person has been granted a licence in respect of a work; or
- (d) a person has been granted a licence under section *eighty-five* in respect of a reserved work of folklore;

shall be *prima facie* proof of that fact.

## 127 Proof of entries in Register and of things done by Registrar

(1) In any proceedings before the Tribunal or any court, a document purporting to be a copy of an entry in the Register provided in terms of section *one hundred and nine* shall be admissible on its production by any person as *prima facie* evidence of the entry having been made and of its contents.

[Subsection amended by section 7 of Act 32 of 2004]

(2) In any proceedings before the Tribunal or any court, a document purporting to be a statement by the Registrar, certified with the seal referred to in section *ninety* and giving particulars of—

- (a) any proceedings before him in terms of this Part; or
- (b) the grounds for any decision or order given or made by him in terms of this Part; or
- (c) the practice of his office; or
- (d) any other matter which is within his knowledge as Registrar;

shall be admissible on its production by any person as *prima facie* evidence of the facts stated in the document.

## PART XV

### GENERAL

## 128 No copyright under common law

Subject to this Act, no copyright or right in the nature of copyright shall subsist otherwise than by virtue of this Act or any other enactment.

## 129 Devices designed to circumvent copy-protection

(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 level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(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.

## 130 Removal of rights-management information

(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
  - (a) 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 level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(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.

### 131 Fraudulent reception of transmissions

(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 Zimbabwe 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 level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[Subsection as amended by section 4 of Act 22 of 2001]

(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.

### **132 Application of Act to works made and contracts concluded before commencement of Act**

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

(2) No act done before the fixed date 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 fixed date 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.

### **133 Act not to affect certain other rights**

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.

### **134 Collecting societies to deposit certain agreements with Registrar**

(1) Every registered collecting society shall ensure that a copy of any agreement which it concludes with any other collecting society and which relates to—

- (a) the management of rights of owners of copyright; or
- (b) the representation of owners of copyright; or
- (c) the administration of licence schemes;

is lodged without delay at the Copyright Office.

(2) The Registrar shall ensure that any agreement lodged in the Copyright Office in terms of subsection (1) is kept available for inspection by members of the public at all reasonable times.

### **135 Regulations**

(1) Subject to this section, the Minister may by regulation 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) provide for the establishment of one or more schemes whereby—

- (i) a levy is imposed on—
  - A. the sale of blank records which can be used for the recording of works in accordance with section *forty-one* or *forty-two*; or
  - B. the use of any apparatus or process for reprographic copying by educational institutions and libraries which reproduce or are likely to reproduce works, whether in accordance with section *twenty-five* or otherwise, or in accordance with a compulsory licence referred to in paragraph (a);

and

- (ii) the proceeds of any levy referred to in subparagraph (i) are paid to or for the benefit of authors and performers whose works or performances are being or are likely to be reproduced in terms of section *forty-one* or *forty-two* or by an educational institution or library referred to in subparagraph B of subparagraph (i) or under a compulsory licence referred to in paragraph (a);
  - (d) declare invalid any term or condition in a licence or licence scheme which, in the Minister's opinion—
    - (i) is not reasonably necessary to protect copyright or any other right conferred by this Act in a work; and
    - (ii) unduly restricts the rights of any licensee;
  - (e) prescribe the classes of works in respect of which collecting societies may be registered in terms of Part X;
  - (f) confer powers on the Registrar in regard to the settlement of disputes regarding infringement of copyright or the terms and conditions of any licence or any assignment of copyright;
  - (g) prescribe fees payable in respect of any notice given to the Director of Customs and Excise under section *sixty*, and the reimbursement of the Director of Customs and Excise for any expenses incurred in detaining any articles in consequence of any notice or order under that section.
- (3) Before making regulations referred to in paragraph (c) of subsection (2) providing for the imposition of any levy, the Minister shall consult the Ministers responsible for finance and trade.
- (4) When making any regulations in terms of subsection (1) the Minister shall have regard to Zimbabwe's obligations under any international convention, treaty or agreement relating to copyright.
- (5) Any person who is aggrieved by—
- (a) any compulsory licence issued under regulations referred to in paragraph (a) of subsection (1), or any refusal or failure to grant such a licence or any term or condition of such a licence; or
  - (b) any scheme established by regulations referred to in paragraph (b) of subsection (2), or any act done under such a scheme; or
  - (c) any regulations referred to in paragraph (c) of subsection (2);
- may refer the matter to the Tribunal, and the Tribunal may make such order as the Tribunal determines to be reasonable in the circumstances.
- (6) Without derogation from subsection (5), the Tribunal may—
- (a) declare any regulations made under subsection (1) to be void, if in the Tribunal's opinion they could not have been made under this Act; or
  - (b) recommend to the Minister that he amend any regulations made under subsection (1);
- and the Minister shall pay due regard to any such declaration or recommendation.
- (7) Sections one hundred and eleven, one hundred and twelve, one hundred and fourteen and one hundred and fifteen shall apply, *mutatis mutandis*, in regard to any reference in terms of subsection (5).

### **136 Repeal of Cap. 26:01 and savings**

- (1) Subject to subsection (2), the Copyright Act [*Chapter 26:01*] is repealed.
  - (2) Any assignment, licence or scheme which had effect under the Copyright Act [*Chapter 26:01*] immediately before the fixed date shall be 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 fixed date may be registered in terms of Part XI:
- Provided that any application for such registration shall be made within one year after the date of commencement of Part XI.

## **FIRST SCHEDULE (Section 97 (8))**

PROVISIONS APPLICABLE TO COPYRIGHT AND NEIGHBOURING RIGHTS COLLECTING SOCIETY OF ZIMBABWE 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 or she is neither a citizen of Zimbabwe nor ordinarily resident in Zimbabwe; or
- (b) he or she 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 or she 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 or she has been sentenced—
  - (i) in Zimbabwe, in respect of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, 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 or she has been convicted—
  - (i) in Zimbabwe of an offence involving dishonesty; or
  - (ii) outside Zimbabwe, in respect of any conduct which, if committed in Zimbabwe, 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 or she be qualified to hold office as a member.

(3) For the purposes of paragraph (b) of subparagraph (2), a person who is appointed to a council, board or other Agency which is a body or which is responsible for the administration of the affairs of a body shall be regarded as a member of that body.

*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 or she shall continue to hold office until he or she has been re-appointed or his or her 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 fix.

*Vacation of office by appointed members*

3.(1) An appointed member shall vacate his or her office and his or her office shall become vacant—

- (a) one month after the date he or she gives notice in writing to the Minister of his or her intention to resign his or her office or after the expiry of such other period of notice as he and the Minister may agree; or
- (b) on the date he or she begins to serve a sentence of imprisonment, whether or not any portion has been suspended, imposed without the option of a fine—
  - (i) in Zimbabwe, in respect of an offence; or
  - (ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence; and
- (c) if he or she 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 or she is mentally or physically incapable of efficiently exercising his or her functions as a member.

(2) The Minister on the recommendation of the Board, may require an appointed member to vacate his or her 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 or she 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 Board 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 or she 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 or her 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 insure the enforcement of this Act; and

(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;

(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 Zimbabwe 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;
- (e) 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 [Chapter 9:07].

## **SECOND SCHEDULE (Section 97(8))**

PROVISIONS APPLICABLE TO FINANCES RELATING TO A COPYRIGHT AND NEIGHBOURING RIGHTS COLLECTING SOCIETY OF ZIMBABWE

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 31<sup>st</sup> December 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 Comptroller and Auditor-General, who shall have all the powers conferred upon him by section 9 of the Audit and Exchequer Act [Chapter 22:03] as though the assets of the Board were public moneys or State property