

**Council for Trade-Related Aspects of
Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY
LAWS AND REGULATIONS NOTIFIED UNDER
ARTICLE 63.2 OF THE AGREEMENT**

KENYA

The present document reproduces the text¹ of the Copyright Act Cap 130 of 1966 as last amended in 1991, as notified by Kenya under Article 63.2 of the Agreement (see document IP/N/1/KEN/2).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À LA
PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

KENYA

Le présent document contient le texte¹ de la Loi sur le droit d'auteur (chapitre 130) de 1966, modifiée en dernier lieu en 1991, notifiée par le Kenya au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/KEN/2).

**Consejo de los Aspectos de los Derechos de Propiedad
Intellectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA PROPIEDAD
INTELLECTUAL NOTIFICADOS EN VIRTUD DEL PÁRRAFO 2
DEL ARTÍCULO 63 DEL ACUERDO**

KENYA

En el presente documento se reproduce el texto¹ de la Ley sobre derecho de autor (capítulo 130) de 1966, modificada por última vez en 1991, que Kenya ha notificado en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/KEN/2).

¹ In English only./En anglais seulement./En inglés solamente.

L A W S O F K E N Y A



The Copyright Act

C H A P T E R 1 3 0

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CHAPTER 130

THE COPYRIGHT ACT

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CHAPTER 130

THE COPYRIGHT ACT

Commencement: 1st April 1966

3 of 1966,
5 of 1975,
5 of 1982,
14 of 1989.

An Act of Parliament to make provision for copyright in literary, musical and artistic works, audio-visual works, sound recordings and broadcasts

1. This Act may be cited as the Copyright Act.

Short title.

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

Interpretation.
5 of 1975, s. 2,
5 of 1982, s. 2,
14 of 1989, s. 3.

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

(a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;

(b) maps, plans and diagrams;

(c) works of sculpture;

(d) photographs not comprised in audio-visual works;

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

(f) works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art;

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

“author”, in the case of audio-visual work, computer programme or sound recording, means the person by whom the arrangements for the making of the audio-visual work, computer programme or sound recording were undertaken, or in the case of a broadcast transmitted from within a country, means the person by whom the arrangements for the making of the transmission from within that country were undertaken, or in the case of programme-carrying signals, means the person who decides what programme the signal emitted to a satellite or passing through a satellite will carry;

“broadcast” means a sound or television broadcast of any material and includes a diffusion over wires, but does not include the emission of programme-carrying signals to a satellite;

No. 15 of 1988.

“broadcast authority” means the Kenya Broadcasting Corporation established by the Kenya Broadcasting Corporation Act or any other broadcaster authorized by or under any written law;

“building” includes any structure;

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

“copy” means a reproduction in written form, in the form of a recording or audio-visual works, or in any other material form, but an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

“copyright” means copyright under this Act;

“infringing copy” means a copy whose manufacture constituted an infringement of copyright or the rights of the performer and in case of a copy which is imported, would have constituted an infringement of copyright or the rights of the performer had the copy been manufactured in Kenya by the importer;

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

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

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

but does not include a written law or judicial decision;

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

“prescribed” means prescribed by regulations made under section 18;

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

“reproduction” means the making of one or more copies of a literary, musical or artistic work, audio-visual works or a sound recording;

“school” has the meaning assigned to it by the Education Act; Cap. 211.

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

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

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

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

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

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

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) audio-visual works;
- (e) sound recordings;

Works eligible
for copyright.
5 of 1975, s. 3,
14 of 1989, s. 4.

- (f) broadcasts; and
- (g) programme-carrying signals.

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

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

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

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

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

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

<i>Type of Work</i>	<i>Date of Expiration of Copyright</i>
1. Literary, musical or artistic work other than photographs	Fifty years after the end of the year in which the author dies.
2. Audio-visual works and photographs	Fifty year in which the work was first made lawfully accesible to the public.
3. Sound recordings	Fifty years after the end of the year in which the recording was made.
4. Broadcasts	Fifty years after the end of the year in which the broadcast took place.
5. Programme-carrying signals	Fifty years after the end of the year in which the signals were emmitted by satellite.

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

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

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

(5) In the case of literary, musical or artistic work where the author is a body corporate, the copyright therein shall subsist until the end of fifty years from the end of year in which the work was first published.

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

Copyright by reference to country of origin.
5 of 1975, s. 5,
14 of 1989, s. 6.

(a) being a literary, musical or artistic work or any audio-visual work is first published in Kenya;

(b) being a sound recording, is made in Kenya; and

(c) being a programme-carrying signal, is emitted to a satellite from a place in Kenya,

and which has not been the subject of copyright conferred by section 4.

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

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

Copyright in works of Government and international bodies.
5 of 1975, s. 6,
14 of 1989, s. 7.

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

(3) Copyright conferred by this section on any audio-visual work, photograph, sound recording, broadcast or programme-carrying signal shall have the same duration as is provided for by section 4 in relation to a similar work.

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

Nature of
copyright in
literary,
musical or
artistic works
and
audio-visual
works.
5 of 1975, s. 7,
14 of 1989, s. 8,
14 of 1989, s. 13.

7. (1) Copyright in a literary, musical or artistic work or in an audio-visual work shall be the exclusive right to control the doing in Kenya of any of the following acts, namely the reproduction in any material form, the distribution of the public for commercial purposes of copies by way of sale, rental, lease, hire, loan or similar arrangements, the communication to the public and the broadcasting, of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original; but copyright in any such work shall not include the right to control—

(a) the doing of any of those acts by way of fair dealing for the purposes of scientific research, private use, criticism or review, or the reporting of current events;

(b) *(Deleted by 5 of 1975, s. 7.)*

(c) the reproduction and distribution of copies, or the inclusion in a film or broadcast, of an artistic work situated in a place where it can be viewed by the public;

(d) the incidental inclusion of an artistic work in a film or broadcast;

(e) the inclusion in a collection of literary or musical works of not more than two short passages from the work in question if the collection is designed for use in a school registered under the Education Act or the University of Nairobi established under section 3 (1) of the University of Nairobi Act or any other university and includes an acknowledgment of the title and authorship of the work;

(f) the broadcasting of a work if the broadcast is intended to be used for purposes of systematic instructional activities;

(g) the reproduction of a broadcast referred to in the preceding paragraph and the use of that reproduction in a school registered under the Education Act or the University of Nairobi established under section 3 (1) of the University of Nairobi Act or any other university for the systematic instructional activities of any such school or university;

(h) the making or importing of a sound recording of a literary or musical work and the reproduction of

Cap. 211

Cap. 210.

such sound recording, if intended for retail sale in Kenya and provided fair compensation is paid to the owner of the relevant part of the copyright in the work in accordance with regulations made under section 15;

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

(2) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognizably derived from the original; but the copyright in any such work shall not include the right to control the reconstruction of a building to which that copyright relates in the same style as the original.

(3) Copyright in a literary, musical or artistic work or in audio-visual works shall also include, during the lifetime of the author, the right to claim authorship in the work, except when the work is used incidentally or accidentally, and to object to any distortion, mutilation or other modification of the work where that action would be or is prejudicial to the honour or reputation of the author.

Broadcasting
of works
incorporated in
audio-visual
works.
14 of 1989, s. 13.

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

(2) Notwithstanding subsection (1), where a broadcasting authority broadcasts audio-visual works in which a musical work is incorporated, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority, and in the absence of an agreement the amount of compensation shall be determined by the competent authority appointed under section 17.

Nature of
copyright in
sound recording.
14 of 1989, s. 9.

9. (1) Subject to subsections (2) and (3), copyright in sound recording shall be the exclusive right to control the doing in Kenya of any of the following acts in respect of the sound recording namely—

- (a) the direct or indirect reproduction in any material form; or
- (b) the distribution to the public of copies for commercial purposes by way of sale, rental, lease, hire, loan or any similar arrangements; or
- (c) the communication to the public or the broadcasting of the sound recording in whole or in part either in its original form or in any form recognizably derived from the original.

(2) The provisions of paragraphs (a), (g), (k) and (i) of section 7 (1) shall apply *mutatis mutandis* to the copyright in a sound recording.

(3) Subject to the subsections (4) and (5), the rights of an owner of a copyright in a sound recording are not infringed by the making of a single copy of the recording for the personal and private use of the person making the copy; and in respect of such use the owner of copyright in the sound recording shall have the right to receive fair compensation consisting of a royalty levied on audio recording equipment or audio blank tape suitable for recording and other media intended for recording, payable at the point of first sale in Kenya by the manufacturer or importer for commercial purposes of such equipment or media.

(4) The level of the royalty payable under subsection (3) shall be agreed between organizations representatives of producers of sound recordings and of manufacturers and importers of audio recording equipment, audio blank tape and media intended for recording or failing such agreement by the authority appointed under section 17.

(5) All claims for compensation under this section shall be made through an organization representative of producers of sound recordings.

(6) Any person who, for commercial purposes, makes available any audio recording equipment for the purposes of enabling any other person to make single copies of any sound recording for his personal or private use shall be guilty of an offence.

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

Nature of
copyright in
broadcasts.

(a) paragraphs (a), (g), (j) and (m) of section 7 (1) shall apply *mutatis mutandis* to the copyright in a broadcast;

(b) the copyright in a television broadcast shall include the right to control the taking of still photographs therefrom.

Nature of
copyright in
programme-
carrying signals.
5 of 1975, s. 8.

11. (1) Copyright in programme-carrying signals shall be the exclusive right to prevent the distribution in Kenya or from Kenya of any such signals by any distributor for whom these signals were not intended by their author, but paragraphs (a), (f), (g) and (m) of, section 7 (1) shall apply *mutatis mutandis* to the copyright in programme-carrying signals.

(2) In this section—

“distribution” means an operation by which programme-carrying signals are transmitted to the general public or any section thereof;

“distributor” means the person who decides that the distribution should take place;

“programme-carrying signals” means electronically generated carriers transmitting live or recorded material consisting of images, sounds or both, in their original form or any form recognizably derived from the original, and emitted to or passing through a satellite situated in extraterrestrial space.

Rights of
performers.
14 of 1989, s. 10.

12. (1) No person shall do any of the following acts without the authorization of the performer—

(a) broadcast his performance except where the broadcast is made from a fixation of the performance authorized by the performer;

(b) communicate to the public his performance except where the communication—

(i) is made from a fixation of the performance; or

(ii) is made from a broadcast of the performance, authorized by the performer;

(c) make a fixation of a previously unfixed performance;

(d) reproduce a fixation of the performance in either of the following cases—

(i) where the performance was initially fixed without the authorization of the performer; or

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

(2) In the absence of any contractual agreement to the contrary in circumstances of employment from which the contrary would normally be inferred

- (a) the authorization to broadcast does not imply an authorization to licence other organizations to broadcast the performance;
- (b) the authorization to broadcast does not imply an authorization to make a fixation of the performance; and
- (c) the authorization to broadcast and fix the performance does not imply an authorization to reproduce the fixation.

(3) A binding authorization given under this section may be given by the performer or by a duly appointed representative to whom he has granted in writing the right to give such authorization; and any authorization given by the performer claiming that he has retained the relevant rights or by a person claiming to be a duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the claim or appointment, as the case may be, was not valid.

(4) Protection of the rights of the performer under this section shall subsist for fifty years after the end of the year in which the performance took place.

(5) In this section—

“performance” means the representation of a work by such action as dancing, playing, reciting, singing, declaiming or projecting to listeners by any means whatsoever;

“performer” means an actor, singer, declaimer, musician or other person who performs a literary or musical work and includes the conductor or director of the performance of any such work;

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

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

13. (1) Copyright conferred by sections 4 and 5 shall vest initially in the author:

Provided that where a work—

- (i) is commissioned by a person who is not the author's employer under a contract of service; or

First ownership
of copyright.
5 of 1982, s. 3.

(ii) not having been so commissioned, is made in the course of the author's employment,

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

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

Assignments and
licences.
5 of 1975, s. 9.

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

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

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

(4) A non-exclusive licence to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct, and may be revoked at any time, but a licence granted by contract shall not be revoked, either by the person who granted the licence or his successor in title, except as the contract may provide, or by a further contract.

(5) (*Deleted by 5 of 1975, s. 9.*)

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

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

15. (1) Copyright shall be infringed by a person who, without the licence of the owner of the copyright—

Infringement.
5 of 1982, s. 4,
14 of 1989, s. 11.

(a) does, or causes to be done, an act the doing of which is controlled by the copyright; or

(b) imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.

(2) The rights of a performer shall be infringed by a person who without the consent of the performer—

(a) does, or causes to be done, any act specified in section 12 (1); or

(b) imports or causes to be imported, otherwise than for his own private or domestic use, an article which he knows would have been made contrary to section 12 had it been made in Kenya by the importer.

(2) Infringement of copyright shall be actionable at the suit of the owner of the copyright; and in any action for infringement the following relief shall be available to the plaintiff—

(a) the relief by way of damages, injunction, accounts or otherwise that is available in any corresponding proceedings in respect of infringement of other proprietary rights; and

(b) delivery up to the plaintiff of any article in the possession of the defendant which appears to the court to be an infringing copy, or any article used or intended to be used for making infringing copies.

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

(a) that an infringement was committed; but

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

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

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

(a) the flagrancy of the infringement; and

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

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

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

(6) In an action under this section—

(a) copyright shall be presumed to subsist in the work or other subject matter to which the action relates, if the defendant does not put in issue the subsistence of copyright therein; and

(b) where the subsistence of copyright is proved, admitted, or presumed by paragraph (a), the plaintiff shall be presumed to be the owner of the copyright if he makes a claim thereto and the defendant does not dispute that claim.

(7) Where in an action under this section, a name purporting to be the name of the author or joint author appeared on copies of a literary or musical work as published or an artistic work when it was made, any person whose name so appeared, if it was his true name or the name by which he was commonly known, shall be presumed, unless the contrary is proved—

(a) to be the author of the work; and

(b) to have made the work in circumstances not falling within the proviso to section 11 (1).

(8) Where, in an action under this section, subsection (7) does not apply but the literary, musical or artistic work to which that action relates was first published in Kenya, or any country to which the provisions of this Act in respect of works of the type in issue has been extended, twenty years before the year in which the action was brought and a name purporting to be that of the publisher appeared in a copy of the work

when it was first published, then unless the contrary is proved, copyright shall be presumed to subsist in the work and that publisher shall be presumed to have been the owner of that copyright when the work was first published.

(9) Where, in action under this section, the author of the literary, musical or artistic work to which the action relates is dead, it shall be presumed, unless the contrary is proved—

(a) that the work is eligible for copyright; and

(b) that any allegation by the plaintiff that the work is a first publication and was published in a specified country on a specified date, is true.

(10) (a) Where, in an action under this section the sound recording to which the action relates is reproduced on a record, bearing a label or other mark, which has been issued to the public, any statement on that label to the effect that a person named thereon was the maker of the sound recording or the recording was first published in a specified year shall, unless the contrary is proved, be presumed to be true.

(b) In this subsection “record” means any disc, tape, perforated roll or other device in which sounds are embodied which are capable of reproduction therefrom with or without the aid of another instrument.

(11) In this section—

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

“court” means the High Court;

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

16. (1) Any person who, at a time when copyright or the rights of a performer subsists in a work—

(a) makes for sale or hire any infringing copy;

(b) sells or lets for hire or by way of trade exposes or offers for sale or hire any infringing copy;

(c) distributes infringing copies;

(d) possesses otherwise than for his private and domestic use, any infringing copy;

Offences and penalties for infringement.
5 of 1975, s. 10,
5 of 1982, s. 5.
14 of 1989, s. 12.

- (e) imports into Kenya otherwise than for his private and domestic use any infringing copy; or
- (f) makes or has in his possession any contrivance used or intended to be used for the purpose of making infringing copies,

shall, unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright or the rights of a performer would or might thereby be infringed, be guilty of an offence.

(2) Any person who causes a literary or musical work, an audio-visual work or a sound recording to be performed in public at time when copyright subsisted in such work or sound recording and where such performance was an infringement of that copyright shall be guilty of an offence unless he is able to prove that he had acted in good faith and had no reasonable grounds for supposing that copyright would or might be infringed.

(3) For the purposes of paragraphs (a) to (f) of subsection (1), any person who has in his possession, custody or control three or more infringing copies of a work in the same form, shall, unless the contrary is proved, be presumed to be in possession of or to have imported such copies otherwise than for private and domestic use.

(4) Any person guilty of an offence under paragraph (a), (c) or (e) of subsection (1) shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

(5) Any person guilty of an offence under paragraph (b) or (d) of subsection (1) shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding two years or to both.

(6) Any person guilty of an offence under paragraph (f) of subsection (1) shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

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

(8) No prosecution for an offence under this section shall be instituted—

(a) after the expiration of the period of three years immediately following the date of the offence alleged; and

(b) except before the High Court or the Resident Magistrate's Court,

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

Appointment of competent authority and duties of such authority.

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

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

the competent authority may direct that, as respects the doing of any act relating to a work with which the licensing body is concerned, a licence shall be deemed to have been granted by the licensing body at the time the act is done provided the appropriate fees fixed by the competent authority are paid or tendered before the expiration of such period or periods as the competent authority may determine.

(2) In this section—

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

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

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

18. (1) The Attorney-General may make regulations for the better carrying out of the provisions of this Act, and without prejudice to the generality of the foregoing those regulations may prescribe anything to be prescribed or which may be prescribed under this Act, and may extend the application of

Regulations and extension of application of Act.
5 of 1975, s. 11.

this Act in respect of any or all of the works referred to in section 3 (1)—

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

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

(c) to sound recordings made in; or

(d) to programme-carrying signals emitted to a satellite from,

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

(2) The Attorney-General may make regulations restricting the right of an author to control the translation or the reproduction of his work up to the extent permitted by any Universal Copyright Convention for the time being in force in Kenya.

(3) The Attorney-General may make regulations authorizing, and prescribing terms and conditions governing, any specified use of folklore, except by a national public entity for non-commercial purposes, or the importation of any work made abroad which embodies folklore.

(4) For the purposes of subsection (3) “folklore” means a literary, musical or artistic work presumed to have been created within Kenya by an unidentified author which has been passed from one generation to another and constitutes a basic element of the traditional cultural heritage of Kenya.

Application to
works made
before
commencement
of Act.

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

Abrogation of
common law
rights.

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

SUBSIDIARY LEGISLATION

Regulations under section 15

THE COPYRIGHT REGULATIONS

L.N. 322/1966,
L.N. 353/1966,
L.N. 127/1967,
L.N. 266/1971,
L.N. 312/1977.

1. These Regulations may be cited as the Copyright Regulations.

2. The application of the Act is extended—

(a) in respect of literary works, musical works, artistic works and cinematograph films, to—

(i) individuals or bodies corporate who are citizens of, domiciled or resident in or incorporated under the laws of the countries named in the First Schedule; and

(ii) those works and cinematograph films first published in the countries named in the First Schedule,

being countries which are parties to the Universal Copyright Convention to which Kenya is also a party and which provides for copyright in works to which the application of the Act extends; and

(b) in respect of sound recordings, to—

(i) individuals or bodies corporate who are citizens of, domiciled or resident in or incorporated under the laws of the countries named in the Third Schedule; and

(ii) those recordings made in the countries named in the Third Schedule,

being countries which are parties to the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms to which Kenya is also a party and which provides for copyright in sound recordings to which application of the Act extends.

3. The international bodies named in the Second Schedule to these Regulations are prescribed for the purposes of section 6 (1) of the Act.

FIRST SCHEDULE

Andorra.	Czechoslovakia.
Algeria.	Denmark.
Argentina.	Ecuador.
Australia.	Fiji.
Austria.	Finland.
Bangladesh.	France.
Belgium.	Germany, Democratic Re-
Brazil.	public of.
Bulgaria.	Germany, Federal Republic
Cambodia.	of.
Cameroon.	Ghana.
Canada.	Greece.
Chile.	Guatemala.
Colombia.	Haiti.
Costa Rica.	Holy See.
Cuba.	Hungary.

Iceland.	Norway.
India.	Pakistan.
Ireland.	Panama.
Israel.	Paraguay.
Italy.	Peru.
Japan.	Philippines.
Laos.	Poland.
Lebanon.	Portugal.
Liberia.	Senegal.
Liechtenstein.	Spain.
Luxembourg.	Sweden.
Malawi.	Switzerland.
Malta.	Tunisia.
Mauritius.	United Kingdom of Great
Mexico.	Britain and Northern
Monaco.	Ireland.
Morocco.	United States of America.
Netherlands.	U.S.S.R.
New Zealand.	Venezuela.
Nicaragua.	Yugoslavia.
Nigeria.	Zambia.

SECOND SCHEDULE

The United Nations Organization.
 The Specialized Agencies of the United Nations Organization.
 The Organization of American States.
 The Organization of African Unity.

THIRD SCHEDULE

Argentina.	Hungary.
Australia.	India.
Brazil.	Italy.
Chile.	Luxembourg.
Denmark.	Mexico.
Ecuador.	Monaco.
Fiji.	New Zealand.
Finland.	Panama.
France.	Spain.
Germany; Federal Republic	Sweden.
of.	United Kingdom.
Guatemala.	United States of America.
Holy See.	Zaire.
