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

Original: English/
anglais/
inglés

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

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**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**

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Le présent document contient le texte¹ de la Loi sur le droit d'auteur (chapitre 26:1), notifié par le Zimbabwe au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/ZWE/2). Cette loi sera abrogée à l'adoption et l'entrée en vigueur du projet de loi de 2000 sur le droit d'auteur et les droits voisins (reproduit dans le document distribué sous la cote IP/N/1/ZWE/C/1).

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

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

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

TITLE 26
INDUSTRIAL AND INTELLECTUAL PROPERTY

CHAPTER 26:01
COPYRIGHT ACT

Acts 60/1966, 29/1969, 17/1971 (s. 59), 32/1979 (s. 8), 29/1981; RGN 1340/1973.

ARRANGEMENT OF SECTIONS

PART I
PRELIMINARY

Section

1. Short title.
2. Interpretation.
3. Supplementary provisions as to interpretation.
4. Infringement of copyright.

PART II
COPYRIGHT IN ORIGINAL WORKS

5. Copyright in literary, dramatic and musical works.
6. Copyright in artistic works.
7. Ownership of copyright in works.
8. Infringements by importation, sale and other dealings.
9. General exceptions from protection of literary, dramatic or musical works.
10. Special exception in respect of records of musical works.
11. General exceptions from protection of artistic works.
12. Special exception in respect of industrial designs.
13. False registration of industrial designs.
14. Anonymous and pseudonymous works.
15. Works of joint authorship.

PART III
COPYRIGHT IN SOUND RECORDINGS, CINEMATOGRAPH FILMS, BROADCASTS, ETC.

16. Copyright in sound recordings.
17. Copyright in cinematograph films.
18. Copyright in broadcasts.
19. Copyright in published editions of works.
20. Supplementary provisions for purposes of Part III.

PART IV
REMEDIES FOR INFRINGEMENTS OF COPYRIGHT

- 21. Interpretation in Part IV.
- 22. Action by owner of copyright for infringement.
- 23. Rights of owner of copyright in respect of infringing copies.
- 24. Proceedings in case of copyright subject to exclusive licence.
- 25. Onus of proof in copyright actions.
- 26. Prescription of actions for copyright infringement.
- 27. Offences and proceedings in respect of dealings which infringe copyright.
- 28. Provision for restricting importation of infringing copies.

PART V
COPYRIGHT TRIBUNAL

- 29. Interpretation in Part V.
- 30. Establishment of Tribunal.
- 31. Functions of Tribunal.
- 32. Reference of licence schemes to Tribunal.
- 33. Further reference of scheme to Tribunal.
- 34. Applications to Tribunal.
- 35. Diffusion services.
- 36. Effect of orders of Tribunal.
- 37. Special conditions relating to television broadcasts.
- 38. Determination by Tribunal of equitable remuneration or apportionment of remuneration.
- 39. Appointment of assessors.
- 40. Powers of Tribunal.
- 41. Effect of decisions of Tribunal.

PART VI
APPLICATION OF ACT TO OTHER COUNTRIES

- 42. Power to extend benefit of Act to other countries.
- 43. Copyright in publications of certain international organizations.
- 44. Extended application of provisions relating to broadcasts.
- 45. Denial of copyright to citizens of countries not giving adequate protection to Zimbabwean works.

PART VII
MISCELLANEOUS

- 46. Assignments and licences in respect of copyright.
 - 47. Prospective ownership of copyright.
 - 48. Copyright to pass under will with unpublished work.
 - 49. Copyright in publications of the State.
 - 50. Copyright in legal tender notes and in coin.
 - 51. Broadcasts and demonstrations of sound recordings and cinematograph films, and diffusion of broadcast programmes.
 - 52. Ephemeral reproductions.
 - 53. Use of copyright material for education.
 - 54. Special provisions as to public records.
 - 55. Special provisions as to libraries and archives.
 - 56. Regulations.
 - 57. Penalties.
 - 58. Savings.
 - 59. Special provisions *re* certain contracts.
 - 60. Transitional provisions.
- SCHEDULE: Transitional Provisions.

AN ACT to make provision in respect of copyright and related matters and to provide for other matters relating thereto and in connection therewith.

[Date of commencement: 1 January 1967.]

PART I
PRELIMINARY (sections 1-4)

1 Short title

This Act may be cited as the Copyright Act [*Chapter 26:01*].

2 Interpretation

(1) In this Act-

'adaptation', in relation to-

(a) a literary or dramatic work, means any of the following-

- (i) in the case of a non-dramatic work, a version of the work, whether in its original language or a different language, in which it is converted into a dramatic work;
- (ii) in the case of a dramatic work, a version of the work, whether in its original language or a different language, in which it is converted into a non-dramatic work;
- (iii) a translation of the work;
- (iv) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;

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

'appointed date' means the 1st January, 1967;

'artistic work' means a work of any of the following descriptions-

- (a) paintings, sculptures, drawings, engravings and photographs, irrespective of their artistic quality;
- (b) works of architecture, being either buildings or models of or for buildings;
- (c) works of artistic craftsmanship not falling within the descriptions contained in paragraph (a) or (b);

'author', in relation to a photograph, means the person who at the time when the photograph is taken is the owner of the material on which it is taken;

'broadcast' means a sound broadcast or a television broadcast;

'broadcasting' means broadcasting by a radio communication service, whether by way of sound broadcasting or by television;

'broadcasting service' means a radio communication service for reception by members of the public;

'building' includes any structure;

'cinematograph film' means any sequence of visual images recorded on material of any description, whether translucent or not, so as to be capable, by use of that material, of being-

(a) shown as a moving picture; or

(b) recorded on other material, whether translucent or not, by the use of which it can be shown as a moving picture;

and includes the sounds embodied in any sound-track associated with the film;

'construction' includes erection;

'copy', in relation to a cinematograph film, means any print, negative, tape or other article on which the film or part of the film is recorded;

'copyright', in relation to a work or other subject-matter, means the exclusive right conferred, by virtue of and subject to this Act, to do and to authorize other persons to do in Zimbabwe such acts, in relation to the work or other subject-matter, as are in the relevant provision of this Act, designated as the acts restricted by the copyright in a work of that description. For the purposes of this definition **'the relevant provision of this Act'**, in relation to a work or other subject-matter, means any provision of this Act which provides that, subject to compliance with the conditions specified in that provision, copyright shall subsist in works or other subject-matter of that description;

'Corporation' means the Zimbabwe Broadcasting Corporation established by section 3 of the Broadcasting Act [*Chapter 12:01*];

'Designs Act' means the Registered Designs Act, 1958 (No. 12 of 1958) or the Industrial Designs Act [*Chapter 26:02*], as may be appropriate;

'dealer' has the meaning assigned to it in section 2 of the Broadcasting Act [*Chapter 12:01*];

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

'drawing' includes any diagram, map, chart or plan;

'educational institution' means any school, technical college, university college, university or similar institution;

'engraving' includes any etching, lithograph, woodcut, print or similar work, but does not include a photograph;

'equitable', in relation to-

- (a) remuneration payable in terms of this Act, means remuneration of such amount or at such rate, if any, as may be agreed between the parties concerned or, failing such agreement, as may be determined by the Tribunal;
- (b) the apportionment of any remuneration referred to in subsection (4) or (6) of section *ten*, means an apportionment agreed between the parties concerned or, failing such agreement, determined by the Tribunal;

'future copyright' means copyright which will or may come into existence in respect of any future work or class of works or other subject-matter or on the appointed date or in any other future event;

'judicial proceedings' means proceedings before any court, tribunal or person having power to hear, receive and examine evidence on oath;

'literary work' includes any written table or compilation;

'maker', in relation to-

- (a) a cinematograph film, means the person by whom the arrangements necessary for the making of the film are undertaken;
- (b) a sound recording, means the person who owns the record embodying the sound recording at the time when the recording is made thereon;

'manuscript', in relation to a work, includes the original document embodying the work, whether written by hand or not;

'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;

'performance', in relation to a work or an adaptation of a work, includes-

- (a) subject to the provisions of subsection (4), any mode of visual or acoustic presentation, including any such presentation by-
 - (i) the operation of a radio communication service; or
 - (ii) the exhibition of a cinematograph film; or
 - (iii) the use of a record; or
 - (iv) any other means;
- (b) in relation to lectures, speeches, addresses and sermons, delivery thereof;

'photograph' means any product of photography or of any process akin to photography, other than a part of a cinematograph film;

'prospective owner', in relation to any future copyright, includes a person prospectively entitled thereto by virtue of an agreement such as is referred to in subsection (1) of section *forty-seven*;

'publication', in relation to a cinematograph film, means the sale, letting on hire or offer for sale or hire of copies of the film to, or for showing by any means to, the public;

'qualified person', in relation to the conditions under which copyright may subsist in any work or other subject-matter, means-

- (a) in the case of an individual, a person who is a Zimbabwean citizen or is domiciled or resident in Zimbabwe;
- (b) in the case of a body corporate, a body incorporated under the laws of Zimbabwe;

'radio communication service' has the meaning assigned to it in section 2 of the Radio Communication Services Act [*Chapter 12:04*];

'record', in relation to a work or other subject-matter, means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable, with or without the aid of some other instrument, of being automatically reproduced therefrom, by means of which such work or other subject-matter can be performed;

'reproduction', in relation to-

- (a) a literary, dramatic or musical work, includes a reproduction in the form of a record or of a cinematograph film;
- (b) an artistic work, includes a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form;

'sculpture' includes any cast or model made for purposes of sculpture;

'sound broadcast' means sounds broadcast otherwise than as part of a television broadcast;

'sound recording' means the aggregate of the sounds embodied in, and capable of being reproduced by means of, a record of any description, but does not include a sound-track associated with a cinematograph film;

'sound-track associated with a cinematograph film' means any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded, or which is issued by the maker of the film for use in conjunction with such an article;

'sufficient acknowledgement' means an acknowledgement identifying the work in question by its title or other description and, unless the work is anonymous or the author has previously agreed or required that no acknowledgement of his name should be made, also identifying the author;

'television broadcast' means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images;

'Tribunal' means the Copyright Tribunal established by section *thirty*;

'work' means a literary, dramatic, musical or artistic work;

'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, as the case may be;

'**Zimbabwe citizen**' means a citizen of Zimbabwe in terms of the Citizenship of Zimbabwe Act [*Chapter 4:01*].

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

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

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

(3) References in this Act to the doing of any act by the reception of a broadcast made by the Corporation shall be construed as references to the doing of that act by means of receiving the broadcast either-

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

whether the reception of the broadcast is directly from the transmission in question or from a re-transmission thereof made by any person from any place, whether in Zimbabwe or elsewhere, and, for the purposes of this subsection, '**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, print, negative, tape or other article on which the broadcast in question has been recorded.

(4) For the purposes of this Act-

- (a) broadcasting or the causing of a work or other subject-matter to be transmitted to subscribers to a diffusion service shall not be deemed to constitute performance or to constitute causing visual images or sounds to be seen or heard;
- (b) where visual images or sounds are displayed or emitted by any receiving apparatus to which they are conveyed by the transmission of electromagnetic signals, whether over paths provided by a material substance or not-
 - (i) the operation of any apparatus whereby the signals are transmitted, directly or indirectly, to the receiving apparatus shall not be deemed to constitute performance or to constitute causing the visual images or sounds to be seen or heard; but

- (ii) in so far as the display or emission of the images or sounds constitutes a performance or causes them to be seen or heard, the performance or the causing of the images to be seen or heard, as the case may be, shall be deemed to be effected by the operation of the receiving apparatus.

(5) Without prejudice to the generality of the subsection (4), where a work or an adaptation of a work is performed or visual images or sounds are caused to be seen or heard by the operation of any-

- (a) receiving apparatus referred to in subsection (4); or
- (b) apparatus for reproducing sounds 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 of those premises shall, for the purposes of this Act, be deemed to be the person giving the performance or causing the images or sounds to be seen or heard, as the case may be, whether he is the person operating the apparatus or not.

3 Supplementary provisions as to interpretation

(1) Unless the context otherwise requires, any reference in this Act to-

- (a) the doing of an act in relation to a work or other subject-matter shall be deemed to include a reference to the doing of that act in relation to a substantial part thereof;
- (b) a reproduction, adaptation or copy of a work or a record embodying a sound recording shall be deemed to include a reference to a reproduction, adaptation or copy of a substantial part of the work or a record embodying a substantial part of the sound recording, as the case may be:

Provided that, for the purposes of subsections (1) and (2) of section *five*, subsections (1) and (2) of section *six*, subsections (2) and (3) of section *forty-three*, section *forty-eight* and subsections (2), (3), (4) and (5) of section *forty-nine*, this subsection shall not affect the construction of any reference to the publication or absence of publication of a work.

(2) With regard to publication, for the purposes of this Act-

- (a) the performance, issue of records or broadcasting of a literary, dramatic or musical work, the exhibition of an artistic work or the construction of a work of architecture shall not constitute publication of the work;
- (b) 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;
- (c) subject to paragraphs (a) and (b), a work or an edition of a literary, dramatic or musical work shall be taken to have been published if, but only if, reproductions of the work or edition have been issued to the public;
- (d) a publication in Zimbabwe or in any other 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 of each other;

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

(3) In determining, for the purposes of any provision of this Act, whether-

(a) a work or other subject-matter has been published; or

(b) a publication of a work or other subject-matter was the first publication thereof;

no account shall be taken of any unauthorized publication or of the doing of any other unauthorized act:

Provided that nothing in this subsection shall affect any provisions of this Act as to the acts restricted by any copyright or as to acts constituting infringements of copyright.

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

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

(a) to the doing of different acts or classes of acts; or

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

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

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

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

(8) Any reference in this Act to deriving title shall be construed as a reference to deriving title either directly or indirectly.

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

(a) provisions of this Act specify certain acts as being restricted by the copyright or as constituting infringements thereof; and

(b) other provisions of this Act specify certain acts as not constituting infringements of the copyright;

the omission or exclusion of any matter from the provisions referred to in paragraph (b) shall not be considered as extending the operation of the provisions referred to in paragraph (a).

4 Infringement of copyright

Subject to this Act, copyright in a work or other subject-matter is infringed by any person who, not being the owner of the copyright and without the licence of the owner thereof, does or authorizes another person to do in Zimbabwe any act which in the relevant provision of this Act is designated as an act restricted by the copyright in a work or other subject-matter of that description.

PART II COPYRIGHT IN ORIGINAL WORKS (sections 5-15)

5 Copyright in literary, dramatic and musical works

(1) Subject to this Act, copyright shall subsist in every original literary, dramatic or musical work which is unpublished and of which the author was a qualified person-

- (a) at the time the work was made; or
- (b) if the making of the work extended over a period, for a substantial part of that period.

(2) Subject to this Act, where an original literary, dramatic or musical work has been published, copyright shall subsist or, if copyright subsisted therein immediately before its first publication, shall continue to subsist in that work if, but only if-

- (a) the work was first published in Zimbabwe; or
- (b) the author of the work was a qualified person at the time it was first published; or
- (c) the author of the work had died before it was first published but was a qualified person immediately before his death.

(3) The term of copyright subsisting in a literary, dramatic or musical work by virtue of this section shall be the lifetime of the author of the work and a period until the end of fifty years from the end of the calendar year in which the author died.

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

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

Provided that in the case of a musical work incorporating a literary text or choreography, an act which is referred to in paragraph (d) or in paragraph (c) or (e) in so far as it relates to the performance or transmission of a broadcast of the work and which has been authorized by the owner of the copyright in the music shall not be deemed to be restricted by copyright within the meaning of this section in so far as such act relates to such literary text or choreography, but such authorization by the owner of the copyright in the music shall not prejudice the right of the owner of the copyright in the literary text or choreography to claim an equitable remuneration.

6 Copyright in artistic works

(1) Subject to this Act, copyright shall subsist in every original artistic work which is unpublished and of which the author was a qualified person-

- (a) at the time the work was made; or
- (b) if the making of the work extended over a period, for a substantial part of that period.

(2) Subject to this Act, where an original artistic work has been published, copyright shall subsist or, if copyright subsisted therein immediately before its first publication, shall continue to subsist in that work if, but only if-

- (a) the work was first published in Zimbabwe; or
- (b) the author of the work was a qualified person at the time it was first published; or
- (c) the author of the work had died before it was first published but was a qualified person immediately before his death.

(3) The term of copyright subsisting in an artistic work by virtue of this section shall be-

- (a) in the case of a work other than a photograph, the life-time of the author of the work and a period until the end of fifty years from the end of the calendar year in which the author died;
- (b) in the case of a photograph, until the end of a period of fifty years from the end of the calendar year in which the photograph was first published.

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

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

7 Ownership of copyright in works

(1) Subject to this section, copyright conferred by section *five* or *six* shall vest initially in the author of the work.

(2) Where a literary, dramatic or artistic work is made by the author-

- (a) 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 copyright in the work in so far as the copyright relates to publication of the work in any newspaper, magazine or similar periodical, or to reproduction of the work for the purpose of its being so published, shall be deemed to have been transferred to the said proprietor, subject to any agreement between the parties excluding or limiting such transfer.
- (3) Subject to subsection (2), where a photograph is taken, a portrait is painted or drawn or a gravure is made by the author-
 - (a) for a person who has commissioned the making of that artistic work and pays or agrees to pay for it in money or money's worth; and
 - (b) in pursuance of that commission; the copyright in that artistic work shall be deemed to have been transferred to the person who commissioned the work, subject to any agreement between the parties excluding or limiting such transfer.
- (4) Where any work not referred to in subsection (2) or (3) is made by the author in the course of his employment by another person under a contract of service or apprenticeship, the copyright in the work shall be considered to have been transferred to that other person, subject to any agreement between the parties excluding or limiting such transfer.

8 Infringements by importation, sale and other dealings

- (1) Without prejudice to the generality of section *four*, this section shall have effect in relation to copyright subsisting by virtue of this Part.
- (2) Copyright subsisting in any work by virtue of this Part is infringed by any person who, without the licence of the owner of the copyright-
 - (a) imports an article into Zimbabwe, otherwise than for his personal and private use; or
 - (b) sells, lets for hire or by way of trade offers or exposes for sale or hire any article; or
 - (c) distributes an article-
 - (i) for purposes of trade; or
 - (ii) for other purposes but to such an extent as to affect prejudicially the owner of the copyright in question; or
 - (d) by way of trade exhibits any article in public; if to his knowledge the making of that article constituted an infringement of that copyright or, in the case of an imported article would have constituted such an infringement if the article had been made in Zimbabwe.

9 General exceptions from protection of literary, dramatic or musical works

- (1) Fair dealing with a literary, dramatic or musical work for the purpose of-
 - (a) research, private study or personal and private use by the person so dealing with that work; or
 - (b) criticism or review whether of that work or another work, if it is accompanied by a sufficient acknowledgement; or

- (c) reporting current events-
 - (i) in a newspaper, magazine or similar periodical, if it is accompanied by a sufficient acknowledgement; or
 - (ii) by means of broadcasting or in a cinematograph film;

shall not constitute an infringement of the copyright in that work.

(2) Copyright in a literary, dramatic or musical work is not infringed by any person who-

- (a) reproduces it for the purposes of any judicial proceedings or for the purposes of a report of judicial proceedings; or
- (b) causes it to be performed in public for the purposes of any judicial proceedings.

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

(4) Subsections (1), (2) and (3) shall apply to the doing of any act in relation to the adaptation of a work as they apply to the doing of that act in relation to the work itself.

(5) This section shall apply where a work or an adaptation of a work is caused to be transmitted to subscribers to a diffusion service as they apply where a work or an adaptation thereof is broadcast.

10 Special exception in respect of records of musical works

(1) Copyright in a musical work is not infringed by a person, in this section referred to as **'the manufacturer'**,

who makes a record of the work or of an adaptation thereof, whether from an imported disc, tape, matrix or otherwise, in Zimbabwe if-

- (a) records of the work or, as the case may be, of a similar adaptation of the work have previously been made in or imported into Zimbabwe for the purposes of retail sale, and were so made or imported by or with the licence or consent of the owner of the copyright in the work; and
- (b) before making the record the manufacturer gave to the owner of the copyright the prescribed notice of his intention to make it; and
- (c) the manufacturer intends to sell the record or to supply it for the purpose of being sold by another person or to use it for making other records which are to be so sold or supplied; and
- (d) in the case of a record which is sold, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, a royalty of an amount ascertained in accordance with this section.

(2) Subject to subsections (3), (4) and (5), the royalty referred to in paragraph (d) of subsection (1) shall be at the rate of five *per centum* of the ordinary retail selling price of the record, calculated in the prescribed manner:

Provided that-

- (i) if the amount so calculated includes a fraction of one half-cent, that fraction shall be reckoned as one half-cent;
- (ii) the royalty so calculated shall not be less than one cent.

(3) If at any time after the end of the period of one year from the appointed date it appears to the Tribunal that the amount calculated in accordance with subsection (2), or in accordance with those provisions as last varied by an order under this subsection, has ceased to be equitable either generally or in relation to any class of records, the Tribunal may hold an inquiry in the prescribed manner and if, in consequence of such an inquiry, the Tribunal is satisfied of the need to do so, it may make an order fixing such different rate or amount, either generally or in relation to any one or more classes of records, as the Tribunal may consider equitable:

Provided that-

- (i) no order shall be made under this subsection unless a draft of the order has been laid before, and has been approved by resolution of, Parliament;
- (ii) where an order affecting any class of records has been made under this subsection, no further order affecting that class of records shall be made unless a period of five years has elapsed since the date on which the first-mentioned order was made.

(4) In the case of a record-

- (a) which comprises, with or without other material, and either in their original form or in the form of adaptations, two or more musical works in which copyright subsists; and
- (b) where the owners of the copyright in the works are different persons;

there shall be an equitable apportionment of the remuneration among the owners.

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

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

the making of the record shall not constitute an infringement of the copyright in that literary or dramatic work.

(6) Subsection (5) shall not be construed as requiring more than one remuneration to be paid in respect of a record, and if copyright subsists both in the musical work and in the literary or dramatic work and their owners are different persons, there shall be an equitable apportionment among them, or among them and any other person entitled to a share thereof, in accordance with subsection (4).

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

(8) Where, for the purposes of paragraph (a) of subsection (1), the manufacturer requires to know whether such previous records as are mentioned in that paragraph were made or imported as therein mentioned, the manufacturer may make the prescribed inquiries and, if the owner of the copyright fails to reply to those inquiries within the prescribed period, the previous records shall be taken to have been made or imported, as the case may be, with the licence or consent of the owner of the copyright.

(9) Nothing in this section shall be construed as authorizing the importation of records, not being discs, tapes, matrices or devices in which sounds are embodied and which are imported not for retail sale but for the purpose of manufacturing records, which could not lawfully be imported apart from the provisions of this section and accordingly, for the purposes of any provision of this Act relating to imported articles, where the question arises, in relation to a record made outside Zimbabwe and so imported, whether the making of the record would have constituted an infringement of copyright if the record had been made in Zimbabwe, that question shall be determined as if subsection (1) had not been enacted.

(10) This section shall apply in relation to records of part of a work or adaptation as they apply in relation to records of the whole of it, save that subsection (1) shall not apply to a record-

- (a) of the whole of a work or adaptation unless the previous records referred to in paragraph (a) of that subsection were records of the whole of the work or of a similar adaptation;
- (b) of part of a work or adaptation unless those previous records were records of, or comprising, that part of the work or of a similar adaptation.

11 General exceptions from protection of artistic work

(1) Fair dealing with an artistic work for the purpose of-

- (a) research, private study or personal and private use by the person so dealing with that work; or
- (b) criticism or review, whether of that work or another work, if it is accompanied by a sufficient acknowledgement; or
- (c) reporting current events by means of broadcasting or in a cinematograph film or otherwise;

shall not constitute an infringement of the copyright in that work.

(2) The making of a painting, drawing, engraving or photograph of-

(a) works of architecture; or

(b) other artistic works which are permanently situated in a public place or in premises open to the public; or the inclusion of such a work in a cinematograph film or a television broadcast shall not constitute an infringement of the copyright in that work.

(3) Without prejudice to the generality of subsection (2), the inclusion of an artistic work in a cinematograph film or a television broadcast, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the film or broadcast, shall not constitute an infringement of the copyright in that work.

(4) The publication of a painting, drawing, engraving, photograph or cinematograph film of an artistic work the making of which, by virtue of subsection (2), did not constitute an infringement of the copyright in that work, shall not constitute an infringement of that copyright.

(5) Copyright in an artistic work is not infringed by any person who reproduces it for the purposes of any judicial proceedings or for the purposes of a report of judicial proceedings.

(6) The making of an object of any description which is in three dimensions shall not be deemed to constitute an infringement of the copyright in an artistic work in two dimensions if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work.

(7) Where the author of an artistic work (in this subsection referred to as '**the earlier work**') makes another such work (in this subsection referred to as '**the subsequent work**') and part of the earlier work is-

(a) reproduced in the subsequent work; and

(b) so reproduced by the use of a mould, cast, sketch, plan, model or study made for the purposes of the earlier work;

the making of the subsequent work shall not constitute an infringement of the copyright in the earlier work unless the author of the subsequent work in the making of that work repeats or imitates the main design of the earlier work.

(8) Where copyright subsists in a building as a work of architecture any reconstruction of the building shall not constitute an infringement of that copyright.

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

(10) This section shall apply in relation to a television programme which is caused to be transmitted to subscribers to a diffusion service as they apply in relation to a television broadcast.

12 Special exception in respect of industrial designs

- (1) Subject to subsection (2), where copyright subsists in an artistic work and-
 - (a) a corresponding design is applied industrially by or with the licence of the owner of the copyright in the work; and
 - (b) articles to which the design has been so applied are sold, let for hire or offered for sale or hire, whether in Zimbabwe or elsewhere;

after the end of the period of fifteen years from the date on which articles referred to in paragraph (b) were first sold, let for hire or offered for sale or hire, whether in Zimbabwe or elsewhere, it shall not be an infringement of the copyright in that artistic work to do anything which at the time when it was done would, if a corresponding design had been registered under the Designs Act immediately before that date, have been within the scope of the copyright in the design as extended to all associated designs and articles.

- (2) For the purposes of subsection (1)-

- (a) no account shall be taken of any articles in respect of which at the time when they were sold, let for hire or offered for sale or hire the design in question was excluded from registration under the Designs Act by virtue of regulations referred to in subsection (3) of section 7 of the Registered Designs Act, 1958 (No. 12 of 1958) or subsection (4) of section 6 of the Industrial Designs Act [*Chapter 26:02*], as the case may be;
- (b) reference to the scope of the copyright in a registered design shall be construed as a reference to the aggregate of the things which, by virtue of section 15 of the Industrial Designs Act [*Chapter 26:02*], the registered proprietor of the design has the exclusive right to do;
- (c) reference to the scope of the copyright in a registered design as extended to all associated designs and articles shall be construed as a reference to the aggregate of the things which, by virtue of section 15 of the Industrial Designs Act [*Chapter 26:02*], the registered proprietor would have had the exclusive right to do if-
 - (i) when that design was registered, there had at the same time been registered every possible design consisting of that design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof and the said proprietor had been registered as the proprietor of every such design; and
 - (ii) the design in question, and every other design such as is mentioned in subparagraph (1), had been registered in respect of all the articles to which it was capable of being applied.

- (3) For the purposes of any proceedings under this Act, a design shall be conclusively presumed to have been excluded as mentioned in paragraph (a) of subsection (2) if-

- (a) before the commencement of those proceedings an application for the registration of the design under the Designs Act in respect of those articles had been refused; and
- (b) the reason or one of the reasons stated for the refusal was that the design was excluded from such registration by virtue of regulations referred to in paragraph (a) of subsection (2); and

- (c) no appeal against that refusal had been allowed before the commencement of the proceedings or was pending on that date.

(4) Regulations made in terms of section 58 of the Industrial Designs Act [*Chapter 26:02*] shall apply for determining for the purposes of subsection (1) the circumstances in which a design is to be taken to be applied industrially.

- (5) In this section-

'corresponding design', in relation to an artistic work, means a design which when applied to an article results in a reproduction of that work.

13 False registration of industrial designs

- (1) Subsections (2) and (3) shall have effect where-

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

- (2) Subject to subsection (3), for the purposes of any proceedings referred to in subsection (1)-

- (a) the registration shall be treated as never having been effected; and
- (b) nothing in the Designs Act shall be construed as affording any defence in such proceedings.

(3) Notwithstanding anything contained in subsection (2), it shall be a good defence in any proceedings referred to in subsection (1) if it is proved or admitted that any act to which the proceedings relate was done-

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

- (4) In this section-

'corresponding design' bears the meaning assigned to it in subsection (5) of section twelve.

14 Anonymous and pseudonymous works

(1) This Part shall, in the case of anonymous or pseudonymous works, have effect subject to this section.

(2) In the case of the first publication of-

- (a) a literary, dramatic or musical work; or
- (b) an artistic work other than a photograph;

which is anonymous or pseudonymous, the term of any copyright subsisting in that work by virtue of section *five* or *six* shall be a period until the end of fifty years from the end of the calendar year in which the work was first published:

Provided that this subsection shall not apply to any work as respects which, at any time before the end of the said period, it is possible for a person without previous knowledge of the facts to ascertain the identity of the author of the work by reasonable inquiry.

(3) Where an original work is anonymous or pseudonymous and has not been published, any copyright subsisting in the work by virtue of section *five* or *six* shall be deemed to have ceased to subsist if on reasonable grounds it appears that the author of the work has been dead for fifty years:

Provided that this subsection shall not apply to any work as respects which it is possible for a person without previous knowledge of the facts to ascertain the identity of the author of the work by reasonable inquiry.

(4) The publisher of a work which is published anonymously or pseudonymously shall, subject to any agreement to the contrary between the parties, have authority to grant any assignment or licence in the copyright subsisting in the work and owned by the author without disclosing the identity of the author to the assignee or licensee.

(5) For the purposes of this Act, a publication of a work under two or more names shall not be taken to be pseudonymous unless all those names are pseudonyms.

15 Works of joint authorship

(1) In relation to a work of joint authorship, the references to the author-

- (a) in subsections (1) and (2) of section *five*, subsections (1) and (2) of section *six* and the proviso to subsection (2) of section *fourteen* shall be construed as references to any one or more of the authors;
- (b) in subsection (3) of section *five* and subsection (3) of section *six* shall, subject to the provisions of subsection (2), be construed as references to the author who died last.

(2) In relation to a work of joint authorship which was first published under two or more names-

- (a) of which one or more, but not all, were pseudonyms; or

- (b) all of which were pseudonyms if at any time within the period of fifty years from the end of the year in which the work was first published it is possible for a person, without previous knowledge of the facts, to ascertain the identity of any one or more, but not all, of the authors by reasonable inquiry;

references to the author in subsection (3) of section *five* and subsection (3) of section *six* shall be construed as references to the author whose identity was disclosed or, if the identity of two or more of the authors was disclosed, to that one of those authors who died last, and for the purposes of this subsection the identity of an author shall be taken to have been disclosed if-

- (i) in his case the name under which the work was published was not a pseudonym; or
- (ii) it is possible to ascertain his identity in accordance with the provisions of paragraph (b).

(3) In relation to a work of joint authorship of which one or more of the authors is such a person that had he been the sole author of the work copyright would not have subsisted in that work under this Part, section *seven* shall have effect as if the author or authors, other than such persons, had been the sole author or authors, as the case may be, of the work.

(4) In relation to a work of joint authorship, the reference in paragraph (d) of subsection (5) of section *fifty-three* to not more than one other excerpt from works by the author of the passage in question-

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

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

PART III COPYRIGHT IN SOUND RECORDINGS, CINEMATOGRAPH FILMS, BROADCASTS, ETC. (sections 16-20)

16 Copyright in sound recordings

(1) Subject to this Act, copyright shall subsist in every sound recording-

- (a) which is made in Zimbabwe; or
- (b) of which the maker was a qualified person at the time the recording was made.

(2) The term of copyright subsisting in a sound recording by virtue of subsection (1) shall be a period until the end of fifty years from the end of the calendar year in which the recording was made.

(3) Subject to this Act, copyright conferred by this section shall vest initially in the maker of the sound recording:

Provided that, where a sound recording is made-

- (a) for a person who has commissioned the making of the sound recording and pays or agrees to pay for it in money or money's worth; and
- (b) in pursuance of that commission;

the copyright in the sound recording shall be deemed to have been transferred to the person who commissioned the making of the sound recording, subject to any agreement between the parties excluding or limiting such transfer.

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

(5) Fair dealing with a sound recording for the purpose of research or private study by the person so dealing with such recording shall not constitute an infringement of the copyright in the recording.

(6) Copyright in a sound recording is not infringed by any person who makes a recording embodying the sound recording for the purposes of any judicial proceedings.

(7) For the purposes of this Act, a sound recording shall be deemed to be made at the time when the first recording embodying the sound recording is made.

17 Copyright in cinematograph films

(1) Subject to this Act, copyright shall subsist in every cinematograph film-

- (a) the maker of which was a qualified person for the whole or a substantial part of the period during which the film was made; or
- (b) which has been published and of which the first publication took place in Zimbabwe.

(2) The terms of copyright subsisting in a cinematograph film by virtue of-

- (a) paragraph (a) of subsection (1), shall be a period until the film is published and thereafter until the end of fifty years from the end of the calendar year in which the film was first published;
- (b) paragraph (b) of subsection (1), shall be a period until the end of fifty years from the end of the calendar year in which the film was first published.

(3) Subject to this Act, copyright conferred by this section shall vest initially in the maker of the cinematograph film:

Provided that, where a cinematograph film is made-

- (a) for a person who has commissioned the making of the cinematograph film and pays or agrees to pay for it in money or money's worth; and
- (b) in pursuance of that commission the copyright shall be deemed to have been transferred to the person who commissioned the making of the cinematograph film, subject to any agreement between the parties excluding or limiting such transfer.

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

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

(5) Fair dealing with a cinematograph film for the purpose of-

- (a) research, private study or personal and private use by the person so dealing with that film; or
- (b) criticism or review, whether of that film or another film, if it is accompanied by a sufficient acknowledgement; shall not constitute an infringement of the copyright in that film.

(6) Copyright in a cinematograph film is not infringed by any person who-

- (a) makes a copy of the film for the purposes of any judicial proceedings; or
- (b) causes it to be seen or heard in public for the purposes of any judicial proceedings.

(7) Where copyright has subsisted in a cinematograph film by virtue of this section and has ceased so to subsist, a person who thereafter causes the film-

- (a) to be seen or seen and heard in public; or
- (b) to be broadcast;

does not thereby infringe any copyright subsisting in any work presented in the film by virtue of Part I.

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

(9) In the case of a cinematograph film which is a newsreel, the causing of the film to be-

- (a) seen or seen and heard in public; or
- (b) broadcast; or
- (c) transmitted to subscribers to a diffusion service; after the end of a period of twenty-five years from the end of the calendar year in which the principal events depicted in the film occurred does not constitute an infringement of the copyright subsisting in the film by virtue of this section.

(10) Where the sounds embodied in any sound-track associated with a cinematograph film are also embodied in a record not derived from that sound-track, any use made of that record does not constitute an infringement of the copyright in the film.

18 Copyright in broadcasts

(1) Subject to this Act, copyright shall subsist in every broadcast made by the Corporation after the appointed date.

(2) The term of copyright subsisting in a broadcast by virtue of subsection (1) shall be a period until the end of fifty years from the end of the calendar year in which the broadcast was made.

(3) Subject to this Act, copyright conferred by this section shall vest initially in the Corporation.

(4) The acts restricted by copyright in a broadcast are-

(a) in the case of a television broadcast in so far as it consists of visual images, the making, otherwise than for personal and private use of the person so dealing with that broadcast, of-

(i) a cinematograph film of it or part of it or a copy of such film; or

(ii) a photograph of part of it or a copy of such photograph;

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

(c) in the case of a television broadcast, causing it, in so far as it consists of visual images, to be seen in public or in so far as it consists of sounds, to be heard in public if it is seen or heard by a paying audience;

(d) in the case of any broadcast, rebroadcasting it.

(5) The restrictions imposed by subsection (4) in relation to a broadcast shall apply whether the act in question is done by-

(a) the reception of the broadcast; or

(b) making use of any record, print, negative, tape or other article on which the broadcast has been recorded.

(6) In relation to copyright in television broadcasts, in so far as they consist of visual images, the restrictions imposed by subsection (4) in relation to a cinematograph film or a copy of such film shall apply to any sequence of images sufficient to be seen as a moving picture and accordingly, for the purpose of establishing an infringement of such copyright, it shall not be necessary to prove that the act in question extended to more than a sequence of images.

(7) For the purposes of subsection (4), a cinematograph film or a copy thereof, a photograph or a copy thereof or a sound recording or a record embodying a sound recording shall be deemed to be made otherwise than for personal and private use if it is made for the purposes of the doing by any person of any of the following acts-

(a) the sale or letting for hire of any copy of the film or photograph or, as the case may be, of any record embodying the sound recording;

- (b) broadcasting the film recording or photograph;
- (c) causing the film, photograph or recording to be seen or heard in public.

(8) For the purposes of paragraph (c) of subsection (4), a television broadcast shall be deemed to be seen or seen and heard by a paying audience if it is seen or seen and heard by persons who have been admitted-

- (a) for payment to the place where the broadcast is to be seen or seen and heard or to a place of which that place forms part; or
- (b) to the place where the broadcast is to be seen or seen and heard in circumstances where goods or services are supplied there at prices which exceed the prices usually charged at similar places and are partly attributable to the facilities afforded for seeing or seeing and hearing the broadcast.

(9) For the purposes of paragraph (a) of subsection (8), no account shall be taken of persons admitted to the place in question-

- (a) as residents or inmates therein; or
- (b) as members of a club or society where the payment is only for membership of the club or society and the provision of facilities for seeing or seeing and hearing television broadcasts is only incidental to the main purposes of the club or society.

(10) Copyright in a broadcast is not infringed by anything done in relation thereto for the purposes of any judicial proceedings.

19 Copyright in published editions of works

(1) Subject to this Act, copyright shall subsist in every published edition of any one or more literary, dramatic or musical works where-

- (a) the first publication of the edition took place in Zimbabwe; or
- (b) the publisher of the edition was a qualified person at the date of the first publication thereof.

(2) Copyright shall not subsist in an edition which reproduces the typographical arrangement of a previous edition of the same work or works.

(3) The term of copyright subsisting in a published edition by virtue of this section shall be a period until the end of fifty years from the end of the calendar year in which the edition was first published.

(4) Subject to this Act, copyright conferred by this section shall vest initially in the publisher of the edition.

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

(6) The making by any photographic or similar process of a reproduction of the typographical arrangement of the edition for the purpose of research or private study involving the work contained in the edition shall not constitute an infringement of the copyright in that edition.

20 Supplementary provisions for purposes of Part III

(1) Subject to subsection (7) of section *seventeen*, where copyright subsists by virtue of this Part in any sound recording, cinematograph film, broadcast or other subject-matter-

- (a) nothing in this Part shall be construed as affecting the operation of Part II in relation to any work from which that subject-matter is wholly or partly derived;
- (b) such copyright shall be additional to and independent of any copyright subsisting by virtue of Part II.

(2) Copyright subsisting in any subject-matter by virtue of this Part is infringed by any person who without the licence of the owner of the copyright-

- (a) imports an article into Zimbabwe, otherwise than for his personal and private use; or
- (b) sells, lets for hire or by way of trade offers or exposes for sale or hire any article; or
- (c) distributes an article-
 - (i) for purposes of trade; or
 - (ii) for other purposes but to such an extent as to affect prejudicially the owner of the copyright in question; or
- (d) by way of trade exhibits any article in public;

if to his knowledge the making of the article constituted an infringement of that copyright or, in the case of an imported article, would have constituted such an infringement if the article had been made in Zimbabwe.

PART IV

REMEDIES FOR INFRINGEMENTS OF COPYRIGHT (sections 21-28)

21 Interpretation in Part IV

In this Part-

'**action**' includes a counter-claim, and references to the plaintiff and to the defendant in an action shall be construed accordingly;

'**infringing copy**', in relation to-

- (a) a work or a published edition referred to in section *nineteen*, means a reproduction thereof otherwise than in the form of a cinematograph film;
- (b) a sound recording, means a record embodying that recording;
- (c) a cinematograph film, means a copy thereof;
- (d) a broadcast, means a cinematograph film or a copy of a cinematograph film of it or of part of it or a photograph of part of it or a sound recording of it or a record embodying a sound recording of it;

being in any such case an article the making of which constituted an infringement of the copyright in the work, edition, sound recording, cinematograph film or broadcast, as the case may be, or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in Zimbabwe;

'**plate**' includes any stereotype, stone, block, mould, matrix, transfer, negative or other appliance.

22 Action by owner of copyright for infringement

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

(2) In any action by the owner of copyright for an infringement thereof all such relief by way of damages, interdict, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

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

- (a) an infringement was committed; but
- (b) at the time of the infringement the defendant was not aware and had no reasonable grounds for supposing that it was an infringement of copyright;

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 any 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 shall in assessing damages for the infringement have power to award such additional damages as the court may consider appropriate in the circumstances.

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

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

23 Rights of owner of copyright in respect of infringing copies

(1) Subject to this Act, the owner of any copyright shall be entitled to all such rights and remedies, in respect of the conversion or detention by any person of any infringing copy of any plate used or intended to be used for making infringing copies, as he would be entitled to if he were the owner of every such copy or plate and had been the owner thereof since the time when it was made:

Provided that any rights of such owner of the copyright as are provided by this subsection shall become extinguished by prescription after a lapse of thirty years from the time when such right arose.

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

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

24 Proceedings in case of copyright subject to exclusive licence

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

(2) Subject to this section-

- (a) the exclusive licensee shall, except as against the owner of the copyright, have the same rights of action and be entitled to the same remedies under section *twenty-two* or *twenty-three* as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under section *twenty-two*;
- (b) the owner of the copyright shall not have any rights of action or be entitled to any remedies under section *twenty-three* which he would not have had or been entitled to if the licence had been an assignment.

(3) Where an action is brought by the owner of the copyright or by the exclusive licensee and the action in so far as it is brought under section *twenty-two* relates, wholly or partly, to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action in so far as it is brought under that section and relates to that infringement unless the other party is joined as a plaintiff in the action or added as a defendant, as the case may be:

Provided that this subsection shall not affect the granting of an interim interdict on the application of either the owner or the licensee.

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

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

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

(6) Where an action in so far as it is brought under section *twenty-two* relates, wholly or partly, to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action and in that action, whether they are both parties to it or not, an account of profits is directed to be taken in respect of that infringement, the court shall, subject to any agreement of which the court is aware whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee-

- (a) apportion the profits between them as the court may consider just; and
- (b) give such directions as the court may consider appropriate for giving effect to that apportionment.

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

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

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

(9) In this section-

'exclusive licence' means a licence in writing, signed by or on behalf of an owner or prospective owner of copyright, authorizing the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would, apart from the licence, be exercisable exclusively by the owner of the copyright;

'if the licence had been an assignment' means if, instead of the licence, there had been granted, subject to terms and conditions corresponding as nearly as may be with those subject to which the licence was granted, an assignment of the copyright in respect of its application to the doing, at the places and times authorized by the licence, of the acts so authorized;

'the other party', in relation to-

- (a) the owner of the copyright, means the exclusive licensee;
- (b) the exclusive licensee, means the owner of the copyright.

25 Onus of proof in copyright actions

(1) In any action brought by virtue of this Part-

- (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 question whether copyright subsists therein;
- (b) where the subsistence of copyright is proved or admitted or is presumed in accordance with the provisions of paragraph (a), the plaintiff shall be presumed to defendant does not put in issue the question of the ownership thereof.

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

- (a) to be the author of the work or, in the case of a work alleged to be a work of joint ownership, one of the authors; and
- (b) to have made the work in circumstances not falling within the provisions of subsection (2), (3) or (4) of section *seven*.

(3) Where in an action brought by virtue of this Part with respect to any work which is anonymous or pseudonymous it is established that-

- (a) the work was first published in Zimbabwe and was so published within the period of fifty years ending with the beginning of the year in which the action was 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 at the time of the publication:

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

(4) Where in an action brought by virtue of this Part with regard to any work it is established that-

- (a) the author is dead; or
- (b) the work has been published and-
 - (i) the publication was anonymous or was under a name alleged by the plaintiff to have been a pseudonym; and

(ii) it is not shown that-

- A. the work has ever been published under the true name of the author or under a name by which he was commonly known; or
- B. it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry;

then, unless the contrary is proved, the work shall be presumed to be an original work.

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

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

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

26 Prescription of actions for copyright infringement

No action in respect of infringement of copyright shall be commenced after the expiration of three years from the end of the year in which the alleged infringement took place.

27 Offences and proceedings in respect of dealings which infringe copyright

(1) Any person who at a time when copyright subsists in a work or other subject-matter-

- (a) makes for sale or hire; or
- (b) imports into Zimbabwe, otherwise than for his personal and private use; or
- (c) sells, lets for hire or by way of trade offers or exposes for sale or hire; or
- (d) distributes-
 - (i) for purposes of trade; or
 - (ii) for other purposes but to such an extent as to affect prejudicially the owner of the copyright; or
- (e) by way of trade exhibits in public;

any article which he knows to be an infringing copy of the work or other subject-matter shall be guilty of an offence.

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

(3) Upon the application of the owner of the copyright in any work or other subject-matter a magistrate, if satisfied that there is reasonable ground for believing that infringing copies of the work or other subject-matter are being hawked, carried about, sold or offered for sale, may by order authorize a police officer to seize the copies without warrant and to bring them before the court and the court, on proof that the copies are infringing copies, may order them to be destroyed or to be delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

(4) If a magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under subsection (1) or (2) is being committed on any premises, he may grant a search warrant directing a police officer named therein to enter the premises and to seize any copies of any work or other subject-matter or any plates in respect of which he has reasonable ground for suspecting that such an offence is being committed.

(5) All copies of any work or other subject-matter and plates seized under subsection (4) shall be brought before the court and, if proved to be infringing copies or plates intended to be used for the printing or reproduction of 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.

(6) Any person who does any act which constitutes an infringement of copyright in any work or other subject-matter knowing that

- (a) copyright subsists in the work or other subject-matter; and
- (b) the act constitutes an infringement of the copyright;

shall be guilty of an offence.

28 Provision for restricting importation of infringing copies

(1) The owner of the copyright in any published literary, dramatic or musical work or any sound recording may give notice in writing to the Director of Customs and Excise that he-

- (a) is the owner of the copyright in the work or the sound recording; and
- (b) requests the Director of Customs and Excise, during the period specified in the notice, to treat as prohibited goods-
 - (i) any printed copy of the work; or
 - (ii) any copy of the sound recording which is made outside Zimbabwe and which, if it had been made in Zimbabwe, would be an infringing copy of the work or the sound recording, as the case may be:

Provided that-

- (i) the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright is to subsist;
- (ii) the Director of Customs and Excise shall not be bound to act in terms of any notice given in terms of this subsection unless the owner of the copyright furnishes him with security in such form and for such amount as the said Director may require to secure the fulfilment of any liability and the payment of any expense which he may incur by reason of the detention by him of any copy of the work to which the notice relates or as a result of anything done by him in relation to a copy so detained.

(2) Where a notice has been given under subsection (1) and has not been withdrawn, the importation into Zimbabwe at a time before the end of the period specified in the notice of any copy of the work or the sound recording referred to in paragraph (b) of subsection (1) shall be prohibited:

Provided that this subsection shall not apply to the importation of any copy of the work or the sound recording by a person for his personal and private use.

(3) Notwithstanding anything contained 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, by reason of the fact that any goods are treated as prohibited goods by virtue of this section.

PART V COPYRIGHT TRIBUNAL (sections 29-41)

29 Interpretation in Part V

(1) In this Part-

'**licence**' means a licence granted by or on behalf of the owner or prospective owner of the copyright in a literary, dramatic or musical work or in a sound recording or a television broadcast, being-

- (a) in the case of a literary, dramatic or musical work, a licence to perform in public or to broadcast or to record the work or an adaptation thereof or to cause the work or an adaptation thereof to be transmitted to subscribers to a diffusion service;
- (b) in the case of a sound recording, a licence to make a record embodying it;
- (c) in the case of a television broadcast, a licence to cause it, in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;

'**licence scheme**', in relation to a licence, means a scheme prepared by one or more licensing bodies setting out the classes of cases in which they are willing or the person on whose behalf they act is willing to grant licences of that description and the charges, if any, and the terms and conditions subject to which licences will be granted in those classes of cases;

'**licensing body**', in relation to a licence mentioned-

- (a) in paragraph (a) of the definition of '**licence**', means a society, firm or other organization which has as its main object or one of its main objects the negotiation or granting of such a licence, either as owner or prospective owner of copyright or as agent for the owner or prospective owner thereof, but does not include an organization by reason that its objects include the negotiation or granting of individual licences each relating to a single work or the works of a single author if they do not include the negotiation or granting of general licences each extending to the works of several authors;
- (b) in paragraph (b) of the definition of '**licence**', means an owner or prospective owner of copyright in sound recordings or a person acting as agent for owners or prospective owners of copyright in sound recordings in relation to the negotiation or granting of such a licence;

(c) in paragraph (c) of the definition of '**licence**', means the Corporation;

'**scheme**' includes anything in the nature of a scheme, whether described therein as a scheme or as a tariff or by any other name.

(2) Any reference in this Part to-

- (a) terms and conditions shall be construed as a reference to any terms and conditions other than those relating to the amount of a charge for a licence;
- (b) giving to a person an opportunity of presenting his case shall be construed as a reference to giving him an opportunity, at his option, of submitting representations in writing or of being heard or of submitting representations in writing and being heard.

30 Establishment of Tribunal

(1) There is hereby established for the purposes of this Act a tribunal, to be called the Copyright Tribunal, which shall consist of a President.

(2) The President shall be the person who is for the time being appointed as President of the Patents Tribunal under section 70 of the Patents Act [*Chapter 26:03*].

(3) The registrar of the Patents Tribunal shall be registrar of the Copyright Tribunal.

31 Functions of Tribunal

The functions of the Tribunal shall be-

- (a) to determine disputes arising between licensing bodies and persons requiring licences or organizations claiming to be representative of such persons, either-
 - (i) on the reference of a licence scheme to the Tribunal in terms of section *thirty-two* or *thirty-three*; or
 - (ii) on the application in terms of section *thirty-four* of a person requiring a licence either in accordance with a licence scheme or in a case not covered by a licence scheme;
- (b) to determine the amount or rate of remuneration or apportionment of remuneration, as the case may be, that is equitable in the circumstances of the case where the parties concerned fail to agree as to what remuneration or apportionment of remuneration is equitable and refer the matter to the Tribunal in terms of section *thirty-eight*;
- (c) to hold any inquiry and make any order in terms of subsection (3) of section *ten*.

32 Reference of licence schemes to Tribunal

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

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

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

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

- (a) the organization or person at whose instance the reference is made; and
- (b) the licensing body operating the scheme to which the reference relates; and
- (c) such other organization or person, if any, as applies to the Tribunal to be made a party to the reference and, in accordance with subsection (3), is made a party thereto.

(3) Where-

- (a) an organization, whether claiming to be representative of persons requiring licences or not, or a person, whether requiring a licence or not, applies to the Tribunal to be made a party to a reference; and
- (b) the Tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute;

the Tribunal may, if it thinks fit, make that organization or person a party to the reference.

(4) The Tribunal shall not entertain a reference under this section by an organization unless the Tribunal is

satisfied that the organization is reasonably representative of the class of persons which it claims to represent.

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

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

(7) Where the Tribunal has made an order with respect to a licence scheme which has been referred to it, such scheme shall, notwithstanding anything contained therein, in so far as it relates to the class of cases in respect of which the order was made, thereafter remain in operation subject to the terms of the order:

Provided that this subsection shall not apply in relation to a reference as respects any period after the reference has been withdrawn or has been discharged by virtue of subsection (4).

33 Further reference of scheme to Tribunal

(1) Where the Tribunal has made an order under section *thirty-two* with respect to a licence scheme-

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

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

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

(2) A licence scheme shall not, except with the special leave of the Tribunal, again be referred to the Tribunal under subsection (1)-

- (a) where the relevant order was made so as to be in force indefinitely or for a period exceeding fifteen months, before the expiration of a period of twelve months from the date on which the order was made;
- (b) where the relevant order was made so as to be in force for a period not exceeding fifteen months, at any time more than three months before the date of expiry of the order.

(3) Section *thirty-two* shall apply, *mutatis mutandis*, in respect of any reference under this section or any order made thereon, and the Tribunal shall have power to make such order on any such reference as it may deem to be reasonable in the circumstances.

34 Applications to Tribunal

(1) For the purposes of this Part, a case shall be taken to be covered by a licence scheme if, in accordance with a licence scheme for the time being in operation, licences would be granted in cases of the class to which that case belongs:

Provided that where in accordance with the provisions of a licence scheme-

- (a) the licences which would be so granted would be subject to terms and conditions whereby particular matters would be excepted from the licences; and
- (b) the case in question relates to one or more matters falling within such an exception;

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

(2) Any person who claims that in a case covered by a licence scheme the licensing body operating the scheme has refused or failed-

- (a) to grant him a licence in accordance with the provisions of the scheme; or
- (b) to procure the grant to him of such a licence;

may apply to the Tribunal for an order under this section.

(3) Any person who claims that he requires a licence in a case not covered by a licence scheme and that-

- (a) a licensing body or person has refused or failed to grant the licence or to procure the grant thereof and that in the circumstances it is unreasonable that the licence should not be granted; or
- (b) any charges, terms or conditions subject to which a licensing body or person proposes that the licence should be granted are unreasonable;

may apply to the Tribunal for an order under this section.

(4) Where an organization, whether claiming to be representative of persons requiring licences or not, or a person, whether requiring a licence or not, applies to the Tribunal to be made a party to an application under subsection (2) or (3) and the Tribunal is satisfied that the organization or person has a substantial interest in the matter in dispute, the Tribunal may, if it thinks fit, make that organization or person a party to the application.

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

- (a) in the case of an application under subsection (2), determine to be applicable in accordance with the licence scheme;
- (b) in the case of an application under subsection (3), determine to be reasonable in the circumstances.

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

35 Diffusion services

In a dispute concerning the transmission of broadcasts to subscribers to a diffusion service in Zimbabwe, the Tribunal shall disallow any claim under this Act-

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

36 Effect of orders of Tribunal

Any person who complies with the conditions of an order made by the Tribunal under this Part or who has given a satisfactory undertaking to the owner or prospective owner of the copyright to comply with such conditions shall be deemed to be the holder of a licence under this Act.

37 Special conditions relating to television broadcasts

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

38 Determination by Tribunal of equitable remuneration or apportionment of remuneration

Where a dispute arises between any persons as to-

- (a) the amount of any remuneration referred to in the proviso to subsection (4) of section *five*, subsection (3) or (4) of section *fifty-one*, the proviso to subsection (1) of section *fifty-two* or section *fifty-nine* which is equitable in the circumstances of the case; or
- (b) the apportionment in terms of subsection (4) or (6) of section *ten* of any remuneration referred to in either of those subsections;

the dispute may be referred by either party to the Tribunal which shall consider the case and, after giving to the parties to the reference an opportunity of presenting their respective cases, shall make an order determining the remuneration or apportionment of remuneration, as the case may be, that appears to the Tribunal to be equitable in the circumstances.

39 Appointment of assessors

In any proceedings before it under this Part the Tribunal may, if it thinks fit, and shall, on the request of all the parties to the proceedings, appoint one or more assessors who are specially qualified in regard to all or any of the questions arising in the course of the proceedings to aid it in its consideration of those questions.

40 Powers of Tribunal

Subsections (1), (2) and (4) of section 71, section 72 and subsection (1) of section 73 of the Patents Act [*Chapter 26:03*] shall apply to the Copyright Tribunal as they apply to the Patents Tribunal.

41 Effect of decisions of Tribunal

(1) Subject to this section, any decision, ruling or order of the Tribunal shall be final.

(2) Any question of law arising in the course of proceedings before the Tribunal may, at the request of any party to the proceedings, be referred by the Tribunal to the Supreme Court for decision, whether before or after the Tribunal has given its decision in the proceedings:

Provided that a question shall not be referred to the Supreme Court in terms of this subsection in pursuance of a request made after the date on which the Tribunal gave its decision unless the request is made within the prescribed period.

(3) If the Tribunal, after giving its decision in any proceedings, refuses any request to refer a question of law to the Supreme Court, the party by whom the request was made may, within such period as may be prescribed, apply to the Supreme Court for an order directing the Tribunal to refer the question to the Supreme Court.

(4) On any reference to the Supreme Court under this section with respect to any proceedings before the Tribunal and on any application under subsection (3) every party to the proceedings before the Tribunal shall be entitled to appear and to be heard.

(5) Where, after the Tribunal has given its decision in any proceedings, the Tribunal refers to the Supreme Court under this section a question of law which arose in the course of the proceedings and the Supreme Court decides that the question was erroneously determined by the Tribunal-

- (a) the Tribunal shall, if it considers it requisite to do so for the purpose of giving effect to the decision of the Supreme Court, give to the parties to the proceedings a further opportunity of presenting their cases; and
- (b) the Tribunal shall reconsider the matter in dispute in conformity with the decision of the Supreme Court; and
- (c) if on such reconsideration it appears to the Tribunal to be appropriate to do so, the Tribunal shall make such order revoking or modifying any order previously made by it in the proceedings or make such other order as on such reconsideration the Tribunal determines to be appropriate.

(6) Any reference of a question by the Tribunal to the Supreme Court under this section shall be by way of stating a case for the opinion of the Supreme Court and the decision of the Supreme Court on any such reference shall be final.

PART VI

APPLICATION OF ACT TO OTHER COUNTRIES (sections 42-45)

42 Power to extend benefit of Act to other countries

(1) The Minister may, by order in a statutory instrument, provide that any provision of this Act specified in the order shall, in the case of any country specified in that order, apply in relation to-

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

(2) An order made under subsection (1) may provide that any provisions referred to therein shall apply-

- (a) subject to such exceptions or modifications as may be specified in the order;
- (b) either generally or in relation to such classes of works or other subject-matter or classes of cases as may be specified in the order.

(3) The Minister shall not make an order under subsection (1) in respect of any country which is not a party to a

convention relating to copyright to which Zimbabwe is also a party unless the Minister is satisfied that, in respect of the class of works or other subject-matter to which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

43 Copyright in publications of certain international organizations

(1) The Minister may, by order in a statutory instrument, specify the international organizations to which the provisions of this section shall apply.

(2) Where an original work or a cinematograph film is made by or under the direction or control of an organization to which this section applies in such circumstances that-

- (a) apart from this subsection copyright would not subsist in the work or film; and
- (b) if the author of the work or maker of the film had been a Zimbabwean citizen at the time when it was made, copyright would have subsisted in the work or film immediately after it was made and would thereupon have vested in the organization; copyright shall subsist in the work or film as if the author or maker had been a Zimbabwean citizen when it was made and shall continue to subsist so long as the work or film remains unpublished and shall, subject to this Act, vest initially in the organization.

(3) Where an original work or a cinematograph film is first published or a sound recording is made by or under the direction or control of an organization to which this section applies in such circumstances that, apart from this subsection, copyright would not subsist in the work, film or recording immediately after the first publication or the making thereof, as the case may be, and-

- (a) the work or film is so published or recording is so made, as the case may be, in pursuance of an agreement with the author or maker which does not reserve to the author or maker the copyright, if any, in the work, film or recording; or
- (b) the work, film or recording was made in such circumstances that if it had been first published or made, as the case may be, in Zimbabwe the organization would have been entitled to the copyright in the work, film or recording;

copyright shall subsist in the work, film or recording or, if copyright in the work or film subsisted immediately before its first publication, shall continue to subsist as if the work or film had been first published or recording been made, as the case may be, in Zimbabwe, and shall subsist in the work, film or recording until the end of a period of fifty years from the end of the calendar year in which it was first published or made, as the case may be, and shall, subject to this Act, vest initially in the organization.

(4) Part II or III, as the case may be, with the exception of those provisions relating to the subsistence, duration or ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section as they apply in relation to copyright subsisting by virtue of the said provisions.

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

44 Extended application of provisions relating to broadcasts

The Minister may prescribe that, subject to such exceptions and modifications, if any, as may be prescribed, such provisions of this Act relating to broadcasts as may be prescribed shall apply in relation to the operation of a broadcasting service by way of the emission, as opposed to reception, of electromagnetic energy-

- (a) by such persons or classes of persons, other than the Corporation, as may be prescribed; and
- (b) for such purposes, whether involving broadcasting or not, as may be prescribed;

as they apply in relation to broadcasts made by the Corporation.

45 Denial of copyright to citizens of countries not giving adequate protection to Zimbabwean works

(1) If it appears to the Minister that the laws of another country fail to give adequate protection-

- (a) to any work, cinematograph film or sound recording the author or maker of which is a qualified person; or
- (b) in the case of one or more classes of such works or other subject-matter, whether the lack of protection relates to the nature of the work or other subject-matter or the country of its author or maker or both;

the Minister may prescribe that country and prescribe that either generally or in such classes of cases as are prescribed copyright under this Act shall not subsist in works or cinematograph films which were first published or sound recordings which were made after a prescribed date if at the time of the first publication or making, as the case may be, the authors or makers thereof were-

- (i) citizens or subjects of the prescribed country, not being at that time persons domiciled or resident in Zimbabwe; or
- (ii) bodies incorporated under the laws of the prescribed country.

(2) In prescribing any matter referred to in subsection (1) the Minister shall have regard to the nature and extent of the lack of protection for works or other subject-matter referred to in subsection (1) in consequence of which the regulations are made.

PART VII
MISCELLANEOUS (sections 46-60)

46 Assignments and licences in respect of copyright

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

(2) The owner of any copyright, in assigning his copyright, may-

- (a) limit the assignment in any one or more of the following ways-

- (i) so as to apply to one or more, but not all, of the classes of acts which by virtue of this Act the owner of the copyright has the exclusive right to do, including any one or more classes of acts not separately designated in this Act as being restricted by the copyright, but falling within any of the classes of acts so designated;
- (ii) so as to apply to any one or more, but not all, of the countries in relation to which the owner of the copyright has by virtue of this Act that exclusive right;
- (iii) so as to apply to part, but not the whole, of the period for which the copyright is to subsist;

(b) make the assignment or limitation thereof subject to such conditions as he may wish.

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

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

47 Prospective ownership of copyright

(1) Where by an agreement made in relation to any future copyright and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright wholly or partially to another person (in this subsection referred to as '**the assignee**'), then if, on the coming into existence of the copyright, the prospective owner or a person claiming under him would apart from this subsection be entitled as against all other persons to require the copyright to be vested in him, wholly or partially, as the case may be, the copyright shall on its coming into existence be deemed to have been transferred to the assignee or his successor in title accordingly.

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

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

(4) Subsection (1) shall not apply in relation to any copyright where the prospective owner is the author of the work or maker of the sound recording or cinematograph film and such copyright is deemed to have been transferred to another person in terms of subsection (2), (3) or (4) of section *seven*, the proviso to subsection (3) of section *sixteen* or the proviso to subsection (3) of section *seventeen*, as the case may be.

48 Copyright to pass under will with unpublished work

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

49 Copyright in publications of the State

(1) Copyright shall subsist in any original work, sound recording or cinematograph film made by or under the direction or control of the State or any department thereof in which, but for the provisions of this subsection, such copyright would not subsist and shall vest initially in the President.

(2) Subject to this Part, copyright in any original work or cinematograph film first published in Zimbabwe which is first published by or under the direction or control of a department of the State shall vest initially in the President.

(3) The term of copyright subsisting in an original literary, dramatic or musical work by virtue of this section shall be-

- (a) where the work is unpublished, for so long as the work remains unpublished;
- (b) where the work is published, until the end of a period of fifty years from the end of the calendar year in which the work was first published.

(4) The term of copyright subsisting in an artistic work by virtue of this section shall be until the end of a period of fifty years from-

- (a) in the case of a photograph, the end of the calendar year in which the photograph was first published;
- (b) in the case of an artistic work other than a photograph, the end of the calendar year in which the work was made.

(5) The term of copyright subsisting in a sound recording or cinematograph film by virtue of this section shall be-

- (a) in the case of a sound recording, until the end of a period of fifty years from the end of the calendar year in which the recording was made;
- (b) in the case of a cinematograph film-
 - (i) where the film is unpublished, for so long as the film remains unpublished;
 - (ii) where the film is published, until the end of a period of fifty years from the end of the calendar year in which the film was first published.

(6) Subsections (1) to (5) shall have effect subject to any agreement made by or on behalf of the President with the author of the work or the maker of the sound recording or cinematograph film, as the case may be, whereby it is agreed that the copyright in the work, recording or film shall vest in the author or maker or in another person designated in that behalf in the agreement.

(7) Part II or III, as the case may be, with the exception of those provisions relating to the subsistence, duration or ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section as they apply in relation to copyright subsisting by virtue of the said provisions.

(8) For administrative purposes, the copyright which vests in the President shall be deemed to vest in such officer as may be designated by the President by statutory instrument.

50 Copyright in legal tender notes and in coin

(1) Notwithstanding anything contained in Part II, copyright shall subsist in bank notes and coin issued by the Reserve Bank of Zimbabwe in terms of the Reserve Bank of Zimbabwe Act [*Chapter 22:10*], whether before, on or after the appointed date, which is legal tender in Zimbabwe and-

- (a) such copyright shall vest in the Reserve Bank of Zimbabwe;
- (b) the term of such copyright shall be the period from the date on which such bank notes or coin are issued until such bank notes or coin are demonetized in terms of the said Act.

(2) Coins to which subsection (1) applies and the artistic work defining the design of any such coin shall, for the purposes of this Act and the Designs Act, not be considered to be designs.

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

(1) Where by virtue of an assignment or licence or otherwise the Corporation is authorized to make a broadcast, any person who by the reception of that broadcast causes-

- (a) a cinematograph film to be seen or seen and heard in public shall be in the like position in any proceedings for the infringement of the copyright, if any, in the film under section *seventeen*, as if he had been the holder of a licence granted by the owner of that copyright to cause the film to be seen or seen and heard in public by the reception of the broadcast;
- (b) a programme to be transmitted to subscribers to a diffusion service, being a programme comprising a literary, dramatic or musical work or an adaptation of such a work or an artistic work or a cinematograph film, shall be in the like position in any proceedings for infringement of the copyright, if any, in the work or film, as if he had been the holder of a licence granted by the owner of that copyright to include the work, adaptation or film in any programme caused to be transmitted by him to subscribers to that service by the reception of that broadcast.

(2) If in the circumstances mentioned in subsection (1) the person causing the cinematograph film to be seen or seen and heard or the programme to be transmitted, as the case may be, infringed the copyright in question by reason of the fact that the broadcast was not authorized as mentioned in subsection (1)-

- (a) no proceedings shall be brought against that person under this Act in respect of his infringement of that copyright; and
- (b) it shall be taken into account in assessing damages in any proceedings against the Corporation in respect of that copyright in so far as that copyright was infringed by the Corporation in making that broadcast.

(3) Where the owner of the copyright in any work authorizes a person to incorporate the work in a cinematograph film and the Corporation broadcasts the film, such broadcast shall not, in the absence of any agreement to the contrary, infringe such copyright:

Provided that where the Corporation broadcasts a cinematograph film in which a musical work is incorporated the owner of the right to broadcast that work shall be entitled to receive an equitable remuneration from the Corporation.

(4) Subject to subsection (3), where a work has been reproduced in material form, published, performed in public, broadcast or transmitted to subscribers to a diffusion service, whether in or outside Zimbabwe, and no licensing body as defined in section *twenty-nine* has authority to grant a licence as defined in that section in respect of that work, the Corporation may broadcast the work subject to the payment of an equitable remuneration to the owner of the copyright in that work.

(5) A dealer in apparatus capable of-

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

shall not infringe any copyright by *bona fide* demonstrations on his premises of such apparatus, sound recordings, cinematograph films or records to a specific client.

52 Ephemeral reproductions

(1) Subject to subsection (3), where by virtue of an assignment or licence or otherwise the Corporation is authorized-

- (a) to broadcast a literary, dramatic or musical work or a cinematograph film but, apart from this subsection, would not be entitled to make reproductions of it in the form of a record or cinematograph film; or
- (b) to include an artistic work in a television broadcast but, apart from this subsection, would not be entitled to make reproductions of it;

the copyright in the work shall not be infringed if such reproductions are made for the purpose of the authorized broadcast by the Corporation using the facilities of the Corporation:

Provided that notwithstanding the absence of an assignment or licence authorizing the broadcast of any such work or cinematograph film or the inclusion of such work in a television broadcast, as the case may be, the Corporation may, if the owner of the copyright has permitted the performance of such work or cinematograph film by any person in Zimbabwe, make and broadcast such reproductions on condition that the owner of the copyright is not thereby deprived of his right to an equitable remuneration for the broadcasting of the work or cinematograph film or the inclusion of the work in a television broadcast, as the case may be.

(2) Subject to subsection (3), the copyright in a sound recording shall not be infringed if a record embodying the recording is made for the purpose of a broadcast by the Corporation using the facilities of the Corporation.

(3) Subject to subsection (4), subsection (1) or (2) shall not apply if, without the consent of the owner of the copyright in the work, cinematograph film or sound recording, the reproduction or record, as the case may be, or any copy thereof is-

- (a) used for any purpose except that of making a broadcast in accordance with the authorization, if any, or the provisions of the proviso to subsection (1), as the case may be; or
- (b) not destroyed-
 - (i) before the end of a period of one year from the date it is made; or
 - (ii) after two broadcasts of the recording have been made;

whichever occurs first.

(4) Any-

- (a) reproduction of a work or cinematograph film made under subsection (1); or
- (b) record of a sound recording made under subsection (2);

which is of an exceptional documentary character may be preserved in the official archives of the Corporation but, subject to this Act, shall not be used during the period copyright subsists in the work, cinematograph film or sound recording, as the case may be, for broadcasting or any other purpose without the consent of the owner of the copyright:

Provided that the reproduction or record so preserved may, subject to the payment of an equitable remuneration to the owner of the copyright in the work, cinematograph film or sound recording be further used by the Corporation for a broadcast on the occasion of an anniversary, commemoration ceremony or similar event which is of public interest.

(5) This section shall apply-

- (a) where a work or an adaptation of a work is caused to be transmitted to subscribers to a diffusion service as they apply where a work or adaptation is broadcast;
- (b) in relation to a television programme which is caused to be transmitted to subscribers to a diffusion service as they apply in relation to a television broadcast.

(6) For the purposes of this section, any reproduction or record made in terms of subsection (1) or (2)-

- (a) by a person who supplies television programmes to the Corporation for the exercise of its powers specified in paragraph 12 of the Schedule to the Broadcasting Act [*Chapter 12:01*] shall be deemed to have been made by the Corporation;
- (b) using the facilities of a person referred to in paragraph (a), shall be deemed to have been made using the facilities of the Corporation.

53 Use of copyright material for education

(1) Where a literary, dramatic or musical work is-

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

the performance shall not be considered, for the purposes of this Act, to be a performance in public if the audience is limited to persons who are teachers or lecturers in, or pupils or students in attendance at, an educational institution or are otherwise directly connected with the activities of an educational institution.

(2) For the purposes of subsection (1), a person shall not be taken to be directly connected with the activities of an educational institution by reason only that he is a parent or guardian of a pupil or student in attendance at the educational institution.

(3) Subsection (1) shall apply in relation to cinematograph films and television broadcasts as they apply in relation to literary, dramatic or musical works, subject to the modification that any reference to performance shall be construed as a reference to the act of causing the sounds or visual images in question to be seen or seen and heard.

(4) Where copyright subsists in a work, sound recording, cinematograph film or broadcast, the copyright shall not be considered to be infringed by reason only that the work or subject-matter is reproduced or an adaptation of the work or subject-matter is made or reproduced-

- (a) in the course of instruction at an educational institution where the reproduction or adaptation is made by a teacher or pupil; or
- (b) as part of a question to be answered in an examination or in an answer to such a question; or
- (c) for correspondence courses for the purpose of the instruction of pupils or students enrolled with the person providing such correspondence courses if such correspondence courses are not provided for profit:

Provided that, if the use of a work or subject-matter in terms of this subsection involves the making of a reproduction or adaptation thereof by the use of a duplicating process, such reproduction or adaptation of any copy thereof shall be destroyed before the end of a period of one year from the date it is made.

(5) The copyright in a published literary or dramatic work is not infringed by the inclusion of a short passage from it in a collection intended for use in educational institutions if-

- (a) the collection is described in its title and in any advertisements thereof by or on behalf of the publisher as being so intended; and
- (b) the work in question was not published for use in educational institutions; and
- (c) the inclusion of the passage is accompanied by a sufficient acknowledgement; and
- (d) not more than one other excerpt from works by the author of the passage, being works in which copyright subsists when the collection is published, is contained in that collection or in that collection taken together with every similar collection, if any, published by the same publisher within the period of five years immediately preceding the publication of that collection.

54 Special provisions as to public records

Subject to the National Archives Act [*Chapter 25:06*], where any work in which copyright subsists or a reproduction of any such work is comprised in any records belonging to the State which are under the charge and superintendence of any department of the State and are open to public inspection, the copyright in the work is not infringed by the making or the supplying to any person of any reproduction of the work by or under the direction of any officer in whose custody such records may be.

55 Special provisions as to libraries and archives

(1) Copyright in-

- (a) an article contained in a periodical publication is not infringed by the making or supplying of a copy of the article;
- (b) a published literary, dramatic or musical work, other than a periodical publication, is not infringed by the making or supplying of a copy of part of the work;

if the copy is made or supplied by or on behalf of the librarian of a prescribed library and with due observance of the conditions prescribed:

Provided that paragraph (b) shall not apply if, at the time when the copy is made, the librarian concerned knows or could by reasonable inquiry ascertain, the name and address of the person entitled to authorize the making of the copy.

(2) In prescribing any library or conditions for the purposes of subsection (1) the Minister shall make such provisions as he may consider appropriate for ensuring that-

- (a) the library concerned is not established or conducted for profit; and
- (b) the copies in question are supplied only to persons satisfying the librarian, or a person acting on his behalf, that they require them for the purposes of research or private study and will not use them for any other purpose; and
- (c) no person is furnished with more than one copy of the same article or part of the work, as the case may be; and
- (d) in the case of copies of an article contained in a periodical publication, no copy extends to more than one article contained in any one publication:

Provided that a copy may extend to more than one article contained in any one publication if each such article relates to the same subject; and

- (e) in the case of a part of any published literary, dramatic or musical work, other than a periodical publication, no copy extends to more than a reasonable portion of the work in question.

(3) Copyright in a published literary, dramatic or musical work is not infringed by the making or supplying of a copy of the work or any part of it by or on behalf of the librarian of a prescribed library if-

- (a) the copy is supplied to the librarian of another prescribed library; and

- (b) at the time when the copy is made the librarian by or on whose behalf it is supplied does not know, or could not by reasonable inquiry ascertain, the name and address of any person entitled to authorize the making of the copy:

Provided that this paragraph shall not apply in the case of an article contained in a periodical publication; and

- (c) any other prescribed conditions are complied with.

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

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

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

(5) Where a published literary, dramatic or musical work, in this subsection referred to as '**the new work**', incorporates the whole or any part of a work, in this subsection referred to as '**the old work**', in respect of which the circumstances specified in subsection (4) existed immediately before the new work was published, the publication of the new work or any subsequent publication thereof, whether in the same or any altered form, shall not, if-

- (a) before the new work was published, prescribed notice of the intended publication had been given; and
- (b) immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publisher of the new work;

in so far as such publication constitutes a publication of the old work, be regarded, for the purposes of this Act, as an infringement of the copyright in the old work or as an unauthorized publication of the old work:

Provided that this subsection shall not apply to a subsequent publication incorporating a part of the old work which was not included in the new work as originally published, unless the circumstances specified in subsection (4) and in paragraphs (a) and (b) existed immediately before that subsequent publication.

(6) In so far as the publication of a work or part of a work is, by virtue of subsection (5), not regarded as an infringement of the copyright in the work, the person who subsequently broadcasts the work or that part thereof, as the case may be, or causes it to be transmitted to subscribers to a diffusion service, or performs it in public, or makes a record of it, does not thereby infringe the copyright in the work.

(7) This section shall also apply in relation to an article or other work which is accompanied by one or more artistic works provided for explaining or illustrating it, in this subsection referred to as '**illustrations**', and for that purpose-

- (a) any reference to the copyright in any article or other work shall be construed as including a reference to the copyright in any such illustrations;
- (b) the references in subsections (1) and (2) to a copy of an article shall be construed as including references to a copy of the article together with a copy of the illustrations or any of them;
- (c) the references in subsections (1), (2) and (3) to a copy of the work shall be construed as including references to a copy of the work together with a copy of the illustrations or any of them and references to a copy of part of the work shall be construed as including references to a copy of that part of the work together with a copy of any of the illustrations which were provided for explaining or illustrating that part;
- (d) the references in subsections (4) and (5) to the doing of any act in relation to the work shall be construed as including references to the doing of that act in relation to the work together with any of the illustrations.

56 Regulations

(1) The Minister may by regulation prescribe 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) The Minister may, in the exercise of the powers conferred upon him by subsection (1), provide for-

- (a) the regulation generally of the practice and procedure under this Act of the Tribunal and, with respect to applications or references to the Tribunal, as to-
 - (i) the time within which any requirement of the regulations is to be complied with;
 - (ii) the costs and expenses of and incidental to any proceedings in the Tribunal;
 - (iii) the fees to be charged in respect of proceedings therein;
 - (iv) the fees and allowances to be paid to assessors;

and in particular may make regulations providing for the summary determination of any application which appears to the Tribunal to be frivolous or vexatious or to be brought for the purpose of delay; and

- (b) the form in which notice is to be given under section *twenty-eight* and the evidence to be submitted with such form; and
- (c) the fees payable in respect of any notice given under section *twenty-eight* or expenses which the Director of Customs and Excise may incur in consequence of the detention of any goods specified in the notice.

(3) Any regulations made in terms of this section in relation to the fixing of any fees or allowances shall be subject to the approval of the Minister responsible for finance.

57 Penalties

Any person who is guilty of an offence under this Act shall be liable to a fine not exceeding four hundred dollars or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

58 Savings

(1) Nothing in this Act shall affect any right or privilege-

- (a) of the State subsisting otherwise than by virtue of any enactment;
- (b) of the State or of any other person under any enactment not expressly repealed by section *sixty*.

(2) Nothing in this Act shall affect the right of the State or any person deriving title from the State to sell, use or otherwise deal with articles forfeited under the Customs and Excise Act [*Chapter 23:02*], including any article so forfeited by virtue of this Act.

(3) Subject to subsections (1) and (2), 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.

59 Special provisions *re* certain contracts

With effect from the appointed date, every contract entered into solely or substantially for the licensing of the doing of any act in respect of copyright which is not controlled by copyright under the provisions of this Act shall cease to have effect:

Provided that the licensee in terms of any such contract shall pay to the other party to such contract an equitable remuneration for the period that the contract would have continued to have effect but for this section.

60 Transitional provisions

Notwithstanding the repeal of the Copyright Act [*Chapter 227 of 1963*], the transitional provisions contained in the Schedule shall have effect for the purposes of this Act.

SCHEDULE (Section 60) TRANSITIONAL PROVISIONS

PART I PROVISIONS RELATING TO PART I OF THIS ACT

Conditions for subsistence of copyright

1. In the application of sections *five* and *six* to a work first published before the appointed date the provisions of subsection (2) of section *five* and subsection (2) of section *six* shall apply as if in the case of each of those subsections paragraphs (b) and (c) had not been enacted.

Duration of copyright

2. In relation to any photograph taken before the appointed date, subsection (3) of section *six* shall not apply but, subject to the provisions of subsection (2) of that section, the term of copyright subsisting in the photograph by virtue of that section shall be until the end of a period of fifty years from the end of the calendar year in which the photograph was taken.

Ownership of copyright

3. (1) Subsections (2), (3) and (4) of section *seven* shall not apply to any work made as mentioned-

- (a) in subsection (2) or (4) of that section, if the work was made before the appointed date;
- (b) in subsection (3) of that section, if the work was or is so made in pursuance of a contract made before the appointed date.

(2) In relation to any work referred to in subparagraph (1), the provisions of subsection (1) of section *seven* shall have effect subject to the proviso to subsection (1) of section 5 of the Act of 1911 as if *Chapter 227 of 1963* had not been repealed.

Infringements of copyright

4. For the purposes of section *eight*, the fact that to a person's knowledge the making of an article constituted an infringement of copyright under *Chapter 227 of 1963* or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if to that person's knowledge the making of the article had constituted an infringement of copyright under this Act.

Records

5. (1) Any reference in section *ten* to a record previously made by or with the licence or consent of the owner of the copyright in a work includes a reference to a record previously made by or with the consent of the owner of the copyright in that work under *Chapter 227 of 1963*.

(2) The repeal of *Chapter 227 of 1963* shall not affect the operation of section 19 of the Act of 1911 or of any regulations or order made thereunder in relation to a record made before the appointed date:

Provided that any copyright in a record so made shall, subject to this Act, comprise only the right within the meaning of section *sixteen* to prohibit the making of records embodying the sound recording.

Artistic works

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

(2) In subsection (9) of section *eleven* the reference to construction by or with the licence of the owner of the copyright in any architectural drawings or plans includes a reference to construction by or with the licence of the person who at the time of the construction was the owner of the copyright in the drawings or plans under *Chapter 227 of 1963*.

Industrial designs

7. (1) Sections *twelve* and *thirteen* shall not apply to artistic works made before the appointed date.

(2) Copyright shall not subsist by virtue of this Act in any artistic work made before the appointed date which, at the time when the work was made, constituted a design capable of registration under the Registered Designs Act, 1958 (No. 12 of 1958) or under a law repealed by that Act and was used or intended to be used as a model or pattern to be multiplied by an industrial process.

(3) For the purposes of subparagraph (2), a design shall be considered to be used as a model or pattern to be multiplied by an industrial process when-

- (a) the design is reproduced or intended to be reproduced on more than fifty single articles, unless all the articles on which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in the Registered Designs Act, 1958 (No. 12 of 1958); or
- (b) the design is to be applied to-
 - (i) hangings;
 - (ii) carpets, floor cloths or oil cloths manufactured or sold in lengths or pieces;
 - (iii) textile piece goods or textile goods manufactured or sold in lengths or pieces;
 - (iv) lace not made by hand.

Reproductions of works

8. (1) Where before the appointed date a person has in the case of a work given the requisite notice under the proviso to section 3 of the Act of 1911, that proviso shall, subject to subsection (1) of section 16 and section 17 of the Act of 1911, as modified by subparagraph (3) as respects reproduction by that person of that work after the appointed date, have effect as if it had been re-enacted as a proviso to section *four* with the substitution therein for any reference to the Board of Trade of a reference to the Minister.

(2) For the purposes of the operation of the proviso to section 3 of the Act of 1911 in accordance with subparagraph (1), any regulations made thereunder before the appointed date shall have effect as if they had been made under this Act and the power to make further regulations thereunder shall apply as if the proviso had been re-enacted as mentioned in subparagraph (1).

(3) For the purposes of this paragraph-

- (a) subsection (1) of section 16 of the Act of 1911 shall be construed as if it read as follows-

'(1) In the case of a work of joint authorship references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter.';

- (b) subsection (1) of section 17 of the Act of 1911 shall be construed as if it read as follows-

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

Works of joint authorship

9. (1) Notwithstanding anything contained in section *fifteen*, copyright shall not subsist by virtue of Part II of this Act in any work of joint authorship first published before the appointed date if the period of copyright had expired before the appointed date.

(2) In subparagraph (1)-

'the period of copyright' mean-

(a) the life of the author who died first and a term of fifty years after his death; or

(b) the life of the author who died last;

whichever is the longer.

PART II PROVISIONS RELATING TO PART III OF THIS ACT

Cinematograph films

10. (1) Section *seventeen* shall not apply to a cinematograph film made before the appointed date.

(2) Where a cinematograph film made before the appointed date was an original dramatic work as defined in section 35 of the Act of 1911, this Act, other than this paragraph, shall have effect in relation to that film as if it had been an original dramatic work within the meaning of this Act, and the person who was the author of the work for the purposes of the Act of 1911 shall be taken to be the author thereof for the purposes of the said provisions as applied by this subparagraph.

(3) This Act shall have effect in relation to photographs forming part of a cinematograph film made before the appointed date as those provisions have effect in relation to photographs not forming part of a cinematograph film.

Supplementary provisions

11. For the purposes of subsection (2) of section *twenty*, the fact that to a person's knowledge the making of an article constituted an infringement of copyright under *Chapter 227 of 1963* or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if to that person's knowledge the making of the article had constituted an infringement of copyright under this Act.

PART III
PROVISIONS RELATING TO PART IV OF THIS ACT

Actions for infringement

12. Nothing in section *twenty-two* shall apply to any infringement of copyright under *Chapter 227 of 1963* or shall affect any proceedings under that Act, whether begun before or after the appointed date.

Rights of owner in respect of infringing copies

13. Section *twenty-three* shall not apply with respect to any article made or, as the case may be, imported before the appointed date but proceedings may, subject to the provisions of *Chapter 227 of 1963*, be brought or continued by virtue of section 7 of the Act of 1911 in respect of any article made or imported before the appointed date although the proceedings relate to the conversion or detention thereof after the appointed date.

Exclusive licences

14. Section *twenty-four* shall not apply to any licence granted before the appointed date and shall not affect any proceedings under Chapter 227 of 1963, whether begun before or after the appointed date.

Dealings which infringe copyright

15. For the purposes of section *twenty-seven*, the definition of '**infringing copy**' in section *twenty-one* shall apply as if any reference to copyright in that definition included a reference to copyright under *Chapter 227 of 1963*.

Notices relating to importation of infringing copies

16. Where before the appointed date a notice had been given in respect of a work in terms of section 4 of *Chapter 227 of 1963* and that notice had not been withdrawn and had not otherwise ceased to have effect before the appointed date the notice shall have effect after the appointed date as if it had been duly given under section *twenty-eight*:

Provided that a notice shall not continue to have effect by virtue of this paragraph after the end of a period of six months from the appointed date.

PART IV
PROVISIONS RELATING TO PART IV OF THIS ACT

Licence schemes and licences

17. (1) Part V of this Act shall apply in relation to licence schemes made before the appointed date as they apply in relation to licence schemes made thereafter as if any reference in that Part to copyright included a reference to copyright under *Chapter 227 of 1963*.

(2) For the purposes of section *thirty-four*, any reference to a refusal or failure to grant or procure the grant of a licence or to a proposal that a licence should be granted shall not include a reference to a refusal or failure which occurred or a proposal made before the appointed date.

PART V
PROVISIONS RELATING TO PART VI OF THIS ACT

Provisions as to international organizations

18. The provisions of-

- (a) subsection (2) of section *forty-three* shall not apply to works made before the appointed date;
- (b) subsection (3) of section *forty-three* shall not apply to works first published before the appointed date.

PART VI
PROVISIONS RELATING TO PART VII OF THIS ACT

Assignments, licences and bequests

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

- (a) was made or occurred before the appointed date; and
- (b) had any operation affecting the title to copyright in the work under *Chapter 227 of 1963* or would have had such an operation if *Chapter 227 of 1963* had continued in force;

shall have the corresponding operation in relation to the copyright in the work under this Act:

Provided that if the operation of any such document was or would have been limited to a period specified in the document, it shall not have any operation in relation to the copyright under this Act except in so far as that period extends beyond the appointed date.

(2) For the purposes of the operation of a document referred to in subparagraph (1) in accordance with the provisions of that subparagraph-

- (a) expressions used in the document shall be construed in accordance with their effect immediately before the appointed date, notwithstanding that a different meaning is assigned to them for the purposes of this Act; and
- (b) subsection (1) of section *forty-seven* shall not apply.

(3) Without prejudice to the generality of subparagraph (1), the proviso to subsection (2) of section 5 of the Act of 1911 shall apply to assignments and licences having effect in relation to copyright under this Act in accordance with subparagraph (1) as if that proviso had been re-enacted in this Act as follows:

'Provided that where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein made by him (otherwise than by will) after the passing of this Act shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, notwithstanding any agreement to the contrary, on the death of the author, devolve on his legal personal representatives as part of his estate, and any

agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.'

(4) In relation to copyright under this Act in a sound recording or in a cinematograph film, subparagraphs (1), (2) and (3) shall apply subject to the following modifications-

- (a) in the case of a sound recording, references to the copyright under *Chapter 227 of 1963* shall be construed as references to the copyright under that Act in records embodying the recording;
- (b) in the case of a cinematograph film, references to the copyright under *Chapter 227 of 1963* shall be construed as references to any copyright under that Act in the film in so far as it constituted a dramatic work for the purposes of that Act or in photographs forming part of the film.

(5) In this paragraph-

'operation affecting the title', in relation to copyright under *Chapter 227 of 1963*, means any operation affecting the ownership of that copyright or creating, transferring or terminating an interest, a right or a licence in respect of that copyright

Bequests of unpublished works

20. (1) Section *forty-eight* shall not apply to bequests contained in the will or a codicil to the will of a testator who died before the appointed date.

(2) In the case of an author who dies before the appointed date the provisions set out in subsection (2) of section 17 of the Act of 1911 shall have effect as if they had been re-enacted in this Act.

Publications of the State

21. (1) In relation to a photograph taken before the appointed date-

- (a) subsection (4) of section *forty-nine* shall not apply;
- (b) the term of copyright subsisting by virtue of section *forty-nine* shall be until the end of a period of fifty years from the end of the calendar year in which the photograph was taken.

(2) In relation to a cinematograph film made before the appointed date-

- (a) subsection (5) of section *forty-nine* shall not apply;
- (b) in the case of a cinematograph film referred to in subsection (1) of section *forty-nine*, if it was an original dramatic work as mentioned in paragraph 9, subsections (1), (2) and (3) of that section shall apply in accordance with paragraph 9;
- (c) with respect to photographs forming part of such a cinematograph film, subsections (1), (2) and (3) of section *forty-nine* shall apply as they apply in relation to photographs not forming part of a cinematograph film.

PART VII
GENERAL AND SUPPLEMENTARY PROVISIONS

Provisions as to interpretation

22. In the application of subsection (2) of section *three* to a publication effected before the appointed date the reference in paragraph (d) thereof to thirty days shall be construed as a reference to fourteen days.

Interpretation of terms in Act of 1911

23. For the purposes of the application, by virtue of any of the provisions of this Schedule, of any provision of *Chapter 227 of 1963*-

- (a) the expressions of which definitions are set out in section 35 of the Act of 1911 shall, notwithstanding anything contained in this Act, be construed in accordance with those definitions; and
- (b) where for those purposes any of those provisions is to be construed as if re-enacted in this Act, it shall be construed as if it had been so re-enacted with the substitution for the words 'this Act', wherever the reference is to the passing or the commencement of the Act of 1911, of the words 'the Copyright Act [Chapter 227 of 1963]'.

Construction of references in enactments and other documents

24. Without prejudice to the operation of any of the provisions of this Schedule-

- (a) any enactment or other document referring to an enactment repealed by this Act shall be construed as referring or as including a reference to the corresponding provision of this Act;
- (b) any enactment or other document referring to copyright or to works in which copyright subsists, if but for this Act it would be construed as referring to copyright under *Chapter 227 of 1963* or to works in which copyright subsists under *Chapter 227 of 1963*, shall be construed as referring or as including a reference to copyright under this Act or, as the case may be, to works or any other subject-matter in which copyright subsists under this Act;
- (c) any reference in an enactment or other document to the grant of an interest in copyright by licence shall be construed in relation to copyright under this Act as a reference to the grant of a licence in respect of that copyright.

Application of Act

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

(2) For the purposes of any reference in this Schedule to works, sound recordings or cinematograph films made before the appointed date, a work, recording or film, the making of which extended over a period, shall not be taken to have been so made unless the making of it was completed before the appointed date.

Interpretation of terms

26. In this Schedule-

'Act of 1911' means the British Copyright Act set out in the First Schedule to *Chapter 227 of 1963*;

'Chapter 227 of 1963' means the Copyright Act [*Chapter 227 of 1963*];

'photograph' has the meaning assigned thereto in section 35 of the Act of 1911.
