WORLD TRADE ORGANIZATION
ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO

IP/N/1/GMB/C/1

29 January 2014

(14-0526)

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

THE GAMBIA

The present document reproduces the text[1] of the Copyright Act, 2004, as notified by the Delegation of The Gambia on 16 January 2014 under Article 63.2 of the Agreement (see document IP/N/1/GMB/1).

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

GAMBIE

Le présent document contient le texte[1] de la Loi de 2004 sur le droit d'auteur, notifiée par la délégation de la Gambie le 16 janvier 2014 au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/GMB/1).

Consejo de los Aspectos de los Derechos de Propiedad Intelectual relacionados con el Comercio

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

GAMBIA

En el presente documento se reproduce el texto[1] de la Ley de Derecho de Autor, de 2004, notificada por la delegación de Gambia el 16 de enero de 2014 en virtud del párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/GMB/1).

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

PP 3-79 - Offset (Pdf file attached)
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PP 3-79 - Offset (fichero Pdf adjunto)

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COPYRIGHT ACT, 2004

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ISSN 0796—0298

Supplement "C" to The Gambia Gazette No. 12 of 5th May, 2004

Copyright Act, 2004.

THE GAMBIA

NO. 10 OF 2004.

Assented to by The President,

this 28th day of April, 2004.

YAHYA A. J. J JAMMEH
President.

AN ACT to provide for the protection of copyright in The Gambia and for matters connected therewith.

[28th April, 2004]

ENACTED by the President and the National Assembly.

CHAPTER I - PRELIMINARY

Short title

1. This Act may be cited as the Copyright Act, 2004.

Interpretation

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

"adaptation" means the modification of a pre-existing work from one kind of work to another and consists in altering work within the same kind to make it suitable for different conditions of exploitation, and may also involve altering the composition of the work;

"artistic work" means, irrespective of artistic quality, any of the following works -

(a) painting, drawing, etching, lithograph, wood-cut, engraving, print, fashion design or wood design;

(b) photograph not comprised in an audio visual film;

(c) map, plan or diagram;

(d) sculpture;

(e) work of architecture in the form of building or model; or

(f) work of applied art, whether handicraft or produced on an industrial scale;

"audio-visual work" means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible to being made audible and where accompanied by sounds, susceptible of being made audible;

"author" means a person who created a work, and includes in the case of -

(a) broadcast transmitted from within a country, the person by whom the arrangements for the making of the transmission within that country were undertaken;

(b) an audiovisual work, the person by whom the arrangements for the making of the work were undertaken;

(c) a sound recording -

(i) the person by whom the arrangements for the making of the sound recording were made, or

(ii) of a musical work, the artist in whose name the recording was made, unless in either case the parties to the making of the sound recording, provide otherwise by contract;

"Board" means the Board of the Centre;

"broadcasting" means the communication of a work, performance or a sound recording to the public by wireless transmission, including transmission by satellite;

"broadcasting organization" means an authority established under law in The Gambia or elsewhere providing broadcasting services for public reception.

"cable programmes" means visual images, sounds or other information sent by means of a telecommunication system, otherwise than by wireless telegraphy, for reception –

(a) at two or more places (whether for simultaneous reception or at different times) in response to request by different users; or

(b) for presentation to members of the public;

"Centre" means the National Centre for Arts and Culture established under the National Centre for Arts and Culture Act, 2003;

"choreographic work" means a composition of movements for dancing or any other patterned succession of gestures mostly created to accompanying music and includes other forms of dance, whether or not in dramatic form;

"Collecting Society" means the Collecting Society of The Gambia established under section 79;

"collective licence" means a licence issued by a collecting society under which copies of a work can be made;

"communication to the public" means the transmission by wire or without wire, of the images or sounds, or both, of a work, performance or sound recording or broadcast in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closet social acquaintances at a place or places so distant from the place where the transmission originates –

(a) that without the transmission, the images or or sounds would not be perceivable;

(b) irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places or times; individually chosen by them;

"computer" means an electronic or similar device having information-processing capabilities;

"computer programme" means a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

"copy" means a reproduction of a work in a written form, or in the form of a recording or film, or in any manner or form, but an object shall not be taken to be a copy of an architectural work unless the object is a building or a model;

"copyright" means an economic right or moral right protected under this Act;

"directive work" means a work resulting from adaptation, translation or other transformation of an original work in so far as it constitutes an independent creation;

"distribution" for the purposes of section 14, means any operation by which programme-carrying signals are transmitted to the general public or any section of it;

"distributor" for the purposes of section 14, means the person who decides that the distribution should take place;

"exclusive licence" means a licence signed by or on behalf of the owner of copyright, authorizing the licensee, to the exclusion of all other persons (including the person granting the licence), to exercise any right which would otherwise be exercised exclusively by the copyright owner;

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

(a) folktale, folk poetry and folk riddle;

(b) folk song and instrumental folk music;

(c) folk dance and folk play; and

(d) production of folk art, in particular, drawing, painting, carving, sculpture, pottery, terra-cotta, mosaic, woodwork, metal ware, jewelry, handicraft, costume and indigenous textile;

"fixation" means the embodiment of sounds, images or both of the representations from which the sounds, images or images and sounds can be perceived, reproduced or communicated through a device;

"folklore" means the literary, artistic and scientific work belonging to the cultural heritage of The Gambia which are created, preserved and developed by ethnic communities of The Gambia or by unidentified Gambian authors;

"infringement" means an act that violates a right protected under this Act;

"licence" means a lawfully granted licence permitting the doing of an act controlled by this Act;

"literary work" includes irrespective of literacy quality, any of the following works or works similar to them -

(a) novels, stories or poetical works;

(b) plays, stage directions, film scenarios or broadcasting scripts;

(c) textbooks, treaties, histories, biographies, essays or articles;

(d) choreographic works;

(e) encyclopedias, dictionaries, directories, time tables, anthologies, databases or compilation of data or other material, whether or not in machine readable form, which by reason of the selection or arrangement of contents constitutes intellectual creations;

(f) letters, reports or memoranda;

(g) law reports, excluding court decisions;

(h) lectures, addresses or sermons; and

(i) computer programmes, whatever may be the mode or form of expression;

"moral right" means any of the rights mentioned in section 10;

"musical work" includes any musical work, irrespective of its musical quality and words composed for musical accompaniment;

"owner" or owner of copyright means the person to whom the copyright in a work belongs and includes the heir of an author or an assignee in whole or in part of a copyright and where –

(a) the economic right is vested in the author, it is the author;

(b) the economic right is originally vested in an individual, other than the author or in a legal entity, it is that person or entity; or

(c) the ownership of the economic right has been transferred to an individual or legal entity, it is that person or entity;

"performance" means the presentation of a work by action, including dancing, playing, reciting, singing, delivering, declaiming or projecting, to listeners or spectators;

"performer" means an actor, a dancer, declaimer, musician, singer or any other person who performs a literary or artistic work and includes the conductor or director of a performance of the artistic or literary work;

"photographic work" means -

(a) a recording of light or other radiation on a medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which the recording is made; or

(b) a still picture extracted from an audiovisual work which is considered to be a part of the work concerned;

"producer" in relation to an audiovisual work or a sound recording, means the individual or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording;

"programme-carrying signals" means electronically generated carriers transmitting live or recorded material consisting of images, sounds or both, in their original form or any form recognizable derived from the original, in extra-terrestrial space;

"public display" means –

(a) the showing of the original or a copy of any work.-

(i) directly,

(ii) by means of a film, slide, television image or otherwise on screen, or

(iii) by means of any device or process; or

(b) in the case of an audiovisual work, the showing of individual images non-sequentially,

at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time or at different places or times, and where the work can be displayed without communication to the public;

"public lending" means the transfer of the possession of the original or a copy of a work or sound recording for a limited period of time for non-profit making purposes, by an institution, the services of which are available to the public, including a library and an archive;

"public place" means a building, place or conveyance to which the public are, for the time being entitled or permitted to have access, either without any condition or on condition of making any payment, and includes theatre, hotel, cinema, concert hall, dance hall, bar, club, sports ground, holiday resort, circus, restaurants, commercial banking and industrial establishments;

"public performance" means, in the case of -

(a) a work, other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;

(b) an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and

(c) a sound recording, making the recorded sounds audible at a place or at places where -

(i) persons outside the normal circle of a family and its closet acquaintances are or can be present, irrespective of whether they are or can be - present at the same place and time, or at different places or times, and

(ii) where the performance can be perceived without the need for broadcasting or communication to the public;

"published" means a work or a sound recording, tangible copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies, provided that it was available to the public, in the case of -

(a) a work, with the consent of the author or other owner of copyright; and

(b) a sound recording with the consent of the producer of the sound recording or his or her successor in title;

"publisher" means -

(a) person who undertakes the publication of a work by the issue of copies to the public usually for sale; or

(b) in the case of a sound recording or audio visual work, the person who issues duplicates of the sound recording or audio visual work;

"re-broadcast" means a simultaneous or subsequent broadcast by one broadcasting organization of the broadcast of another broadcasting organization;

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

"reproduction" means the making of one or more copies of a work or sound recording in any manner or form, including a permanent or temporary storage of the work or in electric form;

"right management information" means any information

(a) which identifies the author, the work, the performer, the performance of the performer, the producer of the sound recording, the broadcaster, the broadcast, the owner, the owner of any right under this Act; or

(b) about the terms and condition of use of the work, performance, sound recording or broadcast, and any number or code that represents the information, when any of the items of information is attached to copy of a work, a fixed performance, a sound recording or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast;

"Secretary of State" means the Secretary of State responsible for arts and culture;

"Society" means the Collecting Society of The Gambia established under section 79;

"sound recording" means a work that results from the fixation of series of musical, spoken or other sound, but does not include sounds accompanying a motion picture or other audiovisual work regardless of the nature of the material objects in which those sounds are embodied;

"systematic instructional activities" means the methodical presentation of information for educational purposes;

"technical device" includes audio and visual cassettes, compact discs, CD-Roms, VCRs, photocopying machines and any other object , equipment and device used capable of being used to infringe copyright;

"work" means any of the works listed sections 4 and 5(1) and includes translations, adaptation, new versions or arrangements of pre-existing works, and anthologies or collection of works which, by reason of the selection and arrangement of their content, present an original character;

"work of applied art" means an artistic creation with useful functions or incorporated in an useful article, whether made by hand or produced on an industrial scale;

"work of joint authorship" means a work created by two or more authors in collaboration in which the individual contributions are indistinguishable from each other.

(2). The following provisions apply with respect to the publication of a work -

(a) a work is deemed to have been published if copies of it have been made available in a manner sufficient to render the work accessible to the public;

(b) where in the first instance, a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work; and

(c) a publication in any 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.

Application of this Act

3. The provisions of this Act shall –

(a) apply to works, performances, sound recording, and broadcasts existing before the date of the coming into effect of this Act, provided that the term of protection had not expired under the former legislation or under the legislation of the country of origin of the works, performances, sound recording or broadcast that are to be protected under an international treaty to which The Gambia is a party; and

(b) not affect any contract or contracts on works, performances, sound recordings and broadcasts concluded before the entering into force of this Act.

CHAPTER II – COPYRIGHT

PART I – WORKS PROTECTED

Works eligible for copyright

4. (1) Subject to this section, an author, co-author or joint author of any of the following works is entitled to the copyright and protection afforded to that work under this Act -

(a) literary work;

(b) artistic work;

(c) musical work;

(d) sound recordings;

(e) audio-visual work;

(f) choreographic work;

(g) the derivative works specified in section 6; and

(h) programme-carrying signals.

(2) Notwithstanding subsection (1), a work is not eligible for copyright unless -

(a) it is original in character;

(b) it has been affixed in a definite medium of expression now known or later to be developed with the result that the work can either directly or with the aid of a machine or device be perceived, reproduced or otherwise communicated; and

(c) it is –

(i) created by a citizen of The Gambia or a person who is ordinarily resident in The Gambia or by a body corporate incorporated by or under the laws of The Gambia,

(ii) first published in The Gambia, and in the case of a work first published outside The Gambia, it is subsequently published in The Gambia within thirty days of its publication outside The Gambia, or

(iii) a work in respect of which The Gambia has an obligation under an international treaty to grant protection.

(3) The eligibility of a work for copyright is not affected by its artistic quality, the purpose of the author in creating it or by the manner or form of its expression.

(4) For the purposes of this section, a work is original if it is the product of the independent effort of the author.

Copyright by reference to international agreements

5. (1) A work is also protected if –

(a) on the date of its first publication at least one of the authors is -

(i) a citizen of or domiciled in, or

(ii) a body corporate established by or under the laws of,

a country that is a party to an obligation in a treaty or other international agreement to which The Gambia is a party; or

(b) the work is first published -

(i) in a country which is a party to an obligation in a treaty or other international agreement to which The Gambia is party,

(ii) by the United Nations or any of its specialised agencies, or

(iii) by the African Union, or

(iv) by the Economic Community of West African States.

(2) Where the question arises as to whether a country is a party to an obligation in a treaty or other international agreement to which The Gambia is also a party, a certificate from the Centre to that effect shall be conclusive proof of that fact.

Derivative works eligible for copyright

6. (1) The following derivative works are also protected by copyright -

(a) any translation, adaptation, arrangement and other transformation or modification of a work; and

(b) collection of works, collection of mere data (databases), whether in machine-readable or other form, and collections of expressions of folklore if the, collection is original by reason of the selection or arrangement of their contents

(2) The protection of a work referred to in subsection (1) is without prejudice to any protection of a pre-existing expression of folklore incorporated in or in or utilized for the making of the work.

Ideas, concepts excluded from copyright

7. Notwithstanding the provisions of sections 5 and 6, no protection shall extend under this Act to -

(a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work; or

(b) any official text of a legislative, administrative or legal nature or any of its official translation.

Expression of folklore protected

8. (1) Expression of folklore is protected by copyright under this Act against -

(a) reproduction;

(b) communication to the public by performance, broadcasting, distribution by cable or other means; and

(c) adaptation, translation and other transformation,

when the expression is made either for commercial purposes or outside a traditional or customary context.

(2) The protection conferred in subsection (1) does not include the right to control -

(a) the doing of any of the acts by way of fair dealing for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source;

(b) the utilisation for purposes of education, utilisation by way of illustration in an original work of an author, provided that the extent of such utilisation is compatible with fair practice;

(c) the borrowing of expression of folklore for creating an original work of an author, provided that the extent of such utilisation is compatible with fair practice; or

(d) the incidental utilisation of expressions of folklore.

(3) The source of an identifiable expression of folklore shall be indicated in all printed publications, and in connection with any communications to the public, in an appropriate manner, and in conformity with fair practice, by mentioning the community or place from where the expression utilised was derived.

(4) The right to authorise an act referred to in subsection (1) shall vest in the Secretary of State on behalf of and in trust for the people of The Gambia.

PART II – NATURE AND VESTING OF COPYRIGHT

:conomic ights

9. (1) Subject to this Act, the author or other owner of copyright has the exclusive economic right in respect of the work to do or authorise the doing of any of the following -

(a) the reproduction of the work;

(b) the translation, adaptation, arrangement or any other transformation of the work;

(c) the communication to the public by performance, broadcasting or any other means;

(d) the distribution to the public by sale, rental, public lending or otherwise of the original or a copy of the work that has not already been subject to sale or other transfer of ownership authorised by the owner of copyright;

(e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in sound recording, a computer programme, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;

(f) importation of copies of the work;

(g) public display of the original or a copy of the work;

(h) public performance of the work;

(i) broadcasting of the work; and

(j) any other communication to the public of the work.

(2) The right of rental or lending under subsection (1)(e) does not apply to rental or lending of a computer programme where the programme itself is not the essential object of the rental or lending.

loral rights

10. (1) In addition to the economic rights referred to in section 9, the author of a copyright work has the sole moral right, independent of his or her economic rights -

(a) to claim authorship of his or her work and in particular to demand that his or her name or pseudonym be indicated prominently on the copies and in connection with any public use of his or her work, as far as practicable;

(b) not to have his or her name or pseudonym indicated on the copies and in connection with any public use of his or her work, as far as practicable;

(c) to object to and seek relief in connection with any distortion, mutilation or other modification of, or other derogatory action in relation to his or her work which would be prejudicial to his or her honour or reputation; and

(d) to alter the work at any time.

(2) None of the rights mentioned in subsection (1) shall be transmissible during the life of the author, but the right to exercise any of the rights shall be transmissible by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that -

(a) the waiver is in writing and clearly specifies the right waived and the circumstances in which the waiver applies; and

(b) a waiver of the right under subsection (1)(c) specifies the nature and extent of the modification or other action in respect of which the right is waived.

(4) Following the death of the author, the individual or legal entity on whom or which the moral rights have devolved has the right to waive those rights.

Employed authors

11. The copyright of a work shall vest in an employer or a person who commissioned the work if the employed author created the work -

(a) in the course of his or her employment by the employer or person;

(b) under a contract of service; or

(c) on commission by the person who commissioned the work, in the absence of any enactment or contract to the contrary.

Works made by the Government of The Gambia, and international bodies

12. The copyright in a work, shall vest in -

(a) the President on behalf of and in trust for the people of The Gambia; or

(b) an international body,

if the work is made by or under the direction or control of the Government of The Gambia or of a specified

international body.

Works for public benefit

13. (1) The rights referred to in sections 9 and 10 shall not vest in any person in respect of the following works -

(a) an enactment;

(b) a decision made by a court or tribunal established under an enactment for the administration of justice in The Gambia;

(c) a report made by a commission of enquiry appointed by the Government or any agency of the Government and published by the Government; and

(d) news, namely, a report of fresh event or current information made by the media, whether published in written form, by broadcast or communicated to the public by any other means, except where the news is disseminated by the private media.

(2) The President is the trustee for the public of the works specified in subsection (1) of this section except where they relate to the private media.

Programme-carrying signals

14. Copyright in programme-carrying signals is the exclusive right to prevent the distribution in The Gambia or from The Gambia of any signals by any distributor for whom those signals were not intended by their author, but it is not an infringement of the right of the author, where the use of the signal involves

(a) the reproduction in any material form, the communication to the public or the broadcasting of the whole signal or a substantial part of it, either in its original form or in any form recognisably derived from the original by way of fair dealing for the purpose of scientific research, private use, criticism or review or the reporting of current events;

(b) the broadcast of the signal if, the broadcast is intended to be used for purposes of systematic instructional activities;

(c) the reproduction of a broadcast and the use of the reproduction in an educational institution or for the systematic instructional activities in any educational institution; or

(d) its use for the purpose of a judicial proceeding or for any report of the proceeding.

Original ownership of economic rights.

15. (1) Subject to the provisions of subsection (2), the original owner of the economic rights is the author who created the work.

(2) In the case of –

(a) a work of joint authorship, the co-authors shall be the original owners of the economic rights but if a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author or each part shall be the original owner of the economic rights in the part that he or she has created;

(b) a collective work, the natural person or legal entity at whose initiative and under whose direction the work has been created shall be the original owner of the economic rights;

(c) a work created by an author, employed by an individual or a legal entity, in the course of his or her employment, the employer shall, unless provided otherwise in a contract, be the original owner of the economic rights; and

(d) an audiovisual work the producer shall, unless provided otherwise in a contract, be the original owner of the economic rights.

(3) The co-authors of audiovisual work and the author of a pre-existing work
of the audiovisual work shall maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be the subject of acts covered by their economic rights separately from the audiovisual work.

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16. (1) The owner of copyright may transfer the economic rights in section 9 to a third party either in whole or in part but the transfer whether in whole or in part shall not include the moral rights referred to in section 10.

(2) A contract that requires the transfer of the rights referred to in section 10 shall be limited in scope to the use provided for in the contract.

(3) Copyright may be transferred by assignment, licence, testamentary disposition or operation of law.

(4) An assignment of copyright shall be in writing and signed by the owner of the copyright or by the person authorised by him or her for the purpose.

(5) A licence to do an act that falls within copyright may be oral, written or inferred from conduct.

(6) In the case of joint authorship of a work, an assignment or a licence for the work shall be subject to the authorisation of the joint authors.

(7) Where a work is of joint authorship and one of the joint authors withholds his or her consent to an assignment or the granting of a licence, the matter shall be referred to the Centre to determine whether or not consent should be granted in respect of the assignment or licence and upon what conditions.

Presumption of authorship and of representation of the author

17. (1) An individual whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the pseudonym, of the work notwithstanding that the name is a pseudonym if the pseudonym leaves no doubt as to the identity of the author.

(2) In the case of an anonymous work of pseudonymous work whose author is not identified, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the economic rights and moral rights of the author but this presumption shall cease to apply when the author reveals his or her identity.

ight to claim uthorship.

18. (1) The owner of a copyright has the right to -

(a) claim authorship of his or her work, in particular that his or her authorship be indicated in connection with any of the acts referred to in section 9 except when the work is included incidentally or accidentally when reporting current events by means of broadcasting;

(b) object and seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his or her work, where the action would be or is prejudicial to his or her honour or reputation.

(2) The rights referred to in subsection (1) are perpetual, inalienable and imprescriptible.

(3) For the purpose of this section, "author" includes his or her heirs and successors-in-title.

ight to share proceeds of ale.

19. (1) Notwithstanding an assignment or a sale of the original work, the author of a graphic work, three-dimensional work or manuscript has an inalienable right to share in the proceeds of a sale of that work or manuscript by public auction or through a dealer, whatever the method used by the latter to carry out the operation.

(2) The right conferred by this section shall apply to originals of the work.

(3) The conditions for the exercise of the right conferred by this section shall be determined by regulations to be made by the Centre.

(4) The provisions of subsections (1) to (3) shall not apply to architectural work or applied art.

(5) In this section, "author" includes heirs and successors-in-title.

Duty of printer and others to keep register.

20. Publishers, printers, producers, manufacturers of works in which copyright subsists shall keep a register of all works produced by them showing the following -

(a) the name of the author;

(b) the title;

(c) year of production; and

(d) the quantity of work produced.

PART III - DURATION OF COPYRIGHT

Duration of copyright: general

21. (1) Subject to the provisions of subsection (2), the economic right and moral right of an author shall be protected during the life of the author and for fifty years after his or her death.

(2) The economic right or moral right are protected in the case of -

(a) a work of joint authorship, during the life of the last surviving author and for fifty years after his or her death;

(b) a collective work, other than a work of applied art, and in the case of an audiovisual work, for fifty years from the date on which the work was either made, first made available to the public or first published, whichever date is the latest;

(c) a work published anonymously or under a pseudonym, for fifty years from the date on which the work was made, first made available to the public or first published, whichever date is the latest, provided that where the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) shall apply, as the case may be;

(d) a work of applied art, for twenty-five years from the making of the work.

(3) Every period provided for under this Part shall run to the end of the calendar year in which it would otherwise expire.

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22. Where the copyright in a work is owned by a public corporation or other body corporate, the term of protection shall be fifty years from the date on which the work was made public.

ıration of ıpyright in ıdio-visual ırks

23. In the case of an audiovisual work, a sound recording or broadcast, the rights are protected until the expiration of fifty years from the date of the making of the work, or where the work is made available to the public during that period with the consent of the author, until the expiration of fifty years from the date of its communication to the public.

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24. In the case of programme-carrying signals, the rights are protected until the expiration of fifty years from the date of the making of the signal.

Duration of copyright in photographic work

25. In the case of a photographic work, the rights of th author referred to in section 9 are protected until th expiration of fifty years from the date of the making of th work.

Duration of copyright in folklore

26. The rights vested in the Secretary of State on beha of and in trust for the people of The Gambia in respect (expression of folklore under section 8 exist in perpetuity.

PART IV – PERMITTED USE OF COPYRIGHT, AND EPHEMERAL RECORDINGS

Private reproduction for personal purposes

27. (1) Notwithstanding the provisions of section 9 (1)(a and subject to the provisions of subsection (2), th private reproduction of a published work in a single cop is permitted without the authorisation of the author (other owner of copyright, where the reproduction is mac by an individual exclusively for his or her own person purposes.

(2) The permission under subsection (1) does not exten to reproduction -

(a) of a work of architecture in the form of building or any other construction;

(b) in the form of reprography of the whole or (a substantial part of a book or of a music work in the form of notation;

(c) of the whole or of a substantial part of database in digital form;

(d) of a computer programme, except a provided in section 28; and

(e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

Temporary reproduction.

28. Notwithstanding the provisions of section 9(1)(a), the temporary reproduction of a work shall be permitted if the reproduction -

(a) is made in the process of a digital transmission of the work or making a digitally stored work perceptible;

(b) is caused by a person or entity that, by way of authorisation by the owner of copyright of operation of law, is entitled to make the transmission or the digitally stored work perceptible; and

(c) is an accessory to the transmission or the making perceptible, that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those, referred to in paragraphs (a) and (b).

Reproduction in the form of quotation.

29. (1) Notwithstanding the provisions of section 9(1)(a), the reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorisation of the author or other owner of copyright, if the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose.

(2) An indication of the source and the name of the author or other owner of copyright, if his or her name appears in the work from which the quotation is taken, shall accompany the quotation.

Reproduction for teaching.

30. (1) Notwithstanding the provisions of section 9(1)(a), the following acts are permitted without authorisation of the author or other owner of copyright –

(a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recording, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;

(b) the reprographic reproduction, for face-to-face teaching in educational institutions whose activities do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that -

(i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasion, and

(ii) there is no collective licence offered by a Collecting Society of which the educational institution is or should be aware, under which the reproduction can be made.

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1).

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31. Notwithstanding the provisions of section 9(1)(a), a library or an archive whose activities do not serve direct or indirect gain may, without the authorisation of the author or other owner of copyright, make a single copy of the work by reprographic reproduction where -

(a) the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of an individual if -

(i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research,

(ii) the act of reproduction is an isolated case occurring if repeated, on separate and unrelated occasions, and

(iii) there is no collective licence offered by a Collecting Society of which the library or archive is or should be aware, under which the copy can be made; or

(b) the copy is made in order to preserve and, if necessary, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive, provided that -

(i) it is impossible to obtain the copy under reasonable conditions, and

(ii) the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.

Reproduction, broadcasting and other communication to the public

32. (1) Notwithstanding the provisions of section 9 (1)(a), (i) and (j), the following acts shall be permitted in respect of a work, without the authorisation of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author or other owner as far as practicable-

(a) subject to subsection (2), the reproduction in a newspaper or periodical, the broadcast or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character;

(b) for the purpose of reporting current events, the reproduction, broadcast or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose; and

(c) the reproduction in a newspaper or periodical, the broadcast or other communication to the public of a political speech, a lecture, an address, a sermon or any other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent justified by the purpose of providing current information.

(2) The permission granted under subsection (1)(a) does not apply where the right to authorise reproduction, broadcast or other communication to the public is expressly reserved by the author or other owner of copyright.

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33 Notwithstanding the provisions of section (9)(1), the publication of the portrait of the author or other owner of copyright is permitted without his or her authorisation if publication is related to scientific, educational or cultural purposes in general or to facts or events of public interest that have occurred in public.

eproduction id adoption computer ogrammes

34. (1) Notwithstanding the provisions of section 9(1)(a) and (c), the reproduction, in a single copy, or the adaptation of a computer programme by the lawful owner of a copy of that computer programme is permitted without the authorisation of the author or other owner of copyright, if the copy or adaptation is necessary for -

(a) use of the computer programme with a computer for the purpose and extent for which the computer programme has been obtained;

(b) for archival purposes and for the replacement of the lawfully owned copy of the computer programme in the event that the copy of the computer programme is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer programme shall be used for any purpose other than those specified in subsection (1), and the copy or adaptation shall be destroyed if the continued possession of the copy of the computer programme becomes unlawful.

Importation for personal purposes

35. Notwithstanding the provisions of section 9(1)(f), the importation of a copy of a work by an individual for his or her own personal purposes is permitted without the authorisation of the author or other owner of copyright.

Display of works

36. Notwithstanding the provisions of section 9(1)(g), the public display of the original or copy of a work is permitted without the authorisation of the author or other owner of copyright provided that -

(a) the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process; and

(b) the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his or her successor in title.

Ephemeral recordings

37. (1) Where a work is broadcast, the broadcaster may use his or her own facilities to make a recording of the broadcast and may produce copies of the recording for his or her own use.

(2) Subject to subsection (3), the broadcaster shall destroy copies of the recording within six months after the date on which the recording was made.

(3) An authorised recording under subsection (1) of an exceptional documentary character may be preserved for presentation to the National Archives.

(4) The preservation of an authorised recording for presentation to the Archives does not affect the rights of the author in the work that was broadcast.

(5) Whether a recording of a broadcast is of exceptional documentary character is a question of fact to be determined by the broadcaster after taking into consideration the circumstances of the case and in particular the need for the enhancement of the historical and cultural aspects of life in the country.

PART V – PROTECTION OF PERFORMERS, BROADCASTING ORGANIZATIONS, SOUND RECORDING PRODUCERS AND AUDIO VISUAL PRODUCERS

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38. (1) A performer has the economic right and moral right to a live aural performance and to a performance fixed in a sound recording and has the exclusive right to authorise -

(a) the broadcast or other communication to the public of his or her performance, except where the broadcast or the other communication -

(i) is made from a fixation of the performance, other than a fixation made under the terms of section 42 or otherwise made without the authorisation of the performer; or

(ii) is a re-broadcast made or authorised by the organization initially broadcast the performance;

(b) the fixation of his or her unfixed performance;

(c) the direct or indirect reproduction of a fixation of his or her performance, in any manner or form;

(d) the distribution to the public by sale or other transfer of ownership, of a fixation of his or her performance, or copies thereof, that have not already been subject to a distribution authorised by the performer;

(e) rental to the public or public lending of a fixation or copies of the fixation of his or her performance irrespective of the ownership of the copy rented or lent;

(f) the making available to the public of his or her fixed performance, by wire or wireless means, in such a way that members of the public may access them from a place or at a time individually chosen by them.

(2) A person shall not -

(a) broadcast or communicate the performance of a performer directly or indirectly to the public except -

(i) where the performance is made for a previously authorised fixation; or

(ii) where the transmission is one that has been authorised by the broadcasting organization that transmits the first performance;

(b) arrange the fixation of a performance not previously fixed on a physical medium;

(c) provide the first public distribution of the original or a copy of a fixation of a performance;

(d) provide or obtain a rental of the original or a copy of the performance for the purpose of direct or indirect commercial advantage irrespective of the ownership of the original or copy rented; or

(e) make available to the public a fixed performance by wire or wireless means, in a way that members of the public may access it from a place and at a time individually chosen by them, without the authorisation of the performer.

(3) A person shall not reproduce a fixation of a performance where -

(a) the performance is initially fixed without the authorisation of the performer;

(b) the reproduction is made for a purpose other than that for which the performer gave the authorisation; or

(c) the performance is initially fixed in accordance with this Act but the reproduction is made for purposes other than those specified.

(4) Where two or more performers take part in the same performance as a group, authorisation may be given by the legal representative of the group or by the leader of the group.

(5) Once the performer has authorised the incorporation of his or her performance in an audiovisual fixation, the provisions of subsection (1) shall have no further application.

(6) The performer shall, independently of his or he economic rights and even after the transfer of thos rights as regards his or her live aural performances an performances fixed in sound recording, have the right to -

(a) claim to be identified as the performer of his or her performances, except wher omission is dictated by the manner of th use of the performance, and

(b) object to any distortion, mutilation or othe modification of his or her performances tha would be prejudicial to his or her reputation

(7) The provisions of section 10 (2) and (3) apply *mutati mutandis* to the rights granted under subsection (5);

Performers right to enter into contracts

39. No provision in this Act shall preclude the right of performer to enter into a contract with any person o such terms and conditions as he or she thinks fit for th use of his or her performance by another person.

Authorisation relating to broadcast

40. In the absence of any law or contract to the contran the provisions of section 38 shall not imply a consent to ·

(a) license other broadcasters to transmit th performance;

(b) make a fixation of the performance;

(c) reproduce the fixation if the authorisation grante is to broadcast and make a fixation of th performance; or

(d) broadcast the performance from a previous fixation or from the reproduction of the fixation where initial permission was given solely to enable the broadcasting of the performance.

Broadcasting organizations

41. A broadcasting organization has the exclusive right to authorise or prohibit -

(a) the re-broadcasting of its broadcast;

(b) the fixation of its broadcast; or

(c) the reproduction of a fixation of its broadcast where -

(i) the fixation used to make the reproduction is made without authorisation, or

(ii) the broadcast is initially fixed in accordance with the provisions of this Act, but the reproduction is made for purposes other than those specified.

Rights of sound recording producers and audiovisual producers

42. (1) The producer of a sound recording or audio visual work may authorise or prohibit -

(a) the direct or indirect reproduction of that sound recording or audio visual work;

(b) importation of copies of the sound recording;

(c) the distribution to the public by sale or other transfer of ownership of the original or copies of the sound recording that has not already been subject to a distribution authorised by the producer;

(d) rental to the public or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent;

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

(2) The rights under subsection (1) shall be protected from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

(3) The producer of a sound recording or audiovisual work may make available to the public a sound recording or audio visual work by wire or wireless means in such a way that members of the public may access it from a place and at a time individually chosen by them.

(4) A copy of a sound recording or audiovisual work is unlawful if with or without imitating the outward characteristic of the original work it incorporates all or part of the producer's sound recording or audiovisual work without his authorisation.

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43. The provisions of sections 38, 40, 41and 42 shall not apply where the acts referred to are concerned with -

(a) private use;

(b) the reporting of current events, but only short excerpts of a performance, sound recording, audiovisual work or broadcast may be used;

(c) teaching or scientific research; and

quotation in the form of short excerpts of a performance, sound recording, audio visual work or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations

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44. (1) The user of a sound recording or audio visual work shall pay the producer and the performers reasonable remuneration for -

(a) a sound recording or audio visual work published for commercial purposes;

(b) a production of a sound recording or audio visual work, if the sound recording or audio visual work is used for broadcasting or in any other from of communication to the public; and

(c) for the public performance of a sound recording.

(2) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording

has not been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

(3) For the purposes of this section, a sound recording that has been made available to the public by wire or wireless means in such a way that members of the public may access it from a place and at a time individually chosen by them shall be considered as if it has been published for commercial purposes.

Obligation of producers

45. (1) The producer of a sound recording or audio visual work shall state on the label of the sound recording or audio visual work or on its container -

(a) the name of the author and those of the main performers;

(b) the title of the work;

(c) the year the original matrix was cut;

(d) the individual or corporate name or the distinguishing mark of the producer; and

(e) that the rights accruing to the producer under this Act are reserved.

(2) Choirs, orchestras and composers shall be referred to by their proper names or by the name of the leader for the purpose of paragraph (a) of subsection (1)(a).

Notice of protection of rights of producers

46. (1) A notice shall be printed on copies of sound recording or audiovisual work made for commercial purposes which shall include -

(a) the symbols © and (p); and

(b) the year of first publication of the sound recording or audiovisual work.

(2) The notice shall be placed in such a manner as to give reasonable notice of claim of protection of the rights of the producer.

(3) If the notice on the copies of the sound recording, audio visual work or their containers does not identify the producer or his or her licence by his or her name, description or trade mark, it shall indicate the name of the person who owns the rights of the producer.

(4) Non-compliance with the provisions of this section by a producer does not deprive the producer of protection of this Act if made in accordance with its provisions.

(5) A person may use fixations or reproductions made in good faith before the commencement of this Act if made in accordance with its provisions.

PART VI – SUPPLEMENTARY PROVISIONS

Royalties

47. The author, performer and producer of sound recordings and other copyright work is entitled to royalties under this Act when sound recording discs or other devices are used in a public performance or in a public place or where they are used in broadcasting or audiovisual work.

Public domain

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

(a) a work with expired terms of protection;

(b) a work by an author who has renounced his or her rights; and

(c) a foreign work that does not enjoy protection in The Gambia.

(2) For the purposes of subsection (1) (b), renunciation by an author or his or her successor in title of his or her rights provided under sections 9 and 10 shall be in writing and made public, but the renunciation shall not conflict with any previous contractual obligation relating to the work.

(3) For the purposes of this section, "public domain" means copyright works which do not enjoy protection because of the expiration of the term of protection or in the case of foreign works, those which lack international conventions and treaties to ensure protection.

(4) Subject to the payment of such fee as may be specified by the Centre, a work that has fallen into the public domain may be used without any restriction.

Registration of works

49. (1) The Centre shall open and maintain registers in which shall be registered works, productions and associations of authors.

(2) The purposes of registration are to-

(a) maintain a record of works;

(b) publicise the rights of the owners; and

(c) provide evidence of the ownership and authentication of intellectual property.

(3) The publisher or executive producer of a work in The Gambia shall submit it for registration by the Centre not later than one month before its publication and two copies of the best edition shall be deposited at the Centre.

(4) A publisher or executive producer who fails to submit a work for registration in accordance with subsection (3) commits an offence and is liable on summary conviction to a fine not exceeding one hundred thousand dalasis .

(5) In this section, "executive producer" means a person who finances the production of a work from its beginning to the end.

CHAPTER III - INFRINGEMENT AND ENFORCEMENT OF COPYRIGHT

nfringement of copyright

50. (1) Subject to this Act, a person who, without the licence or authorisation of the author or other owner of the copyright -

(a) reproduces, duplicates, extracts, imitates or imports into the country, except for his or her private use, any work;

(b) causes to be reproduced, duplicated, extracted, imitated or imported into the country except for his or her private use any work;

(c) distributes or permits or causes to be distributed in the country by way of sale or otherwise any work;

(d) sells, offers for sale exhibits or permits or causes to be exhibited in public any work;

(e) effects the public performance of any work;

(f) removes or alters any electronic information;

(g) distributes, imports for distribution, broadcasts, communicates or makes available to the public, work, performances, copies of fixed performances or sound recordings knowing that electronic information has been removed or altered without authority; or

(h) rents or lends to the public any work,

infringes the right of the author or other owner of the copyright and is liable to be dealt with under this Chapter

(2) For the purposes of this section, the exploitation of a work in a manner prejudicial to the honour or reputation of the author is an infringement of the rights of the author.

Conservatory provisions and measures

51. (1) The High Court shall have jurisdiction to hear cases under this Act and shall have the authority, subject to the relevant provisions of rules of civil and criminal procedure and on such terms as it may deem reasonable to –

(a) grant injunctions to prevent the infringement or prohibit the continuation of the infringement;

(b) order the impounding of -

(i) copies of works or sound recording suspected of being made or imported without the authorisation of the owner of any right protected under this Act where the making or importation of copies is subject to such authorisation, or

(ii) the packaging of the implements that could be used for the making of, and the documents, accounts or business papers referring to such copies.

(2) The provisions of the Civil and Criminal Procedure Codes dealing with search and seizure shall apply to infringements of rights under this Act.

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(3) The provisions of the Customs Act dealing with suspension of the release of suspected illegal goods shall apply to articles and implements protected under this Act.

Civil remedies.

52. (1) The owner of a right protected under this Act whose right has been infringed is entitled to payment, by the defendant, of -

(a) damages for the prejudice suffered as a consequence of the act of infringement, and

(b) expenses caused by the infringement, including legal costs.

(2) The amount of damages shall be fixed in accordance with the relevant provisions of the rules of civil proceedings, taking into account the importance of -

(a) the material and moral prejudice suffered by the owner of the right;

(b) the defendant's profits attributable to the infringement.

(3) Where infringing copies exist, the court shall have the authority to order the destruction or other reasonable disposal of those copies and their packaging outside the channels of commerce in such a manner as to avoid harm to the owner of the right unless the owner of the right requests otherwise.

(4) Where there is a danger that implements may be used to commit or continue to commit an act of infringement, the Court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposal outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the right.

(5) Where there is a danger that an act of infringement may be continued, the Court shall -

(a) expressly order that the act shall not be committed; and

(b) fix a fine of one hundred thousand dalasis, which shall be paid if the order is not respected.

Criminal sanctions.

53. (1) A person who infringes a right protected under this Act wilfully or by gross negligence and for profit-making purposes commits an offence and is liable on conviction to a fine of not more than five hundred thousand dalasis and imprisonment for a term of not more than three years or to both the fine and imprisonment.

(2) The Court shall fix the amount of the fine, taking into particular account, the defendant's profits attributable to the infringement.

(3) The Court may increase up to double the upper limit of the penalties specified in subsection (1), where the defendant has been convicted for a new act of infringement within five years of a previous conviction for an infringement.

(4) The Court shall also apply the measures and remedies referred to in sections 51 and 52 in criminal proceedings, if no decision has yet been taken on those remedies in a civil proceeding.

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54. (1) The following acts are unlawful and, in the application of sections 49 to 52, shall be assimilated to infringements of the rights protected under this Act -

(a) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work, a sound recording or a broadcast, or to impair the quality of copies made;

(b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of a programme, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the programme;

(c) the removal or alteration of any electronic information without authority;

(d) the distribution, import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, sound recordings or broadcasts, knowing or having reason to know that electronic information has been removed or altered without authority.

(2) In the application of sections 50 to 52, an unlawful device and means mentioned in section (1) and a copy from which rights management information has been removed or altered, shall be assimilated to infringing copies of works, and an unlawful act referred to in subsection (1) shall be treated as an infringement of copyright or related rights to which the civil remedies and criminal sanctions provided for in sections 50 to 52 are applicable.

Offences related to folklore

55. (1) A person who sells, offers or exposes for sale or distribution in The Gambia copies of -

(a) expression of folklore made in or outside The Gambia;

(b) a translation, an adaptation, arrangement or expression of folklore made outside The Gambia without the permission in writing of the Centre;

(c) wilfully misrepresents the source of an expression of folklore, or

(d) wilfully distorts an expression of folklore in a manner prejudicial to the honour, dignity or cultural interests of the community in which it originates,

commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction, in the case of -

(a) an individual, to a fine not exceeding one hundred thousand dalasis or imprisonment for a term not exceeding twelve months or to both the fine and Imprisonment; and

(b) a body corporate, to a fine of five hundred thousand dalasis.

(3) A Court before which an offence under this section is tried may order that the infringing or offending article be delivered to the Centre.

CHAPTER IV - ADMINISTRATION

Centre to administer this Act

56. The Centre shall be responsible for the administration of this Act.

Functions of the Centre under this Act

57. The Centre shall -

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

(b) monitor and supervise The Gambia's position in relation to international conventions and advise Government accordingly;

(c) enlighten and inform the public on matter relating to copyright;

(d) maintain an effective data bank on author and other owners of copyright and their works

(d) undertake such other tasks relating t copyright as the Secretary of State ma assign to it.

Copyright inspectors

58. (1) The Board may, by notice published in th *Gazette,* appoint for the Centre such number c copyright inspectors as it deems fit for the purposes c this Act.

(2) A copyright inspector shall have the power to -

(a) enter, inspect and examine, at any reasonable time, any building or premises which he or she suspects is being used fo an activity which infringes copyright under this Act;

(b) arrest a person who he or she reasonably believes has committed an offence unde this Act;

(c) carry out such examination and inquiry a: may be necessary to ascertain compliance with the provisions of this Act;

(d) require the register kept under section 2(to be produced for inspection, examinatior or copying, if necessary;

(e) require a person found in the building or premises to give such information as he or she may have relating to a purpose specified in this Act;

(f) carry out such examination, test or analysis within the building or premises as is required to give effect to any provision of this Act;

(g) take instant photographs where any examination, test or analysis under paragraph (f) is carried out in the building or premises; and

(h) do such other things as the Centre may delegate to it to give effect to this Act.

(3) A person who obstructs a copyright inspector in the performance of his or her duties commits an offence and is liable on conviction to a fine not exceeding fifty thousand dalasis or imprisonment for a term not exceeding two years or to both fine and imprisonment.

Anti-piracy devices

59. (1) The Centre has power, with the approval of the Secretary of State, to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in or in connection with any work which is protected under this Act.

(2) A person who -

(a) sells, rents, hires; or

(b) offers for sale, rent or hire,

a work in contravention of a prescription made under subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand dalasis or imprisonment for a term not exceeding three years or to both the fine and imprisonment.

(3) A person who, without the permission of the Centre -

(a) imports into The Gambia; or

(b) has in his or her possession,

an anti-piracy device prescribed under subsection (1) or any machine, instrument or other thing intended for use in the production of an anti-piracy device, commits an offence and is liable on conviction to a fine not exceeding five hundred thousand dalasis or imprisonment for a term not exceeding three years or to both the fine and imprisonment.

CHAPTER V – LICENSING PROVISIONS

Licences required for certain activities

60 (1) As from the commencement of this Act, no person shall act as a producer, publisher or distributor unless he or she holds a licence issued under or pursuant to this Act for that purpose.

(2) A person who contravenes the provisions of this section commits an offence and is liable on conviction to a fine of not more than fifty thousand dalasis.

(3) In this section. "distributor" means a person who has the responsibility for distributing a work to the public.

Application for licence or permit

61. (1) A person who wishes to obtain a licence under this Part shall apply to the Centre in such form as the Centre shall prescribe.

(2) On receipt of an application under this section, the Centre may make such investigations or require such information as may be necessary, for the consideration of the application

Issuance or refusal of licence or permit

62. (1) After due consideration of an application, the Centre may -

(a) issue to the applicant the licence applied for, with such conditions as it may deem fit; or

(b) refuse to issue the licence, giving reasons for the refusal.

(2) Unless earlier cancelled or revoked, a licence issued under this Act shall remain valid until the thirty-first day of December next following the date of issue and may, thereafter, be renewed from year to year or for such further period or periods as may be specified.

(3) An application for the renewal of a licence or permit shall be made not later than such period as may be prescribed by the Centre before the expiration of the existing licence.

(4) A licence or permit may be renewed, subject to such conditions as the Centre may deem necessary;

False declaration or representation

63. A person who, for the purpose of obtaining a licence under this Part, makes a declaration that is false commits an offence and is liable on conviction to a fine not exceeding thirty thousand dalasis.

Suspension and revocation of licence

64. (1) The Centre may suspend or cancel a licence if the holder of the licence contravenes a provision of this Act or of a condition attached to the licence.

(2) Where the Centre suspends or cancels a licence under subsection (1), it shall notify the holder of the licence accordingly, and he or she shall cease to carry out the activity authorised by the licence immediately on being notified.

Appeals to Secretary of State

65. (1) A person who is aggrieved by -

(a) the refusal of the Centre to issue or renew a licence; or

(b) the suspension or cancellation of a licence,

may within fourteen days of receipt of the notification of the action complained of, appeal to the Secretary of State.

(2) The appeal shall be in writing stating the grounds of appeal and be accompanied by such other written statements or document as the appellant may wish to submit in support of the appeal.

(3) The Secretary of State shall, within thirty days of receiving the appeal, take a final decision and communicate the decision to the appellant.

CHAPTER VI - COLLECTING SOCIETY OF THE GAMBIA

PART I – ESTABLISHMENT OF THE COLLECTING SOCIETY OF THE GAMBIA AND ITS GOVERNING BOARD

Establishment of the Collecting Society of The Gambia

66. (1) There is hereby established for authors and other owners of copyright in The Gambia, a society to be known as the Collecting Society of The Gambia.

(2) The Society shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) For the purpose of performing its functions under this Act or any other law, the Society shall have the power to acquire and hold any moveable and immoveable property and to dispose of the property and to enter into any contract or other transaction.

(4) The Society shall be non-profit making and be responsible for -

(a) promoting, representing and protecting the interests of its members; and

(b) except as otherwise provided under this Act, collecting and distributing the royalties and other remuneration accruing to its members under this Act.

Establishment of the governing Board

67. (1) There is hereby established, for the Society, a governing Board, which shall be responsible for the overall policy and general management of the Society.

(2) The Society Board shall comprise -

(a) the President of the General Assembly of the Society, as the chairperson;

(b) two persons nominated by the Musicians Union of The Gambia;

(c) one music producer nominated by The Gambia Association of Music Producers;

(d) one literary author nominated by The Gambia Association of Writers;

(e) a representative of The Gambia Association of Book Publishers;

(f) a representative of performing artistes;

(g) a representative of film producers;

(h) a representative of the Director General of the Centre; and

(i) the Executive Secretary of the Society.

Meetings of the Society Board

68. (1) The Society Board shall meet for the discharge of its business at least once in every three months at such times and places as the Chairperson shall appoint.

(2) The Chairperson shall, at the written request of the Executive Secretary or not less than seven members of the Society Board, convene a special meeting of the Society Board to transact any extraordinary business on a date specified in the request.

(3) A written notice of a special meeting of the Society Board shall -

(a) be sent to each member not later than twenty-four hours before the meeting; and

(b) specify the business for which the meeting is being convened.

(4) Where a request under subsection (2) is made by members, other than the Executive Secretary, the request shall be transmitted to the Executive Secretary, stating the business to be transacted, at least two working days before the date specified in the request.

(5) The quorum of the Society Board at any meeting shall be six, including the Chairperson or the Executive Secretary.

(6) The Society Board shall take decisions by a simple majority of the votes of members present and, where there is an equality of votes, the person presiding shall have a casting vote.

(7) The Chairperson shall preside at every meeting of the Society Board at which he or she is present, and in his or her absence, the members of the Society Board present shall appoint one of their number to preside at the meeting.

(8) The minutes of every meeting of the Society Board shall be recorded, and signed by the Chairperson of the meeting after confirmation by the members.

(9) The Society Board may at any time co-opt any person to act as an adviser at any of its meetings, but no person so co-opted shall be entitled to vote at any meeting of the Society Board.

(10) The validity of any proceeding of the Society Board shall not be affected by a vacancy among its members or by a defect in the appointment of any of its members.

(11) A member of the Society Board who has an interest in a company or an undertaking with which the Society proposes to enter into a contract shall –

(a) disclose the nature of his or her interest to the Society Board; and

(b) not participate in any deliberation and of the Society Board in respect of the contract.

(12) The Society Board may remove from the Society Board a member who contravenes the provisions or subsection (11).

Absence of Executive Secretary from meetings

69. If the office of Executive Secretary is vacant or the Executive Secretary is for any reason unable to attend a meeting of the Society Board, the person for the time being carrying out the duties of the Executive Secretary shall attend the meeting and may participate in its deliberations.

Transaction of business without meeting

70. A resolution is a valid resolution of the Society Board if –

(a) it is signed or assented to by a majority of the members; and

(b) notice of the proposed resolution was given to each member and to the Executive Secretary,

notwithstanding that it was not passed at a meeting of the Society Board.

Protection of members

71. No action, suit prosecution or proceedings shall be brought or instituted against a member of the Society Board personally in respect of any thing done or omitted to be done in pursuance, execution or intended execution of this Act.

Allowances to members

72. Members of the Society Board and persons co-opted to the Society Board shall be paid such allowances as the General Assembly of the Society may approve.

PART II – GENERAL ASSEMBLY

General Assembly of the Society

73. (1) There shall be a General Assembly of the Society, which shall consist of all the registered members of the Society.

(2) The General Assembly shall -

(a) determine the qualification for membership of the Society;

(b) receive and approve the report on the yearly activities and the audited accounts of the Society; and

(c) make recommendations relating to the objects of the Society to the Society Board and Secretary of State, as it deems necessary.

(3) The General Assembly shall have a President and a Vice President, both of whom shall be elected at a meeting called by the General Assembly for that purpose.

(4) The President and Vice President shall hold office for a period of two years and may be re-elected for one further term only.

(5) The General Assembly shall meet for business at least once a year at such times and places as the President of the Society may determine.

(6) At a meeting of the General Assembly, the President shall preside but in his or her absence, the Vice President of the Society shall preside.

(7) The quorum for a meeting of the General Assembly shall be one-third of all the registered members of the Society.

(8) The President or one-third of all the registered members of the General Assembly may convene an extraordinary meeting of the Society.

PART III- FUNCTIONS OF THE SOCIETY

Functions of the Society

74. The functions of the Society are to -

(a) administer, exclusively within The Gambia, or outside The Gambia on the basis of reciprocity, all rights relating to public performances by its members;

(b) act as an intermediary for the conclusion of contracts between its members and users of their works;

(c) receive and record any information from its members in respect of their identification and their works;

(d) charge and collect on behalf of its members royalties from the users of their works and pay the royalties to the appropriate members, subject to deduction of agreed charges;

(e) provide information and advice to its members on all matters relating to copyright and keep them informed of their rights;

(f) foster harmony and understanding between its members and users of their works with a view to protecting the rights of its members;

(g) promote activities for the dissemination of national cultural works in and outside The Gambia; and

(h) carry out such other duties relating to copyright as may be assigned to it by the Society Board.

PART IV – MANAGEMENT AND STAFF

Executive Secretary

75. (1) There shall be for the Society an Executive Secretary who shall be appointed by the Society Board.

(2) The Executive Secretary shall -

(a) be the chief executive of the Society;

(b) be responsible for the execution and implementation of the policy of the Society Board and the transaction of the day-to-day business of the Society; and

(c) exercise supervision and control over the acts of all employees of the Society.

(3) The Society Board may delegate to the Executive Secretary such of its functions as are necessary to enable him or her to transact efficiently the day-to-day business of the Society and for that purpose, the Society Board may, from time to time, issue written instructions.

Other staff of the Society

76. (1) The Society Board shall appoint for the Society such employees as it may think necessary for the due discharge of the functions of the Society, on such terms as to remuneration or otherwise as it may determine.

(2) The Society Board shall be responsible for the discipline and removal of employees of the Society.

(3) The Society Board shall make regulations establishing schemes for pensions, gratuities and other retirement benefits in respect of employees of the Society.

(4) The Board shall, for the purpose of achieving maximum efficiency in the discharge of its functions under this Act, institute schemes for the training of its employees in administrative, technical, managerial and other capacities with a view to securing the benefit of their knowledge, experience and expertise in the conduct of the operations of the Society.

PART V - FINANCIAL PROVISIONS

Fund of the Society

77. The Society shall maintain a fund into which shall be paid -

(a) royalties;

(b) fees charged for services rendered;

(c) donations and gifts;

(d) membership dues; and

(e) such other sums as may accrue to the Society from any other source.

Accounts and audit

78. (1) The Society shall keep proper records and books of accounts of its incomes and expenditure.

(2) The Society shall prepare a statement of accounts in respect of each financial year.

(3) The Society shall, within three months of the end of each financial year, submit to independent auditors for auditing its statement of accounts for the preceding year.

(4) The audited accounts of the Society and the independent auditors' report shall be submitted to the General Assembly.

Annual report

79. (1) The Society Board shall, not later than three months after the end of each financial year, submit to the General Assembly in respect of the financial year an annual report on the activities of the Society.

(2) The report under subsection (1) shall include -

(a) information with regard to the affairs and policy of the Society;

(b) a copy of the audited accounts of the Society in respect of that year together with the Auditor's report on the accounts; and

(c) such other information as the Secretary of State may request in writing.

(3) The Executive Secretary shall also, from time to time, provide the General Assembly with such information relating to the affairs of the Society as the General Assembly may request in writing.

PART VI– LEGAL PROCEEDINGS

Notice of action

80. (1) No action shall be brought against the Society unless at least one month's written notice of the intention to bring the action has been served on the Society by the intending plaintiff or his or her agent.

(2) The notice shall state the cause of action, the name and place of abode of the intending plaintiff and the relief that he or she claims.

Service

81. The notice referred to in section 98 and any summons, notice or other document required or authorised to be served on the Society in connection with any suit by or against the Society may be served by delivering it to or sending it by registered post addressed to the Executive Secretary.

Execution of judgment

82. In any action or suit against the authority, no -

(a) execution or attachment or process in the nature thereof shall be issued against the Society, or

(b) sums of money which may by judgment of the court be awarded against the Society shall be paid by the Society from its funds,

before the expiration at least three months from the date of the judgement of the court.

Representation

83. In any suit pending before the court, the Society may be represented in court at any stage of the proceedings by any officer or other employee of the Society duly authorised in writing by the Society in that behalf.

ndemnity of ıfficers

84. No officer or employee of the Society or a person acting on the direction of the Society shall be liable in respect of a matter or thing done by him or her in good faith for the purposes of this Act.

PART VII – SUPPLEMENTARY PROVISIONS

\pplication for ıermission to ıse authors vorks

85. (1) Subject to section 86, a person who wishes to use or perform the work of any of the members of the Society or cause the work to be performed in public for gain shall apply to the Society for permission to do so.

(2) The application for permission shall be in such form as may be prescribed by the Society.

ɜrant of ıermission

86. (1) The Society shall charge such fees in respect of granting a permission as it may, from time to time, determine.

(2) A permission granted under subsection (1) shall be for such duration and on such terms and conditions as the Society may determine.

(3) The Society may also prescribe penalties for contravention of this section and of any term or condition of the permission.

CHAPTER VII - MISCELLANEOUS PROVISIONS

Offences by body of persons

87. (1) Where an offence is committed by a body of persons under this Act -

(a) in the case of a body corporate, other than a partner, every director or secretary of the body corporate shall also be deemed to have committed the offence; and

(b) in the case of a partnership, every partner shall also be deemed to have committed the offence.

(2) No person shall commit an offence under this section if it is proved to the satisfaction of the court that the offence of which the person is charged was committed by some other persons and was without his or her consent or connivance and that he or she exercised such diligence to prevent the commission of that offence as he or she ought to have exercised having regard to the circumstances.

Settlement of disputes

88. (1) Where any dispute arises between any parties under this Act or in relation to any copyright or claim under this Act, the parties involved in the dispute shall first seek to negotiate a settlement of the dispute among themselves.

(2) Where negotiation under subsection (1) fails, a report shall be made by either or both parties to the Executive Director who shall mediate for a settlement.

(3) Where no settlement is arrived at upon mediation, the matter shall be referred by the Executive Secretary to the Secretary of State.

(4) The Secretary of State shall, on a reference under subsection (3), appoint two persons who shall then appoint a chairperson to settle the dispute and pronounce a decision within twenty-one days from the date of reference.

(5) A party dissatisfied with the decision made under subsection (4) shall have recourse to the courts.

Regulations

89. The Secretary of State may make regulations -

(a) for the registration and deposit of works;

(b) for the levy payable on technical devices used for copyright materials;

(c) for the form and scope of contracts and licences relating to publishing, performing, sound recording and audiovisual productions; and

(d) generally, for carrying into effect the provisions of this Act.

Repeal and savings
Cap. 95:05

90. (1) The Copyright Act is hereby repealed.

(2) The repeal of the Copyright Act shall not affect any copyright or other rights that were vested in a person by virtue of that Act, and those rights shall continue to be enforceable as if they were conferred under this Act.

(3) Notwithstanding the repeal of the Copyright Act, any regulation made under it and in force immediately before the commencement of this Act shall, if not inconsistent with this Act, continue in force until amended or revoked under this Act.

PASSED in the National Assembly this 5th day of April, in the year of Our Lord Two Thousand and Four

M. S. JALLOW
Clerk of the National Assembly.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which was passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.

M. S. JALLOW
Clerk of the National Assembly.