

COPYRIGHT ACT, 1989

An Act to make provision for copyright in literary, dramatic, musical and artistic works, audio-visual works, sound recordings and broadcasts; the rights of performers; the establishment of the Copyright Society of Malawi; and for matters incidental thereto or connected therewith.



Published by

COPYRIGHT SOCIETY OF MALAWI (COSOMA)

Johnstone Road, P.O Box 30784, Lilongwe 3, Malawi

Tel: +265 751148 Fax: +265 751148 E-mail: cosoma@sdpn.org.mw

2001

MALAWI

COPYRIGHT ACT, 1989

An Act to make provision for copyright in literary, dramatic, musical and artistic works, audio-visual works, sound recordings and broadcasts; the rights of performers; the establishment of the Copyright Society of Malawi; and for matters incidental thereto or connected therewith

[as amended up to November 2, 1989]

ARRANGEMENT OF SECTIONS

PART I-PRELIMINARY

Section

1. Short title and commencement
2. Interpretation

PART II-COPYRIGHT

3. Copyright
4. Works in which copyright subsists

PART III-LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

5. Copyright in literary, dramatic, musical and artistic works
6. Derivative works
7. Works not subject to copyright protection
8. Economic rights
9. Moral rights
10. Permitted free uses of a work
11. Ownership of copyright
12. Employed authors
13. Duration of copyright

PART IV-
TRANSFER OF RIGHTS AND COMPULSORY LICENCES

Division I-Transfer of Copyright

14. Transferability of copyright
15. Contracts for authorization of use of rights under this Act
16. Commissioned work

Division II-Compulsory Licences

17. Compulsory translation licence
18. Conditions of a compulsory translation licence
19. Translation licence for broadcasting purposes
20. Compulsory reproduction licence
21. Conditions of a compulsory reproduction licence
22. Compulsory reproduction licence for audio-visual works
23. Production of recording of musical works

PART V-EXPRESSIONS OF FOLKLORE

24. Copyright in expressions of folklore to vest in Government
25. Certain uses of expressions of folklore to be subject to authorization
26. Free uses of expressions of folklore
27. Source of expressions of folklore to be acknowledged
28. Authorization for use of expressions of folklore
29. Non-hindrance of development of folklore
30. Protection under this part to be additional

PART VI-BROADCASTERS, PERFORMERS AND PRODUCERS OF SOUND RECORDINGS

31. Rights of broadcasters, performers and producers of sound recordings not to affect copyright
32. Acts requiring authorization of performers
33. Granting of authorization by performers
34. Acts requiring the authorization of producers of sound recordings
35. Obligations of producers of sound recordings
36. Notice of protection of rights of producers of sound recordings
37. Sound recording performance in public places
38. Rights of broadcasting organizations
39. Exceptions to certain provisions under this Part

PART VII-PUBLIC DOMAIN

40. Works in the public domain

PART VIII-THE COPYRIGHT SOCIETY OF MALAWI

41. Establishment of a Copyright Society of Malawi
42. Functions of the Society
43. Powers of the Society
44. Funds of the Society
45. Accounts and audit
46. Constitution, proceedings and other matters of the Society

PART IX-INFRINGEMENT OF COPYRIGHT, OFFENCES AND
MISCELLANEOUS PROVISIONS

47. Infringement of copyright, etc.
48. Offences and penalties
49. Compensation to victims of offence
50. Proof of facts in proceedings
51. Inspectors
52. Entry into premises
53. Mode of inspection
54. Inspectors not to be personally liable for acts done by them under this Act
55. Extension of the application of this Act
56. Regulations
57. Application to works created before and after commencement of this Act
58. Repeal

Schedule [as amended in 2001]

Date of Act (No. 9): April 26, 1989; of amendatory Law (No. 2): November 2, 1989.

Date of entry into force: May 8, 1989.

Observation: According to Article 58 of the present Act, "The Copyright Act (of 1965) is hereby repealed".

PART I
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Copyright Act, 1989, and shall come into operation on such date as the Minister may appoint by notice in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires "adaptation":

(a) in relation to a literary work, (whether the work is in its original language or in a different language) in non-dramatic form, means a version of the work in a dramatic form; or

(b) in relation to a literary work (whether in its original language or in a different language) in a dramatic form, means a version of the work in a non-dramatic form; or

(c) in relation to a literary work (whether in a non-dramatic form or in a dramatic form) means

(i) a translation of the work; or

(ii) a version of the work in which the story or action is conveyed solely or principally by means of pictures; or

(d) in relation to a musical work, means an arrangement or transcription of the work;

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

(a) paintings, drawings, etchings, lithographs, woodcuts, engravings, product of photogravure and prints; or

(b) photography not comprised in a cinematograph film; or

(c) maps, plans, charts or diagrams; or

(d) sculpture; or

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

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

"association" means an association of persons whose works are protected under this Act;

"audio-visual work" means a fixation in any physical medium of images synchronized with or without sound from which a moving picture may by any means be reproduced and includes cinematograph films, videotapes and videograms but does not include a broadcast;

"author" means the person who creates a work, and:

(a) in the case of a cinematograph film or sound recording, means a person by whom arrangements for the making of the film or recording were undertaken; and

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

"Board" means the Board for the management of the Society as referred to in section 46;

"broadcast" means the transmission of programmes or materials for reception by the general public over a distance by means of radio, television, electromagnetic emissions, light beams, wire cable or other means;

"broadcasting organization" means the Malawi Broadcasting Corporation, established by the Malawi Broadcasting Act and any other broadcaster whether licensed under that Act or any other written law;

"building" includes any structure;

"choreographic work" means a dance composition or design by a dance composer of dance patterns which may be used as blue print for unified dance presentations on stage or in recordings of any kind regardless of how long they may last;

"commissioned work" means a work created in pursuance of a contract between the author and an individual or a legal entity commissioning a specified work from the author against an agreed author's fee;

"communication by cable", in relation to a work, means transmission over wires or other paths provided by a material substance of the work, production or performance of the work;

"communication to the public" means making a work accessible to the public;

"computer software" means a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine-readable medium, of causing an electronic or other device having information processing capabilities to indicate, perform or achieve a

particular function, task or result;

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

"copyright" means copyright protected under this Act;

"derivative 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" means the distribution to the public for commercial purposes of copies of a work or production by way of sale, rental, lease, hire, loan or similar arrangement;

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

"dramatic work" includes:

(a) a choreographic show or entertainment in dumb show;

(b) a scenario or script for an audiovisual work but does not include the audio-visual work;

"engraving" does not include a photograph;

"fixation" means the embodiment of images or sounds or both in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or communicated;

"folklore" means all literary, dramatic, musical and artistic works belonging to the cultural heritage of Malawi created, preserved and developed by ethnic communities of Malawi or by unidentified Malawi authors, and includes, in particular:

(a) folk tales, folk poetry and riddles;

(b) folk songs and instrumental folk music;

(c) folk dances, plays and artistic forms of rituals;

(d) production of folk art, in particular drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, baskets and costumes;

(e) traditional musical instruments; and

(f) any works designated as such by the Minister by notice published in the *Gazette*;

"infringement of copyright" has the meaning assigned thereto in section 47;
"infringing copies of a work" means copies of a work produced by any process and in any form the making of which involves infringement of the copyright in the work or the rights granted to performers, broadcasters and producers of sound recordings under this Act and includes copies the making of which infringes the provisions of this Act relating to folklore;
"literary work" irrespective of literary quality, includes any of the following:

- (a) novels, stories or poetical works;
- (b) plays, stage direction, film scenario or broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays or articles;
- (d) encyclopaedias, dictionaries, directories or anthologies;
- (e) letters, reports or memorandum;
- (f) lectures, addresses or sermons; and
- (g) computer programs;

"manuscript", in relation to a work, means the original document embodying the work whether written by hand or otherwise;

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

"performance" means the presentation of a work by such action as dancing, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators, live or by any means whatsoever;

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

"photograph" includes photolithograph and other work produced by any process analogous to photography but does not include any part of an audio-visual work;

"plate" means any material object in which a work, production, performance or edition has been embodied and by the means of which copies or reproductions of the work, production performance or edition may be made;

"public performance" means the performance of a work which is presented to listeners or spectators not restricted to specific persons belonging to a private group;

"publication of a sound recording" means the offering of a sound recording to the public in a quantity sufficient to satisfy a reasonable demand for the sound recording;

"published works" means works reproduced with the consent of their authors in copies made available to the public in a quantity sufficient to satisfy a reasonable demand for the work;

"rebroadcasting" means the simultaneous or subsequent broadcasting in part or in whole by one broadcasting organization of the broadcast of another broadcasting organization;

"reproduction" means the making of one or more copies of a literary, dramatic, musical or artistic work or expressions of folklore or fixation in any material form including any audio-visual work or sound recording, and in the case of an artistic work, includes converting a work into a three-dimensional form or, if existing in a three-dimensional form, converting it into a two-dimensional form;

"Society" means the Copyright Society of Malawi established under section 41;

"sound recording" means:

(a) a recording of sounds from which the sounds may be reproduced;

(b) a recording of a literary, dramatic or musical work from which sounds reproducing the work may be produced,

in either case, regardless of the medium on which the recording is made or the method by which the sounds are reproduced;

"work" means any work or other matter in which copyright subsists under this Act;

"works of applied art" means an artistic work applied to objects for practical use whether handicraft or works produced on industrial scale;

"works published in Malawi" includes works published abroad but thereafter published in Malawi within thirty days;

"works of joint authorship" means a work created 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.

PART II COPYRIGHT

Copyright

3. Subject to the provisions of this Act, an author of any work shall, by the mere fact of its creation, enjoy an exclusive property right in the work against all persons.

Works in which copyright subsists

4. (1) Copyright shall subsist in accordance with this Act in:

(a) literary, dramatic, musical and artistic works:

- (i) of an author who is a national of, or is resident in, Malawi;
- (ii) which are first published in Malawi, irrespective of the nationality or residence of their authors;

(b) expressions of folklore developed and maintained in Malawi;

(c) performances, if:

- (i) the performer is a national of Malawi; or
- (ii) the performance took place in Malawi; or
- (iii) the performance is fixed in a sound recording qualifying for copyright under paragraph (d); or
- (iv) the performance, which has not been fixed in a sound recording, is embodied in a broadcast qualifying for protection under paragraph (e);

(d) audio-visual work and sound recording, where:

- (i) the producer of audio-visual work or sound recording is a national of, or is resident in, Malawi; or
- (ii) the first fixation of the audiovisual work or sound recording was made in Malawi; or
- (iii) the audio-visual work or sound recording was first published in Malawi;

(e) broadcasts, where:

- (i) the headquarters of the broadcasting organization is situated in Malawi; or
- (ii) the broadcast was transmitted from a transmitter situated in Malawi; and

(f) typographical arrangements of works published in Malawi.

PART III
LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

Copyright in literary, dramatic, musical and artistic works

5. (1) Literary, dramatic, musical or artistic work shall not be eligible for copyright under this Part unless:

(a) it is original in character; or

(b) it is derivative work, and it is in writing or recorded or otherwise reduced to material form.

(2) A work shall be eligible for copyright under this Part irrespective of its form of expression, its quality and purpose for which it was created.

(3) For the purposes of this Part, a work is original if it is the product of the independent efforts of the author.

Derivative works

6.(1) The following derivative works shall be subject to copyright protection as if they were original works :

(a) translations, adaptations, arrangements and any other transformations of original literary, dramatic, musical and artistic works :

(b) collections of literary, dramatic, musical and artistic works in the form of encyclopaedias and anthologies which, by reason only of the selection and arrangements of their contents, constitute intellectual creations; and

(c) works inspired by expressions of folklore.

(2) The protection of any work referred to under subsection (1) shall be without prejudice to any protection of a pre-existing work or expression of folklore.

Works not subject to copyright protection

7. Copyright protection shall not extend to:

(a) written laws and decisions of courts and administrative bodies as

well as to official translations thereof;

(b) news of the day published, broadcast or publicly communicated by any other means;

(c) a report made by a commission of inquiry appointed by the Government or any agency thereof which is published by the Government.

Economic rights

8. Subject to section 10, the author of any work eligible for copyright under this Part shall have the exclusive right in respect of such work to do, or authorize any other person to do, the following acts in relation to the whole work or any part thereof:

(a) the reproduction of the work; or

(b) the distribution of the work to the public; or

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

(d) its communication to the public.

Moral rights

9. (1) The author of any work eligible for copyright under this Part shall have the exclusive right:

(a) to claim authorship of his work and in particular to demand that his name or pseudonym be mentioned when any of the acts referred to in section 8 is done in relation to such work, except when the work is included when reporting current events by means of photography, audiovisual work, sound recording and broadcasting;

(b) to object to, and to seek relief in connexion with any distortion, mutilation or other modification of the work where such act would be or is prejudicial to his honour or reputation or where the work is discredited thereby; and

(c) to alter the work at any time.

(2) The rights conferred by subsection (1) shall not be transferable except upon and by reason only of the death of the author and henceforth such

rights shall be exercisable by his heirs.

Permitted free uses of a work

10. The following uses of a work under this Part, either in its original language or in its translation, shall be permissible without the author's consent and without the obligation to pay remuneration for the use of such work

(a) in the case of any work that has been lawfully published:

(i) the reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user's own personal or private use;

(ii) the inclusion, subject to mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries;

(iii) use of the work by way of illustration in publications, broadcasts, programmes distributed by cable, or audio-visual works or sound recordings for teaching to the extent justified by the purpose, or communication for teaching purposes of the work broadcast or distributed by cable for use in schools, universities and professional training, provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast, the programme distributed by cable or the recording;

(b) the distribution by cable of any work broadcast or played back from lawful recording thereof, where the beneficiaries of the distribution by cable live in one and the same building, or group of buildings none of which is separated from another building by public street or road, if the cable distribution originates in such building or group of buildings and the distribution by cable is done without direct or indirect gainful intent;

(c) in the case of any article published in newspapers or periodicals on current economic, political, social or religious topics, and in the case of any work of the same character broadcast or distributed by cable, the reproduction of such article or such work in the press, or the communication of it to the public, unless the article, when first

published, or the work, when broadcast or distributed by cable, was accompanied by any express condition prohibiting such use, and provided that the source of the article or the work when used in such manner is clearly indicated;

(d) for the purpose of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informative purpose, of any work that can be seen or heard in the course of the said current event;

(e) the reproduction of works of art or of architecture in an audio-visual work or video recording, if such works are permanently located in a place where they can be viewed by the public or are included in the audio-visual work or video recording by way of background or as incidental to the essential matters represented;

(f) the reproduction, the photography, audiovisual work or sound recording or electronic storage by public libraries, non-commercial documentation centres, scientific institutions and educational establishments, of literary, dramatic, musical and artistic works which have already been lawfully made available to the public, provided that such reproduction, the number of copies made and the use thereof are limited to the needs of the regular activities of the body reproducing the work, and neither conflict with the normal uses of the work nor unreasonably prejudice the legitimate interests of the author;

(g) the reproduction in the press or the communication to the public of:

- (i) any political speech delivered in public or any speech delivered during legal proceedings; or
- (ii) any lecture, address, sermon or other work of the same nature delivered in public, provided that the use is exclusively for the purpose of current information and the author retains the right to publish a collection of such works;

(h) the recording by any broadcasting organization for the purpose of its own broadcasts and by means of its own facilities, in one or several copies, of any work which it is authorized to broadcast, so however that all copies of such recording shall be destroyed within six months of the making thereof or within any longer period agreed to by the author:

Provided that, where such recording has an exceptional documentary character, one copy of it may be preserved in the official archives, without prejudice to the application of the provisions of section 9.

Ownership of copyright

11. In determining the person vested with the copyright under this Part, the following principles shall apply:

(a) if one person was the author of the work, the rights vest in that person;

(b) if two or more persons were the authors of the work of joint ownership, the rights vest in them jointly; and

(c) if there is no evidence to the contrary, the author of a work is the individual whose name is indicated on the work as its author.

Employed authors

12. Subject to any written law relating to contracts of employment and to the terms of any specific contract of service or for services, when a work is created by an author:

(a) in the course of his employment for the Government, a body corporate or another individual; or

(b) under a contract for services with, or as a work commissioned by, the Government, a body corporate or another individual,

then, in respect of that work, the author's rights, under section 8, shall vest in the Government, body corporate or other person who employed the author or commissioned the work.

Duration of copyright

13. (1) Unless otherwise expressly provided in this Act, the rights referred to in sections 8 and 9 shall be protected

(a) during the life of the author and for fifty years after his death; or

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

(c) in the case of the work published anonymously or under a pseudonym, until the expiration of fifty years from the date on which such work was first lawfully published:

Provided that where, before the expiration of such period, the author's identity is known or is no longer in doubt, protection shall be for the duration specified in paragraph (a) or (b), as the case may be; or

(d) in the case of any audio-visual work, until the expiration of fifty years from the date on which such work is created or, if the work is made available to the public during such period with the consent of the author, for fifty years from the date of its first communication to the public; or

(e) subject to paragraphs (f) and (g), in the case of a work owned by the Government or any body corporate, for fifty years commencing from the date on which the work was first made available to the public;

(f) in the case of computer programs, for ten years calculated from either the date when the program is first used or the date when the computer software is first sold, leased or licensed; and

(g) in the case of photographic work or a work of applied art, until the expiration of twenty-five years from the date on which the work was first published or made.

(2) Every period specified in subsection (1) shall run to the end of the calendar year in which it would otherwise expire.

PART IV TRANSFER OF RIGHTS AND COMPULSORY LICENCES

DIVISION I TRANSFER OF COPYRIGHT

Transferability of copyright

14. (1) Except as limited or restricted by this Act, any right protected by copyright under this Act shall be transferable and may be so transferred by assignment, testamentary disposition or by operation of law.

(2) A contract which requires the total transfer of the economic rights specified in section 8 shall be limited in scope to the use provided for in that contract.

(3) An assignment of right under this Act shall be in writing and shall be signed by the owner of the rights or by the person authorized by him for the purpose.

(4) A licence to do any act falling within a copyright may be oral or in writing.

(5) In case of work of joint authorship an assignment or licence in respect of such work shall be subject to the authorization of the joint authors thereof.

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

(7) The Society shall assign reasons for its decision under subsection (6) and any appeal against that decision shall lie to the High Court.

(8) An assignment, a licence or testamentary disposition may be made or granted in respect of a future or an existing work.

(9) Where under bequest, whether specific or general, a person is entitled to a manuscript of a literary, dramatic, musical or artistic work which was not published before the death of the testator, such bequest shall 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, unless a contrary intention is indicated in the testator's will or codicil thereto.

Contracts for authorization of use of rights under this Act

15. (1) Authorization by the owner of copyright for the use of a work shall be granted to the user under a contract in writing conferring on the latter the rights required for the envisaged use upon such conditions as may be stipulated in the contract.

(2) A contract made pursuant to subsection (1) shall clearly specify the rights conferred on the user and such rights shall be non-exclusive unless the contract clearly specifies that they are exclusive rights.

(3) The user of rights under a contract made pursuant to subsection (1) shall not be entitled to transfer such rights except if the transfer is made under a contract in writing and subject to the prior consent in writing of the owner of the rights.

(4) Where a contract has been entered into and it is found that there is a gross disproportion between the remuneration paid by the user of the work and the income derived by the user from the use thereof, the owner of the copyright may request an amendment of the contract so as to secure for himself an equitable share of income, corresponding to standards generally

prevailing in similar cases, but such claim may not be made in advance of the use and it shall not be enforceable after the lapse of two years from the time when the owner of copyright work first received knowledge of the circumstances which give rise to the claim:

Provided that the owner of the copyright may not claim to have received such knowledge after the expiration of six years from the date of the contract to be amended.

(5) Where the user does not exercise an exclusive right conferred on him by the owner of copyright the owner may revoke such right if the non-exercise thereof was prejudicial to his legitimate interests.

(6) The right of revocation under subsection (5) may be exercised only after the period of delay stipulated in the contract for commencing the exercise of the exclusive right by the person on whom it is granted has expired but, in any case, not earlier than two years:

(a) from the grant of such right; or

(b) if the work to be used was supplied subsequent to the grant of the right, from the date of its delivery.

(7) In each of the cases under paragraph (a) or (b) of subsection (6) the owner of copyright shall notify the user of the proposed revocation, allowing him a reasonable additional time in which to exercise the exclusive right, but where the exercise of the right by the user has become or is impossible or the user has refused the right, the owner's right of revocation may be exercised in accordance with subsection (6).

(8) A contract on future grant of rights for the use of works to be created thereafter and not specified in detail but only mentioned in general or by reference to their nature, may be terminated by either party with six months notice after a period of four years from the conclusion of the contract.

Commissioned work

16. (1) Where a contract is in respect of work to be created (in this Act referred to as "commissioned work") the user shall be under an obligation to make a declaration respecting acceptance of the work within sixty days from the date on which the work was handed over or, if such work is regulated under another written law, within such period as is prescribed for acceptance under that law, and if the user fails to make such declaration within such period he shall be deemed to have accepted the work.

(2) Within the time allowed under subsection (1) for acceptance of commissioned work, the user may, once or repeatedly, return the work to the author and require him to amend or correct the work taking into

consideration the purpose for which the creation of the work was agreed upon and such requests shall be made in writing and fix reasonable dates by which the amendment or correction shall be done.

(3) If the author fails to comply with the request made under subsection (2) or if the amended or corrected work is still not suitable for the stipulated purpose, the user may terminate the contract but shall be obliged to pay to the author, in consideration of the work done, an appropriate fee which shall be less than the agreed remuneration for use of the commissioned work.

DIVISION II COMPULSORY LICENCES

Compulsory translation licence

17. (1) Where a work is expressed exclusively in words the right to make a translation of that work and to publish it in Malawi may be subject to compulsory licensing under the conditions specified in this section.

(2) A person who is a citizen of Malawi or is ordinarily resident in Malawi may, subject to the provisions of this section, apply to the Minister for a non-exclusive licence to make a translation of a work which is expressed exclusively in words, into a foreign language or any language of Malawi, and to publish or authorize the publication of the translation in copies.

(3) No application for a licence under this section may be filed until the expiration of a period of:

(a) three years commencing from the date of the first publication of the work in copies, if the licence is for translation into any language other than a language of Malawi; or

(b) one year commencing from the date of the first publication of the work in copies, if the licence is for translation into any language of Malawi.

(4) No licence under this section shall be granted unless the Minister is first satisfied that:

(a) no translation of the work into the language in question has ever been published in copies by or under the authority of the owner of the right of translation, or that all previous editions in that language are out of print;

(b) following the expiration of the relevant period specified in subsection (3) the applicant either has requested the owner of the right of translation for consent to translate the work but has been

refused or, in spite of genuine efforts made by the applicant, he has been unable to locate the owner;

(c) the applicant, at the time of making the request referred to in paragraph (b), sent a notice of his request to the International Information Centre established by the United Nations Educational, Scientific and Cultural Organization, or to a national or regional copyright information centre identified as such in a notification deposited with the Director General of that organization or with the Director General of the World Intellectual Property Organization by the state in which the publisher is believed to have his principal place of business; or

(d) where the applicant cannot locate the owner of the right of translation, he has by registered mail sent copies of his application to the publisher whose name appears on the work and also to the centres specified in paragraph (c).

(5) For the purpose of subsection 4(c) the Society shall keep and maintain addresses of national and regional copyright information centres for easy reference or contact by interested persons.

(6) A licence under this section shall not be granted, unless the following periods from the date of the application have expired:

(a) in the case of an application for a licence required for translation into any language other than a language of Malawi, six months; and

(b) in the case of an application for a licence required for translation into a language of Malawi, nine months.

(7) If during any period specified in subsection (6) a translation of the work in the language in question is published in copies by or under the authority of the owner of the right of translation, then, no licence shall be granted for translation of the work.

(8) When a work is composed mainly of illustrations, a licence to translate the text and to reproduce the illustrations shall be granted only if the conditions prescribed under section 18 are also fulfilled.

(9) Where the author of a work has withdrawn all copies of the work from circulation no licence shall be granted in respect of the work under this section.

Conditions of a compulsory translation licence

18. (1) A licence granted under section 17 shall:

(a) be limited to the non-exclusive right to translate the work into the language in respect of which it is granted and to publish copies of the translation in Malawi;

(b) be for a translation required only for the purpose of teaching, scholarship or research;

(c) not be transferable by the licensee;

(d) not authorize the exportation of copies of the translation prepared under the licence;

(e) be valid only for publication in Malawi; and

(f) provide for just compensation to the owner of the work, consistent with standards of royalties normally payable in the case of licences freely negotiated between a person in Malawi and the owner of the right of translation in any other country.

(2) Where a licence is granted under section 17 the licensee shall ensure that the work in respect of which the licence is granted is correctly translated and that all published copies include:

(a) the original title and name of the author of the work;

(b) a notice in the language of the translation stating that copies of the translated version of the work are available for distribution in Malawi only; and

(c) a reprint of the copyright notice, namely, the symbol (c), accompanied with the name of the owner of the copyright and the year of the first publication of the work and the place where the work of which the translation is made is published with the copyright notice.

(3) A licence granted under section 17 shall terminate if a translation of the work in the same language and with substantially the same content as the edition for which the licence is granted is published in copies in Malawi by or under the authority of the owner of the right of translation at a price reasonably related to that normally charged in Malawi for comparable work;

but so however that any copies already published before the licence is terminated may continue to be distributed until the stock is exhausted.

Translation licence for broadcasting purposes

19. (1) Subject to the provisions of sections 17 and 18, a licence to translate a work published in printed form or other form of reproduction may also be granted under this section to a broadcasting organization where the translation is:

(a) made from a work made or acquired in accordance with this Act;

(b) for use only in broadcasts intended exclusively for teaching or for the dissemination of the result of specialized research to experts in a particular profession;

(c) in fact used exclusively for the purpose specified in paragraph (b) through broadcasts that are lawfully made and are intended for reception in Malawi, including broadcasts made from audio-visual works or sound recordings that are lawfully made for the sole purpose of such broadcasts.

(2) A translation under this section of an audio-visual work or sound recording may be exchanged only between departments or divisions of the broadcasting organization.

(3) A licence may also be granted under this section to a broadcasting organization to translate any text incorporated in an audiovisual work that is itself prepared and published for the sole purpose of being used in connexion with systematic instructional activities.

(4) A translation made under a licence issued under this section shall not be used for commercial purposes.

Compulsory reproduction licence

20. (1) Where a literary, dramatic, musical or artistic work is published in printed form or other form of reproduction, the exclusive right to reproduce the work and publish it in copies may be subject to compulsory licence under the conditions specified in this section.

(2) A person who is a citizen of Malawi or is ordinarily resident in Malawi may, subject to the provisions of this section, apply to the Minister for a non-exclusive licence to reproduce a particular edition of a work referred to in subsection (1) and to publish or authorize the publication of such reproduction in copies.

(3) A licence under this section shall not be granted

(a) until the expiration of a period of:

- (i) three years commencing from the date of publication of a work in the field of technology or of a natural or physical science including mathematics; or
- (ii) seven years commencing from the date of publication of a work of fiction, poetry, drama or music or a book of art; or
- (iii) five years commencing from the date of publication of any other work; and

(b) unless the Minister is first satisfied that:

- (i) there has never been a sale or other distribution, authorized by the owner of the reproduction right, of copies of the particular edition in Malawi to the general public in connexion with systematic instructional activities, at a price reasonably related to that charged in Malawi for comparable works, or that there has been no such sale or other distribution during the immediately preceding six months;
- (ii) the applicant either has requested from the owner of the right of reproduction for his authorization to reproduce the work and has been refused or, in spite of genuine efforts made by the applicant, he has been unable to locate the owner;
- (iii) the applicant, at the time of making the requests referred to in subparagraph (ii), sent a notice of his request either to the International Copyright Information Centre established by the United Nations Educational, Scientific and Cultural Organization, or a national or regional copyright information centre identified as such in a notification deposited with that organization or with the World Intellectual Property Organization by the state in which the publisher is believed to have his principal place of business; or
- (iv) where the applicant cannot locate the owner of the right of reproduction, the applicant has by registered mail sent copies of the application to the publisher whose name appears in the work and also to the centres specified in subparagraph (iii).

(4) For the purpose of subsection (3)(b)(iii) the Society shall keep and maintain addresses of such centres for easy reference or contact by interested persons

(5) A licence under this section shall not be granted in respect of any

application made until expiration of a period of six months commencing from the date of:

(a) the request referred to in subsection 3(b)(iii); or

(b) the dispatch of the copies of the application referred to in subsection (3)(b)(iv).

(6) Where the author of a work has withdrawn all copies of an edition of the work from circulation, no licence shall be granted under this section in respect of that edition.

Conditions of a compulsory reproduction licence

21. (1) A licence granted under section 20 shall:

(a) be limited to the non-exclusive right to reproduce the particular edition of the work in respect of which it is granted, and to publish copies of the reproduction in Malawi for use in connexion with systematic instructional activities, but the price at which the reproduced copies are sold shall be at a level not higher than such amount as is reasonably related to the price normally charged in Malawi for comparable work;

(b) not be transferable by the licensee;

(c) not authorize the exportation of copies of the particular edition of the work in respect of which it is granted;

(d) be valid for publication in Malawi only; and

(e) provide for just compensation to the owner of the work, consistent with standards of royalties normally payable in the case of licences negotiated between persons in Malawi and owners of the right of reproduction in any other country.

(2) Where a licence is granted under section 20 the licensee shall ensure that the particular edition of the work in respect of which the licence is granted is accurately reproduced and that all published copies include the following:

(a) the title of the particular edition of the work and the name of the author;

(b) a notice in the appropriate language stating that copies of the reproduced version of the work are available for distribution in Malawi only; and

(c) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

(3) A licence granted under section 20 shall terminate:

(a) whenever copies of an edition of the work in respect of which the licence is granted are distributed to the general public in Malawi; or

(b) whenever copies of the edition of the work are distributed in Malawi in connexion with systematic instructional activities, by or under the authority of the owner of the right of reproduction at a price reasonably related to that normally charged in Malawi for comparable work, if such edition is in the same language and is substantially the same in content as the edition published under the licence, but so however that any copies already made before the licence is terminated may continue to be distributed until the stock is exhausted.

Compulsory reproduction licence for audio-visual works

22. (1) The Minister may, upon application in writing made to him by any person, grant a licence authorizing such person:

(a) to reproduce in audio-visual form a lawfully made audio-visual work, including any protected work incorporated in it; or

(b) to translate any text incorporated in such work into either a foreign language or any language of Malawi.

(2) No licence shall be granted under this section unless the audio-visual work is prepared or published for the sole purpose of being used in connexion with systematic instructional activities.

Production of recording of musical works

23. (1) A manufacturer of sound recordings may make a sound recording of any musical work or a similar adaptation thereof, including any literary work intended as an accompaniment to the work, if:

(a) copies of the musical work or a similar adaptation of them have

previously been made in or imported into Malawi for the purpose of retail sale, and were so made with the licence of, or so imported by, the owner of the copyright in such work; and

(b) before the making of the copies the manufacturer gives the owner of the copyright[ed] work notice of his intention to make the copies and the address at which he intends to make them.

(2) The manufacturer shall, not later than fifteen days before the sale of any of the copies made by him under this section, send to the owner of the copyright or the person authorized by him for that purpose, by registered post notice of his intention to sell or otherwise distribute the copies made and such notice shall contain:

(a) the name and address of the manufacturer;

(b) the title of the work to which the notice under subsection (1)(b) relates, with a description sufficient to identify the author of the work and the publisher thereof;

(c) the type of sound recording on which the manufacturer intends to produce the work and an estimate of the number of copies he initially intends to sell;

(d) the ordinary selling price of the copies the manufacturer intends to reproduce and the amount of royalty payable in respect of them; and

(e) the earliest date on which any of the copies may be available for sale.

(3) The manufacturer shall, within ninety days after he has sent the notice referred to in subsection (2), pay royalties to the owner of the copyright and shall have affixed to each copy of the sound recording made by him an adhesive label issued by the Society as evidence of such payment.

(4) The royalty payable by the manufacturer under subsection (3) shall be an amount not less than ten per centum of the ordinary retail selling price of each copy of the sound recording or its similar adaptation.

(5) It shall be an infringement of copyright where the manufacturer exhibits for sale or sells, without the adhesive label referred to in subsection (3) affixed thereto, any copy of a sound recording or its similar adaptation made by him under this section.

PART V
EXPRESSIONS OF FOLKLORE

Copyright in expressions of folklore to vest in Government

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

Certain uses of expressions of folklore to be subject to authorization

25. Subject to the provisions of section 26, the following uses of the expressions of folklore shall be subject to prior written authorization by the Minister when they are made for gainful purposes or outside their traditional and customary context:

(a) any publication, reproduction and any distribution of copies of expressions of folklore; or

(b) any communication to the public, including recitation, performance, broadcasting or distribution by cable, of expressions of folklore.

Free uses of expressions of folklore

26. The provisions of section 25 shall not apply to any use of the expressions of folklore in the following cases:

(a) for the purposes of education;

(b) by way of illustration in an original work of an author provided that the extent of such use is compatible with fair practice;

(c) using expressions of folklore for creating an original work by an author inspired by folklore; and

(d) incidental use of expressions of folklore, including, in particular:

(i) that which can be seen or heard in the course of a current event by means of photography, broadcasting or audio-visual work or sound recording, provided that the extent of such use is justified by the informative purposes thereof, and

(ii) use of objects containing the expressions of folklore

which are permanently located in a place where they can be viewed by the public, if the use consists in the inclusion of their image in a photograph, a film or a television broadcast.

Source of expressions of folklore to be acknowledged

27. In any printed publication or communication to the public wherein expressions of folklore have been used, except for uses referred to in section 26(c) and (d), the user of the expression of folklore shall acknowledge in such publication or communication the source from where the expressions of folklore so used by him have been derived.

Authorization for use of expressions of folklore

28. (1) Authorization of any use of expressions of folklore may be either general or special and may be granted upon application in writing to the Minister.

(2) In granting or refusing to grant an application for authorization under this Part, the Minister shall not be required to assign any reasons and his decision shall be final and not subject to appeal to, or review or question by, any court:

Provided that the Minister's refusal to grant an application shall not act as a bar to any subsequent application respecting the same or other expression of folklore.

Non-hindrance of development of folklore

29. The protection of expressions of folklore under this Act shall not in any way be construed so as to hinder the normal use, maintenance and development of expressions of folklore.

Protection under this Part to be additional

30. Protection of any expressions of folklore conferred by this Part shall be additional to and shall not in any way limit or prejudice protection on such expressions conferred by any other written law or treaty or convention to which Malawi is a party.

PART VI
BROADCASTERS, PERFORMERS AND PRODUCERS OF SOUND
RECORDINGS

Rights of broadcasters, performers and producers of sound recordings not to affect copyright

31. The protection granted under sections 32 to 39 relating to rights of broadcasters, performers and producers of sound recordings shall not in any way affect copyright in a literary, dramatic, musical or artistic work under this Act, and accordingly no provision in any of those sections shall be construed so as to affect copyright in any such work.

Acts requiring authorization of performers

32. (1) Without the authorization of the performers, no person shall do any of the following acts:

(a) the broadcasting or distribution by cable of their performance except where the broadcast or distribution by cable:

- (i) is made from fixation of the performance, other than a fixation made under the provisions of section 39; or
- (ii) is a broadcast or distribution by cable of the performance, and is made or authorized by the organization initially broadcasting the performance;

(b) the communication to the public of their performance, except where the communication:

- (i) is made from a fixation of the performance; or
- (ii) is made from a broadcast or distribution by cable of the performance;

(c) the fixation of their unfixed performance;

(d) the reproduction of a fixation of their performance, in any of the following cases:

- (i) where the performance was initially fixed without their authorization., or
 - (ii) where the reproduction is made for purposes different from those for which the performers gave their authorization;
- or

(iii) where the performance was initially fixed in accordance with the provisions of section 39, but the reproduction is made for purposes different from any of those referred to in that section.

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

(a) the authorization to broadcast or distribute a performance by cable does not imply:

- (i) an authorization to license another organization to broadcast or distribute the performance by cable;
- (ii) an authorization to fix the performance;
- (iii) an authorization to reproduce the fixation; and

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

(3) Where the performers have authorized the fixation of their performance by the broadcaster and the broadcast or distribution by cable of that fixation, the performer shall have the right to equitable remuneration in respect of any such broadcast or distribution by cable whether or not such fixation has been used commercially.

(4) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favourable for them in respect of any use of their performance.

(5) The protection under this section shall subsist for twenty years computed from the end of the year in which the performance took place.

Granting of authorization by performers

33. (1) A binding authorization under section 32 may be given by the performer or by a duly appointed representative to which the performer has in writing granted the right to give such authorization.

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

Acts requiring the authorization of producers of sound recordings

34. (1) Without the authorization of the producer of a sound recording, no person shall do any of the following acts:

- (a) direct or indirect reproduction;
- (b) importation for the purpose of distribution to the public;
- (c) distribution to the public of copies of his sound recording; or
- (d) communication to the public of the sound recording by performance or other means.

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

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

(4) The protection referred to in subsection (1) shall subsist for twenty years computed from the end of the year in which the sound recording was published for the first time.

Obligations of producers of sound recordings

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

- (a) the names of the author and those of the main performer;
- (b) the title of the work;
- (c) the name, whether individual or corporate, or distinguishing mark of the producer; and
- (d) that the rights accruing to the producer under this Act are reserved, and it shall be sufficient to use any words to that effect.

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

Notice of protection of rights of producers of sound recordings

36. (1) Where copies of a sound recording are made for commercial purposes, there shall be printed on the copies a notice consisting of:

(a) the symbol (P) and

(b) the year of first publication of the sound recording,

placed in such a manner as to give reasonable notice of claim of protection of the rights of the producer.

(2) Where the copies of the sound recording or their containers do not identify the producer or his licensee in relation thereto by his name, description or trade mark, the notice shall also include the name of the owner of the copyright in the recording.

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

Sound recording performance in public places

37. Where in any public place, by means of broadcasting, cinematography, jukebox or other apparatus, sound recording or other devices are used in public performance the authors, performers and the producers of sound recordings shall be entitled to royalties in accordance with the provisions of this Act.

Rights of broadcasting organizations

38. (1) A broadcasting organization shall have the exclusive right to authorize or prohibit:

(a) the rebroadcasting of its broadcasts;

(b) the fixation of its broadcasts; or

(c) the reproduction of its fixation of its broadcasts where:

(i) the fixation used to make the reproduction is made

without authorization; 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 authorized.

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

Exceptions to certain provisions under this Part

39. The provisions of sections 33, 34, 35, 36 and 37 shall not apply where the acts referred to therein are concerned with

(a) private use;

(b) the reporting of current events, except that no more than short excerpts of a performance, sound recording or broadcast are used;

(c) teaching or research;

(d) quotations in the form of short excerpts of a performance, sound recording or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations.

PART VII
PUBLIC DOMAIN

Works in the public domain

40. (1) The following works shall belong to the public domain:

(a) works whose terms of protection have expired;

(b) works in respect of which authors have renounced their rights;
and

(c) foreign works that do not enjoy protection in Malawi.

(2) For the purpose of paragraph (b), renunciation by an author or his successor in title of his rights referred to in section 9 shall be in writing and made public but any such renunciation shall not be contrary to any previous contractual obligation relating to the work.

(3) Subject to the payment of such fee as may be determined by the Minister in relation thereto, a work that has fallen into the public domain may be used without any restriction.

PART VIII
THE COPYRIGHT SOCIETY OF MALAWI

Establishment of a Copyright Society of Malawi

41. There is hereby established an institution to be known as the Copyright Society of Malawi (in this Act referred to as the "Society") which shall be a body corporate having perpetual succession and a common seal and shall, under that name, be capable of suing and being sued and of purchasing or otherwise acquiring, holding and alienating movable or immovable property and, subject to the provisions of this Act, of doing or performing all such acts and things as bodies corporate may by law do or perform.

Functions of the Society

42. The functions of the Society shall be:

(a) to promote and protect the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers and in particular to collect and distribute any royalties or other remuneration accruing to them in respect of their rights provided for in this Act;

(b) to maintain registers of works, productions and associations of authors, performers, translators, producers of sound recordings, broadcasters and publishers;

(c) to publicize the rights of owners and give evidence of the ownership of these where there is a dispute or an infringement;

(d) to print, publish, issue or circulate any information, report, periodical, book, pamphlet, leaflet or any other material relating to copyright, expressions of folklore, rights of broadcasters, performers and producers of sound recordings; and

(e) to advise the Minister on all matters under this Act.

Powers of the Society

43. For the better performance of its functions, the Society shall, subject to this Act, have power:

(a) to acquire, hire or dispose of property;

(b) with the approval of the Minister and subject to the Finance and Audit Act, to borrow money whether by way of loan, overdraft or otherwise, on the security of its assets;

(c) with the approval of the Minister to accept and administer any trust or donation;

(d) to determine minimum rates of royalties to be levied in respect of uses to be made of works registered by it;

(e) to levy fees upon registering works and associations;

(f) to perform such other functions as may be assigned to it by the Minister; and

(g) generally, to do and perform all such acts or things as it may deem necessary or expedient to achieve the objects of this Act.

Funds of the Society

44. The funds of the Society shall consist of:

(a) such sums as may be appropriated by Parliament for the purposes of the Society;

(b) all fees payable under this Act; and

(c) such other moneys and assets as may vest in or accrue to the Society, whether in course of its functions or otherwise.

Accounts and audit

45. (1) The Society shall:

(a) keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act;

(b) furnish to the Minister annually, or as often as the Minister may direct, accounts in respect of finances and property, including an estimate of income and expenditure for the following financial year.

(2) The accounts of the Society shall be examined and audited annually by auditors appointed by the Society and approved by the Minister.

(3) The financial year of the Society shall be a period of twelve months

beginning on 1st April every year and ending on 31st March the following year:

Provided that the first financial year of the Society may be such longer period not exceeding eighteen months from the commencement of this Act as the Minister may approve.

Constitution, proceedings and other matters of the Society

46. (1) The Society shall be managed by a board of management (in this Act referred to as the "Board"), the constitution, composition and proceedings of which shall be as provided for in the Schedule.

(2) The Minister may, by order published in the *Gazette*, amend the Schedule.

PART IX
INFRINGEMENT OF COPYRIGHT, OFFENCES AND MISCELLANEOUS
PROVISIONS

Infringement of copyright, etc.

47. (1) Infringement of copyright is where, without valid transfer, licence or authorization under this Act, a person does, permits or causes another person to:

(a) reproduce, fix, duplicate, extract, imitate or import into Malawi otherwise than for his private use or permit or cause to be reproduced, fixed, duplicated, extracted, imitated or imported into Malawi otherwise than for his private use; or

(b) distribute or permit or cause to be distributed in Malawi by way of sale, hire, rental or like manner; or

(c) offer or expose to the public for distribution by way of sale, hire, rental or otherwise; or

(d) exhibit or permit or cause to be communicated to the public, for commercial purposes by way of broadcast, public performance or otherwise,

any work or performance protected under this Act.

(2) For the purposes of this section the use of a work in a manner prejudicial to the honour or reputation of the author of that work shall be deemed an infringement of the right of the author.

Offences and penalties

48. (1) Any person who infringes any copyright shall be guilty of an offence and liable to a fine of not less than K200 and not exceeding K15,000 and to imprisonment for a term not exceeding one year and in the case of a continuing offence to a further fine of not less than K5 and not exceeding K50 for each day during which the offence continues.

(2) Any person who, without the authorization of the Minister, imports, sells, offers or exposes for sale or distribution in Malawi any copies of the following works made outside Malawi:

(a) works of Malawian folklore; or

(b) translations, adaptations, or arrangements of Malawian folklore,

shall be guilty of an offence and shall be liable to a fine of not less than K200 and not exceeding K10,000 and to imprisonment for a term not exceeding one year and in the case of a continuing offence to a further fine of not less than K10 and not exceeding K50 for each day during which the offence continues.

(3) Any person who contravenes section 25, 27 or 28 shall be guilty of an offence and liable to a fine of K2,000 and to imprisonment for one year.

(4) Any person who has in his possession any infringing copy of a work other than for his private or domestic use or who has in his possession any machinery, plate, matrix or other device with the intention of using such device to produce infringing copies, shall be guilty of an offence and shall be liable to a fine of not less than K2,000 and not exceeding K10,000 and to imprisonment for a term not exceeding one year and, in the case of a continuing offence, to a further fine of K50 for each day during which the offence continues.

(5) For the purposes of subsection (4) any person who has in his possession three or more infringing copies of the same work shall, unless the contrary is proved be presumed to be in possession of such copies otherwise than for private or domestic use.

Compensation to victims of offence

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

(2) In addition to any punishment imposed by the court in respect of an offence under this Act in any action for an infringement, all such relief by way of damages, injunction, account of profits or otherwise, shall be available to the plaintiff as in any other corresponding proceedings in respect of infringements of other proprietary rights, and in any such action the court

may give such orders as are necessary to:

(a) enable the plaintiff to obtain evidence of any infringement which he intends to adduce at the trial;

(b) prohibit the defendant from removing his assets from the jurisdiction of the court or otherwise wasting them, to the extent that such assets are necessary to satisfy the plaintiffs claim if his succeeds at the trial.

(3) In any proceedings to which subsection (2)(a) applies:

(a) a person shall not be excused from answering any question put to that person or complying with any order made pursuant to that subsection by reason only that to do so would tend to expose that person or his spouse to criminal proceedings under this Act;

(b) no statement or admission made by a person in answer to a question put, or an order made, in accordance with that subsection shall be admissible in criminal proceedings brought under this Act against that person or his spouse, save that nothing in this paragraph shall render any such statement or admission inadmissible in proceedings against that person for perjury or contempt of court.

(4) The court may order that all reproductions, duplications, extracts, imitations and other material involved in the infringement and all implements or devices used in such infringement be given to the copyright owner, or, if such material be dangerous to the public, be destroyed by the court.

(5) For the purposes of this Part, "owner of copyright" means the first owner, an assignee or an exclusive licensee, as the case may be, of the relevant portion of the copyright.

Proof of facts in proceedings

50. An affidavit made on oath, affirmation or other like manner before a magistrate, notary public or other person competent to administer an oath or affirmation under the law of the country where the oath was made, which:

(a) purports to have been made by or on behalf of the owner of the copyright or his successor in title, and

(b) states all or any of the following:

- (i) that at the time specified therein the rights of the owner of the copyright work subsisted;
- (ii) the nationality of the owner of the copyright;
- (iii) the place where the work was first made;
- (iv) the date and place of first publication of the work and the date of publication thereof in Malawi, if such publication was not first publication;
- (v) that the person named therein is the owner of the copyright or his successor in title;
- (vi) that a copy of the work exhibited to the affidavit is a true copy or the work,

shall be admitted without further proof in any proceedings under this Act.

Inspectors

51. (1) The Society shall, for the purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Society considers appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such inspectors.

(2) In addition to inspectors appointed under subsection (1) any member of the Society, a police officer of the rank of Sub-Inspector and above shall perform the functions of an inspector under this Act.

(3) A person appointed as an inspector shall hold office subject to such conditions as the Society may determine with approval of the Minister.

Entry into premises

52. Subject to the provisions of this section, an inspector may, at any reasonable time and on production of his certificate of authority, enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connexion with those premises, ship, aircraft or vehicle any contravention of this Act.

Mode of inspection

53. (1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect:

- (a) any substance or article appearing to him to be a work;
- (b) any container or package used or intended to be used to contain

any work; or

(c) any plant or equipment appearing to him to be used or intended to be used in connexion with the production, reproduction or otherwise manufacture of a work.

(2) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which he has reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he has reasonable cause to believe to be a document which may be required in proceedings under this Act.

(3) Where an inspector seizes any work he shall notify in writing the person from whom it is seized the fact of that seizure and shall in that notification specify any item seized.

(4) Any person who:

(a) wilfully obstructs an inspector in the discharge of the inspector's duties; or

(b) wilfully fails to comply with any requirement properly made to him by an inspector; or

(c) without reasonable cause fails to give to the inspector any assistance or information which the inspector may reasonably require of him for the purpose of the performance of his duties under this Act; or

(d) in giving any such information as is mentioned in subparagraph (c), makes any statement which he knows to be false or which he does not believe to be true,

shall be guilty of an offence and shall be liable to a fine of K 1,000, and to imprisonment for a term not exceeding six months.

Inspectors not to be personally liable for acts done by them under this Act

54. An inspector shall not be personally liable in respect of any act done by him in the course of his employment and in the execution or purported execution of any duty under this Act.

Extension of the application of this Act

55. The Minister may, by notice published in the *Gazette*, extend the

application of this Act to any works, expressions of folklore, performances, sound recordings and broadcasts which are first publications in a country or created by a person who is a national of or resident in or a company incorporated in a country which is a party to a copyright treaty or convention to which Malawi is also a party and which grants reciprocal provisions.

Regulations

56. The Minister may make regulations for carrying out or giving effect to the provisions of this Act and without prejudice to the generality of the foregoing, such regulations may:

(a) provide for the registration and deposit of works;

(b) prescribe forms:

(i) of applications to be made;

(ii) of licences to be issued;

(iii) of contracts to be concluded, pursuant to the provisions of this Act:

(c) prescribe fees payable under this Act;

(d) prescribe anything to be prescribed under this Act;

(e) provide for the affiliation of associations to the Society and for the membership with such associations or with the Society of any persons whose works are protected under this Act.

Application to works created before and after commencement of this Act

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

Repeal of Cap. 49:03

58. The Copyright Act is hereby repealed.

SCHEDULE (*Section 46(1)*)

CONSTITUTION, PROCEEDINGS AND OTHER MATTERS OF THE SOCIETY

[As amended with effect as of 1st July 2001]

Composition of the Society

1. (1) The Board shall consist of the following members each of whom shall except in the case of an *ex officio* member be a citizen of Malawi-

(a) Chairman, who is a member of the Society and has knowledge of and competence in copyright matters, appointed by the Minister

(b) the Secretary for Sports and Culture or his designated representative

(c) the Secretary for Justice or his designated representative

(d) five persons nominated at the Annual General Assembly of the Society and appointed by the Minister;

(2) A member of the Society, not being a member *ex officio*, shall hold office for two years.

(3) Upon the appointment to the Society of any member, the Minister shall cause notice of such appointment to be published in the *Gazette* and shall in such notice specify the current membership of the Society resulting upon such appointment.

(4) Members of the Society shall not, by virtue only of their appointment to the Society, be deemed to be officers in the public service.

Vacation, etc. of members from office

2. (1) The Minister may require a member of the Society to vacate his office if the Minister is satisfied that the member--

(a) has become insolvent or has assigned his estate for the benefit

of, or made a composition or other arrangement with his creditors;

(b) has been absent from three consecutive meetings of the Society, of which he has had notice, without the leave of the Chairman of the Society;

(c) has been convicted of an offence under this Act;

(d) has been convicted within Malawi of a criminal offence, or outside Malawi of an offence by whatever name called which, if committed within Malawi, would have been a criminal offence, and sentenced to imprisonment for a term of six months or more without the option of a fine, whether or not such sentence has been suspended, and has not received a free pardon; or

(e) is mentally or physically incapable of efficiently performing his duties as member of the Society.

(2) The Minister may suspend from office a member of the Society against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment for a term of six months or more without the option of a fine may be imposed.

(3) A member of the Society may resign his office by notice in writing to the Minister and if the Minister accepts such resignation.

Filling of vacancies in the Society

3. (1) On vacation of office by a member of the Society, the vacancy shall be filled by a person appointed in accordance with paragraph 1(1) under which the former member was appointed:

Provided that if the remaining period is less than six months the Minister may decide not to have the vacancy filled until the expiry of the period.

(2) If any member of the Society is granted leave of absence by the Society, the Society may, if it sees fit, co-opt a person who belongs to the same profession or calling as the member who has been granted leave to fill the vacancy during the absence of the member.

Co-opted persons

4. The Society may in its discretion at any time and for any length of time invite any person, and the Minister may in the like manner nominate any officer in the public service, to attend any meeting of the Society and take part in the deliberations of the Society, but such person or officer shall not be entitled to vote at that meeting.

Chairman and Vice-Chairman

5. (1) The Society shall elect a Vice-Chairman from amongst its members. The Vice-Chairman shall, subject to subparagraph (2), hold office for the duration of his membership in the Society.

(2) The office of the Vice-Chairman shall become vacant:

(a) if the holder resigns his office by notice in writing to the Society;
or

(b) if the holder of the office ceases to be a member of the Society;
or

(c) if the Society so determines.

(3) Whenever the Chairman is absent or is for any reason unable to discharge the functions of his office, the Vice-Chairman shall discharge the functions of the Chairman.

Meetings of the Society

6. (1) Subject to subparagraph (2), the Society shall hold ordinary meetings for the dispatch of its business at least four times in each year.

(2) An extraordinary meeting of the Society:

(a) may be convened by the Chairman at any time;

(b) shall be convened by the Chairman within twenty-one days of the receipt by him of a request in writing signed by not less than any three members of the Society and specifying the purpose for which the meeting is to be convened.

(3) At any meeting of the Society:

(a) the Chairman or, in his absence, the Vice-Chairman, shall preside;

(b) in the absence of both the Chairman and the Vice-Chairman the members present and forming the quorum shall elect one of their number to preside; and

(c) the quorum shall be formed by any six members.

(4) At any meeting the decision of the Society on any matter shall be that of the majority of the members present and voting at that meeting, and in the event of an equality of votes, the Chairman or the person presiding shall have a casting vote in addition to his deliberative vote.

(5) Subject to this Act, the Society may make standing orders for the regulation of its proceedings and business and may vary, suspend or revoke any such standing orders.

Remuneration and expenses of members of the Society

7. Members of the Society shall be paid from the funds of the Society such allowances as the Minister may determine and in determining the allowances the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Society in connexion with the business of the Society.

Appointment of Copyright Administrator and other staff

8. (1) Subject to this paragraph, the Society:

(a) shall appoint a Copyright Administrator upon such terms and conditions as may be approved by the Minister;

(b) may appoint such other staff as it considers necessary or desirable in the discharge of its duties and upon such terms and conditions as it may determine.

(2) The Copyright Administrator, after consultation with the Chairman of the Society, may appoint temporary employees at such daily rates of pay, not below the minimum rates otherwise prescribed by written law, as he may consider appropriate and shall, after he has appointed any such employee, report the fact thereof to the Society at its next meeting.

(3) The Copyright Administrator shall be the secretary to the Society.

(4) Subject to any general or special directions of the Society, the Copyright Administrator shall be the chief executive officer of the Society and as such he shall be responsible to the Society for the administration and management of its affairs, including the supervision of other staff of the Society.

[End]