



**ARIPO MODEL LAW ON COPYRIGHT  
AND RELATED RIGHTS**



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**ARIPO OFFICE  
HARARE, ZIMBABWE  
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## **ARIPO Model Law on Copyright and Related Rights:**

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# **ARIPO MODEL LAW ON COPYRIGHT AND RELATED RIGHTS**

**(NAME OF COUNTRY)**

**The Copyright Act, [date]**

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# ARIPO MODEL LAW ON COPYRIGHT AND RELATED RIGHTS

## 1. Short title, Entry into Force

(a) This Law may be cited as the Copyright Act [date]

## 2. Interpretation

For the purpose of this Act the following terms have the following meaning:

“accessible format copy” means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability. The accessible format copy is used exclusively by beneficiary persons and it must respect the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and the accessibility needs of the beneficiary persons;

“artistic work” means, irrespective of artistic quality or form, any of the following works as—

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings, products of photogravure and prints;
- (b) photographs not part of audiovisual works;
- (c) works of sculpture;
- (d) works of architecture in the form of buildings or models;
- (e) maps, plans and diagrams;
- (e) works of applied art;

“audiovisual work” is a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds;

“audiovisual fixation” means the embodiment of moving images, whether or not accompanied by sounds or by the representations thereof, from which they can be perceived, reproduced or communicated through a device;

“author” is a natural person who has created the work;

“authorised entity” means an entity that is authorised or recognised by the government to provide education, institutional training, adaptive reading or information access to beneficiary persons on a non-profit basis. It also includes a government institution or non-profit organisation that provides the same services to the beneficiary persons as one of its primary activities or institutional obligations;<sup>1</sup>

“beneficiary person” means a person who is blind; has visual impairment or perceptual disability or is otherwise unable, through physical disability to hold, manipulate a book or focus or move the eyes to the extent that would be normally acceptable for reading, regardless of any other disabilities;

"broadcasting" means the transmission by wireless means for public reception of sounds or images or both or the representations thereof, and includes transmission by satellite and transmission of encrypted signals where the means of decrypting are provided to the public by the broadcasting organisation or with its consent;<sup>2</sup>

“collective management organisation” means any society or other organisation which has as its main purposes, the negotiation or granting, on behalf of the owners, of copyright licences and those whose objectives

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<sup>1</sup> An authorised entity establishes and follows its own practices: (i) to establish that the persons it serves are beneficiary persons; (ii) to limit to beneficiary persons and /or authorised entities its distribution and making available of accessible format copies; (iii) to discourage reproduction, distribution and making available of unauthorised copies; and (iv) To maintain due care in, and records of, its handling of copies of works, while respecting the privacy of beneficiary persons in accordance to this Act.

<sup>2</sup> It is important to take into account the emerging technological trends in the broadcasting sector as well as the development of copyright law at international level regarding the protection of broadcasting organisations.

include granting of licences covering works of more than one author/rights holder and distributing the remuneration/ royalties to the right holder;

“commercial resale” means the subsequent re-transfer of ownership in artwork from one person to another for monetary consideration with the involvement of an art market professional;

“communication to the public” means the transmission to the public by any means of a work, a performance or a phonogram, or an audiovisual fixation, or a broadcast in such a way that it can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that, without the transmission, the work, performance, phonogram or audiovisual fixation or broadcast would not be perceivable, including the making available of the work or other protected subject matter in such a way that members of the public may access it from a place and at a time individually chosen by them. In respect of sound recording, includes making the sounds or representations of sounds fixed in a phonogram audible to the public. In respect of audiovisual, includes making performance fixed in an audiovisual fixation audible or visible or audible and visible to the public;

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

“computer program” is 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 any format;

“distribution” means the putting into circulation of the original or copies of a work, in any form through sale or other transfer of ownership,

including importing for the purpose of such putting into circulation and public offering for sale and other transfer of ownership;<sup>3</sup>

“fixation” means the embodiment of sounds, images or both or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;

“infringement” means any act that violates any rights protected under this Act;

“information systems” means a system of generating, sending, receiving, storing, displaying or otherwise processing data including over digital networks and the internet;

“Information System Service” includes the provision of connections, the operation of facilities for information systems, the provision of access information systems, the transmission or routing of data between or among points specified by a user and the processing and storage of data, at individual request of the recipient of the service;

“Internet Service Provider” means any person or entity providing information services, systems, or access software provider that provides or enables computer services and other digital networks access by multiple users to a computer server or digital system including connections for, the transmission or routing of data;

“literary work” irrespective of literary quality or form, includes but is not limited to the following—

- a. Novels, stories, sheet music/written music or poetry works;
- b. plays, stage directions, film scenarios or broadcasting scripts;
- c. textbooks, treatises, histories, biographies, essays or articles;
- d. encyclopaedias, dictionaries, directories or anthologies;
- e. letters, reports or memoranda;

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<sup>3</sup> Drafting notes: Refer to Article 6(1) WIPO Copyright Treaty (WCT) and Article 8(1) WIPO Performances and Phonograms Treaty (WPPT).

- f. lectures, addresses or sermons;
- g. computer programmes/software;
- h. maps, drawings, graphic and three-dimensional representations or portrayals of a scientific or technical nature;
- i. and compilation of data or other material;

“making available to the public” means the making available to the public of works or other protected subject matter by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them;

“Minister” means the Minister for the time being responsible for the matters of copyright and related rights and assigned to implement the provisions of this Act;

“musical work” means a work consisting of music and includes any graphical notation of such work;

“performers” means singers, actors, musicians, dancers, variety and circus artists and other persons who sing, deliver, declaim, play, interpret or otherwise perform literary and artistic works or traditional cultural expressions/expressions of folklore; or perform a literary or artistic work that is created or first fixed in the course of a performance;

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

“producer of an audio-visual work” means the natural person or legal entity that undertakes the initiative and responsibility for making the first fixation of the audio-visual work;

“producer of a sound recording” means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first

fixation of the sounds of a performance or other sounds, or the representations of sounds.

“public performance” means:

- a. in the case of a work other than an audio-visual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- b. in the case of an audio-visual work, the showing of images in sequence and the making of accompanying sounds audible, either separately or in combination; and
- c. in the case of a sound recording, includes making the sounds or representations of sounds fixed in a phonogram audible to the public;
- d. in the case of works of expressions of folklore, includes performance to the public through dance, plays, acting, recitals, songs, declaiming or projection to an audience live or by any other means;

“published work” or sound recording means a work or sound recording, tangible copies of which have been made available to the public in a reasonable quantity for sale, for rent, public lending or for other transfer of the ownership or the possession of the copies, provided that, in the case of a work, making available to the public took place with the consent of the author or other owner of copyright, and in the case of a phonogram, with the consent of the producer of the phonogram. Sound recordings made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them, with the consent of the producer of the phonogram, shall be considered as if they had been published;

“re-broadcasting” means the simultaneous or deferred broadcasting in part or in whole by one broadcasting organisation of the broadcasts of another broadcasting organisation;<sup>4</sup>

“rental” means the transfer of the possession/ making available for use of the original or a copy of a work or phonogram or audio-visual work for a limited period of time for direct or indirect commercial purposes;

“reproduction” means the making of copy of the whole or part of a work or sound recording or audio-visual work in any manner or form, including any permanent or temporary storage of the work or sound recording in electronic form;

“rights management information”<sup>5</sup> means any information which identifies the author, the work, the performer, the performance of the performer, the producer of the sound recording, the broadcast, the owner of any right under this Law, or information about the terms and conditions of use of the work, the performance, the sound recording, audio-visual work or the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work , a fixed performance, a sound recording, audiovisual work or a fixed broadcast, 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 or an audiovisual work;

“sound recordings” regardless of the medium on which the recording is made or the method by which the sounds are reproduced<sup>6</sup> means;

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<sup>4</sup> This, like the definition of broadcasting is bound to change based on the rapid evolution of technologies. This definition is based on broadcasting in the “traditional” sense.

<sup>5</sup> Drafting note: Refer to Article 12(2) WCT.

<sup>6</sup> Borrowed from the Copyright and Designs Act of the UK 1988.

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

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

“technological protection measures”<sup>7</sup> means any technology, device or component that, in the normal course of operation, is designed to prevent or restrict access to or acts, in respect of works or objects of related rights, which are not authorized by the right holder.

“work”<sup>8</sup> is any literary or artistic work under Section 4 and 5;

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

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

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<sup>7</sup> Drafting note: Refer to Article 11 of WCT.

<sup>8</sup> Drafting note: Refer to Article 2(1) of the Berne Convention for the Protection of Literary & Artistic Works.

**PART I**  
**COPYRIGHT**

**3. Scope of Application, Copyright**

- (1) The provisions of this Act shall apply to:
- (a) works of authors who are nationals of, or have their habitual residence in (name of country);
  - (b) works first published in (name of country), and works first published in another country and also published in (name of country) within thirty days of the first publication, irrespective of the nationality or residence of their authors;
  - (c) audio-visual works, the producer of which has his headquarters or habitual residence in (name of country); and
  - (d) works of architecture erected in (name of country) and other artistic works incorporated in a building or another structure located in (name of country).
- (2) The provisions of this Act shall also apply to works that are eligible for protection in (name of country) by virtue of, and in accordance with any international convention or other international agreement to which (name of country) is party.

**4. Works Protected**

- (1) Subject to this section, the following works shall be eligible for copyright protection;
- (a) literary works including computer programs;
  - (b) musical works;
  - (c) artistic works including photographic works, drawings, and other works of fine and applied art;

- (d) audio-visual works, including cinematographic works;
  - (e) dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for state productions;
  - (f) works of architecture;
  - (g) illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science.
- (2) Works shall be protected for as long as they are original and fixated irrespective of their mode or form of expression, as well as of their content, quality and purpose. Computer programs shall be protected irrespective of whether they are expressed in source or object code.
- (3) A work shall be eligible for copyright where-
- (a) sufficient effort has been expended on making the work to give it an original character; and
  - (b) the work has been written down, recorded or otherwise reduced to any material or tangible form.

## **5. Derivative Works**

- (1) The following shall also be protected as works:
- (a) translations, adaptations, arrangements and other transformations or modifications of works; and
  - (b) collections of works, compilations of data and other material, whether in machine-readable or other form, and collections of traditional cultural expressions/expressions of folklore, provided that such collections are original by reason of the selection or arrangement of their contents.
- (2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work or traditional cultural expression/expression of folklore incorporated in or utilized for the making of such a work.

## **6. Subject Matter Not Protected**

- (1) Notwithstanding the provisions of Sections 4 and 5, copyright shall not extend to:
- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data;
  - (b) any written laws, official text of a legislative, administrative or legal nature, as well as any official translation thereof;<sup>9</sup>
  - (c) decisions of courts and administrative bodies and official translations thereof;
  - (d) political speeches delivered;
  - (e) news published, broadcast or communicated to the public by any other means.

## **7. Economic Rights**

- (1) Subject to the exceptions and limitations under this Act, the author or other owner of copyright shall have the exclusive right to carry out the following acts in relation to the work:
- (a) reproduction of the work in any material form including electronic and digital copies;
  - (b) translation, adaptation, arrangement or other modification of the work;
  - (c) distribution of the original or a copy of the work to the public;
  - (d) rental of the original or copy of an audio-visual work, a work embodied in a phonogram or a computer program;
  - (e) public performance of the work;
  - (f) broadcasting and rebroadcasting of the work;
  - (g) public display of the work;

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<sup>9</sup> This includes reports made by commissions appointed by the Government or any agency of the Government which have been made available to the public.

- (h) communication to the public of the work;
  - (i) making available of the work to the public;
  - (j) importation of the work;
  - (k) public lending.
- (2) The right of distribution under subsection (1) (c) does not apply to the original or a copy of the work that has already been subject to a sale or other transfer of ownership in [any country] [the national territory] authorized by the owner of copyright.
- (3) The right of rental under subsection (1) (d) does not apply to rental of computer programs where the program itself is not the essential part of the rental.
- (4) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original, but copyright shall not include the reconstruction of a building to which that copyright relates in the same style as the original.

## **8. Authorship of Work**

- (1) Author in relation to-
- (a) a literary, musical or artistic work, means the person who first makes or creates the work;
  - (b) a photograph, means the person who is responsible for the composition of the photograph;
  - (c) a sound recording, means the person by whom the arrangements necessary for the making of the sound recording were undertaken;
  - (d) audiovisual works, means the person by whom the arrangements necessary for the making of the audiovisual work were made;

- (e) a broadcast, means the person making the broadcast or in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person making that other broadcast;
  - (f) a published edition means the publisher;
  - (g) a literary, dramatic, musical or artistic work which is computer generated, means the person by whom the arrangements necessary for the creation of the work were undertaken;
  - (h) a computer programme, means the person who created the source or object code.
- (2) For the purposes of this Act, a work is of “unknown authorship” where the identity of the author is unknown or, in the case of a work of joint authorship, where the identity of none of the authors is known.
- (3) For the purposes of this Act, the identity of an author shall be regarded as unknown if it is not possible for a person to ascertain “the author’s” identity by diligent inquiry; but once “the author’s” identity is known, it shall not subsequently be regarded as unknown.
- (4) Diligent inquiry shall be carried out in good faith in respect of each work or other protected subject-matter, by consulting the appropriate sources for the category of works and other protected subject-matter in question.<sup>10</sup>

## **9. Works of Joint Authorship**

- (1) In this Act, a “work of joint authorship” means a work produced through the collaboration of two or more authors in which the contribution of each author is not distinct from that of the other author or authors.

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<sup>10</sup> 2012/28/EU <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012L0028&from=EN>

- (2) References in this Act to the author of a work shall, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

## **10. Moral Rights of the Author**

- (1) Independently of the author's economic rights, and even after the transfer of such rights, the author shall have the right:
- (a) to be identified by name as the author of the work;
  - (b) to object to any distortion, mutilation or other modification of or derogatory action in relation to the said work which would be prejudicial to his honour or reputation;
  - (c) not to have the author's name indicated on copies and in connection with any public use of the author's work, and the right to a pseudonym.
- (2) The author may waive the exercise of any of the moral rights mentioned in subsection (1), provided that such waiver is in writing and for specific uses.
- (3) In the case of a work of joint authorship, the waiver is to be obtained from each author. Following the death of the author, the natural person or legal entity upon whom or to which the moral rights have devolved shall have the right to waive the said rights.
- (4) None of the rights mentioned in subsection (1) shall be transmissible during the life of the author, but the rights to exercise any of the moral rights shall be transmissible by testamentary disposition or by operation of law following the death of the author.

## PART II

### RELATED RIGHTS

#### RIGHTS OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND BROADCASTING ORGANIZATIONS

##### **11.Scope of Protection**

- (1) The provisions of this Act on the protection of performers shall apply to:
  - (a) performers who are nationals of (name of country);
  - (b) performers who are not nationals of (name of country) but whose performances:
    - (i) take place in the territory of (name of country);
    - (ii) are incorporated in sound recordings that are protected under this Act; or
    - (iii) have not been fixed in a phonogram but are included in broadcasts qualifying for protection under this Act.
- (2) The provisions of this Act on the protection of sound recordings shall apply to:
  - (a) Sound Recordings whose producers are nationals of or have an establishment or other legal residence according to the laws of the country in (name of country);
  - (b) Sound Recordings first fixed in (name of country);
  - (c) Sound Recordings first published in (name of country).
- (3) The provisions of this Act on the protection of broadcasts shall apply to:
  - (a) broadcasts transmitted from transmitters situated in (name of country). This section also, applies to program-carrying signals

the originating organization of which is a national of (name of country).<sup>11</sup>

- (4) The provisions in this Act shall also apply to performances, sound recordings and broadcasts, as defined in this Act, that are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which (name of country) is party.

## **12. Rights of Performers<sup>12</sup>**

- (1) Performers shall enjoy the exclusive right to authorize any of the following acts as regards their performances including audiovisual performances:
- (a) the broadcasting or other communication to the public of the performance, except where the broadcasting or other communication:
    - (i) is made from a fixation of the performance which the performer has authorized to be made, or
    - (ii) is a rebroadcasting made or authorized by the organization initially broadcasting 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 of a fixation of his or her performance, or of copies thereof, to the public;

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<sup>11</sup> **Drafting note:** This is also subject to technological changes as well as to the new approaches to the protection of broadcasting. Refer to Article 6 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations.

<sup>12</sup> This section covers both audio and audiovisual performers.

- (e) the rental to the public of a fixation of his or her performance, or copies thereof;
  - (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 it from a place or at a time individually chosen by them.
- (2) Once the performer has authorized the incorporation of the performance in sound recording or an audiovisual fixation, the performer shall, in the absence of contractual provisions to the contrary, be deemed to have assigned the exclusive economic rights with respect to that fixation to its producer.
- (3) The right of distribution under item (d) of subsection (1) does not apply to a copy of a fixation of the performance that has already been subject to a sale or other transfer of ownership [in this country] [anywhere in the world]<sup>13</sup> authorized by the performer.
- (4) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions that are more favourable for them in respect of their performances;
- (5) The rights under this Section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed or:
- (a) if during that period the recording is published, [at least 50/70] years from the end of the calendar year in which it is first published, or

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<sup>13</sup> Only one of these two options should be retained. The first option would establish a rule of “national exhaustion”, the second option a rule of “international exhaustion”.

(b) if during that period the recording is not published but is made available to the public by being played in public or communicated to the public, [at least 50/70] years from the end of the calendar year in which it is first so made available, but in determining whether a sound recording has been published, played in public or communicated to the public, no account shall be taken of any unauthorised act published.

### **13.Moral Rights of Performers and Directors**

- (1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live performances or performances fixed in phonograms or audiovisual fixations, have the right to claim to be identified as the performer of the performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.<sup>14</sup>
- (2) The rights granted to a performer in accordance with paragraph 13(1) shall, after the performer's death, be maintained at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by this Act.
- (3) The performer may seek relief (civil remedies or criminal sanctions as set out in this Act) in connection with any distortion, mutilation or other modification and any other derogatory action in relation to his work, where such work is or would be prejudicial to the performer's honour or reputation.

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<sup>14</sup> Modifications consistent with the normal exploitation of a performance in the course of a use authorized by the performer shall not be considered prejudicial to the performer's reputation. Refer also to Article 5 of Beijing Treaty on Audiovisual Performances and Article 5 of WPPT.

- (4) Independently of a director's economic rights, and even after the transfer of those rights, the director shall, as regards to audiovisual fixations, have the right to claim to be identified as the director of the audiovisual fixation, except where omission is dictated by the manner of the use of the fixation, and to object to any distortion, mutilation or other modification of their work that would be prejudicial to his reputation.

#### **14. Rights of Producers of Sound Recordings**

- (1) Subject to the provisions of this Act, producers of phonograms shall enjoy the exclusive right of authorizing the following acts:
- (a) the direct or indirect reproduction of the sound recording, whole or in part and in any manner or form;
  - (b) the distribution of the original or copies of the sound recording to the public;
  - (c) the rental of a copy of the sound recording to the public;
  - (d) the broadcast of the sound recording;
  - (e) the communication to the public of the sound recording including the public performance of the sound recording;
  - (f) the making available to the public of the sound recording, 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.
- (2) The right of distribution under item (b) of subsection (1) does not apply to the original or the tangible copies of the phonogram that have already been subject to a sale or other transfer of ownership authorized by the producer.
- (3) The rights under subsection (1) shall be protected from publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the phonogram has not been published from the

fixation of the phonogram until the end of the fiftieth calendar year, following the year of fixation.

### **15. Equitable Remuneration for Performers and Producers of Sound Recordings**

- (1) Where a sound recording is published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.
- (2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) shall be paid by the producer to the performer or performers.
- (3) 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, provided that the phonogram is still protected under the Act.
- (4) For the purposes of this Section, phonograms that have been available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

### **16. Rights of Broadcasting Organizations**

- (1) Subject to the provisions of this Act, a broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts:
  - (a) the rebroadcasting of its broadcast;
  - (b) the communication to the public of its broadcast;
  - (c) the fixation of its broadcast;

- (d) the reproduction of a fixation of its broadcast.
- (2) Program-carrying signals transmitted by satellite which are not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable transmission by an authorized receiving organization, may not be broadcast or communicated to the public by anyone else without authorization of the person or legal entity that decided what program the emitted signal would carry (originating organization).
  - (3) The right under this Section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year in which the broadcast takes place.
  - (4) Nothing in this section shall grant the broadcaster rights over, nor otherwise affect the rights in, any works or subject matter protected by related rights that form part of a broadcast.

## **17. Equitable Remuneration for Performers of Audiovisual Works**

- (1) Independent of the transfer of rights described in subsection 12(2) the performer has the unwaivable and untransferable rights to receive equitable remuneration or royalties in respect of any broadcast, communication to the public, rental or making available to the public of his performance fixed in an audiovisual fixation.<sup>15</sup>
- (2) The right to equitable remuneration shall be made effective by the corresponding collective management organisation who, under the provisions of this Act must collect the remuneration from the persons carrying out any of such uses as regards performances fixed in audiovisual fixation, and distribute it accordingly to the concerned performer.

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<sup>15</sup> Drafting note: Refer to Article 12(1) and 12(3) Beijing Treaty on Audiovisual Performances.

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(3) The right to an equitable remuneration under this Section shall subsist from the date of publication of the audiovisual performance until the end of the fiftieth calendar year following the year of publication, provided that the audiovisual work/performance is still protected under the Act.

## PART III

### EXCEPTIONS AND LIMITATIONS

#### 18. General Provisions on Limitations and Exceptions

- (1) The exercise of exclusive rights shall not include the right to control the doing of any of those acts by way of fair dealing for purposes of scientific research, private use, criticism or review, or the reporting of current events, subject to the acknowledgement of source.
- (2) The exceptions and limitations to copyright provided in Section 18 to 30 shall only apply in certain special cases, and if they do not conflict with a normal exploitation of the work and do not otherwise unreasonably prejudice the legitimate interests of the author, or other owner of copyright.
- (3) In determining whether the use made of a work in any particular case is a fair dealing the following factors shall be considered<sup>16</sup>—
  - (a) the purpose and character of the use, including whether the use is of a commercial nature or is for non-profit educational purposes;<sup>17</sup>
  - (b) the nature of the protected work;
  - (c) the amount and substantiality of the portion used in relation to the protected work as a whole; and
  - (d) the effect of the use upon the potential market for value of the protected work.
- (4) The fact that a piece of work is not published shall not of itself prejudice the requirement of fair dealing in accordance with subsection (3).

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<sup>16</sup> Section 15 (2)(a) to (d) of the Copyright and Neighbouring Rights Act, 2006 of Uganda.

<sup>17</sup> Drafting note: Not all non-profit educational purposes are fair dealing, however some limited uses might be.

## **19.Private Reproduction for Personal Purposes**

- (1) Reproduction, translation, adaptation, arrangement or other transformation of a work shall be permitted for the personal use of a work that has already been lawfully made available to the public and which the user has lawfully acquired. In respect of such use, where applicable, the owner of copyright in the work shall have the right to receive a fair compensation in accordance with the provisions of this Act.
- (2) The authorisation under subsection (1) shall not extend to reproduction:
- (a) of a work of architecture in the form of building or other construction;
  - (b) in the form of the whole or of a substantial part of a literary work or of a musical work in the form of a notation;
  - (c) of the whole or a substantial part of a database in digital form;
  - (d) of a computer program, except as provided in Section 25; and
  - (e) of any work in cases where reproduction would conflict with normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

## **20.Temporary Reproduction**

- (1) Temporary acts of reproduction, which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable:
- (a) digital transmission of the work or an act of making a digitally stored work perceptible;
  - (b) transmission or making the work perceptible;
  - (c) transmission in a network between third parties by an intermediary; and

(d) transmission that occurs during the normal operation of the equipment used and that entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those referred to in subsection (1)(a) and provided the copy shall have no independent economic significance.

## **21.Quotation**

- (1) The quotation from a work that has lawfully been made available to the public shall be permitted without authorization of the author or owner of copyright, provided that the quotation is compatible with fair dealing and does not exceed the extent justified by the purpose.
- (2) The quotation shall be accompanied by an acknowledgement of source and the name of the author if the name appears in the source from which the quote is taken.

## **22.Reproduction for Educational Purposes**

- (1) The use of copyright works shall be permitted for teaching and educational purposes where:
  - (a) utilization by way of illustration of a work that has lawfully been made available to the public for teaching purposes, in publications, broadcasting or sound or visual recordings, provided such utilization is compatible with fair dealing and does not exceed the extent justified by the purpose;
  - (b) the utilization may also include the making available of such works in digital networks, provided that access to the works is only available to enrolled pupils or students and their teachers;<sup>18</sup>

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<sup>18</sup> Drafting note: may consider adding “through secure electronic environment” immediately after the word ‘teachers’.

(c) the reproduction, for face-to-face teaching in educational institutions the activities of which 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 reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions;
- (ii) not more than a single copy for each pupil or student and the teacher is made; and
- (iii) there is no licence from a reproduction rights management organisation available under which such reproduction can be made.

Provided the author is sufficiently acknowledged as such.

### **23.Reproduction by Libraries and Archives, Educational Institutions, and Museums**

- (1) Any publicly accessible library, educational establishment, museum, or archive whose activities do not serve direct or indirect economic or commercial advantage may, without the authorization of the author or other owner of copyright, make a single copy of a work lawfully acquired by them.
- (2) Such publicly accessible libraries, educational institutions, museums or archives shall not be held liable for copyright infringement 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 a natural person, provided that:

- (i) the beneficiary of this exception is satisfied that the copy will be used solely for the purposes of study, scholarship or private research,
- (ii) the reproduction of any particular work is an isolated act occurring, if repeated, only on separate and unrelated occasions, and
- (iii) there is no collective licence available from a reproduction rights management organisation under which such copies can be made.

Provided the author is acknowledged as such.

- (3) Any publicly accessible library, educational establishment, museum, or archive whose activities do not serve direct or indirect economic or commercial advantage may, without the authorization of the author or other owner of copyright, make a copy of a work made in order to preserve and, if necessary, replace a copy, which has been lost, destroyed or rendered unusable, provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions.

#### **24.Reproduction, Broadcasting and Other Communication to the Public for Information Purposes**

- (1) The following acts shall be permitted in respect of a work without the authorization of the author or other owner of copyright, subject to the obligation to acknowledge the source and the name of the author:
- (a) the reproduction in a newspaper or periodical;
  - (b) the broadcasting 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;
- (c) for the purpose of reporting current events, the reproduction and the broadcasting 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;
  - (d) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a lecture, address, sermon or other work of similar nature delivered in public, to the extent justified by the purpose of providing current information.
- (2) The provision of this section shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work.
- (3) The Minister shall be authorized to regulate by decree questions whose regulation may be necessary for the implementation of this Law, including the setting up of one or more organizations to manage rights, on behalf of the owners of such rights, and to determine the conditions under which such organizations shall work.<sup>19</sup>

## **25. Computer Programmes**

- (1) A computer programme shall be subject to fair dealing for the purpose of Section 19 of this Act.
- (2) Notwithstanding the provision of subsection (1), a person who is in lawful possession of a computer programme may carry out any of the

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<sup>19</sup> The Minister for the time being responsible for the matters of copyright and related rights and assigned to implement the provisions of this Act.

following acts without the authorisation of the rights holder, whereby copies are necessary for the use of the computer programme in accordance with its intended purpose:

- (a) to make copies of the program to the extent necessary to correct errors;
  - (b) to make a back-up copy;
  - (c) for the purpose of testing a program to determine its suitability for the person's use;
  - (d) for any purpose that is not prohibited under any license or agreement whereby the person is permitted to use the program.
- (3) The authorization of the right holder of the program shall not be required to decompile the program, convert the program into a version expressed in different programming language, code or notation for the purpose of obtaining information needed to enable the program to operate with other programs.
- (4) Any copy(ies) made pursuant to this section shall be used only for the purpose for which it was made and shall be destroyed when the person's possession of the computer program ceases to be lawful.

## **26. Persons with Print Disabilities**

- (1) Notwithstanding the provisions of Sections 18 an authorized entity shall be permitted without the authorization of the author or owner of copyright, to reproduce a published work for visually impaired persons in an accessible format, and to distribute the copies exclusively to those persons, provided that the work is not reasonably available in an identical or accessible format, and that the reproduction and distribution are made on a non-profit basis.

- (2) The distribution is also permitted in case the accessible format copies have been made outside the country provided that and the conditions mentioned above have been fulfilled.
- (3) The provisions in subsections (1) and (2) are subject to the obligation to acknowledge the source and the name of the author.

## **27. Authorized Entities**

- (1) In relation only to works mentioned in Sections 4 and 5 of this Act that are in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media, including works in audio form, and subject to the conditions in subsection (2):
  - (a) authorized entities shall be permitted, without the authorization of the author or the owner of copyright, to make an accessible format copy of a work, obtain from another authorized entity an accessible format copy, and supply those copies to persons with a print disability by any means, undertaking any intermediate steps to achieve those objectives, when all of the following conditions are met:
    - (i) the authorized entity has lawful access or copy to that work;
    - (ii) the work is converted to an accessible format copy;
    - (iii) such accessible format copy is supplied exclusively to be used by persons with a print disability; and
    - (iv) the activity is undertaken on a non-profit basis.
  - (b) persons with a print disability, or someone acting on their behalf, shall be permitted to make and use an accessible format copy of a work for his or her personal use where he or she has lawful access or copy to that work.

- (c) authorized entities shall be permitted, without the authorization of the author or the owner of copyright, to export by any means accessible format copies to authorized entities and directly to a person with a print disability or someone acting on their behalf when both of the following conditions are met:
    - (i) the authorized entity or person with a print disability is located in a country party to the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled;
    - (ii) prior to exporting the accessible format copy the authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used for anyone other than persons with a print disability.
  - (d) a person with a print disability, someone acting on their behalf, or an authorized entity, shall be permitted to import an accessible format copy for that person's benefit, without the authorization of the owner of the copyright.
- (2) Acts pursuant to subsection (1) must meet all of the following conditions:
- (a) an accessible format copy shall be used exclusively by persons with a print disability;
  - (b) when creating and supplying an accessible format copy the integrity of the original work must be respected, taking due consideration of the changes needed to make the work accessible for persons with a print disability; and
  - (c) the distribution and making available of accessible format copies shall be limited to certain special cases that do not conflict with a normal exploitation of the work or object of

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related rights and do not unreasonably prejudice the legitimate interests of the owner of the copyright.

## **28.Ephemeral Recordings**

- (1) A broadcasting organization may make, without the authorization of the author or other owner of copyright, for the purpose of its own broadcasts and by means of its own facilities, an ephemeral recording of any work, which it is authorized to broadcast.
- (2) All copies made under subsection (1) shall be destroyed within six months of the making or within any longer term agreed to by the author, however, where such recording has an exceptional documentary character; one copy of it may be preserved in official archives.

## **29.Use for Public Security and for the Performance or Reporting of Proceedings**

A work may be used for the purpose of public security and to ensure the proper performance or reporting of administrative, parliamentary or judicial proceedings.

## **30.Caricature, Parody and Pastiche**

The use of a work for parody, caricature or pastiche shall not amount to an infringement of the author or right owner's moral rights provided for under this Act.

## PART IV

### GENERAL PROVISIONS

#### **31. Original Ownership of Copyright**

- (1) Subject to the provisions of subsections (2) to (5), the original owner of copyright is the author who has created the work.
- (2) In respect of works of joint authorship, the co-authors shall be the original owners of the copyright. If, however, a work of joint authorship consists of parts that can be used separately, and the author of each part can be identified, the author of each part shall be the original owner of copyright in the part that he has created.
- (3) In respect of a work created by an author, employed or commissioned by a natural person or legal entity, in the course of his employment or commission, the original owner of the work shall be, unless provided otherwise in a contract, the employer or the commissioner of the work.
- (4) In respect of an audio-visual work, the original owner of the works shall be the producer, unless provided otherwise in a contract. The co-authors of the audiovisual work and the author of the pre-existing works included in or adapted for the making of the audiovisual work shall, however, maintain their copyright in their contributions or pre-existing works, respectively, to the extent that those contributions or pre-existing works can be subject of acts covered by their rights separately from the audiovisual work.<sup>20</sup>
- (5) In respect of sound recordings, the original owner is deemed to be the sound recording producer.

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<sup>20</sup> This provision is subject to revision based on the Beijing Treaty on the Protection of Audiovisual Performances, 2012.

### **32. Presumption Regarding Authorship, Producers of Audiovisual Works, Producers of Sound Recordings and Publishers**

- (1) The natural person whose name is indicated as the author on an audiovisual work shall, in the absence of proof to the contrary, be presumed to be the author of the work. This provision shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.
- (2) The person whose name appears on an audiovisual work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the producer of the work.
- (3) In the case of anonymous or pseudonymous works, subject to the provision of subsection (1), 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 moral and economic rights of the author. This presumption shall cease to apply when the author reveals his identity.
- (4) In the case of sound recordings, where copies of the recording as issued, communicated or made available to the public, bear a label, mark or other accompanying data stating—
  - (a) that a named person was the owner of the related rights in the recording at the date of issue, communication or making available to the public, or
  - (b) that the recording was first published in a specified year or in a specified country.

The label, mark or other data shall be admissible as evidence of the facts stated and shall be presumed to be correct until the contrary is proved.

### **33.Presumption**

- (1) The original owners of the moral and economic rights shall be the co-authors of the audiovisual work, who, in the absence of proof to the contrary, shall be presumed to be the producer, the author of the scenario, the author of the dialogue and the composer of the music specifically created for the audiovisual work. The authors of pre-existing works included in, or adapted for, the making of the audiovisual work shall be assimilated to the co-authors of the audiovisual work.
- (2) Where a performer has consented to fixation of the performance in an audiovisual fixation, the exclusive rights of authorization provided for in Section XXXX shall be owned or exercised by or transferred to the producer of such audiovisual fixation, subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the contract law.

### **34.Duration of Copyright**

- (1) Economic rights shall be protected during the life of the author and for fifty years after the author's death.
- (2) In the case of joint authorship, economic rights shall be protected during the life of the last surviving author and for fifty years after author's death.
- (3) In the case of an audio-visual work or a sound recording, the economic rights shall be protected 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.
- (4) In the case of a work published anonymously or under pseudonym, the economic rights shall be protected 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, 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) or subsection (2) shall apply, as the case may be.

- (5) In the case of a work of applied art, the economic rights shall be protected for fifty years from the making of the work.
- (6) In the case of a computer generated work, the rights shall be protected for a period of fifty years from the end of the calendar year in which the work was made.
- (7) In the case of a broadcast or cablecast, the rights set out in Section 16 expire at the end of a period of 50 years from the end of the calendar year in which the broadcast was made or the programme was included in a cable programme service.<sup>21</sup>

### **35. Public Domain**

- (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.
- (2) For the purpose of subsection (1) (b), renunciation by an author or the author's successor in title of the author's rights referred to in this Act shall be in writing and made public, but any such renunciation shall not be contrary to any previous contractual obligation relating to the work.<sup>22</sup>

### **36. Private Copying Levy**

- (1) The rights of an owner of a work, sound recording, fixed performance or audiovisual work are not infringed by the making of a single copy of the

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<sup>21</sup> This is based on the minimum length of protection under the Berne Convention and the TRIPS Agreement. Countries are free to adopt longer terms, but this will only apply within their Countries. Other Countries with the minimum protection shall not be required to apply the longer term of protection to members of Countries where the term is longer than 50 years.

<sup>22</sup> This provision takes into account the different ways in which a work can fall into public domain. It is different from works that have been put under creative commons as authors in creative commons still retain their rights and grant different licences for the use of their works.

work or recording for the personal and private use of the person making the copy.

- (2) In respect of such use, the owner of copyright and related rights in the work shall have the right to receive fair compensation consisting of a royalty levied on devices and media suitable or intended for copying, payable at the point of first sale in *Name of the Country* by the manufacturer or importer of such equipment or media.
- (3) The level of the royalty payable under subsection (2) shall be agreed between collective management organisations and representatives of manufacturers and importers of the devices and media suitable or intended for copying.
- (4) All royalties levied and claims for compensation under this section shall be made through the respective collective management organization.
- (5) In the absence of such an agreement, the Tribunal, as constituted under this Act, shall determine the levy.
- (6) Any person who, for commercial purposes, makes available any "broadcasting" means the transmission by wire or wireless means for public reception of sounds or images or both or the representations thereof, and includes transmission by satellite and transmission of encrypted signals where the means of decrypting are provided to the public by the broadcasting organisation or with its consent; devices or media for the purposes of enabling any other person to make single copies of any work for their personal or private use, without payment of the royalty levied under subsection (3) shall be guilty of an offence and shall be liable to a fine not exceeding XXXX or to imprisonment for a term not exceeding XXXX years or to both.

**PART V**  
**ASSIGNMENT AND LICENSING**

**37. Assignment and Licensing of Copyright**

- (1) Subject to this section, economic rights shall be transmissible in whole or in part by assignment, licensing, testamentary disposition, or by operation of law as moveable property.
- (2) An assignment in whole or in part of any economic right, or a license to do an act subject to authorization by the author or other owner of copyright, shall only apply to the acts which the copyright owner has exclusive rights to control.
- (3) Any assignment of an economic right, and any exclusive license to do an act subject to authorization by the author or other owner of copyright, shall be made in writing and signed by both the assignor and the assignee, or by the licensor and the licensee.

**38. Extended Collective Licensing**

- (1) The Minister may make regulations to provide for a collective management organisation recognised under this Act to be authorised to grant copyright licences in respect of works in which copyright is not owned by the body or person on whose behalf the collective management organisation acts.
- (2) An authorisation must specify:
  - (a) The types of work to which it applies; and
  - (b) The acts restricted by copyright that the licensing body is authorised to license.
- (3) The regulations must provide for the copyright owner to have a right to limit or exclude the grant of licences by virtue of the regulations.
- (4) The regulations must provide for any licence not to give exclusive rights.

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(5) In this section, “copyright licences” means licences to do or to authorise the doing of any of the acts restricted by copyright.

**PART VI**  
**ARTIST RESALE RIGHT**

**39. Artist Resale Right (Droit de suite)**

- (1) Notwithstanding any assignment of the original work, the authors of the original works of art shall have an inalienable right to a share of the proceeds of any sale or subsequent sale of the work through a public auction or through a dealer after the first transfer of ownership.
- (2) The resale royalty shall be payable at the rate of **X** percent of the net sale price on the commercial resale of an artwork and the seller, the art professional, the seller's agent and the buyer shall be jointly and severally liable to pay the resale royalty.<sup>23</sup>
- (3) If a mark or name purporting to identify a person as an artist of an artwork appears on the artwork, it shall be presumed in the absence of any other mark or evidence, that the person is the artist.
- (4) There shall be no resale royalty payable on commercial resale of an artwork—
  - (a) if the sale price is less than XXXX (amount in the local currency)
  - (b) if it concerns the resale of a building, or a drawing, plan or model of a building;
  - (c) if it is an auction for charitable purposes;
  - (d) if the works of fine art produced are of identical copies, or;
  - (e) if it concerns a manuscript of a literary, dramatic or musical work.
- (5) The artist resale right shall not apply to architectural works or works of applied art.

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<sup>23</sup> See Annex for guidelines on calculation of royalties for the resale rights

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- (6) The procedure for the exercise of the resale right shall be determined through regulations by the Minister for the time being responsible for the implementation of this Act.
  - (7) Authors who are nationals of other countries and their successors in title shall enjoy the resale right in accordance with this Act provided the law in their country provides for the resale right.
  - (8) The term of protection of the resale right shall last for as long as the work enjoys copyright protection as set out under Section 34 of this Act.

## PART VII

### ENFORCEMENT OF RIGHTS

#### **40. Infringement, Rights Management Information, Technological Protection Measures**

- (1) Copyright shall be infringed by a person who, without the licence or authorization of the owner of copyright:
  - (a) does or causes to be done, an act, the doing of which is controlled by copyright; or
  - (b) imports or causes to be imported, a work which the person knows to be an infringing copy.
- (2) Copyright infringement shall be considered to arise where a person;
  - (a) circumvents any effective technical protection measure designed to protect the works; or
  - (b) manufactures, imports, distributes, sells, rents, advertises for sale or rental, or possesses for commercial purposes devices, products or components or the provision of services which:
    - (i) are promoted, advertised or marketed for the purpose of circumvention; or
    - (ii) have only a limited commercially significant purpose or use other than to circumvent; or
    - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of any effective technological protection measures.
  - (c) removes or alters any electronic rights management information; or
  - (d) distributes, imports, broadcasts, communicates or makes available to the public protected works or other protected subject matter

from which electronic rights management information has been removed or has been altered without the authority of the rights holder.

(e) communicates or makes available to the public copyright protected work without authorization of the copyright owners.

(3) Technological protection measures are “effective” where the use of a work or object of related rights is controlled by the right holder through application of an access control or protection process – such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism – which, in the normal course of its operation (that is, if not circumvented) achieves the protection objective.

(4) Exceptions to Sections 40(2)(a) and (b) may be provided for through regulations promulgated by the Minister responsible for copyright matters to the extent the exceptions do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of technological protection measures.<sup>24</sup>

#### **41.Secondary Infringement**

(1) Secondary infringement shall occur where a person, without the authority of the copyright owner:

(a) Imports or causes to be imported or distributed for commercial purposes works which are protected without the consent of the copyright holder;

(b) Manufactures, imports, possesses in the course of business, sells or lets for hire, or offers or exposes for sale or hire devices or software that are used to infringe copyright and related rights;

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<sup>24</sup> Drafting note: The 3-step test should be considered as guidance to the regulations.

- (c) Manufactures or distributes devices which are primarily designed or produced for the purpose of circumventing technical protection measures designed to protect works protected under this Act.

#### **42. Provisional Measures**

- (1) The court having jurisdiction of a civil action arising under this Law, has the authority:
  - (a) to grant injunctions to prohibit the committing, continuation of committing, of infringement of any right protected under this Law;
  - (b) to grant injunctions against intermediaries whose services are used by a third party to infringe a copyright or related right;
  - (c) to order the seizure of infringing copies where the making or importation of copies is subject to such authorization, as well as the seizure of the packaging and contrivances that could be used for the making of infringing copies;
  - (d) to order prompt and effective provisional measures to preserve relevant evidence in regard to an alleged infringement;
  - (e) to order the infringer to inform the right owner of the identity of third persons involved in the production, distribution, communication or making available to the public of the infringing goods, copies or rendering of services, and of their channels of distribution.

#### **43. Civil Remedies**

- (1) The owner of any copyright protected under this Act shall be entitled to payment, by the infringer of damages for the prejudice suffered as a consequence of the act of infringement, as well as the payment of expenses caused by the infringement, including legal costs.
- (2) The amount of damages shall be assessed, having regard to all the circumstances including:

- (a) the importance of the material and moral prejudice suffered by the owner of the right/ flagrancy of the infringement;
  - (b) any benefit accruing to the infringer by reason of the infringement.
- (3) Where the infringer did not know, or had no reasonable reason to know or knew that he/she was engaged in infringing activity, the court has the authority to order the recovery of profits.
- (4) Where infringing copies exist, the court has the authority to order the seizure or destruction or other reasonable disposal of those copies and their packaging outside the channels of commerce.
- (5) Where there is a danger that contrivances may be used to commit or continue to commit acts of infringement, the court may order their destruction or other reasonable disposal outside the channels of commerce in such a manner as to minimize the risks of further infringements.
- (6) Where there is a danger that acts of infringement may be continued, the court has the authority to expressly order that such acts not be committed.
- (7) The courts shall award such additional damages as merits of the case may require.

#### **44.Criminal Sanctions<sup>25</sup>**

- (1) Any person who wilfully or through gross negligence infringes on copyright is liable to a fine not exceeding **X** times the market value of the infringed work in respect of each infringing work, imprisonment not exceeding **X** years or both.
- (2) Where the defendant has been convicted for a new act of infringement within five years of a previous conviction for an infringement, he shall be liable, upon conviction, to double the fine set out in subsection 1, or a term of imprisonment not exceeding **X** years or both.

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<sup>25</sup>Criminal Sanctions are best dealt with at national level but should be deterrent and punitive.

## 45. Protection of Technological Protection Measures<sup>26</sup>

- (1) It is prohibited and constitutes infringement for the purposes of this Act to:
  - (a) circumvent effective technological protection measures or;
  - (b) produce, import, distribute, sell, rent, advertise for sale or rental, or possess devices, products, components or services for commercial purposes that:
    - (i) are promoted, advertised or marketed for the purpose of circumventing effective technological measures;
    - (ii) have only a limited commercially significant purpose or use other than circumventing effective technological measures; or
    - (iii) are primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of effective technological measures.
- (2) Technological protection measures are “effective” where the use of a work or object of related rights is controlled by the right holder through application of an access control or protection process – such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism – which, in the normal course of its operation (that is, if not circumvented) achieves the protection objective.
- (3) Exceptions to this Section may be provided for through regulations promulgated by the Minister responsible for copyright matters, to the extent the exceptions do not impair the adequacy of legal protection or

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<sup>26</sup>Technological protection measures are “effective” where the use of a work or object of related right protected under this Act is controlled by the right holder through application of an access control or protection process – such as encryption, scrambling or other transformation of the work or other subject-matter, or a copy control mechanism – which, in the normal course of its operation, achieves the protection objective.

the effectiveness of legal remedies against the circumvention of technological protection measures.<sup>27</sup>

#### **46. Protection of Rights Management Information**

- (1) It is prohibited and constitutes infringement for the purposes of this Act to:
  - (a) remove or alter any electronic rights management information without the consent of the right holder; or
  - (b) distribute, import for distribution, broadcast or communicate to the public works or other subject matter protected under this Act from which electronic copyright management information has been removed or altered without the authorization of the right owner.
- (2) Subsection (1) does not prohibit any governmental activities for public policy or security authorized by law.

#### **47. Anti-Piracy Security Device**

- (1) Every sound, audio-visual recording and literary work made available by way of sale, lending or distribution in any manner to the public for commercial purposes in the country shall have an anti-piracy security device as prescribed by the law through the regulations.<sup>28</sup>
- (2) The anti-piracy security device shall be issued by the Copyright Office (or the Revenue Authority) in the prescribed format.<sup>29</sup>

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<sup>27</sup> Drafting note: The 3-step test should be considered as guidance to the regulations.

<sup>28</sup> This is purely for guiding Member States that would be interested in putting in place the authentication devices and is not a mandatory requirement. There are several countries that have already made provisions for the same such as Kenya, Tanzania and Malawi Law, among others. It is also drawn from existing best practices to deal with the issue of unauthorized commercial use of copyright works by enhancing enforcement. It also takes into cognizance the current usage of music and advances in technology.

<sup>29</sup> It is important to note that dealings in copyright are rapidly moving towards digital distribution and access, which renders the efficacy of Anti-Piracy Security Device as questionable and hence should probably, be included in regulations and not substantive law.

## PART VIII

### LIABILITY OF INTERNET/ONLINE SERVICE PROVIDERS<sup>30</sup>

#### 48. Liability of ISPs

An Internet Service Provider engaged in activities covered by Section 51 to 53 that stores and/or transmits works [or subject matter protected by related rights] and that fails to take actions that would qualify it for the limitations set out therein is jointly liable for the infringements of copyright [and related rights] with the initiators of transmissions and/or storage of works or related rights.

#### 49. General Conditions for Limitations on Remedies

- (1) An Internet Service Provider providing technical, automatic and passive data transmission, caching or storage services shall not be liable for damages or any other pecuniary remedy or criminal penalty in respect of copyright infringements occurring as a result of the provision of that service provided it meets the general conditions set out in this Section and complies with requirements of this Act.
- (2) A service is not of a technical, automatic and passive nature if the provider has knowledge or control of the copyright works or other protected subject matter made available to the public or stored on its service, including through optimisation of the presentation or promotion of such works or other subject matter.

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<sup>30</sup> It is recommended for ARIPO to consider the most recent discussions on secondary intermediary liability of Internet service providers taking place in the United States by the *Digital Millennium Copyright Act* of 1998 and the revision of the ecommerce directive in the EU (200/31/EC) available at : <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0593>. These are still ongoing. The present developments in Europe is seeing legislation proposed to ensure that services playing an “active role” are not eligible for safe harbour protection. Safe harbour provisions should apply only to services that are technical, automatic and passive, and not to those playing an active role in relation to the content on their services, for example by organising or promoting content. The current draft is based on some of the national laws within ARIPO Member States, namely the Electronic Transaction laws in Ghana, Zambia, Malawi.

(3) The general conditions an Internet service provider must meet in order to benefit from limitations on remedies are as follows:

- (a) It does not receive any financial benefit attributable to the infringing activity;<sup>31</sup>
- (b) It accommodates and does not interfere with industry standard technical measures used by right holders to locate, identify or protect copyright works; and
- (c) It has adopted a policy that provides for termination of accounts of repeat infringers in appropriate circumstances, informing users on the policy and implements the policy in a reasonable manner.<sup>32</sup>
- (d) It acts expeditiously upon learning of an infringing transmission to remove or disable access to the infringing transmission.

#### **50.Limitations on Remedies Available Against Mere Conduits**

(1) An Internet Service Provider, shall not be liable for damages or any other pecuniary remedy or criminal penalty in respect of copyright infringement for providing access to a communication network or transmitting or routing a communication network or storage of content in ordinary course of business, as long as it:

- (a) does not initiate the transmission;
- (b) does not select the recipient of the transmission;
- (c) does not modify or select the material contained in the transmission;
- (d) does not in any way promote the content or material being transmitted.

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<sup>31</sup> Drafting note: In deciding whether a financial benefit is attributable to infringing activity, it is relevant whether the availability of the infringing content enhances the attractiveness of the service.

<sup>32</sup> Drafting note: a repeat infringer includes a subscriber whose account has been associated with infringement of copyright and/or the subject of a takedown notice more than once.

(2) The acts of provision of access to a communication network or transmission or routing of data in a communication network, referred to in subsection (1) shall include automatic, intermediate and transient storage of the content in so far as:

(a) the storage takes place for the sole purpose of carrying out the transmission, routing or provision of access and has no independent economic significance; and

(b) the content is not stored for any period longer than is reasonably necessary for the transmission routing or provision of access.

### **51.Limitations on Remedies Available Against Caching Services**

(1) An Internet Service Provider, shall not be liable for damages or any other pecuniary remedy or criminal penalty in respect of copyright infringement for automatic, intermediate and temporary storage of content, where the sole purpose of the storage is to make onward transmission of the data more efficient to other recipients of the service upon their request as long as the Internet Service Provider:

(a) does not modify the material including making the content available in a different format to the original;

(b) complies with conditions on access to the material;

(c) complies with rules regarding updating the cache in conformity with generally accepted standards within the service sector;

(d) does not interfere with the lawful use of technology which confirms to generally accepted standards within the service sector to obtain information on the use of the material;

(e) acts expeditiously to remove or disable access to the material once it receives a takedown notice as provided for in this Act or where the original material has been deleted or access disabled on orders of a competent court or otherwise upon obtaining knowledge or

where it ought to have been aware from facts and circumstances of the unlawful nature of the cached material.

## **52.Limitations on Remedies Available Against Hosting Services**

(1) An Internet Service Provider, shall not be liable for damages or any other pecuniary remedy of criminal penalty in respect of copyright infringement for storing material at the request of the recipient of the services, as long as it:

(a) does not have actual knowledge that the content or activity related to the material is infringing the rights of a third party;

(b) could not reasonably be expected to have been aware of the facts or circumstances from which the infringing activity or infringing nature of the material is apparent;

(c) upon obtaining such knowledge or awareness by whatever means, including the receipt of a takedown notice, acts expeditiously to remove or to disable access to the allegedly infringing content in the manner provided under this Act and takes effective steps reasonably expected of a diligent operator to prevent material which infringes copyright appearing on its service in the future.<sup>33</sup>

Provided that the exemption shall not apply if the recipient of the service is acting under the authority or control of the Internet Service Provider.

## **53.Limitations on Remedies Available Against Information Location Tools (Search Engines)**

(1) An Internet Service Provider, shall not be liable for damages or any other pecuniary remedy or criminal penalty in respect of copyright

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<sup>33</sup> Drafting note: In considering whether the service provider has taken effective steps, a court should take into account: (a) the nature of the service; (b) measures that a diligent economic operator would undertake to prevent infringements of the same content; and (c) the commercial availability of technologies to prevent infringements of the same content, and their effectiveness in light of technological developments.

infringement for referring or linking users to a webpage containing infringing material or facilitating infringing activity, by using information location tools including a directory, index, reference, pointer or hyperlink as long as the Internet Service Provider:

- (a) does not have actual knowledge that the material is infringing the rights of that person;
- (b) could not reasonably be expected to be aware of facts or circumstances from which the allegedly infringing activity or infringing nature of the material is apparent;
- (c) removes or disables access to the reference or link to the content or the infringing activity upon obtaining knowledge or awareness by whatever means that the content or the activity infringes rights of a person; and
- (d) takes reasonable steps to ensure that its services are not used in connection with infringements of copyright, having regard to
  - (i) measures that a diligent economic operator would undertake to prevent infringements of the same content; and
  - (ii) the commercial availability of technical measures (and their effectiveness in light of technological developments) to prevent infringements of the same content.<sup>34</sup>

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<sup>34</sup> Drafting note: In considering whether the service provider has taken reasonable steps, a court should take into account voluntary agreements and industry practices. In the absence of such agreements or practices, regard should be had as to whether the service provider: (a) upon obtaining knowledge or awareness that a reference or link to content at an online location is infringing, prevents references or links to content at the same online location being delivered in search results; (b) has regard to and takes account in its rankings of whether sites are known to be licensed, and modifies its search results accordingly; (c) takes steps to demote references to online locations which infringe or facilitate infringement of copyright and modifies its search results accordingly; and (d) removes or disables access to references within its search results to all online locations that have been determined by a court to be infringing or facilitating infringement of copyright, including but not limited to online locations ordered to be blocked by other service providers.

## 54. Take Down Notices

(1) A person whose rights have been infringed online, may request, by way of a takedown notice, that an Internet Service Provider removes or disables access the infringing content.

(2) A takedown notice issued under subsection (1) shall -

- (a) be in writing (physical or electronic communication) and addressed by the complainant or his agent to the Internet Service Provider or their designated agent;
- (b) contain the full names and telephone, physical and email address of the complainant;
- (c) be signed by the complainant or his authorized agent;
- (d) reasonably identify the content in which it is claimed copyright has been infringed or, if multiple materials are infringed at the same online location, identify a reasonable sample of such content at that online location, identifying the rights being infringed;
- (e) set out the content sought to be removed with details of where the content is contained; attach an affidavit or any other declaration attesting to claim of ownership, validity of the rights, that the complainant has good faith, that the use of the content in the manner complained of is not authorised by the copyright owner, its agent or the law and setting out any efforts to have entities responsible for making the content available to remove the content.

(3) A takedown notice shall be deemed as delivered to the Internet Service Provider on the next business day following physical delivery at its registered offices; or two days following the day if it is sent by registered post or immediately if it is sent by electronic communication to a designated address of the Internet Service Provider or its designated agent.

- (4) (a) An Internet Service Provider shall remove or disable access to the material within XXXX hours and confirm to the sender of the notification of the action taken. The ISP may also inform the uploader of the content who can object to its removal and send a counter notification which must satisfy the following conditions:
- (i) it must include accurate personal details and contact information including the full names, telephone number and email addresses;
  - (ii) it must identify content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or access to it disabled; and
  - (iii) it must include a statement that the uploader of the content has a good faith belief that the content was removed or disabled as a result of a mistake or misidentification of the content to be removed or disabled, and reasons for this statement.
- (b) An Internet Service Provider is not required to respond to a counter notification that does not meet these conditions. If the conditions are met the counter notification should be sent expeditiously to the sender of the take down notice. Access to the material may be restored after 14 days following receipt of the counter notification by the sender of the notification, unless the sender of the notification objects in writing to restoring the content within that period.
- (5) Where the Internet Service Provider fails to take down or disable access upon receipt of a takedown notice, it shall be fully liable for any loss or damages resulting from non-compliance to a takedown notice without a valid justification.

- (6) Any service provider which fails to disable or take down offending content on receiving a takedown notice commits an offence and shall, upon conviction, be liable to a fine not exceeding XXXX or to imprisonment for a term of XXXX years, or to both.
- (7) Any person who falsely or maliciously lodges a takedown notice or a counter notice under this section commits an offence and shall, upon conviction, be liable to a fine not exceeding XXXX or to imprisonment for a term of XXXX years, or to both.
- (8) The person responsible for such misrepresentation under subsection (7) shall, in addition to the penalty provided under that subsection, be liable for any damages resulting from such false or malicious misrepresentation.
- (9) An Internet Service Provider shall not be liable for wrongful takedown in response to a valid takedown notice.

## **55.Provision of Information by Internet Service Providers**

- (1) An Internet Service Provider may be required:
  - (a) to comply with an injunction or other order where its services are being used by a third party to infringe copyright or otherwise contribute to or support the infringement of copyright by a third party;<sup>35</sup>
  - (b) to provide information regarding identity of the subscribers of their services suspected to be engaging in infringement of content on orders of the court upon application by the copyright owner or his agent whose rights have been subject of a takedown notice;

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<sup>35</sup> Drafting note: Depending on the type of service provided by the Internet Service Provider, measures ordered by a competent authority may include, but need not be limited to: (a) an order requiring the service provider to block access to an infringing website or service at IP and DNS level, including in respect of any changes to the IP and DNS addresses from which the service is offered in the future; (b) an order requiring the service provider to stop providing hosting or other services to an infringing website or service; and (c) an order requiring the service provider to remove infringing content or to disable access to it, or to remove or disable access to links to infringing content.

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- (c) to designate an agent or electronic or other address for receiving such notices under its terms and conditions of service.
- (2) Notwithstanding the provisions of subsection (1), there shall be no general obligation on the Internet Service Provider to— monitor the material transmitted, stored, linked to, or actively seek facts or circumstances indicative of infringing activity within its services. This does not prevent a service provider from implementing or applying: specific monitoring obligations, including in respect of specific copyright works or other subject matter; specific duties of care; or specific technical measures to prevent infringement of copyright.

## PART IX

### ADMINISTRATIVE PROVISIONS

#### **56. Establishment of the Copyright Office<sup>36</sup>**

(1) There is hereby established an office to be known as the Copyright Office which shall be situated in XXX and shall have branches in such other places as the Minister may deem appropriate.

(a) The Copyright Office shall be headed by the Copyright Administrator/Registrar/Executive Director <sup>37</sup> (who shall be a public officer and who shall, subject to the direction of the Minister, be responsible for the administration of this Act performing such functions and exercising such powers as conferred by this Act);

(b) The Copyright Office shall have such other officers as may be necessary for the proper performance of its functions and carrying out of its duties.

(2) The Copyright Office shall-

(a) Direct, co-ordinate and oversee the implementation of this Act;

(b) Advise government on the negotiation, conclusion and implementation of bilateral and multilateral agreements on copyright and related rights;

(c) Administer and enforce all matters of copyright and related rights as provided for under this Act and to deal with ancillary matters connected with its functions under this Act;

(d) License and supervise the activities of collective management organisations as provided for under this Act;

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<sup>36</sup> The Office may be established by an Act of Parliament (for instance in Kenya) or a department within the Intellectual Property Office (Botswana and Uganda).

<sup>37</sup> Term will vary from Country to Country.

- (e) Develop and facilitate training programs on copyright and related rights;
  - (f) Enlighten and inform the public on matters relating to copyright and related rights;
  - (g) Maintain an effective database on authors and their works.<sup>38</sup>
- (3) The Minister, may, where necessary, make regulations on the management and administration of the copyright office.<sup>39</sup>

### **57. Collective Management of Copyright and Related Rights**

- (1) Authors, producers, performers and publishers may form collective management organizations for the promotion and protection of their interests and in particular, to collect and distribute any royalties or other remuneration accruing to them in respect of their rights provided for in this law.
- (2) The Government, where it deems necessary and after consultation with the rights holders, may facilitate the establishment of collective management organisations.
- (3) A collective management organization may, acting on the authority of the rights holders collect and distribute royalties and other remuneration accruing from the rights and mandates that the owner has assigned, licensed, granted or otherwise authorised to the collective management organisation.
- (4) Licences in respect of collective management shall be either voluntary, voluntary with legislative support or legal.

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<sup>38</sup>The provision for copyright offices was based on the practices in Kenya, Botswana, and Uganda which have provisions for the copyright office that is mandated to deal with the administration and enforcement of copyright and related rights. The term used will depend on the jurisdiction and the structure of the office.

<sup>39</sup> This takes into account the different structures of copyright offices as provided for in different laws such as Ghana, Kenya, Uganda, Botswana, Liberia, and Namibia among others.

- (5) The Minister may, by way of regulations, provide for the establishment and operations of collective management organizations<sup>40</sup> and for the operation of licensing schemes as the case may be.

## **58. Copyright and Related Rights Tribunal**

- (1) There shall be a Copyright and Related Rights Tribunal appointed by the Minister for the purpose of exercising Jurisdiction under this Act where any matter requires to be determined by such Tribunal.
- (2) The Tribunal shall:
- (a) hear and determine a matter referred to it pursuant to a provision relating to a licensing scheme; and
  - (b) make recommendations to the Minister on the rate of royalties or other due payments in respect of the use or presentation in a national cultural event, of any work or performance in which copyright or other rights subsist.
- (3) In relation to its functions under subsection (2)(b) the Tribunal may on its own initiative and shall, enquire into the appropriateness of any rate fixed and make recommendations to the Minister with respect to the rate as the Tribunal considers appropriate.
- (4) The Minister may provide regulations for the composition and functions of the Tribunal, which shall consist of the following persons appointed by the Minister:
- (a) a Chairman, who shall be a person qualified as an advocate of the High Court of not less than [seven] years' standing or a person who holds or has held judicial office;
  - (b) Not more than four persons who are knowledgeable in matters of copyright and related rights.

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<sup>40</sup>This provision gives the members the flexibility to decide how to set up and deal with the CMOS. It is notable there are different models in different countries and there are some countries which make provisions for government supervision of private CMOS. Each country will be free to adopt the most suitable provisions.

- (5) The Chairman and members of the Tribunal may hold office for a period not exceeding [three] years, after which they may be eligible for re-appointment.
- (6) The Minister shall determine the remuneration and other terms and conditions for the appointment of the Chairman and the members of the Tribunal.<sup>41</sup>

## **59. Application of International Treaties**

Provisions of any international treaties in respect of copyright and related rights to which XXXX Country is a party shall apply to matters dealt with in this Act and, in case of conflict with provisions of this Act, shall prevail over the latter.

## **MISCELLANEOUS PROVISIONS**

## **60. Application to Works Made Before Commencement of this Act**

- (1) This Act shall apply to—
  - (a) works, performances, sound recordings and broadcasts made prior to the commencement of this Act, where the term of protection had not expired under the former Act or under the legislation of the country of origin of such works;
  - (b) performances, sound recordings or broadcasts that are to be protected under an international treaty to which (Name of Country) is a party.
- (2) This Act shall not affect contracts on works, performances, sound recordings and broadcasts concluded before the commencement of this Act.

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<sup>41</sup> The provision for the Tribunal is drawn from existing practices in South Africa, Botswana, Malawi and Kenya. The Tribunal should only deal with matters arising from administrative issues such as licensing and registration. It should not in any way be used as a substitute to courts to determine matters of infringement of copyright and related rights, which are covered by the courts of law. This also takes into account that each country has a specific judicial system and laws that establish the courts.

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## **61. Abrogation of Common Law Rights**

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

## **62. Ministerial Authority to Regulate**

The Minister shall make regulations that may be necessary for the implementation of this Law.

## ANNEX

### Calculation of Royalties for the Resale Right

1. The rate of royalty payable is calculated as follows:<sup>42</sup>

- (a) Up to the equivalent of USD 50 000 will attract a royalty of 4%
- (b) Between the equivalent of USD 50 000.01 and USD 200 000 will attract a royalty of 3%
- (c) Between the equivalent of USD 200 000.01 and 350 000 will attract a royalty of 1%
- (d) Between the equivalent of USD 350 000.01 and USD500 000 will attract a royalty of 0.5%
- (e) In excess of the Equivalent of USD 500 000, will attract a royalty of 0.25 %

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<sup>42</sup> It is important to note that not many of the ARIPO Member States have the artist resale right and the amount to be paid as per the cumulative scale may be determined by each individual state.



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