

BILL

To provide for the protection of Copyright and Related Rights; to provide for the administration of Copyright and Related Rights; to provide for the nature and extent of copyright; to provide for exceptions and limitations to copyright protection; to foster the creation of intellectual products suitable for public benefit; to provide for easily accessible educational material; to provide for rights of performers, producers of sound recordings and audio-visual fixations and broadcasting organisations; to provide for expressions of folklore; to provide for transfer of ownership of copyright; to provide remedies for infringement of Copyright and Related Rights; to establish the Copyright and Related Rights Fund; to provide for collective management of Copyright and Related Rights; to provide for the establishment of a Copyright and Related Rights tribunal; to provide for the voluntary registration of copyright works; to repeal the Copyright and Neighbouring Rights Protection Act, 1994; and to provide for incidental matters.

(Introduced by the Minister of Industrialisation and Trade)

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PART 1

PRELIMINARY MATTERS

1. Definitions and interpretation

In this Act, unless the context otherwise indicates -

“accessible format copy” means a copy of a work or related subject matter -

- (a) in an alternative manner or form which gives a person with a disability access to the work and which permits such a person to have access as feasibly and comfortably as a person without a disability; and
- (b) that meets the requirement set out in section 33(3);

“adaptation”, in relation to -

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- (a) a dramatic work, includes conversion of the work from -

- (i) non-dramatic form into dramatic form;

- (ii) dramatic form into non-dramatic form;

whether the work is in its original language or not;

- (b) a literary work, whether in a non-dramatic form or in a dramatic form, includes -

- (i) a translation of the work;

- (ii) a version of the work in which the story or action is conveyed solely or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;
- (c) a musical work, includes an arrangement or a transcription of the work, if such arrangement or transcription has an original creative character;
- (d) an artistic work, includes a transformation of the work in such a manner that the original or substantial features thereof remain recognisable;
- (e) a computer programme, includes -
 - (i) a version of the programme in which it is converted into or out of a computer language or code into a different computer language or code;
 - (ii) a re-arrangement or altered version of the original programme; and
 - (iii) a fixation of the programme in or on a medium different from the medium of fixation of the programme; and
- (f) a compilation of data, includes a rearrangement or altered version of the original compilation;

“artistic work”, irrespective of artistic quality or form, includes -

- (a) engravings, etchings, drawings, lithographs, paintings, woodcuts, products of photographs and prints, cloth designs;
- (b) photographs, not part of audio-visual works;
- (c) works of sculpture;
- (d) works of architecture in the form of buildings or models;

(e) illustrations, maps, plans, charts, diagrams and three-dimensional works relative to geography, topography, architecture or science;

(f) works of applied art;

“audio-visual fixation” means the embodiment of moving images, whether or not accompanied by sounds or by representations of sound, in a material form from which they can be perceived, reproduced or communicated through a device;

“audio-visual work” means any record of a sequence of related images with or without accompanied sound, irrespective of length, which is intended to be made visible as a moving image through the use of devices, regardless of the medium of initial or subsequent fixation and for which there is an expectation for public exhibition and includes films and video recordings, animation, and documentary productions, for exploitation on any form of distribution currently existing or future invented;

“author” means an author as described in section 15;

“authorised entity” means an entity that is recognised and authorised as such under section 33;

“beneficiary person” means a person who –

(a) is blind;

(b) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(c) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading, regardless of any other disabilities.

“BIPA” means the Business and Intellectual Property Authority established by section 3 of the BIPA Act;

“BIPA Act” means the Business and Intellectual Property Authority Act, 2016 (Act No. 8 of 2016);

“Board” means the Board of BIPA constituted under section 8 of the BIPA Act;

“broadcast” means the transmission by wireless means of sounds or images, or both, or of representations the sounds or images, over a distance, for direct reception by the public and includes the -

- (a) transmission of encrypted signals where the means of decrypting are provided to the public by the broadcasting organisation or with its consent; and
- (b) emission of programme-carrying signals to a satellite;

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

“broadcaster” means any legal or natural person who provides a broadcasting service consisting of television or radio programmes for reception by the public or sections of the public or subscribers to such a service, irrespective of technology used;

“broadcasting organisation” means the Namibian Broadcasting Corporation established by section 2 of the Namibian Broadcasting Act, 1991 (Act No. 9 of 1991) or any other broadcasting organisation that holds a broadcasting licence issued under the Communications Act, 2009 (Act No. 8 of 2009) or any other law;

“building” means any permanent structure that has a roof and walls, and that is designed or intended for support, enclosure, shelter or protection of person, animals or property;

“choreographic work” means a dance composition or design by a dance composer of dance patterns;

“collective management organisation” means any organisation, association or company recognised under section 76;

“communication to the public”, in relation to an artistic work, a performance, sound recording, an audio-visual fixation or a broadcast, means the transmission to the public by any means, 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 and that, without the transmission, the work, performance, sound recording, audio-visual fixation or broadcast would not be perceivable and, in the case of -

- (a) a sound recording, includes making the sounds or representations of sounds fixed in the sound recording audible to the public;
- (b) an audio-visual fixation, includes making a performance fixed in the audio-visual fixation audible or visible or both audible and visible to the public;

“commissioned work” means a work created in pursuance of a written, signed contract between the author or authors and a party commissioning the work at issue;

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

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

“commercially available” means, in relation to a work or other subject-matter,

- (a) available on the Namibian market within a reasonable time and for a reasonable price and may be located with reasonable effort, or

(b) for which a licence to reproduce, perform in public or communicate to the public by telecommunication is available from a collective management organisation within a reasonable time and for a reasonable price and may be located with reasonable effort;

“cover version” means a sound recording made in accordance with section 51;

“copy” means a reproduction of a work and, in the case of a literary, musical or an artistic work, an audio-visual work or a computer programme, also an adaptation thereof, but an object may not be taken to be a copy of a work of architecture unless the object is a building or a model of a building;

“copyright” means copyright under this Act;

“Copyright and Related Rights inspector” means an inspector designated or appointed under section 3;

“derivative work” means a work based upon one or more pre-existing works such as a translation, musical arrangement, dramatisation, fictionalisation, audio-visual work version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted.

“derived signal” means a signal obtained by modifying the technical characteristics of any signal which goes to a satellite, whether or not there have been one or more intervening fixations;

“diffusion service” means a telecommunication service of transmissions consisting of sounds, images, signs or signals, which takes place over wires or other paths provided by material substance and intended for reception by specific members of the public, but diffusion may not be considered -

(a) to constitute a performance or a broadcast; or

(b) as causing sounds, images, signs or signals to be seen or heard,

and where sounds, images, signs or signals are displayed or emitted by a receiving apparatus to which they are conveyed by diffusion in such manner as to constitute a performance or a causing of sounds, images, signs or signals to be seen or heard in public, they must be considered to be affected by the operation of the receiving apparatus;

“distribution”, in relation to -

- (a) a work, means the putting into circulation of the tangible original copies of the 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; and
- (b) a programme-carrying signal, means an operation by which a distributor transmits a derived signal to the public via satellite or wireless;

“distributor”, in relation to a programme-carrying signal, means the person who decides that the transmission of the derived signal to the public takes place;

“digital distribution” is the delivery or distribution of digital media content such as audio, video, e-books, video games, and other software;

“dramatic work” includes -

- (a) a choreographic work or entertainment in dumb show, if reduced to the material form in which the work or entertainment is to be presented; and
- (b) a scenario or script from an audio-visual work,

but does not include an audio-visual work;

“engraving” means the art of producing on hard material incised or raised patterns, lines or similar images, from which an impression or print is taken and includes any etching, lithograph, woodcut, print or similar work, but does not include a photograph;

“exclusive licence” means a license authorising a licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would, apart from the licence, be exercisable exclusively by the owner of the copyright or related right;

“exploit” shall mean, as the context requires, to use, make, have made, sell, offer for sale, import, copy, distribute, create derivative works of, develop or otherwise commercialise any copyright or related rights work;

“expressions of folklore” means any expression whether tangible or intangible, involving traditional, customary, cultural dimensions and knowledge and are expressed, manifested, developed or preserved by the traditional communities of Namibia or by unidentified individuals of Namibia, and includes the following forms of expressions or combinations thereof:

- (a) verbal expressions, such as but not limited to stories, epics, legends, poetry, riddles and other narratives, words, signs, names, and symbols;
- (b) musical expressions, such as but not limited to songs and instrumental music;
- (c) expressions by movement, such as but not limited to dances, plays, rituals and other performances, whether or not reduced to a material or tangible form;
- (d) tangible expressions including productions of art, in particular, drawings, designs, paintings, including body-painting, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metal ware, jewellery, basketry, needlework, textiles, glassware, carpets, costumes and handicrafts;
- (e) traditional musical instruments; and
- (f) traditional architectural works;

“fixation” means the embodiment of sounds, images or both, or of the representations of the sounds or images, in a material form sufficiently permanent and stable so as to enable the sounds or images to be perceived, reproduced or communicated through a machine or device;

“Fund” means the Copyright and Related Rights Fund established under section 67;

“implement” includes any machine, equipment, plate, stereotype, stone, block, mould, matrix, transfer, negative, record, disc, storage medium or any other device that may be used to make copies of a work or related subject matter;

“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;

“infringing copy” means a copy of a work or related subject matter produced by any process and in any form, the making of which involves infringement of copyright in the work or a related right;

“judicial proceedings” means proceedings before a court, tribunal or person having by law power to hear, receive and examine evidence on oath or affirmation;

“licence scheme”, in relation to licences of any description, means a scheme prepared by one or more collective management organisations recognised under section 77;

“literary works, irrespective of literary quality or form, without limitation, includes -

- (a) novels, stories, or poetry works;
- (b) plays, stage directions, film scenarios or broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays or articles;
- (d) letters, reports or memoranda;

(e) lectures, addresses or speeches or similar works; and

(f) computer programmes;

“make available to the public” means the making available to the public of a work or related subject matter by wire or wireless means in any form including an electronic database or a digital form, in such a way that members of the public may access them from a place and at a time individually chosen by them;

“mechanical right” means a right to record, reproduce and distribute to the public a copyrighted musical composition (which includes audiotapes, compact discs and any other material object in which sounds are fixed, except those accompanying motion pictures and other audio-visual works). The licenses granted to the user to exploit the mechanical rights are called mechanical licenses.

“Minister” means the Minister responsible for Industrialisation and Trade;

“musical work” means a work consisting of music, inclusive of any words or action intended to be sung, spoken or performed with the music and any graphical notation of such work;

“orphan work” means a work whose right holders cannot be identified, and even if they are identified, none is located despite a diligent search for the right holders have been carried out.

“performance” means the presentation of a work, a related subject matter or an expression of folklore by such action as dancing, playing, reciting, singing, delivering, declaiming or projecting to listeners or spectators, live or by any means whatsoever;

“performer” means an actor, a singer, musician, dancer or other person who acts, sings, delivers, declaims, plays in, interprets or otherwise performs a work or expression of folklore and includes the conductor of a performance of any such work or expression of folklore;

“photograph” means a recording of light or other radiation on any medium on which an image is produced or from which an image may by any means be produced, but does not include any part of an audio-visual work;

“prescribed” means prescribed by regulation made under section 87;

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

“producer of a sound recording” means the natural person or legal entity that undertakes the initiative and responsibility for the first fixation of the sounds of a performance or other sounds or the representations of sounds;

“programme”, in relation to a programme-carrying signal, means a body of live or recorded material consisting of images or sounds, or both, embodied in a signal;

“programme-carrying signal” means a signal embodying a programme which is emitted and passes through a satellite;

“protected rights” means any of the rights whose violation would constitute an infringement as contemplated in sections 52-55;

“public display” means the showing of the original or a copy of a work or related subject matter

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- (a) directly;
- (b) by means of a film, slide, television image or otherwise on screen;
- (c) by means of any other device or process; or
- (d) in the case of an audio-visual work, the showing of individual images non-sequentially,

at a place or places where persons outside the normal circle of a family and its closest social acquaintance are or can be present;

“moral rights” means the rights described in section 14;

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

“public performance” means a performance with a reach beyond the normal circle of the family and closest social acquaintances of the person initiating the performance, and -

- (a) in the case of a work other than an audio-visual work, includes 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, includes the showing of images in sequence and the making of accompanying sounds audible, either separately or in combination;
- (c) in the case of a sound recording, includes making the sounds or representations of sounds fixed in a sound recording audible; and
- (d) in the case of works of expressions of folklore, includes dance, plays, acting, recitals, songs, declaiming or projection to an audience live or by any other means;

“publication” means -

- (a) availing copies of the work or related subject matter available to the public for sale, rent, public lending or for other transfer of ownership or possession of the copies such quantities as to satisfy the reasonable requirements of the public having regard to the nature of the work or related subject matter; and

(b) available to the public of the work or related subject matter that took place with the consent of the author or other owner of copyright or related rights, but publication does not include -

- (i) performance of a musical work, dramatic work or an audio-visual work or a sound recording;
- (ii) public delivery of a literary work; and
- (iii) transmission in a diffusion service;
- (iv) broadcasting of a work;
- (v) exhibition of a work of art; or
- (vi) construction of a work of architecture;

“public domain” comprises the works specified in section 18; works in the public domain may be used freely without the permission of the former copyright owner;

“published edition” means the first print by whatever process of a particular typographical arrangement of a literary or musical work;

“rebroadcasting” means the simultaneous or subsequent broadcasting in part or in whole by one broadcasting organisation of the broadcast of another broadcasting organisation;

“record” means a disc, tape, plate, perforated roll or other device in or on which sounds are embodied so as to be capable of being automatically reproduced therefrom or performed;

“related rights” includes the rights granted to a performer, broadcasting organisation, producer of sound recordings or audio-visual fixations, and includes rights relating to expressions of folklore;

“related subject matter” includes expressions of folklore, performances, sound recordings, audio-visual fixations, broadcasts, typographical arrangements and fixations of any work or subject matter that may be subject to protection under this Act;

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

“reproduction” means the making of one or more copies by any means, of a work or related subject matter, in whole or in part, and includes -

- (a) making a fixation from a performance or communication;
- (b) permanent or temporary storage in electronic form;
- (c) in the case of a literary or musical work or a broadcast, reproduction in the form of a record or an audio-visual fixation;
- (d) in the case of an artistic work, converting a work into a three-dimensional form or, if existing in a three-dimensional form, converting it into a two-dimensional form; and
- (f) in the case of a sound recording, making, directly or indirectly, a record embodying the recording;

“reprography” means the making of copies of a work, by photocopying or similar means;

“rights management information” means any information that identifies -

- (a) an author;
- (b) a work;
- (c) year of production;
- (d) place of production;
- (e) an expression of folklore;
- (f) a performer;

- (g) the performance of a performer;
 - (h) the producer of a sound recording or an audio-visual fixation;
 - (i) a sound recording or an audio-visual fixation;
 - (j) a broadcast;
 - (k) a broadcasting organisation;
 - (l) a broadcaster;
 - (m) owner of any right protected under this Act;
- (n) terms and conditions of use of a work, expression of folklore, performance, sound recording, audio-visual fixation, broadcast or typographical arrangement, and any numbers or codes that represent that information,

when any of these pieces of information -

- (i) is attached to a copy of a work, an expression of folklore, a fixed performance, sound recording, an audio-visual fixation, a broadcast or typographical arrangement; or
- (ii) appears in connection with the broadcasting, communication to the public or making available to the public or performance of a work, an expression of folklore, a fixed performance, sound recording, an audio-visual fixation, a broadcast or a typographical arrangement;

“satellite” means a device in extra-terrestrial space capable of transmitting signals;

“sculpture” includes a cast or model made for the purposes of sculpture;

“service provider” means any person or entity providing an information system service 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;

“signal” means an electronically generated carrier capable of transmitting programmes;

“sound recordings” means -

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

regardless of the medium on which the recording is made or the method by which the sounds are reproduced, but does not include a fixation incorporated in an audio-visual work as an integral part of the audio-visual work;

“State” means the Government of Namibia;

“tangible copy or form” means a fixed copy or form such that the copy or fixation can be put into circulation as a tangible object;

“technological protection measure” means any technology, product, device or component that, in the normal course of operation, is designed to -

- (a) prevent or restrict access to; or
- (b) prevent or restrict the doing of any acts or activities,

in respect of works or related subject matter, which access and acts or activities are not authorised by the right holder;

“this Act”, includes the regulations made under section 98;

“Tribunal” means the Copyright and Related Rights Tribunal established by section 84;

“work”, includes a literary, dramatic, musical, artistic, audio-visual or a derivative work, in the form of text notation or related illustrations whether published or otherwise made publicly available in any media;

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

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

“writing” includes any form of notation, whether by hand or by printing, typewriting or a similar process.

(2) A reference in this Act to the doing of an act in relation to a work or related subject matter, must, unless the context otherwise indicates, be construed as a reference also to the doing of that act in relation to a substantial part of that work or subject matter.

(3) This Act, with reference to an act or omission outside the territorial limits of Namibia by or on a ship or aircraft registered under a law in Namibia, applies in the same manner as it applies with reference to acts or omissions within the territorial limits of Namibia.

PART 2

ADMINISTRATION

2. Functions of BIPA in relation to this Act

Without derogating from the functions and powers of BIPA conferred by section 5 of the BIPA Act, the functions of BIPA under this Act are to -

- (a) direct, co-ordinate and oversee the implementation of this Act and international conventions and agreements to which Namibia is party which relate to copyright and related rights;

- (b) advise the Minister and other governmental agencies and institutions on the negotiation, conclusion and implementation of bilateral and multilateral conventions and agreements on copyright and related rights;
- (c) make recommendations to the Minister in regard to any amendments to this Act and advise the Minister on any matter referred to it by the Minister;
- (d) 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;
- (e) administer voluntary registration of Copyright and Related Rights
- (f) recognise and register collective management organisations as provided for under this Act;
- (g) cooperate with other institutions and bodies at national, regional and international forums on matters related to copyright and related rights;
- (h) maintain the registers referred to in section 96 (2) and enter into that register the matters specified in that section;
- (i) oversee and supervise the activities of collective management organisations as provided for under this Act;
- (j) develop and facilitate training programmes on copyright and related rights;
- (k) educate and inform the public on matters relating to copyright and related rights;
- (l) maintain an effective database on authors and their works and holders of other related rights and their rights; and
- (m) perform such other functions that BIPA is required to perform under this Act and as may be prescribed.

3. Copyright and Related Rights Inspectors

- (1) BIPA may, for the purposes of enforcing the provisions of this Act appoint Copyright and Related Rights Inspectors as may be necessary and must issue to them, in writing or in such form as may be prescribed, certificates of authority to act as such Inspectors.
- (2) Despite anything to the contrary in this Act or in any law, a member of the Namibian Police referred in section 2 (1) of the Police Act, 1990 (Act No. 19 of 1990) may, subject to such changes as may be necessary, perform the functions or exercise the powers of a Copyright and Related Rights Inspector under this Act as if he or she were a Copyright and Related Rights Inspector.
- (3) A person appointed as a Copyright and Related Rights Inspector holds office subject to such conditions as the BIPA may determine.

4. Powers of Copyright and Related Rights Inspectors

- (1) A Copyright and Related Rights Inspector may, subject to Article 13 of the Namibian Constitution, at any reasonable time and on production of his or her certificate of authority, enter any premises, ship, aircraft or vehicle for the purpose of search to ascertain whether there is or has been, on or in connection with such premises, ship, aircraft or vehicle any contravention of this Act.
- (2) For the purpose of ascertaining whether there is or has been a contravention of this Act, a Copyright and Related Rights Inspector may inspect -
 - (a) any substance or implement appearing to him or her to be a work or related subject matter or thing subject to protection under this Act;
 - (b) any container or package used or intended to be used to contain any work or related subject matter or thing subject to protection under this Act;

- (c) any plant or implement appearing to him or her to be used or intended to be used in connection with the production, reproduction or otherwise manufacture of a work-related subject matter or thing subject to protection under this Act; or
 - (d) any personal computer or devices that can store or carry data in relation to which or by means of which he or she has reasonable cause to believe that an offence under this Act has been or is being committed.
- (3) A Copyright and Related Rights Inspector may search for and seize -
- (a) any substance or implement which he or she has reasonable cause to believe to be an infringing copy of a work or related subject matter;
 - (b) any substance or implement in relation to which or by means of which he or she has reasonable cause to believe that an offence under this Act has been or is being committed; or
 - (c) any document which he or she has reasonable cause to believe to be a document which may be required as evidence in proceedings under this Act.
- (4) Where a Copyright and Related Rights Inspector seizes any work, related subject matter or thing, he or she must in writing notify the person from whom it is seized the fact of that seizure and must in that notification specify any item seized.
- (5) A person who -
- (a) wilfully obstructs a Copyright and Related Rights Inspector or other authorised law enforcement agent in the discharge of their duties;
 - (b) wilfully fails to comply with any lawful directive made to him or her by a Copyright and Related Rights Inspector or other authorised law enforcement agent;
 - (c) without lawful or reasonable excuse fails to give to a Copyright and Related Rights Inspector or other authorised law enforcement agent any assistance or information

which they may reasonably require of that person for the purpose of the performance of the Inspector's duties under this Act; or

- (d) in giving any such information as is mentioned in paragraph (c), makes any statement which he or she knows or reasonably ought to know is false or does not believe to be true,

commits an offence and is liable to a fine not exceeding N\$10,000 or to imprisonment for a period not exceeding 12 months or to both such fine and imprisonment.

- (6) In so far as this section provides for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution, in that it authorises interference with the privacy of a person's home, correspondence or communication, that limitation is enacted upon the authority of Sub-Article (2) of that Article.

5. Access to accounts by Copyright and Related Rights Inspectors

- (1) The Chief Executive Officer or a person designated in writing by BIPA as a Copyright and Related Rights Inspector must, on request in writing, be granted access to the accounts of -
 - (a) manufacturers or importers of devices for digital storage placed on the market for consumers;
 - (b) sellers of artistic works; and
 - (c) copy shops;

in order to determine whether they are complying with the provisions in this Act, and this right to access is limited to the accounts of the last three years before the year in which the request for access is made .

- (2) Information gathered by reason of access to the accounts may not be exploited for other purposes, and the Chief Executive Officer or a person designated in writing by BIPA

as inspector, must observe strict confidentiality with respect to this information except as is necessary in order to enforce the levy schemes pursuant to section 69.

6. Limitation of liability

The Minister, a member of the Board, the Registrar, a Copyright and Related Rights Inspector or any other staff member of BIPA is not liable in respect of anything done or omitted to be done in good faith in the exercise of any power or the performance of any duty under or in furtherance of the objects of this Act.

7. Obligation of copyright users

- (1) Anyone who exploits a work created by others shall, except where no permission is required in accordance with the provisions of this Act, conclude a prior written contract with, or otherwise obtain permission from, the copyright owner.
- (2) A contract shall include the following basic clauses –
 - (a) the manner of exploitation of the work covered by the license;
 - (b) the exclusive or nonexclusive nature of the right to exploit the work covered by the license;
 - (c) the scope and term of the license;
 - (d) the amount of remuneration and the method of its payment;
 - (e) the liability for breach of contract; and
 - (f) any other matter which the contracting parties consider necessary.
- (3) Without permission from the copyright owner, the other party to the contract shall not exercise the right which the copyright owner has not explicitly licensed in the contract.

- (4) The term of validity of a contract shall not exceed ten years. The contract may be renewed on expiration of that term.
- (5) The tariffs of remuneration for the exploitation of works shall be determined and prescribed by BIPA after consultation with collective management organisations.

Where otherwise agreed to in a contract remuneration may be paid in accordance with the terms of the said contract, if it is more favourable than that prescribed.

- (6) Publishers, performers, producers of sound recordings and audio-visual recordings, radio stations, television stations and other entities who or which have, pursuant to this Act, obtained the right of exploitation included in the copyright of others, shall not prejudice such authors' rights of authorship, alteration, integrity and their right to remuneration.

PART 3

COPYRIGHT

8. Scope of application

- (1) Copyright protection under this Act must be extended to -
 - (a) works of an author who is a citizen, permanent resident and other lawful permit holders of Namibia or has his or her habitual residence in Namibia;
 - (b) works first published in Namibia;
 - (c) works first published in Namibia and also published in any other country within 30 days of the first publication, irrespective of the nationality or residence of the author;

- (d) audio-visual works, the maker or producer of which has his or her or a registered place of business or habitual residence in Namibia; and
 - (e) works of architecture erected in Namibia and other artistic works incorporated in a building or another structure located in Namibia.
- (2) The provisions of this Act also apply to works that are eligible for protection in any other country by virtue of, and in accordance with any international convention or other international agreement relating to copyright or related rights which is binding on Namibia.

9. Eligibility for copyright

- (1) Subject to the provisions of this Act, copyright protection subsists in original works of authorship, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine, device or technology . Works of authorship include but are not limited to the following categories:
- (a) literary works;
 - (b) dramatic works;
 - (c) musical works;
 - (d) artistic works;
 - (e) audio-visual works;
 - (f) sound recordings;
 - (g) broadcasts; and
 - (h) published editions;

- (i) programme-carrying signals.
- (2) A work is entitled to protection under this Act irrespective of its content, quality and purpose.
- (3) A work is eligible for copyright where -
 - (a) it is in original character; or
 - (b) a derivative work.
- (4) A work, other than a broadcast or programme-carrying signal, is not, subject to Part 5, eligible for copyright unless it has been written down, recorded, represented in digital data or signals or otherwise reduced to material or tangible form.
- (5) A broadcast or a programme-carrying signal is not eligible for copyright until -
 - (a) in the case of a broadcast, the broadcast has been made; or
 - (b) in the case of a programme-carrying signal, such signal has been transmitted by satellite.
- (6) A work is original if it is the product of the independent effort of the author.

10. Derivative works

- (1) The following derivative works, in so far as they constitute independent creations, are also eligible for protection under this Act -
 - (a) translations, adaptations, arrangements and other transformations or modifications of works;

- (b) collections of works including encyclopaedias, dictionaries, directories or anthologies, whether in machine readable format or other form or eligible for protection under this Act or not, which, by reason of the selection or arrangement of the contents, constitute intellectual creations;
 - (c) compilations of data or other material, whether in machine -readable format or other form, which, by reason of the selection or arrangement of the contents, constitute intellectual creations; and
 - (d) collections of works derived from expressions of folklore.
- (2) The protection of any work referred to in subsection (1) does not extend to the work or data concerned, and is without prejudice to any protection of a pre-existing work or expression of folklore incorporated in or utilised for the making of such a work.

11. Subject matter not eligible for copyright

Copyright protection does not extend to -

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data;
- (b) any written laws and decisions of courts and administrative bodies, as well as any official translation thereof;
- (c) decisions of courts and administrative bodies and official translations thereof;
- (d) political speeches delivered, and speeches delivered during the course of legal proceedings within the scope of work of Namibian Government officials, provided that the author of the speech is not precluded from making a collection of the speeches which is eligible for protection as derivative work under this Act;

12. Economic rights

- (1) Subject to the exceptions and limitations under this Act, the author or other owner of copyright has the exclusive right to do, or to authorise another person to do any of the following acts in relation to the work -
- (a) reproduction of the work in any material form including electronic and digital copies;
 - (b) publishing the work if it was hitherto unpublished;
 - (c) including the work in an audio-visual fixation or a television broadcast;
 - (d) distribution of the original or a copy of the work by way of sale or other transfer of property;
 - (e) public performance of the work;
 - (f) broadcasting and rebroadcasting of the work;
 - (g) public display of the work;
 - (h) communication to the public of the work;
 - (i) making available of the work to the public;
 - (j) importation of the work;
 - (k) rental of the original or copy of an audio-visual work, a computer programme or a work embodied in a sound recording;
 - (l) make a derivative work out of the original work;

- (m) cause the work or a television or other programme, which includes the work, to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the work, and is operated by the original broadcaster;
 - (n) in the case of a programme-carrying signal, the direct or indirect distribution of such signals by a distributor to the public in Namibia, or from Namibia;
 - (o) any of the actions in paragraphs (a) to (k) in relation to a derivative of the work; and
 - (p) translation and adaptation of a work.
- (2) The right of distribution under subsection (1)(d) 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 Namibia authorised by the owner of copyright or related right protected under this Act.
 - (3) The right of rental under subsection (1)(k) does not apply to the rental of computer programmes where the programme itself is not the essential part of the rental.

13. Resale royalty

- (1) Despite any assignment or sale of the original work, the author of an original artistic work or a manuscript of a work retains an inalienable right to a share of the proceeds of any sale or subsequent sale of the original artistic work or manuscript through a public auction, or through a dealer, whatever method used by the dealer to carry out the operation, after the first transfer of ownership.
- (2) Subsection (1) does not apply to the subsequent sale of –
 - (a) an artistic work or manuscript for a sale price of less than N\$50,000 or such amount as prescribed; or

- (b) architectural work or a work of applied art.
- (3) The resale royalty shall be payable at the rate of ten percent (10%) of the net sale price on the commercial resale of an artwork and the seller, the art market professional, the seller's agent and the buyer shall be jointly and severally liable to pay the resale royalty.
- (4) The conditions for the exercise of the right conferred by this section, including the payable remuneration, are as prescribed.
- (5) If a mark or name purporting to identify a person as an artist of an artwork appears on the artwork, it must be presumed in the absence of any other mark or evidence, that the person is the artist thereof.
- (6) Authors who are nationals of other countries and their successors in title enjoy the resale right in accordance with this Act.
- (7) The term of protection of the resale right last for as long as the work enjoys copyright protection under this Act.

14. Moral rights of authors

- (1) Independently of the author's economic rights, and even after the transfer of such rights, the author has the exclusive right -
 - (a) to claim authorship of his or her work, and to demand that his or her name or pseudonym be mentioned when any of the acts referred to in section 11(1) are done in relation to the work; and
 - (b) to object to, and seek relief, in connection with, any distortion, mutilation or other modification of, or derogatory action in relation to, his or her work, where such action would be prejudicial to his or her honour or reputation.
- (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) The waiver referred to in subsection section (2) is -
- (a) in the case of a work of joint authorship, required from each author; and
 - (b) in the case of death of the author, exercisable by his or her successors in title.
- (4) The rights referred to in subsection (1) are not transferable during the life of the author, but are transferable by testamentary disposition or by operation of law following the death of the author.

15. Authorship

- (1) An 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 for the making of the sound recording were made;
 - (d) an audio-visual work, means the person by whom the arrangements for the making of the work were made;
 - (e) a broadcast, means -
 - (i) the first person making the broadcast; or
 - (ii) in the case of a broadcast which relays another broadcast by reception and immediate retransmission, the person making that other broadcast;

- (f) a programme-carrying signal, means the first person emitting the signal to a satellite;
 - (g) a published edition, means the publisher of the edition;
 - (h) a computer programme, means the person who created the source 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 must be regarded as unknown if it is not possible for a person to ascertain the author’s identity through prescribed inquiries, but once the author’s identity is known, it may not subsequently be regarded as unknown.
 - (4) References in this Act to the author of a work must, except as otherwise provided, be construed in relation to a work of joint authorship as references to all the authors of the work.

16. Copyright ownership

- (1) The original ownership in copyright vests in the author, subject to subsections (2)-(5).
- (2) In case of works of joint authorship, original ownership of the copyright vests in the co-authors in equal proportions, but if a work of joint authorship consists of parts that can be used separately, and the author of each part can be identified, original ownership of the copyright vests in the author of each part that he or she has created.
- (3) The copyright in a commissioned work shall be owned by the party commissioning the work if and unless the creation of the work, the parties so agree in a signed contract. In such a case, the person creating the work remains the author.

(4) Where -

- (a) a literary, musical or an artistic work is made by an employee or independent contractor in the course of his or her service with the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship; and
- (b) the work referred to in paragraph (a) is made for the purpose of publication in a newspaper, magazine or similar periodical,

the ownership of the copyright in the work with respect to publication of the work in a newspaper, magazine or similar periodical or reproduction of the work for the purpose of such publication, vests in that proprietor, but in all other respects ownership of the copyright subsisting in the work vests in the employee who retains the right to be publicly recognised as the author of the work and has the right to supplement and improve the work.

(5) Unless otherwise provided for in a contract, original ownership of copyright -

(a) in an audio-visual work, vests in the producer (s), but the -

(i) co-authors of the audio-visual work; and

(ii) author of the pre-existing works included in or adapted for the making of the audio-visual work,

maintain their copyright in their respective contributions or pre-existing works, to the extent that those contributions or pre-existing works can be subject of acts covered by their rights separately from the audio-visual work;

(b) in a sound recording, vests or is deemed to vest in the producer of the sound recording.

(6) A party who has been unable – through documented, reasonably diligent, good-faith efforts – to identify either the owner of the copyright in a particular work or an entity authorised to grant a license to use the work –

(a) may use that work in any of the ways specified in section 11, provided, however, that upon receipt of actual notice from the owner or an authorised licensor, the party expeditiously ceases the activity in question;

(b) and subsequently has adapted the work or integrated it into a new work, may continue to reproduce, distribute, display, and perform the adaptation or new work, even after the receipt of actual notice from the owner or an authorised licensor, provided that the party pays a reasonable fee for such continued use, as determined by the Tribunal. In addition, the party shall retain copyright in the original aspects of the adaptation or new work.

17. Presumptions relating to authorship and ownership

- (1) The person whose name is indicated as the author on a work is, in the absence of proof to the contrary, presumed to be the author and also owner of the work.
- (2) Subsection (1) applies even if the name indicated on the work is a pseudonym, as long as the pseudonym leaves no doubt as to the identity of the author.
- (3) The person whose name appears on a work in as required by proper usage or as prescribed is, in the absence of proof to the contrary, presumed to be the producer of the work.
- (4) In the case of anonymous or pseudonymous works, subject to the provision of subsection (1), the publisher -
 - (a) whose name appears on the work is, in the absence of proof to the contrary, presumed to represent the author; and
 - (b) in his or her representative capacity as contemplated in paragraph (a), is entitled to exercise and enforce the moral and economic rights of the author,

but the presumption of representation ceases to apply when the author reveals his or her identity.

- (5) 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 that -

- (a) 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) the recording was first published in a specified year or in a specified country,

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

- (6) The co-authors of an audio-visual work are the original owners of the moral and economic rights in the audio-visual work who, in the absence of proof to the contrary, are 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 audio-visual work.
- (7) The author of a pre-existing work or related subject matter that has been included in, or adapted for, the making of an audio-visual work must be regarded as one of the co-authors of the audio-visual work as contemplated in subsection (6).
- (8) Where a performer has consented to fixation of the performance in an audio-visual fixation, the producer of the audio-visual fixation is, subject to any contract to the contrary between him or her and the performer, presumed to be the owner of the exclusive rights of authorisation provided for in section 39, and is entitled to exercise those rights.

18. Duration of copyright

- (1) Unless otherwise expressly stated in this Act, copyright protected under this Act endures for the following periods -

- (a) in the case of a literary, musical, or artistic work, other than a photograph, during the life of the author, the remainder of the calendar year in which the author dies and a period of 50 years from the end of that calendar year;
 - (b) in the case of a joint authorship of the works referred to in paragraph (a), during the life of the last surviving author, the remainder of the calendar year in which the last surviving author dies and a period of 50 years from the end of that calendar year;
 - (c) in the case of a photograph, for a period of 50 years either from -
 - (i) the end of the year in which the photograph was first made available to the public with the consent of the owner of the copyright; or
 - (ii) if such photograph was not so made available to the public within 50 years of its making, the end of the year in which the photograph was made;
 - (d) in the case of an audio-visual work or a sound recording, for a period of 50 years from the end of the year in which the work or recording is first published;
 - (e) in the case of a broadcast, for a period of 50 years from the end of the year in which the broadcast was made;
 - (f) in the case of a programme-carrying signal, for a period of 50 years from the end of the year in which the signal was emitted to a satellite;
 - (g) in the case of a work of applied art, for a period of 50 years from the end of the year in which the work was created.
- (2) In the case of anonymous or pseudonymous works, copyright endures for 50 years from-
- (a) the date on which the work was -

- (i) made;
 - (ii) first made available to the public; or
 - (ii) first published; or
 - (b) the end of the year in which it is reasonable to presume that the author died,
- whichever, expires first.
- (3) Where the identity of the author of a work referred to in subsection (2) becomes known before the expiration of the period referred to in that subsection, the term of the copyright in such work must be calculated in accordance with subsection (1).
- (4) The date of the creation of a work shall be determined as follows -
- (a) a work, other than a broadcast or programme-carrying signal, is presumed, in the absence of evidence to the contrary, to be made at the time when it is first reduced to writing, recorded or otherwise reduced to material form;
 - (b) a broadcast is considered to be made at the time when it is first broadcast;
 - (c) a programme-carrying signal is considered to be made at the time when it is first transmitted.

19. Public domain

- (1) The public domain comprises -
- (a) works whose terms of protection have expired;
 - (b) works in respect of which authors have renounced their rights; and

- (c) foreign works that do not enjoy protection under this Act or by virtue of international treaties and agreements binding on Namibia.
- (2) For the purpose of subsection (1)(b), renunciation by an author or the author's successor in title of the author's rights must be in writing and made public, but such renunciation may not be contrary to any previous contractual obligation relating to the work.
- (3) A valid renunciation by an author or the author's successor in title of the author's rights is irrevocable.

PART 4

EXCEPTIONS AND LIMITATIONS

20. General provisions on exceptions and limitations

(1) Notwithstanding the provisions of Section 12, fair dealing for purposes such as research, education criticism, satire or review does not infringe copyright under this Act. A court determining whether an act done in relation to a work constitutes fair dealing shall consider all factors which appear to be relevant, including –

- (a) the nature of the work in question;
- (b) the extent and substantiality of that part of the work affected by the act in relation to the whole of the work;
- (c) the purpose and character of the use; and
- (d) the effect of the act upon the potential market for, or the commercial value of, the work.

(2) Dealing with a work may be construed as fair dealing if -

- (a) private use;

- (b) research for non-commercial purposes;
 - (c) reporting on current events, which involves the use of only short excerpts of a performance, sound recording, audio visual work or broadcast;
 - (d) Educational and research for non-commercial purposes;
 - (d) quotations in the form of short excerpts of a performance, sound recording, audio-visual work or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations; provided they are accompanied by an acknowledgement of source and the name of the author, if the name appears in the source from which the quotation is taken; or
 - (e) cases where, under permitted users of copyright in sections 19 to 35, inclusive, a work can be used without the authorisation of the author or other owner of the copyright.
- (3) The exception referred to in subsection (2)(a) does not extend to the reproduction-
- (a) of a work of architecture in the form of buildings or other construction;
 - (b) in the form of reprography of the whole or of a substantial part of a musical work in the form of a notation or a literary work other than a published article or other short literary work; and
 - (c) of a computer programme, except as provided in section 23.

21. Temporary reproduction

The temporary reproduction of work which is transient or incidental is permissible when the reproduction is 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; or
- (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 paragraphs (a) or (b),

is permitted, except that the reproduced copy may not have an independent economic significance.

22. Educational purposes

(1) The use of a work is permitted where -

- (a) the use is by way of illustration of published articles and other short works or short extracts of works, broadcasts, sound recordings or audio-visual fixations for teaching and educational purposes, provided the source name of the author, if the name appears in the source from which the quote is taken, is acknowledged;
- (b) it includes the making available of published articles and other short works or short extracts of works, broadcasts, sound recordings or audio-visual fixations in digital networks, provided that access to the works is only available to enrolled pupils or students and their teachers and other educators; or
- (c) the reproduction of published articles, other short works or short extracts of works is for teaching in educational institutions, and the activities do not serve direct or indirect commercial gain, to the extent justified by the purpose, and the conditions referred to in subsection (2) are fulfilled.

(2) The conditions referred to in subsection (1)(c) are fulfilled where –

- (a) the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions; and
- (b) not more than a single copy for each pupil or student and the teacher is made.

23. Libraries, archives and museums

- (1) The making of a copy of a work by a library, archive or museum whose activities do not serve direct or indirect economic or commercial advantage for the maintenance or preservation of its collection or the collection of another library, archive or museum whose activities do not serve direct or indirect economic or commercial advantage is permitted where the work was lawfully acquired by the library, archive or museum.
- (2) It is permitted under subsection (1) to make a copy of a work to preserve and, if necessary, replace a copy which has been lost, destroyed or rendered unusable provided that -
 - (a) it is not otherwise possible to obtain a copy of the work under reasonable conditions; and
 - (b) the reproduction of any particular work is an isolated act occurring, if repeated, on separate and unrelated occasions.
- (3) A library, an archive or a museum whose activities do not serve direct or indirect economic or commercial advantage is permitted to make a copy of a work that was lawfully acquired by the library, archive or museum and provide it to any person requesting to use the copy for research, private study, or educational purposes if -
 - (a) the work is or is contained in an article published in a newspaper or a scholarly, scientific or technical periodical;
 - (b) the work is or is contained in an article published in a periodical, other than a scholarly, scientific, or technical periodical, provided the periodical was published more than one year before the copy is made; or

- (c) the work is a short work or a short extract of a work, broadcast, sound recording or audio-visual fixation.
- (4) A library, an archive or a museum whose activities do not serve direct or indirect economic or commercial advantage is permitted to make a copy of an article contained in a newspaper or a scholarly, scientific or technical periodical and provide it to any person requesting to use the copy for purposes of text and data mining.
- (5) It is permitted for a library, an archive or a museum whose activities do not serve direct or indirect economic or commercial advantage to do anything on behalf of a person that the person may do personally under sections 20 or 22.
- (6) The exceptions provided by this section apply in full to libraries, archives and museums that form part of an educational or academic institution, provided their activities do not serve direct or indirect economic or commercial advantage.

24. Broadcasting and other communication to the public

- (1) The following acts are permitted in respect of a work, subject to the obligation to acknowledge the source and the name of the author -
 - (a) the reproduction in a newspaper or periodical or 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;
 - (b) the reproduction and the broadcasting or other communication to the public, for the purpose of reporting current events, of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose; and
 - (c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a lecture, address or other work of a similar nature

delivered in public, to the extent justified by the purpose of providing current information.

- (2) Subsection (1) does not apply where the right to authorise 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.

25. Computer programmes

- (1) The reproduction of a copy or an adaption of a computer programme by the lawful owner or person in lawful possession of a computer programme is permitted if the reproduction or adaption is necessary -
- (a) to make copies of the programme to the extent necessary to correct errors;
 - (b) to make a back-up copy;
 - (c) for the purpose of testing a programme to determine its suitability for that person's use; and
 - (d) for any purpose that is not prohibited under any licence or agreement whereby the person is permitted to use the programme.
- (2) The consent or authorisation of the right holder of a computer programme is not required to decompile the programme, convert the programme into a version expressed in different programming language, code or notation for the purpose of obtaining information needed to enable the programme to operate with other programmes.
- (3) Any copy made pursuant to this section must be used only for the purpose for which it was made and be destroyed when the person's possession of the computer programme ceases to be lawful.

26. Data processing

- (1) The use of a work, including the reproduction of the work, for text and data mining or other computational data processing is permitted, provided the work was lawfully acquired by the person or entity engaging in the activity.
- (2) The sharing of works reproduced for the purpose of an activity referred to in (1) is permitted if the sharing is -
 - (a) for the purpose of verifying the results of the text and data mining or other computational data processing activity; or
 - (b) to facilitate collaborative research or study relating to the text and data mining or other computational data processing activity,

provided that efforts are made to ensure that the sharing occurs in a closed or controlled group and a copy of the work is not made publicly available.

27. Ephemeral recordings

- (1) The making, by a broadcasting organisation, of an ephemeral recording of any work which it is authorised to broadcast, for the purpose of its own broadcasts and by means of its own facilities is permitted if the reproduction is intended exclusively for lawful broadcasts of such broadcasting organisation.
- (2) A copy made pursuant to subsection (1) must not be -
 - (a) kept for longer than 30 days; and
 - (b) used more than three times for transmission.

28. Importation for personal use

The importation of a lawfully acquired copy of a work by any person for his or her own personal use is permitted.

29. Display of works

The public display of originals or copies of works is permitted, provided that -

- (a) the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process; and
- (b) the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his or her successor in title.

30. Caricature, parody and pastiche

The use of a work for parody, caricature or pastiche is permitted.

31. Reporting on judicial and administrative proceedings

The use of a work for the purpose of reporting of administrative, parliamentary or judicial proceedings is permitted.

32. Reproduction for beneficiary persons

- (1) It is not an infringement of copyright for a beneficiary person, for a person acting at the request of a beneficiary person or for a non-profit organisation acting for the benefit of a beneficiary person to -
 - (a) reproduce a literary, musical, artistic or dramatic work in a format specially designed for beneficiary persons;
 - (b) fix a performer's performance of a literary, musical, artistic or dramatic work in a format specially designed for beneficiary persons;

- (c) translate, adapt or reproduce in sign language a literary or dramatic work in a format specially designed for persons with a perceptual disability;
 - (d) provide a beneficiary person with access to a work or other subject matter to which subsection (a) or (b) applies, in a format specially designed for beneficiary persons, and do any other act that is necessary for that purpose; or
 - (e) perform in public a literary or dramatic work in sign language, either live or in a format specially designed for beneficiary persons.
- (2) Subsection (1) does not apply if the work or other subject matter is commercially available, in a format specially designed to meet the needs of the beneficiary person referred to in that subsection.
 - (3) The provisions of subsection (1) are subject to the obligation to acknowledge the source and the name of the author.

33. Authorised entities

- (1) An “authorised entity” is an entity whose main objectives are to provide education, institutional training, adaptive reading or information access needs to beneficiary persons on a non-profit basis, including a non-profit organisation or governmental agency that provides those services to beneficiary persons as one of its primary objectives or functions.
- (2) In relation only to works or subject matter protected under this Act that are in the form of text, notation or related illustrations, whether published or otherwise made publicly available in any media, and subject to the conditions in subsection (3) -
 - (a) an authorised entity is permitted, to make an accessible format copy of a work or subject matter, obtain from another authorised entity an accessible format copy, and supply that copy to a beneficiary person by any means, undertaking any intermediate steps to achieve those objectives, subject to the following conditions -

- (i) the authorised entity has lawful access to a copy of the work or subject matter;
 - (ii) the work or subject matter is converted to an accessible format copy;
 - (iii) such accessible format copy is supplied exclusively to be used by a beneficiary person; and
 - (iv) the activity is undertaken on a non-profit basis;
- (b) a beneficiary person, or a person acting on behalf of a beneficiary person, is permitted to make and use an accessible format copy of a work or subject matter for personal use of the beneficiary person, provided the beneficiary person or the person acting on his or her behalf has lawful access to a copy of the work or subject matter;
- (c) an authorised entity is permitted to export by any means accessible format copies to another authorised entity and directly to a beneficiary person or to someone acting on behalf of the beneficiary person, subject to the following conditions:
- (i) the authorised entity or beneficiary person is located in a country party to -
 - (aa) the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled of 27 June 2013; or
 - (bb) an international convention or agreement that regulates the right of access by blind or visually impaired persons to works or subject matter protected by this Act;
 - (ii) prior to exporting the accessible format copy the authorised entity did not know or have reasonable grounds to know that the accessible format copy would be used for anyone other than a beneficiary person; and

- (d) a beneficiary person, or someone acting on his or her behalf, or an authorised entity, is permitted to import an accessible format copy for the benefit of the beneficiary person.
- (3) Acts pursuant to subsection (2) are subject to the following conditions -
- (a) an accessible format copy must be used exclusively by beneficiary persons; and
 - (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 beneficiary persons.

34. Special exception in respect of musical works

- (1) The copyright in a musical work is not infringed by a person (in this section referred to as the “manufacturer”) who makes a record of a work or of an adaptation thereof in Namibia, if -
- (a) records embodying the work or a similar adaptation of the work were previously made in or imported into Namibia for the purposes of retail sale and were so made or imported by, or with the consent or authorisation of, the owner of the copyright in the work;
 - (b) before making the record, the manufacturer gave the prescribed notice to the owner of the copyright of his, her or its intention to make it and a license has been issued to the applicant after an agreement was entered into;
 - (c) the manufacturer intends to sell the record by retail or to supply it for the purpose of resale by retail by another person or to use it for making other records to be so sold or so supplied; and
 - (d) in the case of a record which is sold by retail or supplied for the purpose of resale by retail, the manufacturer pays to the owner of the copyright the prescribed royalties in the prescribed manner and at the prescribed time.

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

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

the making of the record does not constitute an infringement of the copyright in the literary work.

- (3) For the purposes of this section, an adaptation of a work is deemed to be similar to an adaptation thereof embodied in a previous record if the two adaptations do not differ substantially in their treatment of the work, either in respect of style or, apart from a difference in number, in respect of the performers required to perform them.
- (4) A manufacturer may for the purposes of subsection (1)(a) make the prescribed enquiries in order to ascertain whether the previous records referred to in that paragraph were previously made or imported into Namibia, and if the owner of the copyright fails to reply to any such enquiry within the prescribed period, the previous records must be taken to have been made or imported with the consent or authorisation of the owner of the copyright.
- (5) Subsections (1)-(4) apply also with reference to records of a part of a work or an adaptation thereof, but subsection (1) does not apply with reference to -

- (a) a record of the whole of a work or an adaptation thereof unless the previous records contemplated in paragraph (a) of subsection (1) were records of the whole of the work or of a similar adaptation; or
 - (b) a record of a part of a work or an adaptation thereof unless the records previously made in or imported into Namibia as contemplated in paragraph (a) of subsection (1) were records of, or which included, that part of the work or records of a similar adaptation.
- (6) A manufacturer may, subject to the permission of a copyright holder and obtaining a licence, reproduce the work in any material form, including the storing of it in any medium by electronic means.

35. Exceptions relating to artistic works

- (1) The copyright in an artistic work is not infringed by its inclusion in an audio-visual work or television broadcast or its transmission in a diffusion service, if -
 - (a) such inclusion is merely by way of background to the principal matters represented in the work, broadcast or transmission or incidental thereto; and
 - (b) such work is permanently situated in a street, square or a similar public place.
- (2) The copyright in a work of architecture or in the relevant drawings of such work is not infringed by the reconstruction of such work on the same site in the same style as the original.
- (3) The copyright in an artistic work of which multi-dimensional reproductions were made available, whether inside or outside Namibia, to the public by or with the consent or authorisation of the owner of the copyright (in this subsection referred to as “authorised reproductions”), is not infringed if a person without the consent or authorisation of the owner makes or makes available to the public -
 - (a) multi-dimensional reproductions; or

- (b) adaptations of the authorised reproductions,

provided the authorised reproductions primarily have a utilitarian purpose and are made by an industrial process.

36. Exceptions relating to programme-carrying signals

- (1) Subject to subsection (2), the copyright in a programme-carrying signal is not infringed by the distribution of short excerpts of the programme so carried -

- (a) that consist of a report of a current event; or

- (b) as are compatible with fair use,

and to the extent justified by the informative purpose of such excerpt.

- (2) Subsection (1) does not apply with reference to a programme carried by programme-carrying signals representing a sporting event.

37. Contractual provisions contravening Act unenforceable

To the extent that a term of a contract purports to prevent or restrict the making of a copy or the doing of any other act which, by virtue of this Act, would not infringe copyright or related rights, that term is unenforceable.

PART 5

RIGHTS OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND AUDIO-VISUAL FIXATIONS, AND BROADCASTING ORGANISATIONS

38. Scope of application

- (1) The provisions of this Act on the protection of performers apply to -

- (a) performers who are citizens or permanent residents of, or are habitually resident in, Namibia; and
 - (b) performers who are not citizens or permanent residents of, or habitually resident in, Namibia but whose performances -
 - (i) take place in the territory of Namibia;
 - (ii) are incorporated in sound recordings or audio-visual works that are protected under this Act; or
 - (iii) are included in a broadcast qualifying for protection under this Act.
- (2) The provisions of this Act on the protection of sound recordings and audio-visual fixations apply to -
- (a) sound recordings and audio-visual fixations whose producers are citizens or permanent residents of, or are habitually resident in, Namibia or have an establishment in Namibia in accordance with the laws of Namibia;
 - (b) sound recordings and audio-visual fixations first fixed in Namibia; and
 - (c) sound recordings and audio-visual fixations first published in Namibia.
- (3) The provisions of this Act on the protection of broadcasts apply to -
- (a) broadcasts by broadcasting organisations whose headquarters are situated in Namibia;
 - (b) broadcasts transmitted from transmitters situated in Namibia; and
 - (c) programme-carrying signals transmitted by originating broadcasting organizations whose headquarters are situated in Namibia.

(4) The provisions of this Act also apply to -

- (a) performers that are nationals of, or habitually resident in, a country that is a party to any international convention or other agreement protecting the rights of performers;
- (b) producers of sound recordings or audio-visual fixations and broadcasting organisations whose headquarters are situated in a country that is a party to any international convention or other agreement protecting the rights of producers of sound recordings or audio-visual fixations and broadcasting organisations; and
- (c) performances, sound recordings, audio-visual fixations and broadcasts that are eligible for protection by virtue of, and in accordance with, any international convention or other international agreement,

to which Namibia is also party.

39. Rights of performers, producers and publishers not to affect copyright

The protection granted under this Part relating to -

- (a) rights of performers, producers of sound recordings or audio-visual fixations, and broadcasting organisations and publishers does not in any way affect copyright in a work under this Act, and no provision in this Part may be construed so as to affect copyright in any such work; and
- (b) rights of one category of owners of rights does not affect the rights of another category.

40. Exclusive rights of performers

- (1) A performer has the exclusive right to do or to authorise another person to do any of the following acts as regards his or her performance, including an audio-visual performance

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- (a) the broadcasting or other communication to the public of the performance, except where the broadcasting or other communication is -
 - (i) made from a fixation of the performance which the performer has authorised to be made; or
 - (ii) a rebroadcasting made or authorised by the organisation initially broadcasting the performance;
- (b) the fixation in any manner or form 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, but any other person would infringe this right if that person makes a fixation of a performance of such performer -
 - (i) where the original fixation was itself made without the consent or authorisation of the performer;
 - (ii) where the reproduction is made for purposes other than those in respect of which such performer gave his or her consent or authorisation to the making of the original fixation or of a reproduction thereof; or
 - (iii) where the original fixation was permitted under section 47, and the reproduction is made for purposes not covered by that section;
- (d) the distribution of a fixation of his or her performance, or of copies thereof, to the public;
- (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;

- (g) public performance of a fixed form of the performance; and
 - (h) the reproduction of the work in any material form, including the storing of it in any medium by electronic means.
- (2) In the absence of an agreement to the contrary, a performer's consent or authorisation to the broadcasting of his or her performance is deemed to include his or her consent or authorisation to -
- (a) the rebroadcasting of such performance;
 - (b) the fixation of such performance for broadcasting purposes; and
 - (c) the reproduction for broadcasting purposes of such fixation.
- (3) Once a performer has authorised the incorporation of his or her performance in a sound recording or an audio-visual fixation, the performer is, in the absence of contractual provisions to the contrary, deemed to have assigned the exclusive economic rights with respect to that fixation to its producer.
- (4) The right of distribution provided in subsection (1)(d) 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, authorised by the performer, in Namibia or in any country that is party to an international convention or agreement that protects performers' rights and which is binding on Namibia.
- (5) Nothing in this section may be construed as depriving a performer of the right to agree by contract to terms and conditions that are more favourable to him or her in respect of his or her performance.
- (6) The rights under this section are protected until the end of 50 years from the end of the calendar year in which the performance was fixed or -

- (a) if during that period the recording or audio-visual fixation is published, 50 years from the end of the calendar year in which it is first published; or
- (b) if during that period the recording or audio-visual fixation is not published but is made available to the public by being played in public or communicated to the public, 50 years from the end of the calendar year in which it is first so made available,

but in determining whether a sound recording or an audio-visual fixation has been published or made available to the public, account may not be taken of any unauthorised act.

41. Moral rights of performers and directors

- (1) Independently of a performer's economic rights, and even after the transfer of those rights, a performer has, as regards his or her live performance or a performance fixed in a sound recording or audio-visual fixation, the right to -
 - (a) claim to be identified as the performer of the performance, except where an omission is dictated by the manner of the use of the performance;
 - (b) to reproduce the work in any material form, including the storing of it in any medium by electronic means; and
 - (c) object to any distortion, mutilation or other modification of his or her performance that would be prejudicial to his or her reputation.
- (2) Independently of a director of an audio-visual fixation's economic rights, and even after the transfer of those rights, the director has, with regards to the audio-visual fixation, the right to -
 - (a) claim to be identified as the director of the audio-visual fixation, except where an omission is dictated by the manner of the use of the fixation; and

- (b) object to any distortion, mutilation or other modification of his or her work that would be prejudicial to his or her reputation.
- (3) The rights granted to a performer in accordance with subsection (1) or a director in accordance with subsection (2) must, after the performer's or director's death, be maintained at least until the expiry of the economic rights.
- (4) The provisions of section 13(2)-(4) apply with necessary changes to the rights granted under subsections (1)-(2).

42. Collective performances

- (1) Where several performers take part as a group in the same performance, it suffices, for the purposes of section 39, if consent or authorisation is given by the manager or other authority in charge of the group or, in the absence of such a manager or authority, by the leader of the group.
- (2) In a case contemplated in subsection (1), and unless otherwise stipulated, payment for the use of the performance shall be made by way of a single payment to the manager or other authority in charge of the group or, in the absence of such a manager or an authority, to the leader of the group.
- (3) Any payment made in accordance with subsection (2) to a manager, an authority or leader referred to in that subsection shall be distributed by him or her as agreed by the performers, or failing such an agreement the right to remuneration of the respective performers shall be determined -
 - (a) in accordance with the Arbitration Act, 1965 (Act 42 of 1965); or
 - (b) by the Tribunal, if the majority of the performers so elect.

(4) If the performers are unable to reach an agreement or there is no consensus regarding the quantum, the right to remuneration of the respective performers shall be determined –

(a) by an Arbitration Tribunal established under and in accordance with the provisions of the Arbitration Act, 1965 (Act 42 of 1965); or

(b) by the Tribunal as agreed to in writing by the majority of the performers.

43. Exclusive rights of producers of sound recordings and audio-visual fixations

(1) Subject to the provisions of this Act, a producer of a sound recording or an audio-visual fixation has the exclusive right to do, or to authorise another person to do, the following acts -

- (a) direct or indirect reproduction of the sound recording or audio-visual fixation in whole or in part and in any manner or form;
- (b) distribution of the original or copies of the sound recording or audio-visual fixation to the public;
- (c) rental of a copy of the sound recording or audio-visual fixation to the public;
- (d) broadcasting of the sound recording or audio-visual fixation;
- (e) communication to the public of the sound recording or audio-visual fixation;
- (f) public performance of the sound recording or audio-visual fixation;
- (g) 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;
- (h) importation of copies of the sound recording or audio-visual fixation, even where the imported copies were made with the consent or authorisation of the producer;

- (i) adaptation or other transformation of the sound recording or audio-visual fixation; and
 - (j) to make any other sound recording embodying it, including storing it in any medium by electronic or other means.
- (2) The right of distribution under subsection (1)(b) does not apply to the original or the tangible copies of the sound recording or audio-visual fixation that have already been subject to a sale or other transfer of ownership, authorised by the producer, in Namibia or in any country that is party to an international convention or agreement that protects performers' rights and to which Namibia is also party.
- (3) The rights under subsection (1) are protected -
- (a) from publication of the sound recording or audio-visual fixation until the end of 50 years following the year of publication; or
 - (b) if the sound recording or audio-visual fixation has not been published, from the fixation of the sound recording or audio-visual fixation until the end of 50 years, following the year of fixation.

44. Remuneration for performers and producers of sound recordings and audio-visual fixations

- (1) If a sound recording is published for commercial purposes, or a reproduction of such sound recording -
- (a) is used directly for broadcasting or other communication to the public; or
 - (b) is publicly performed,

the user of the sound recording must pay a single equitable remuneration for the performer or performers and the producer of the sound recording to the producer.

- (2) Unless otherwise agreed between the performers and the producer, the producer must pay half of the amount received by the producer under subsection (1) to the performer or performers. This right is unwaivable and non-transferable, except to a collective management organisation for its enforcement or testamentary disposition.
- (3) The provisions of section 41(3) apply with necessary changes to a disagreement between a performer and a producer arising from the application of subsection (2).
- (4) The right to an equitable remuneration under this section subsists from the date of publication of the sound recording until the end of 50 years following the year of publication, provided that the sound recording is still protected under this Act.
- (5) For the purposes of this section, sound recordings 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 must be considered as if they have been published for commercial purposes.

45. Remuneration for producers of audio-visual fixations

- (1) If an audio-visual fixation is published for commercial purposes, or a reproduction of an audio-visual fixation -
 - (a) is used directly for broadcasting or other communication to the public; or
 - (b) is publicly performed,

the user of the audio-visual fixation must pay a single equitable remuneration for the performer or performers and the producer of the audio-visual fixation to the producer.

- (2) Unless otherwise agreed between the performers and the producer, the producer must pay half of the amount received by the producer under subsection (1) to the performer or performers. This right is unwaivable and non-transferable, except to a collective management organisation for its enforcement or testamentary disposition.

- (3) The provisions of section 41(3) apply with necessary changes to a disagreement between a performer and a producer arising from the application of subsection (2).
- (4) The right to an equitable remuneration under this section subsists from the date of publication of the audio-visual fixation until the end of 50 years following the year of publication, provided that the audio-visual fixation is still protected under this Act.
- (5) For the purposes of this section, audio-visual fixations 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 must be considered as if they have been published for commercial purposes.

46. Remuneration for performers of audio-visual fixations

- (1) Independently of the transfer of rights described in section 39, a performer has the unwaivable and non-transferable right to receive equitable remuneration and royalties in respect of any broadcast, communication to the public, rental or making available to the public of his or her performance fixed in an audio-visual fixation.
- (2) The right to equitable remuneration is affected by the appropriate collective management organisation that, under this Act, must collect the remuneration from the persons carrying out any of such uses as regards performances fixed in audio-visual fixation, and distribute it accordingly to the concerned performers.
- (3) The right to equitable remuneration under this section subsists from the date of publication of the performance until the end of 50 years following the year of publication, provided that the audio-visual work is still protected under this Act.

47. Exclusive rights of broadcasting organisations

- (1) Subject to the provisions of this Act, a broadcasting organisation has the exclusive right to do, and to authorise another person to do, 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; and
 - (d) the reproduction of a fixation of its broadcast.
- (2) A person may not broadcast or communicate to the public any programme-carrying signal transmitted by satellite which is not intended for direct reception by the public, but for simultaneous or subsequent broadcasting or cable transmission by an authorised receiving organization, unless that person has been authorised to do so by the person or legal entity that decided what programme the emitted signal must carry.
- (3) The rights under this section are protected from the moment when the broadcasting takes place until the end of 50 years following the year in which the broadcast takes place.
- (4) Nothing in this section confers a broadcasting organisation rights over, or otherwise affects the rights in, any work or subject matter protected by copyright or related rights that forms part of a broadcast.

48. Exceptions and limitations

- (1) Sections 39, 42 and 46 do not apply where the acts referred to in those sections are related to -
- (a) the use by a person exclusively for his or her own private study or personal purposes;
 - (b) using short excerpts for reporting current events to the extent justified for the purpose of providing current information;
 - (c) use solely for the purpose of teaching or research;
 - (d) criticism, review of a performance or reporting on a current event, provided that only short excerpts from a performance, to the extent justified by the purpose, are used

and, where available, the performer's or producer's name or the names of the leading performers are acknowledged; or

- (e) in cases contemplated under Part 4, a work can be used without the consent or authorisation of the author or other owner of copyright.
- (2) Irrespective of section 39, a broadcasting organisation may by means of its own facilities make a fixation of a performance and reproductions of such a fixation without the consent or authorisation of the performer, provided that, unless otherwise agreed -
- (a) such fixation or reproduction is used solely in broadcasts made by the broadcasting organisation;
 - (b) such fixation or reproduction is, subject to subsection (3), destroyed before the expiration of a period of six months immediately following the making of the fixation or reproduction; and
 - (c) the broadcasting organisation pays to the performer in question, in respect of each occasion the fixation or reproduction is used, equitable remuneration, which, in the absence of agreement, must be determined in accordance with the provisions of the Arbitration Act, 1965 (Act No. 42 of 1965) or, where the performer so elects, by the Tribunal.
- (3) A fixation of a performance or a reproduction of such a fixation made in accordance with subsection (2) may, if it is of exceptional documentary character, be preserved in the archive of the broadcasting organisation but must, subject to the provisions of this Part, not be further used without the consent or authorisation of the performer or their representative.

PART 6

EXPRESSIONS OF FOLKLORE

49. Expressions of folklore

- (1) Copyright in expressions of folklore vests in the Traditional Authorities recognised in terms of the Traditional Authorities Act, on behalf of, and for the benefit of the traditional community within its jurisdiction.
- (2) The provisions of this Part apply whether or not the expressions of folklore are fixed in material or tangible form.
- (3) Expressions of folklore are protected in perpetuity.
- (4) Expressions of folklore shall be protected against all acts of misappropriation, misuse and unlawful exploitation.
- (5) In respect of expressions of folklore of particular cultural or spiritual value or significance to a community, BIPA shall provide adequate and effective legal and practical measures to ensure that the relevant community can prevent the following acts from taking place without its free and prior informed consent expressed in signed writing -
 - (a) in respect of such expressions of folklore other than words, signs, names and symbols -
 - (i) the reproduction, publication, adaptation, broadcasting, public performance, communication to the public, distribution, rental, making available to the public and fixation (including by still photography) of the expressions of folklore or derivatives thereof;
 - (ii) any use of the expressions of folklore or adaptation thereof which does not acknowledge in an appropriate way the community as the source of the expressions of folklore;
 - (iii) any distortion, mutilation or other modification of, or other derogatory action, in relation to the expressions of folklore; and

- (iv) the acquisition or exercise of intellectual property rights over the expressions of folklore or adaptations thereof; and
 - (b) in respect of words, signs, names and symbols which are such expressions of folklore, any use of the expressions of folklore or derivatives thereof, or the acquisition or exercise of intellectual property rights over the expressions of folklore or derivatives thereof, which disparages, offends or falsely suggests a connection with the community concerned, or brings the community into contempt or disrepute.
- (6) In respect of the use and exploitation of other expressions of folklore, the State shall provide adequate and effective legal and practical measures to ensure that -
- (a) the relevant community is identified as the source of any work or other production adapted from the expressions of folklore;
 - (b) any distortion, mutilation or other modification of, or other derogatory action in relation to expressions of folklore can be prevented and/or is subject to civil or criminal sanctions;
 - (c) any false, confusing or misleading indications or allegations which, in relation to goods or services that refer to, draw upon or evoke the expressions of folklore of a community or suggest any endorsement by or linkage with that community, can be prevented and/or are subject to civil or criminal sanctions; and
 - (d) where the use or exploitation is for gainful intent, there should be equitable remuneration or benefit-sharing on terms determined by the national competent authority in consultation with the relevant community.
- (7) Measures for the protection of expressions of folklore shall -
- (a) be such as not to restrict or hinder the normal use, development, exchange, dissemination and transmission of expressions of folklore within the traditional or customary context by members of the community concerned, as determined by customary laws and practices;

- (b) extend only to uses of expressions of folklore taking place outside their traditional or customary context, whether or not for commercial gain; and
 - (c) be subject to exceptions in order to address the needs of non-commercial use, such as teaching and research, personal or private use, criticism or review, reporting of current events, use in the course of legal proceedings, the making of recordings and reproductions of expressions of folklore for inclusion in an archive or inventory exclusively for the purposes of safeguarding cultural heritage, and incidental uses, provided that in each case, such uses are compatible with fair practice, the relevant community is acknowledged as the source of the expressions of folklore where practicable, and such uses would not be offensive to the relevant community.
- (8) A user of an expression of folklore must acknowledge its source in any printed publication or communication to the public.
- (9) The protection of expressions of folklore under this Act may not in any way be construed so as to hinder the normal use, maintenance and development of expressions of folklore.
- (10) Protection of expressions of folklore conferred by this Part is additional to, and does not in any way limit or prejudice protection on such expressions conferred by any other law or international convention or agreement to which Namibia is a party.

PART 7

TRANSFER OF OWNERSHIP

50. Transfer of ownership in copyright

- (1) Economic rights in copyright or related rights may be transferred, in whole or in part, by assignment, licensing, testamentary disposition, or by operation of law.

(2) An assignment or testamentary disposition of copyright or related rights may be limited to

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- (a) only to one or more of the acts which the owner of the copyright or related rights has the exclusive right to do or authorise;
- (b) only to a part of the term of the copyright or related rights; or
- (c) to a specified country or other geographical area.

(3) Any assignment of an economic right, and any exclusive licence to do an act subject to authorisation by the author or other owner of copyright or a related right, must be in writing and signed by both the assignor and the assignee, or by the licensor and the licensee.

(4) A non-exclusive licence to do an act which is subject to copyright or related rights may be -

- (a) granted in writing;
- (b) inferred from conduct; and
- (c) revoked at any time,

but where such a licence was granted by contract it may not be revoked by the licensor or his or her successor in title, except in accordance with the provisions of such contract or by a further contract.

(5) An assignment, licence or testamentary disposition may be granted or made in respect of -

- (a) copyright in a future work;

- (b) copyright in an existing work in which, although copyright does not subsist therein, copyright will come into existence in the future;
- (c) future protection of related rights in any related subject matter,

and the future copyright or protection in any such work or related subject matter is transferable as movable property.

(6) A testamentary disposition of the original document or other material on which a work or related subject matter is first written or otherwise recorded or fixed must, in the absence of a stipulation to the contrary, be construed as including a disposition of -

- (a) the copyright in the work or a right in a related subject matter in so far as the testator was the owner of the copyright or related right immediately before his or her death;
or
- (b) if at the testator's death no copyright subsisted in the work or no right existed in a related subject matter, a disposition of any future copyright in that work or related right in the related subject matter.

(7) A licence granted in respect of any copyright or related right by the person who, in relation to the matters to which the licence relates, is the owner of the copyright or related right, is binding upon every successor in title to his or her interest in the copyright or related right except -

- (a) a purchaser in good faith and without notice, whether actual or constructive, of the licence; or
- (b) a person deriving title from a purchaser referred to in paragraph (b),

and any reference in this Act to the doing in relation to copyright or a related right of anything with or without the licence of the owner of the copyright or related right must be construed accordingly.

(8) Where, in accordance with the terms of a licence, the doing of anything is authorised by the grantee of such licence or a person deriving title from the grantee, anything which is done under such consent or authorisation is for the purpose of this Act deemed to have been done with the licence of the grantor and of every person, if any, upon whom the licence is binding.

Mechanical License for cover versions

51. (1) Any person making a cover version, being a sound recording in respect of any literary, dramatic or musical work, where sound recordings of that work have been made by or with the licence or consent of the owner of the right in the work, may do so subject to the provisions of this section-

provided that such sound recordings shall be in the same medium as the last recording, unless the medium of the last recording is no longer in current commercial use.

(2) The person making the sound recordings shall give prior notice of his intention to make the sound recordings in the manner as may be prescribed, and provide in advance copies of all covers or labels with which the sound recordings are to be sold, and pay in advance, to the owner of rights in each work royalties in respect of all copies to be made by him, at the rate fixed by the respective collective management organisations-

provided that such sound recordings shall not be sold or issued in any form of packaging or with any cover or label which is likely to mislead or confuse the public as to their identity, and in particular shall not contain the name or depict in any way any performer of an earlier sound recording of the same work or any cinematograph film in which such sound recording was incorporated and, further, shall state on the cover that it is a cover version made under this section.

Verbose

(3) The person making such sound recordings shall not make any alteration in the literary or musical work which has not been made previously by or with the consent of the owner of rights, or which is not technically necessary for the purpose of making the sound recordings:

Provided that such sound recordings shall not be made until the expiration of five calendar years after the end of the year in which the first sound recordings of the work was made.

(4) One royalty in respect of such sound recordings shall be paid for a minimum of fifty thousand copies of each work during each calendar year in which copies of it are made.

(5) The person making such sound recordings shall maintain such registers and books of account in respect thereof, including full details of existing stock as may be prescribed and shall allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such sound recording-

provided that if on a complaint brought before the Copyright Tribunal as established by section 77 to the effect that the owner of rights has not been paid in full for any sound recordings purporting to be made in pursuance of this section, the Copyright Tribunal is, prima facie, satisfied that the complaint is genuine, it may pass an order ex parte directing the person making the sound recording to cease from making further copies and, after holding such inquiry as it considers necessary, make such further order as it may deem fit, including an order for payment of royalty.

52. Mechanical licence for broadcasting of literary and musical works and sound recording

(1) Any broadcasting organisation desirous of communicating to the public by way of a broadcast or by way of performance of a literary or musical work and sound recording which has already been published may do so subject to the provisions of this section.

(2) The broadcasting organisation shall give prior notice, in such manner shall be prescribed, of its intention to broadcast the work stating the duration and territorial coverage of the broadcast, and shall pay to the owner of rights in each work royalties in the manner and at the rate fixed by the respective collective management organisations.

(3) The names of the authors and the principal performers of the work shall, except in case of the broadcasting organisation communicating such work by way of performance, be announced with the broadcast.

- (4) No fresh alteration to any literary or musical work, which is not technically necessary for the purpose of broadcasting, other than shortening the work for convenience of broadcast, shall be made without the consent of the owners of rights.
- (5) The broadcasting organisation shall—
 - (a) maintain such records and books of account, and render to the owners of rights such reports and accounts; and
 - (b) allow the owner of rights or his duly authorised agent or representative to inspect all records and books of account relating to such broadcast, in such manner as may be prescribed.
- (6) Nothing in this section shall affect the operation of any licence issued or any agreement entered into before the commencement of this Act or any other Namibian law.

PART 8

INFRINGEMENT AND REMEDIES

53. Infringement of Copyright and Related Rights

- (1) A person infringes:-
 - (a) copyright in a work if he or she does, permits or causes to be done, any of the acts specified in section 12;
 - (b) a performer's rights if he or she does, permits or causes to be done, any of the acts specified in section 39;
 - (c) a producer's rights if he or she does, permits or causes to be done, any of the acts specified in section 43;
 - (d) a broadcasting organisation's rights if he or she does, permits or causes to be done, any of the acts specified in section 47;

- (e) copyright in expressions of folklore if he or she does, permits or causes to be done, any of the acts specified in section 49 (4),

without the consent of, or an authorisation required by the right holder the under this Act.

(2) For the purposes of this section, the following acts in relation to any of the rights protected by sections 13 and 40 are deemed to be an infringement of the rights granted to the authors of the work or performers or directors of the related subject matter -

- (a) to make the work available to the public without mention of the name or the pseudonym of the author, performer or director in the manner required by proper usage;
- (b) to use the work in a manner prejudicial to the honour or reputation of the author, performer or director; or
- (c) when making the work or subject matter available to the public, to mention the name of the author, performer or director when the author, performer or director has requested that he or she does not want to be mentioned.

(3) Subject to subsection (4), the copyright in a work or a right in a related subject matter is infringed by a person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work.

(4) Subsection (3) does not apply in a case where the person permitting the place of public entertainment to be so used was not aware and or had no reasonable grounds for suspecting that the performance would constitute an infringement of the copyright or related right.

54. Secondary infringement

(1) A person commits a secondary infringement of copyright or a related right if that person, without the consent of, or an authorisation granted by the right holder under this Act -

- (a) imports or attempts to import into Namibia an article for a purpose other than for his or her private and personal use;
- (b) sells, lets or by way of trade offers or exposes for sale or hire in Namibia an article or attempts to do any of these acts;
- (c) attempts to distribute or distributes in Namibia an article for the purposes of trade, or for any other purpose, to such an extent that the owner of the copyright or related right in question is prejudicially affected; or
- (d) acquires or attempts to acquire in Namibia an article relating to a computer programme,

if to such person's knowledge the making of that article constituted an infringement of that copyright or related right, or would have constituted such an infringement had that article been made in Namibia.

(2) A person commits a secondary infringement of copyright or a related right if such person, without the consent of or an authorisation granted by the right holder under this Act -

- (a) manufactures, imports, possesses or attempts to in the course of business, sells or lets for hire, or offers or exposes for sale or hire implements or software that are primarily designed or produced to infringe copyright or related rights; or
- (b) manufactures or distributes or attempts to manufacture or distribute implements or software which are primarily designed or produced for the purpose of circumventing technical protection measures designed to protect works protected under this Act.

55. Technological protection measures

(1) It is unlawful and an infringement of the rights to attempt or put in place effective technological protection measures to protect their work eligible for protection under this Act , without the consent or authorisation of the person whose rights are affected, to -

- (a) circumvent the technological protection measures; or
 - (b) manufacture, import, distribute, sell, rent, advertise for sale or rental, or possess for commercial purposes a device, product or component or the provision of service which -
 - (i) is promoted, advertised or marketed for the purpose of circumvention of;
 - (ii) has only a limited commercially significant purpose or use other than to circumvent; or
 - (iii) is primarily designed, produced, adapted or performed for the purpose of enabling or facilitating the circumvention of,
- the effective technological protection measures.

(2) For purposes of subsection (1) 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 -

- (a) an access control or protection process, such as encryption, scrambling or other transformation of the work or other subject-matter; or
- (b) a copy control mechanism which, in the normal course of its operation, if not circumvented, achieves the protection objective.

(3) It is not an infringement under this section for any person to circumvent or assist another person to circumvent a technological protection measure for the purpose of doing an act that such person is permitted to do under this Act.

(4) The Minister may prescribe other exceptions to subsection (1) (a) as long as the exceptions do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of technological protection measures.

(5) A person having a claim for infringement under this Part shall be entitled to the same remedies as are available in respect of an infringement of copyright.

56. Rights management information

(1) It is unlawful and an infringement of the rights of the owner of copyright in a work or related rights in a related subject matter for another person to attempt to or do any of the following acts in relation to the work or related subject matter:

- (a) remove, modify or alter any electronic rights management information; or
- (b) in the course of business make, distribute, import, sell, let for hire, offer or expose for sale, advertise for sale or hire, broadcast, communicate or make available to the public, works or related subject matter from which electronic rights management information has been removed, modified or has been altered.

(2) A person does not commit an infringement under subsection (1) if that person -

- (a) is authorised by the owner of the copyright or related right to remove or modify the rights management information;
- (b) does not know and has no reason to believe that the removal, modification or alteration of the rights management information will induce, enable, facilitate or conceal an infringement of the copyright in the work or related right in the subject matter; or
- (c) is unaware or has no reason to believe that the rights management information has been removed or modified without the authority of the owner of the copyright or related right.

(3) A person having a claim for infringement under this Part shall be entitled to the same remedies as are available in respect of an infringement of copyright.

57. Liability of internet service providers

(1) A service provider shall not be liable for infringement under this Act for providing access to or transmitting content, or for routing or storage of content in the ordinary course of business, as long as it –

- (a) does not initiate transmission;
- (b) does not select the addressee;
- (c) performs the functions in an automatic, technical manner without selection of the material;
- (d) does not modify the material contained in the transmission;
- (e) does not in any way promote the content or material being transmitted:

Provided that the acts of transmission, routing, and of the provision of access referred to in subsection (1) shall include automatic, intermediate and transient storage of the content.

(2) A service provider shall not be liable for infringement under this Act for the automatic, intermediate and temporary storage of that content, where the purpose of storing such content 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 content;
- (b) complies with conditions on access to the content;

(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 to obtain information on the use of the content; and

(e) removes or disables access once it receives a takedown notice or where the original content has been deleted as ordered by a competent court of law or otherwise on obtaining knowledge of unlawful nature of the cached content.

(3) A service provider shall not be liable for damages arising from content stored 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) is not aware of the facts or circumstances of the allegedly infringing activity unless the infringing nature of the material is apparent; and

(c) upon the receipt of a takedown notice engages all reasonable endeavours to remove or to disable access to the allegedly infringing content within 48 hours,

provided that the exemption shall not apply if the recipient of the service is acting under the authority or control of the service provider.

(4) A failure by a service provider – An Internet Service Provider shall not be liable for infringement for damages incurred by a person if the Service Provider refers or links users to a webpage containing infringing material or facilitates infringing activity, by using information location tools including a directory, index, reference, pointer or hyperlink where the Internet Service Provider –

(a) does not have actual knowledge that the material is infringing the rights of that person;

(b) is not aware of the facts or circumstances from which the allegedly infringing nature of the material is not apparent;

(c) removes or disables access to the reference or link to the content or the infringing activity after being informed that the content or the activity infringes rights of a person.

(5) A failure by the service provider to comply with the procedures set out in this section invalidates the service provider's immunity and renders the provider liable for any expenses incurred and any loss or damages sustained by, the person who made the demand.

58. Take down notice

(1) A notification of unlawful activity must be in writing, must be addressed by the complainant to the service provider or its designated agent and must include -

(a) the full names and address of the complainant;

(b) the signature of the complainant;

(c) identification of the right that has allegedly been infringed;

(d) identification of the material or activity that is claimed to be the subject of unlawful activity;

(e) the remedial action required to be taken by the service provider in respect of the complaint;

(f) telephonic and electronic contact details, if any, of the complainant;

(g) a statement that the complainant is acting in good faith; and

(h) a statement by the complainant that the information in the take down notice is to his or her knowledge true and correct.

(2) A service provider is not liable for wrongful take down in a bona fide response to a notification of unlawful activity if the notice complies with subsection (1).

(3) If a service provider removes material in compliance with a take down notice, the service provider must notify the person by whom the information has been made available within three days from such take down.

(4) A person who has been notified of such take down may object to such take down by giving notice of such objection and the reason for such objection to the service provider concerned.

(5) If an objection has been received by the service provider, it must be forwarded to the person who requested the take down of the information.

(6) The person who requested the take down may provide further information to the service provider within three days from the receipt of the objection.

(7) After the receipt of the information referred to in subsection (6) or if the period for providing that information has passed, the service provider must restore the information if he or she has a bona fide belief that the information may reasonably be lawful.

(8) Any person who makes a false or misleading statement in -

(a) a request for a take down notice;

(b) a notice referred to in subsection (4); or

(c) further information provided in terms of subsection (6),

commits an offence and is on conviction liable to a fine not exceeding N\$10,000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(9) When providing the services contemplated in this Section there is no general obligation on a Service Provider to -

- (a) monitor the data which it transmits or stores; and
- (b) actively seek facts or circumstances indicating an unlawful activity.

59. Duties of Internet Service Providers

A service provider will be required to -

- (a) subject to due process provide information to law enforcement agencies regarding the identity of the subscribers of their services suspected to be engaging in infringement of content on orders of a court upon application by the copyright owner whose rights have been subject of a take down notice; and
- (b) to designate an agent or electronic or other address for receiving such notices under its terms and conditions of service section.

60. Application for Interdict

(1) A person may apply to the Tribunal or a competent court of law for interim relief, if they have reasonable grounds to believe that his or her copyright is being or may be infringed upon.

(2) The Tribunal or a competent court of law may, upon application under subsection (1) grant an order requiring –

- (a) a person enabling or facilitating the infringement of copyright, or whose service is used by another person to infringe copyright, to cease such enabling or facilitating activity or disable that person's access to its service for the infringement;
- (b) a person hosting or making available an online location, service or facility situated in or outside Namibia which is used to infringe copyright or which enables or facilitates the

infringement of copyright, to disable access to such online location, service or facility as replaced, amended or moved from time to time; or

(c) a service provider to prevent or impede the use of its service to access an online location, service or facility situated in or outside Namibia that is used to infringe copyright as replaced, amended or moved from time to time.

61. Civil remedies

(1) The Copyright and Related Rights Tribunal or a court with competent jurisdiction may in a matter brought before it inter alia -

- (a) order payment of any damages suffered proportionate to the consequence of an infringement of a protected right, that are attributable to the infringement; or
- (b) award punitive damages where it finds that the infringement is prejudicial to the honour or reputation of the person whose rights were infringed,

provided that in place of an award of compensatory damages, the right holder may elect to recover the profits earned by the infringing party by reason of the infringement

- (c) in lieu of an award for damages, the right holder may elect to recover the profits earned by the infringing party by reason of the infringement.

(2) Damages contemplated in subsection (1) may, be calculated on the basis of the amount of a reasonable royalty which would have been payable under the circumstances by a licensee or sub-licensee in respect of the right concerned.

(3) In assessing the amount of damages that are payable under this section, the Copyright and Related Rights Tribunal or court must have regard to any of the following factors:

- (a) the importance of the material and moral prejudice suffered by the right holder;

- (b) the extent and nature of the infringement of the protected right;
- (c) the amount which could be payable to the right holder in respect of the exercise of the protected right by some other person; and
- (d) any benefit accruing to the infringer by reason of the infringement.

(4) Where in an action for infringement of a protected right, such infringement is proved or admitted, and the court having regard, in addition to all other material considerations, to -

- (a) the flagrancy of the infringement; and
- (b) any benefit shown to have accrued to the infringer by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the right holder, the court may, in assessing damages for the infringement, award such additional damages as the court thinks fit in particular circumstances.

(5) Where it is established that the infringer did not know, or had no reasonable reason to know that he or she was engaged in infringing activity, the court may, instead of making an order under subsection (1), order that the infringer pay over any profit derived from the infringement to the right holder.

(6) In addition to any civil remedies that may be ordered by the court against any person who has infringed any protected right, the court may order the destruction or other reasonable disposition of -

- (a) infringing copies, where they exist; and

- (b) their packaging outside the channels of commerce in such a manner as to avoid harm to the right holder,

unless the right holder requests otherwise, but copies and their packaging which were acquired by a third party in good faith may not be so destroyed.

(7) The court shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimise the risks of further infringements.

(8) A person who in contravention of subsection (8) or (9) fails to carry out the order of the court for the destruction or other reasonable disposition of the infringing copies or implements, commits an offence and is liable to a fine not exceeding N\$10 000 or to imprisonment for a term not exceeding two years, or to both such fine and such imprisonment.

62. Restrictions on importation of copies and powers of customs officials

(1) Subject to subsections (2) and (3), the owner of the copyright in any published work or a right in a fixed related subject matter may give notice in writing to the Commissioner of the Revenue Authority appointed in terms of section 18 of the Namibia Revenue Agency Act, 2017 (Act No. 12 Of 2017), (in this section referred to as “the Commissioner”) that he or she -

- (a) is the owner of the copyright in that work or of a related right in that related subject matter; and
- (b) requests the Commissioner to treat as prohibited goods, during a period specified in the notice, any copies of that work or subject matter to which this section applies.

(2) The period specified in a notice under subsection (1) may not extend beyond the end of the period for which the copyright or related right is to subsist.

(3) The Commissioner is not bound to act in terms of a notice under subsection (1) unless the owner of the copyright or related right furnishes the Commissioner with security, in such form and for such amount as the Commissioner may require for securing -

- (a) the fulfilment of any liability; and
- (b) the payment of any expenses which the Commissioner may incur by reason of the detention of any copy of the work or related subject matter to which the notice relates or as a result of anything done by the Commissioner in relation to a copy so detained.

(4) This section applies to any copy of the work or subject matter in question made outside Namibia which, if it had been made in Namibia, would be an infringing copy of the work or subject matter.

(5) Where a notice has been given under subsection (1) in respect of a work or related subject matter and has not been withdrawn, the importation or exportation into Namibia at a time before the end of the period specified in the notice of any copy of such a work or subject matter is prohibited.

(6) Despite anything contained in the Customs and Excise Act, 1998 (Act No 20 of 1998) (Customs and Excise Act) a person is not liable to a penalty under that Act (other than forfeiture of the goods) by reason of the fact that any goods are treated as prohibited goods by virtue of this section.

(7) This section applies with necessary changes with reference to an exclusive licensee who has the right to import into Namibia a work or related subject matter published elsewhere.

(8) Any infringing copies, implements or devices or other equipment that are imported into Namibia with the intention that they be used to contravene any provision of this Act may be seized in accordance with section 98 of the Customs and Excise Act, 1998, and the provisions of that section and sections 99 to 106 of that Act apply with necessary changes to such copies, implements, devices or equipment as if they were goods liable to forfeiture under that Act.

(9) A person who in contravention of a prohibition imposed by subsection (5) imports any copy of the work or subject matter commits an offence and is on conviction, liable to a fine of N\$1 000 000 and to imprisonment for two years or to both such fine and imprisonment.

63. Rights of action and remedies of exclusive licensee and sub-licensee

(1) An exclusive licensee and sub-licensee has the same rights of action and is entitled to the same remedies as if the licence were an assignment, and those rights and are entitled to remedies concurrent with the rights and remedies of the owner of the copyright or related right under which the licence or sub-licence were granted.

(2) If an exclusive licensee or sub-licensee intends to enforce any rights under section 57 he or she must give notice in writing to the owner of the copyright or related right concerned of the intention.

64. Offences and penalties

(1) A person who -

- (a) intentionally and or negligently infringes any protected right; or
- (b) makes or has in his or her possession an implement knowing that it is to be used for making an infringing copy of a work or related subject matter,

is liable upon conviction an offence.

(2) A person who -

- (a) without the authorisation of the Minister imports, sells, offers or exposes for sale or distribution in Namibia any copy of the following subject matter outside Namibia -
 - (i) expressions of Namibian folklore;

- (ii) translations, adaptations or arrangements of expressions of Namibian folklore; or

- (b) contravenes or fails to comply with section 49,

is liable upon conviction an offence.

- (3) A person who -

- (a) provides a service to any other person knowing that that other person intends to use the service to circumvent an effective technological protection measure as described in section 51(2); or
- (b) provides a service to any other person knowing or having reason to believe that the service will or is likely to be used by another person to infringe rights in a work or subject matter protected by a technological protection measure.
- (c) within Namibia, publishes information enabling or assisting another person to circumvent an effective technological protection measure as described in section 53(2), with the specific intention of inciting that other person to unlawfully circumvent a technological protection measure,

is liable upon conviction of an offense.

- (4) A person convicted of an offence under subsection (1) (2) or (3) -

- (a) in the case of a first conviction, liable to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years or to both such fine and such imprisonment; or
- (b) in the case of a second or any subsequent conviction, be liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

65. Interim measures

- (1) The Copyright and Related Rights Tribunal or a court with competent jurisdiction may, in a matter brought before it inter alia -
 - (a) grant an interdict prohibiting the committing, continuation of committing, of infringement of any right protected under this Act;
 - (b) grant an interdict against intermediaries whose services are used by a third party to infringe a copyright in a work or related right in a related subject matter;
 - (c) order the seizure of infringing copies where the making or importation of copies is subject to authorisation, as well as the seizure of the packaging and contrivances that could be used for the making of infringing copies;
 - (d) order the seizure of imported copies of any work which if it had been made in Namibia would be an infringing copy
 - (e) order prompt and other reasonable effective interim measures to preserve relevant evidence in regard to an alleged infringement;
 - (f) order the infringer to inform the right holder 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.
- (2) In an action for infringement of copyright in respect of the construction of a building, an interdict or other order may not, where the construction of the building has been begun, be granted or made so as to -
 - (a) prevent the building from being completed; or
 - (b) require the building, in so far as it has been constructed, to be demolished.

66. Presumptions

- (1) Where, in the case of -
 - (a) a work, related subject matter, or other protected matter, a name purporting to be that of the author or producer appeared on copies of that work or subject matter as published; or
 - (b) an artistic work, appeared on that work when it was made,

the person whose name so appeared, if it was his or her true name or a name by which he or she was commonly known, must, in any criminal or civil proceedings brought by virtue of this Part, be presumed to be the author of the work or programme or the producer of the related subject matter or owner of the other protected matter, unless the contrary is proved.

(2) In the case of a work or related subject matter alleged to be a work or subject matter of joint authorship, co-production or joint ownership subsection (1) applies in relation to each person alleged to be one of the authors of the work, producers of the subject matter or other owner as if references in that subsection to the author, producer or other owner were references to one of the authors, producers or owners.

(3) Where in any criminal or civil proceedings brought by virtue of this Part with respect to a work or a related subject matter which is anonymous or pseudonymous it is established -

- (a) that such a work or subject matter was first published in Namibia and was so published within the period of 50 years ending with the beginning of the calendar year in which the proceedings were brought; and
- (b) that a name purporting to be that of the publisher appeared on copies of that work or subject matter as first published,

copyright or a related right must be presumed to subsist in that work or subject matter and the person whose name so appeared must be presumed to have been the owner of that copyright or

related right at the time of the publication, unless the contrary is proved or the actual name of the author or producer of a pseudonymous work or related subject matter is commonly known.

(4) Where in any criminal or civil proceedings brought by virtue of this Part with respect to a work or subject matter it is proved or admitted that the author of that work or producer of a related subject matter is dead, that work or subject matter must be presumed to be an original work or subject matter work unless the contrary is proved.

(5) Subsection (4) also applies where a work or subject matter has been published and

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(a) the publication was anonymous or under a name alleged by the right holder or the State to be a pseudonym; and

(b) it is not proved that the work or subject matter has ever been published under the true name of the author or producer, or under a name by which he or she was commonly known or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author or producer by reasonable inquiry.

(6) Where in any criminal or civil proceedings brought by virtue of this Part with respect to the alleged infringement of copyright or related rights in an audio-visual work it is proved that the name purporting to be the name of the author or producer of that work appears thereon in the prescribed manner, the person whose name so appears is presumed to be the author or producer of that work unless the contrary is proved.

(7) Where in any criminal or civil proceedings brought by virtue of this Part with respect to the alleged infringement of copyright or related rights in a sound recording it is proved that records embodying that recording or part thereof have been issued to the public and that at the time of such issue there appeared on a label or any other printed matter affixed to such records or in or on anything in which they were contained, a statement claiming -

(a) that a person named on the label or printed matter is the author or producer of that recording; or

- (b) that the recording was first published in a year and at a place specified on the label or printed matter,

that label or printed matter is, unless the contrary is proved, sufficient evidence of the facts so stated.

- (8) A claim contemplated in subsection (7) -

- (a) paragraph (a) may be made by means of the symbol 'C' in conjunction with the name of the person concerned; and
- (b) paragraph (b) may be made by means of the symbol 'P' in conjunction with the year and place in question.

(9) Where in any civil proceedings brought by virtue of this Part with respect to the alleged infringement of the copyright or related rights in an audio-visual work it is proved that the person alleged to have committed an infringement has done an act which the owner of the copyright or producer has the exclusive right to do or to authorise to do, it is presumed, unless the contrary is proved, that such person did that act without the required authority.

(10) In any civil proceedings brought by virtue of this Part with respect to the alleged infringement of the copyright or related rights in an audio-visual work, sound recording or computer programme, it is presumed, unless the contrary is proved, that a person -

- (a) trading in the selling, letting or distribution of copies of any works or related subject matter of such descriptions; and
- (b) who was found in possession of a copy of any of such works or subject matter,

has sold or let or by way of trade offered or exposed for sale or hire such copy.

(11) Where in any civil proceedings brought by virtue of this Part with respect to the alleged infringement of the copyright in a work or a related right it is proved that the person

alleged to have done an act which allegedly infringes the relevant copyright or related right did that act without the authority of the exclusive licensee, it is presumed, unless the contrary is proved, that the relevant act was done also without the authority of the owner of the copyright or right concerned.

PART 9

COPYRIGHT AND RELATED RIGHTS FUND

67. Copyright and Related Rights Fund

(1) There is established a Fund to be known as the Copyright and Related Rights Fund, which shall become operational on such a date as the Minister shall determine, by notice published in the *Gazette*.

(2) The Fund shall be administered by BIPA.

(3) The Minister shall establish Rules for the management and administration of the Fund by notice published in the *Gazette*.

68. Books and other records of the Fund

76. (1) The Board must cause to be kept accurate financial and other records in accordance with generally acceptable Accounting Standards and of receipts and expenditures of the Fund in accordance with generally accepted accounting standards.

(2) The accounts of the Fund must be audited by an independent auditor appointed by BIPA.

(3) The Board must cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report referred to in subsection (3) must include a balance sheet, an income and expenditure account and the annual report of the Auditor General. and the Board must submit that report to the Minister within 90 days from the end of the financial year of the Fund.

(5) The Minister must lay the report referred to in subsection (4) before the National Assembly within 14 days after it became available, if the National Assembly is in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.

68. Objects and utilisation of Fund

(1) The Fund shall be used for the promotion of Copyright and Related Rights activities and production in Namibia, in which persons who are resident in Namibia take part, as follows:

- (a) the creation of music, fiction and nonfiction such as poetry, essays, plays and textbooks, fine art and audio-visual works, and the production of particular sound recordings or audio-visual works or performances of dramatic works or musical works;
- (b) the upskilling of Namibian authors and performers, producers and publishers, and their living or working conditions by the way of offering -
 - (i) measures such as training courses, seminars, organisational improvement and legal aid, organised or approved by BIPA; and
 - (ii) grants to individual authors or performers;
- (c) enforcement of Copyright and Related Rights law;
- (d) promotion and improvement of -

- (i) creativity; and
- (ii) artistic skills;
- (e) promotion and preservation of folklore; and
- (f) public education and awareness of Copyright and Related Rights matters.
- (g) remuneration for creators of works for the private copying of their performances

69. Finances of Fund

- (1) The Fund is financed through levies on the following acts:
 - (a) importing, manufacturing or placing of devices for digital storage materials on the market;
 - (b) commercial reproduction of works under copyright protection through use of photocopiers or electronic copiers.
- (2) Despite the sources in subsection (1) -
 - (a) the Minister shall appropriate from State resources to the Fund annually for the use of works and related subject matter in public libraries which offer their collections to the general public for lending or consultation free of charge; and
 - (b) the Fund may, with the approval of the Minister and Minister responsible for Finance, receive funding from other lawful sources, fundraising activities conducted by BIPA and donations made available to the Fund subject to such terms and conditions as may be approved.
- (3) The levies and funds raised pursuant to this Part will accrue in favour of the Fund.

(4) The right to benefit from the measures and grants under this section are equally enjoyed by such persons, as referred to in this section, regardless of whether or not they are members of a collective management organisation or not.

(5) For purposes of this section “public libraries “means the libraries which are wholly or partly funded by the State.

70. Levy on storage devices

(1) The levy on the placing of devices for digital storage of material pursuant to section 68 (1) applies with regard to -

- (a) devices integrated in computers or other specialised computer equipment; and
- (b) standalone storage devices such as compact disks, hard drives and memory sticks as specified in regulations.

(2) Manufacturers or importers of devices for the digital storage of material must pay the levy payable under this section.

71. Levy on copy shops

(1) The levy on the offering to the public of paper reproduction pursuant to section 68 (b) applies to the offering of -

- (a) services in the form of reprographic reproduction; and
- (b) access to photocopiers or electronic copiers without offering the machines themselves,

as long as the offer is made on commercial terms.

(2) In order to offer a service or access that is subject to the levy under this section, the owner of the operation is obliged to register it with BIPA as a copy shop, such registration to include identification of the copiers and their location.

(3) The registered owner of the copy shop is obliged to pay the levy payable under this section.

72. Obligation to pay levies independent of protection

The obligation to pay levies pursuant to this Part does not depend on the works and related subject matter involved in the acts referred to in section 68 being subject to protection under this Act.

73. Determination of levies

(1) Collective Management Organisations established under section 76 may, after consultations with their members and users of works, determine the applicable rates for levies that are established by section 68.

(2) The Minister, after consultation with the Minister responsible for Finance, may approve and make regulations on the applicable rates and publish the rates in a notice in the *Gazette*.

74. Exemption from payment of levies

(1) Levies established by section 68 shall not apply to:-

(a) materials manufactured in Namibia for purposes of export; and

(b) institutions that represent persons with disability as may be approved by the Minister.

(2) A person who is required to pay any levy payable under this Part may in the prescribed form and manner apply to the Minister for exemption from payment of the levy.

(3) An application made under subsection (2) must be accompanied by a statement of the reasons why the exemption must be granted and such other information as the Minister may require to enable him or her to determine the application.

(3) If the Minister is satisfied that there are sufficient reasons for granting the exemption, the Minister must grant such exemption on such conditions and for such period of time as the Minister may determine.

75. Financial year of Fund

The financial year of the Fund shall end on 31 March each year.

PART 10

COLLECTIVE MANAGEMENT OF COPYRIGHT AND RELATED RIGHTS

76. Recognition of collective management organisations

(1) Authors, producers, performers and publishers may form collective management organisations 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 as provided for in this Act.

(2) No organisation, association or company shall commence or carry on the business of a copyright collective management organisation except under or in accordance with a certificate of registration granted under this section.

(3) BIPA may, where it deems necessary and after consultation with the rights holders, facilitate the establishment of collective management organisations.

(4) BIPA may approve a collective management organisation if it is satisfied that –

(a) the body is a company limited by guarantee and incorporated under the Companies Act (Act 28 of 2004);

(b) it is a non-profit making entity;

(c) its principal objectives are the collection and distribution of royalties;

(d) its accounts are regularly audited by independent external auditors elected by the collective management organisation;

(e) the effective management, control and beneficial ownership vest in the individuals who are citizens of Namibia or ordinarily resident in Namibia, and

(f) the management of the organisation is vested in a committee or board consisting of at least five persons elected by members of the organisation, at least two of whom are authors, artists or performers whose rights are managed by the organisation;

(g) the collective management organisation is capable of ensuring the enforcement of the rights of copyright owners and other persons whom it will act for or represent.

(5) A collective management organisation 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.

(6) Any organisation, association or company:-

(a) formed to represent the interests of owners of copyright or related rights and licensees; and

(b) whose main objectives include:-

(i) the promotion and protection of the interests of owners of copyright and related rights, licensees or performers;

(ii) the negotiation or granting of licenses, on behalf of the owners, of copyright and related rights through licence schemes; and

(iii) the granting of licences covering works or related subject matter of more than one right holder and distributing the remuneration or royalties to the right holders,

shall prior to commencing business apply to BIPA to be recognised as a collective management organisation for the purposes of this Act.

(7) An application in terms of subsection (6) must be in writing and must be accompanied by -

(a) the constitution of the organisation or association;

(b) the application fee as determined by BIPA; and

(c) such other information or documents as may be prescribed or such other information as required by BIPA.

(8) If BIPA is satisfied that the constitution of the organisation or association submitted in terms of subsection (7) provides adequately for -

(a) the requirements for, and the manner of, admission to membership of the organisation or association of persons who are owners of copyright or related rights and licensees;

- (b) the establishment of licence schemes for the purpose of granting copyright or related rights licences in respect of works or related subject matter in which copyright or related rights are not owned by the body or person on whose behalf the collective management organisation acts;
- (c) the collection on behalf of, and the accounting and distribution to, its members of royalties or other remuneration accruing by reason of the use of works or related rights affecting rights pertaining thereto which are protected by this Act; and
- (d) the inspection by its members of the accounts which it is required to keep in terms of section 76 (4) (d),

BIPA may recognise such organisation or association as a collective management organisation under a name approved by BIPA and issue to it, in such form as BIPA may determine, a certificate to that effect.

(9) BIPA may not approve a name under subsection (8) which is identical to the name of an entity registered under the Companies Act, 2004 (Act No. 28 of 2004) or Close Corporations Act, 1988 (Act no. 25 of 1988), or similar to the name of such registered such that, in the opinion of BIPA, it is likely to cause confusion.

(10) Upon the recognition of an organisation or association as a collective management organisation under subsection (8), BIPA must enter the name of the collective management organisation in the registers kept by the Registrar for such purpose.

(11) With effect from a date determined by BIPA by notice in the *Gazette*, no person, other than a collective management organisation recognised by BIPA in terms of this section, shall on behalf of any owner of copyright or a related right or a licensee collect or demand from any person payment of any royalty or other remuneration in respect of the use of any work or related subject matter in respect of which the rights pertaining thereto are protected by this Act.

(12) Subsection (11) may not be construed as prohibiting any owner of copyright or a related right or a licensee to personally, or through his or her legal representative, demand or

collect from any person any royalty or other remuneration accruing to him or her by reason of any use of any work or related subject matter affecting any right of him or her protected by this Act.

(13) A person who contravenes or fails to comply with the provisions of subsection (11) commits an offence and is liable upon conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding three years, or to both such fine and such imprisonment.

77. Compulsory Reporting

(1) Not later than six months after the end of each financial year, a collective management organisation must prepare and submit to BIPA an annual report relating to such financial year.

(2) The annual report referred to in subsection (1) must contain –

(a) particulars of all activities of the collective management organisation during the financial year under review;

(b) audited financial statements of the collective management organisation contemplated in section 77 (4) (d), including a statement of income and expenditure, a balance sheet and the report contemplated in subsection (1); and

(3) Not later than six months after the end of each financial year, a collective management organisation must prepare and submit to BIPA a three-year integrated financial and business strategy.

(4) A collective management organisation must prepare and submit to BIPA a royalty distribution plan.

(5) A collective management organisation must prepare and submit to BIPA an annual royalty distribution report and an annual financial report.

(6) A collective management organisation shall be liable to pay an annual fee to be prescribed by Minister of Trade in the regulations.

78. Composition of the Collective Management Organisation Board

1 It shall be mandatory for a Collective Management Organisation at all relevant times, to be governed by a Board, which shall consist of the following members —

(a) one member whom shall be a registered legal practitioner;

(b) two members with financial skills as elected for by the members of the collective management organisation;

(b) four persons who are representatives of authors, artists or performers;

(c) one representative responsible for information and publicity;

(d) one representative from the traditional leadership to be appointed by the Minister after consultation with the Council of Chiefs established in terms of section 9 of the Traditional Authorities Act, 2002.

79. Accounts and auditing

82. (1) Every collective management organisation must cause accounts to be kept in accordance with generally accepted accounting standards of all royalties or other remuneration collected by it on behalf of its members and the manner in which such royalties or other remuneration have been distributed or otherwise applied.

(2) Every collective management organisation must cause its books and accounts to be audited annually by a person registered as a public accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

80. Withdrawal of recognition

(1) The Registrar may, upon credible information received by him or her that a Collective Management Organisation -

- (a) is failing in its duty towards its members including -
 - (i) any function contemplated in section 76 (8) (b); or
 - (ii) the inspection of its accounts contemplated in section 76 (8)(d); or
 - (iii) has failed to submit their annual reports as contemplated in section 77
- (b) has failed to comply with any of the requirements and its obligations in this Part,

Subject to reasonable notice to the Collective Management Organisation at its last known address, request the Collective Management Organisation to respond to and provide evidence to any allegations of non-compliance with the requirements and or obligations under this Part, within a period of 21 days from the date of the notice or such extensions as may be justifiably extended.

(2) When, after consideration of any submission made in terms of subsection (1), the Registrar is of the opinion that the failure in question on the part of the collective management organisation -

- (a) is materially prejudicing; or
- (b) has materially prejudiced its members,
- (c) has operated in flagrant disregard to the provisions of this Act.

The Registrar may withdraw the recognition thereof as a collective management organisation and cancel the certificate issued to the organisation under section 76 (8).

(3) After any withdrawal and cancellation under subsection (2), the Companies Registration Office must delete the name of the Collective Management Organisation concerned from the registers referred to in section 76 (10) and publish a public notice to this effect in at least two reputable newspapers and other forums easily within the reach of the majority of the affected members.

81. Collective Management Organisation Regulations

- (1) The Minister may make regulations relating to -
 - (a) constituting of one or more Collective Management Organisations; and
 - (b) the eligibility requirements to be met by an organisation or association before it can be recognised as a collective management organisation;
 - (c) the establishment of licence schemes for the purpose of granting copyright or related rights licences in respect of works or related subject matter in which copyright or related rights are not owned by the body or person on whose behalf the collective management organisation acts.

PART 11

COPYRIGHT AND RELATED RIGHTS TRIBUNAL

82. Copyright and Related Rights Tribunal

- (1) There is established a tribunal to be known as the Copyright and Related Rights Tribunal for the purposes of this Act.
- (2) The Tribunal consists of three members, appointed by the Minister after consultation with the Minister responsible for justice, of whom –

(a) one must be a person with legal qualifications and who has been practising law for a period of not less than five years, and who will be the chairperson; and

(b) two are persons who have skills, knowledge or experience in intellectual property matters, economical or financial matters.

(3) The Minister must, by regulation, prescribe the terms and conditions of appointment of members of the Tribunal, the remuneration to be paid to such members, the termination of such appointments and the filling of vacancies vacated by such members.

(4) Despite the provisions of this section, the judge-president of the court, at the request of the Minister, may, pending the appointment of members of the Tribunal as contemplated in subsection (2), designate one or more judges or acting judges of the court to exercise the powers and perform the functions and duties conferred on the Tribunal by this Act.

86. Oath of Office

A member of the Tribunal appointed in terms of section 85 (2) may not perform any function as such a member unless he or she has taken an oath or made an affirmation, which must be subscribed to by him or her, in the form as is prescribed.

83. Right of Audience

In any proceedings before the Tribunal under this Act –

(a) the parties to such proceedings may appear in person or be represented by a lawyer or representative; and

(b) where the Tribunal deems fit, it may grant to the Registrar leave to intervene, and the Registrar may thereafter appear or be represented as provided in subsection (a).

84. Assessors

1) The Tribunal may appoint any person with special expert knowledge to act as an assessor in an advisory capacity in any case where it appears to the Tribunal that such knowledge is required for the proper determination of the case.

(2) The Minister may prescribe the terms and conditions applicable to the appointment of assessors, and the remuneration payable to assessors.

(3) The Tribunal must give due consideration to, but is not bound by, the opinion of any assessor.

85. Secretary of Tribunal

(1) The Minister must, subject to the Public Service Act 1995 (Act No 13 of 1995), appoint a staff member to be the secretary of the Tribunal who is in charge of the administrative functions of the Tribunal.

(2) The Minister may in like manner appoint such other staff members as may be necessary to assist the secretary in the performance of his or her functions.

86. Seat and Jurisdiction of Tribunal

(1) The seat of the Tribunal is Windhoek, but the functions of the Tribunal may be performed at any such place in Namibia as the chairperson of the Tribunal may determine.

(2) The Tribunal has jurisdiction to –

(a) decide any appeal lodged with it in terms of any provision of this Act;

(b) consider and give a decision on any application made to it in terms of any provision of this Act;

(c) generally, to inquire and adjudicate upon any matter which is required or permitted to be referred to it under any provision of this Act or any other law.

(3) Without derogating from the generality of subsection (2) –

(a) any decision taken by the Registrar under this Act, including in regard to the granting of copyright or related rights registration, or in regard to the rejection of such registration, may be the subject of an appeal to the Tribunal by an interested party in the matter before the Registrar, and such appeal must be filed and prosecuted as prescribed; and

(b) any change or amendment or correction of any document forming part of an application for registration of copyright or related rights may, on application by an interested party to the Tribunal, be set aside by the Tribunal if such change or amendment or correction does not comply with the provisions of this Act.

(4) The Tribunal has, in connection with any proceedings before it, all such powers and jurisdiction as are possessed by a single judge of the court in a civil matter before the court.

(5) Any decision, order or determination of the Tribunal may be executed as it were a decision, order or determination made by the court.

(6) An appeal against any decision by the Tribunal lies to the court.

87. References to Tribunal by Registrar

(1) When any matter to be decided by the Registrar under this Act appears to him or her to involve a point of law or to be of unusual importance or complexity, he or she may, after giving notice to the parties, refer such matter to the Tribunal for a decision and must thereafter, in relation to such matter, act in accordance with the decision of the Tribunal or any decision substituted therefor on appeal to the Tribunal.

(2) Where any matter has been referred to the Tribunal in terms of subsection (1), the Registrar and the parties are entitled to be heard by the Tribunal before any decision is made in such matter and may appear or be represented as provided for in section 88.

88. General powers of Tribunal

(1) In any appeal to the Tribunal under section 220, the Tribunal

may –

- (a) accept evidence by affidavit or take oral evidence on oath or affirmation;
- (b) allow any witness to be cross-examined on his or her affidavit or oral evidence;
- (c) confirm, set aside or vary the order or decision in question;
- (d) exercise any of the powers which could have been exercised by the Registrar in proceedings in connection with which the appeal is brought; and
- (e) make such order as to costs as it may deem fit.

(2) The Tribunal must, in any proceedings before it in terms of this section, record the proceedings and any evidence heard by it and the decision made by it and the reasons therefor.

89. Proceedings of Tribunal

- (1) Proceedings before the Tribunal must be conducted in accordance with the rules of the Tribunal prescribed by the Rules Board referred to in section 98.
- (2) The Tribunal is not be bound by the rules of evidence applicable in civil proceedings.

90. Summoning of Witnesses

- (1) A party to any proceedings before the Tribunal, may procure the attendance of any witness in the manner provided for in the rules of the Tribunal.
- (2) Any member of the Tribunal and any sitting person as an assessor in any proceedings before the Tribunal may put any question to any witness appearing before it.
- (3) If any person who has been duly subpoenaed to attend any proceedings before the Tribunal for the purpose of giving evidence or producing any book, record, document or thing in his or her possession or under his or her control, fails without reasonable cause to attend or to

give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the Tribunal, to remain in attendance throughout the proceedings, the Tribunal may, on being satisfied upon oath or affirmation or by return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his or her reasonable expenses have been paid or offered to him or her, impose upon the said person a fine not exceeding N\$5 000, or in default of payment, imprisonment for a term not exceeding 12 months or both such fine and imprisonment.

91. Costs

The Tribunal may in any proceedings before it makes an order as to costs as it thinks fit.

92. Contempt of Tribunal

A person who –

- (a) insults, disparages or belittles any member of the Tribunal in that capacity, or prejudices, influences or anticipates the proceedings or findings of the Tribunal;
- (b) wilfully interrupts the proceedings of the Tribunal or misconducts himself or herself in any manner during such proceedings;
- (c) does anything in relation to the Tribunal which if done in relation to a court of law would have constituted contempt of court, commits an offence and on conviction is liable to a fine not exceeding N\$ 5 000 or to imprisonment for a term not exceeding 12 months or to both such fine and such imprisonment.

93. Rules of Tribunal

1) There is established the Copyright and Related Rights Tribunal Rules Board (“the Rules Board”) which consists of –

- (a) the judge-president of the court or any judge of that court designated from time to time by the judge-president, who is the chairperson of the Rules Board;

- (b) one practising legal practitioner nominated by the Law Society of Namibia;
 - (c) one legal practitioner serving in the Ministry responsible for justice designated by the Minister responsible for justice; and
 - (d) one staff member serving in the Ministry designated by the Minister.
- (2) The Rules Board may make rules in relation to –
- (a) the conduct of the proceedings of the Tribunal;
 - (b) the manner in which any matter to be heard and determined by the Tribunal may be brought and continued before it;
 - (c) the tariff of fees chargeable by agents;
 - (d) the fees payable in respect of the service or execution of any process of the Tribunal and the tariff of costs and expenses which may be allowed in respect of such service or execution;
 - (e) the taxation of bills of costs;
 - (f) the hours during which the office of the secretary of the Tribunal is open for the transaction of business;
 - (g) the period within which and the manner in which an appeal from a decision of the Tribunal to the court may be noted;
 - (h) the fees to be paid to assessors; and
 - (i) generally, any matter which may be necessary or expedient to prescribe in order to ensure the proper dispatch and conduct of the proceedings of the Tribunal.
- (3) Rules made in terms of subsection (2) may provide for the summary determination of any appeal which appears to the Tribunal to be frivolous or vexatious or brought for the purpose of delay.

(4) No rule made by the Rules Board under subsection (2) is of any force and effect unless it is published in the Gazette by the chairperson of the Rules Board.

94. Appeals to Court

(1) In addition to any right of appeal specifically conferred in respect of proceedings under this Act, any party to any proceedings before the Tribunal may appeal against any decision, order or determination, given by the Tribunal as if it were a judgment or an order given in civil proceedings by a magistrates' court being appealed against to the court.

(2) In addition to any other powers conferred upon it by this Act, the court may in relation to such appeal –

(a) confirm, vary or reverse the order or decision appealed against, as justice may require;

(b) if the record does not furnish sufficient evidence or information for the determination of the appeal, remit the matter to the Registrar, Minister or Tribunal with instructions in regard to the taking of further evidence or the setting out of further information;

(c) order the parties or either of them to produce at some convenient time in the court of appeal such further proof as to it deems necessary or desirable;

(d) take any other course which may lead to the just, speedy and effective settlement of the case; and

(e) make such order as to costs as justice may require.

(3) Every appeal to the court must be noted and prosecuted in the manner prescribed by law for appeals to it against a judgment, order or decision of a magistrates' court.

95. Expenses of Tribunal

The expenditure incidental to the performance of functions of the Tribunal must be defrayed from the money appropriated by Parliament and made available to the Ministry responsible for trade and industry for the purposes of the Tribunal.

- (a) to determine disputes arising between -
 - (i) collective management organisations;
 - (ii) other persons from whom licences are required and persons requiring licences; or
 - (iii) organisations claiming to be representative of any of such persons, either upon the reference of a licence scheme to the Tribunal or upon the application of a person requiring a licence, whether in accordance with a licence scheme or in a case not covered by a licence scheme; and
- (b) to make such other determinations as are provided for in this Act.

PART 12

GENERAL PROVISIONS

96. Voluntary registration of rights and organisations

(1) Registration of copyright or a related right under this section is voluntary and may not be construed as a formal requirement which constitutes a pre-condition for the protection of copyright or a related right under this Act.

- (2) BIPA shall, pursuant to the BIPA Act, open and maintain registers of:-
 - (a) collective management organisations recognised under this Act; and
 - (b) works and related subject matter protected by copyright and related rights that have been voluntarily registered under this Act.

(3) The purposes of registration are to -

- (a) maintain a record of those involved in the management of copyright and related rights; and
- (b) maintain a record of works or related subject matter subject to protection under this Act.

(4) A person who wishes to register a work or related subject must in the prescribed manner, submit an application for such registration to the Registrar.

(5) A publisher of a work or related subject matter may, in the prescribed manner, submit an application for the registration of the work or subject matter before its publication.

(6) An application made under subsection (4) or (5) must be accompanied by a copy of the work or subject matter to be registered together with such other documents and information as may be prescribed.

(7) BIPA shall consider every application made under this section and if satisfied that the application meets the requirements of this Act, register the work or subject matter as applicable, and issue the prescribed certificate of registration to the applicant.

(8) Copyright protection of a work or the protection of a related right is not dependent on the registration of the work.

(9) Application for registration shall be made on a prescribed form subject to a prescribed fee.

(10) A person who has filed an application in terms of subsections (4) and (5) may, in the prescribed form at any time before registration, apply for the withdrawal of the application.

(11) BIPA shall cancel the registration of a copyright or related rights in the following circumstances:

- (a) where the initial registration was erroneously made;
- (b) where the initial registration was fraudulently procured; or
- (c) by an order of a court or any other competent authority.

(12) A cancellation under subsection (11) may be initiated by:

- (a) BIPA;
- (b) a copyright or related rights holder; or
- (c) a person aggrieved by the registration of a copyright or related rights in the prescribed form.

(13) BIPA shall remove a copyright or related rights from the BIPA database where:

- (a) a cancellation has been made subsection (11); or
- (b) there is a clear and obvious error made by the entry into the BIPA database.

(14) A person shall apply for change in ownership or any other amendment of particulars of a copyright or related rights to BIPA.

(15) An application for change in ownership or particulars of ownership of copyright or related rights under subsection (14) may be accepted or rejected.

(16) Application for change of ownership and amendment of a copyright or related rights shall be made on a prescribed form subject to a prescribed fee.

(17) A collective management organisation is, on submission of proof to the Registrar that it has been recognised under this Act, entitled to registration and to be issued with the prescribed certificate of registration by the Registrar.

(18) In any legal proceedings before any court or tribunal the production of any certificate of registration issued by the Registrar constitutes *prima facie* evidence of any matter stated in such certificate, unless the contrary is proven.

97. Effect of International Agreements

Provisions of any international convention or agreement in respect of Copyright and Related Rights to which is binding on Namibia shall apply to matters dealt with in this Act and, in case of conflict between the provision of this Act and the provision of such convention or agreement, the provisions of this Act shall prevail.

98. Regulations

- (1) The Minister may make regulations relating to -
 - (a) any matter required or permitted by this Act to be prescribed;
 - (b) forms and methods pertaining to the implementation of this Act;
 - (c) after consultation with the Judge President, the procedure for instituting proceedings in the Copyrights Tribunal and incidental matters;
 - (d) the tariff of any penalties levied and or fees payable under this Act, with the concurrence of the Minister responsible for Finance, including fees in respect of proceedings before the Tribunal;
 - (d) any other incidental administrative or procedural matter that is necessary to be prescribed for the proper implementation or administration of this Act.
- (2) Regulations made under subsection (1) may –
 - (a) create offences for any contravention of a regulation or a failure to comply with a provision of a regulation; and

- (b) prescribe penalties in respect of an offence contemplated in paragraph (a) not exceeding a fine of N\$10 000 or imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

99. Repeal of laws

- (1) Subject to subsection (2) and section 100, the Copyright and Neighbouring Rights Protection Act, 1994 (Act No.6 of 1994) is repealed.

100. Savings and transitional provisions

- (1) This Act shall not affect any made, granted, entered into, issued or undertaken under any provision of the Repealed Act before the commencement of this Act.

- (2) Anything done under a provision of a law repealed by subsection (1) which could have been done under a corresponding provision of this Act is deemed to have been done under that corresponding provision of this Act.

- (3) Nothing in Part 5 affects the rights acquired by a performer before the commencement of this Act.

- (4) This Act applies to: -

- (a) works and related subject matter 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; and

- (b) related subject matter that is to be protected under an international convention or agreement relating to protection of such subject matter which is binding on Namibia.

101. Act binds State

This Act binds the State.

102. Short title and commencement

(1) This Act is called the Copyright and Related Rights Protection Act, 2024, and commences on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
