



DRAFT COPYRIGHT BILL 2015

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INTRODUCTORY NOTES

Since independence in 1960, Nigeria has had two indigenous copyright legislations: The Copyright Decree of 1970; and the Copyright Decree 47 of 1988, (*later codified as Copyright Act, Chapter C28, Laws of the Federation of Nigeria, 2004 - following amendments in 1992 and 1999*). The latter is the current operating legislation.

After the promulgation of the Copyright Decree of 1988, Nigeria has not had a holistic review of its policy and legal framework for copyright protection. Nevertheless, there have been many significant developments both in the international and domestic copyright community. The paradigm shift in global trade which became more driven by knowledge based products made it imperative to incorporate protection of intellectual property rights in World Trade Organization instrument negotiated within the Uruguay Rounds of talks in 1994. Consequently, the Agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS) became part of the WTO instruments. Countries within the WTO system were accordingly mandated to grant certain defined standards of protection to intellectual property rights. TRIPS Agreement requires member states, among others, to comply with the Paris text of the Berne Convention, which Convention adds some further obligations in the field of copyright.

Similarly, the emergence of digital technologies revolutionized the creative economy as production and dissemination of creative works became more accessible and lent themselves to global exploitation beyond national boundaries. The global intellectual property community has responded to these challenges by the adoption of a number of unique solutions, including international treaties like the WIPO Copyright Treaty and WIPO Performances and Phonograms Treaty of 1996; the WIPO Beijing Treaty for Protection of Audiovisual Performances of 2012; and the Marrakesh Treaty for the Blind and Visually Impaired Persons of 2013.

Taking cognizance of these developments, the Nigerian Copyright Commission, in November 2012, formally launched the Reform of the Copyright System. The key objective of the reform was to reposition Nigeria's creative industries for greater growth; strengthen their capacity to compete more effectively in the global marketplace, and also enable Nigeria to fully satisfy its obligations under the various International Copyright Instruments, which it has either ratified or indicated interest to ratify.

Since the formal launch of the Reform, the Commission, through the Reform Expert Working Group, has undertaken a number of activities, including review and comparative analysis and case studies of similar national reform efforts; stakeholders' consultations; collation of commentaries; and analysis of stakeholder feed backs. Following from these preliminary activities, the Commission empanelled a seven member Technical Working Group consisting of Officials of the Commission and representatives of relevant intellectual property professional bodies to undertake the task of producing a draft Copyright Bill. The Group worked through retreat sessions and meetings, at the end of which it submitted a draft Copyright Bill to the Commission.

Policy Considerations

The preparation of the draft Copyright Bill was guided by an underlying policy objective, inter alia;

- i. To strengthen the copyright regime in Nigeria to enhance the competitiveness of its creative industries in a digital and knowledge-based global economy.
- ii. To effectively protect the rights of authors to ensure just rewards and recognition for their intellectual efforts while also providing appropriate limitations and exceptions to guarantee access to creative works, encourage cultural interchange and advance public welfare.
- iii. To facilitate Nigeria's compliance with obligations arising from relevant international copyright treaties; and
- iv. To enhance the capacity of the Nigerian Copyright Commission for effective administration and enforcement of the provisions of the Copyright Act.

The draft Copyright Bill also takes into account the basic objective of the reform initiative, as well as the identified concerns of Nigeria's copyright community expressed either through written submissions, or interventions during the elaborate stakeholders' consultations between 2012 and 2013.

Highlights of the Draft Copyright Bill

The Draft Copyright Bill has 88 sections divided into eleven parts.

Part I makes provisions for works eligible for copyright protection, qualification for protection and the nature of rights conferred on authors of such works. The part also identifies subject matters which are not eligible for protection.

Part II provides exception to copyright control. These are in the nature of general exceptions, and special exceptions. Among the special exceptions are provisions for archives, libraries, museums and galleries (S. 21); Special exceptions for blind, visually impaired or otherwise print disabled persons (S.22); and Special exceptions in respect of a sound recording of a musical work (S.23).

Part III deals with issues of ownership, transfers and licenses in respect of protected works. Provision is also made for compulsory licenses. These include Compulsory licence for translation and reproduction of certain works (S. 27); License to produce and publish works for certain purposes (S.28); Licence for domestic broadcasting organisation (S.29); and Compulsory licenses for public interest (S.31).

Part IV makes provisions for infringement of rights and remedies to such infringements (S.32 to S.37).

Part V provides for criminal liability. Apart from creating liability for principal offenders, there is also liability in respect of aiding and procuring the commission of copyright offences (SS 38 -41).

Part VI provides for anti-piracy measures. In particular, provision is made for prohibition of circumvention of technological protection measures adopted by owners of copyright (S. 44) and falsification, alteration or removal of electronic rights management information (S. 45). Actions for circumvention of technological protection measures and right management information are provided for in Section 46.

Part VII has provisions relating to online content. This part include provision for issuance of Notice for take down of infringing content (S. 47) and procedures for effecting a take-down of such content as well as suspension of accounts of repeat infringers (S. 48 & S. 49). The part provides for limitation of liability of Service Providers with respect to Information residing on systems or networks at direction of users (S. 51) and use of Information location tools (S. 52). Provision for blocking access to infringing content is available (S. 54).

Part VIII deals with rights of performers. The Part provides for protected performances (S. 56), restrictions on use of performances (S. 57), moral rights of performers (S. 58), and exception to performer's rights (S. 60), among others. A provision on transfer of rights is available (S. 61). Apart from provisions for infringement of performer's rights (S. 63), the part also provides criminal liability in respect of infringement of performer's right (S. 65).

Part IX provides for the protection of expressions of folklore. Provision is made for infringement of folklore rights (S. 67) as well as criminal liability in respect of such infringements (S. 68).

Part X has provisions on administrative framework. The part provides for the establishment, membership and functions of the Governing Board of the Nigerian Copyright Commission (S. 70); and appointment of the Director-General and other staff of the Commission (and Copyright Inspectors) (SS 71 & 72). The part also provides for registration of works (S. 73); establishment and approval of collective managements organizations (S. 74); and levy on copyright materials (also known as private copying levy) (S. 75). The provision relating to collective management organizations allows for extended collective management (S.74 (10)).

Part XI has miscellaneous provisions. These include provisions on establishment of a dispute resolution panel (S.76); Restrictions on importation of certain works (S. 79); powers of the Commission to make regulations (S. 80); Limitation on suit against the Commission (S. 84); Interpretation section (S. 85); and transitional and savings provisions (S. 87).

Nigerian Copyright Commission

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COPYRIGHT BILL 2015

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A BILL
FOR
**AN ACT TO MAKE PROVISIONS FOR THE PROTECTION AND
ADMINISTRATION OF COPYRIGHT AND OTHER RELATED MATTERS**

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:-

PART I
Subsistence and Scope of Copyright

Works eligible for copyright

- 1(1) Subject to this section, the following shall be eligible for copyright—
- (a) literary works;
 - (b) musical works;
 - (c) artistic works;
 - (d) films;
 - (e) sound recordings; and
 - (f) broadcasts.
- (2) A literary, musical or artistic work shall not be eligible for copyright unless the work —
- (a) has an original character;
 - (b) has been fixed in any medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.
- (3) A work meeting the requirements of this section shall be eligible for copyright protection irrespective of the quality of the work or the purpose for which the work was created.
- (4) A work shall not be ineligible for copyright by reason only that the making of the work or the doing of any act in relation to the work involved an infringement of copyright in some other work.
- (5) The copyright in a compilation shall not confer any exclusive right in the pre-existing material or data.

Subject matter ineligible for copyright protection

- 2 The subject matter of copyright shall not include any of the following—
- (a) ideas, procedures, processes, systems, methods of operation, concepts, principles, discoveries or mere data;
 - (b) official texts of a legislative, administrative or legal nature as well as any official translations thereof;
 - (c) official State symbols and insignia, including flags, coat-of-arms, anthems, and banknote designs;
 - (d) news of the day and regular information reports on current events; or
 - (e) non-original databases.

Formalities

- 3 The protection of rights under this Act shall not be subject to any formality.

Copyright by virtue of nationality or habitual residence

- 4(1) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is at the time when the work is made, a qualified person, that is to say—

- (a) an individual who is a citizen of, or is habitually resident in Nigeria; or
- (b) a body corporate incorporated by or under the laws of Nigeria.

Copyright by reference to country of origin

- 5(1) Copyright shall be conferred by this section on every work, other than a broadcast, which is eligible for copyright and which –
- (a) being a literary, musical or artistic work or a film, is first published in Nigeria; or
 - (b) being a sound recording, is made in Nigeria, and which has not been the subject of copyright conferred by section 4 of this Act.

Copyright in works of Government, State authorities and international bodies

- 6 Copyright shall be conferred by this section on every work which is eligible for copyright and is made by or under the direction or control of a Government, an Agency of Government or a prescribed international body.

Copyright by reference to international agreements

- 7(1) Copyright shall be conferred by this section on every work if-
- (a) on the date of its first publication at least one of the authors is-
 - (i) a citizen of or habitually resident in, or
 - (ii) a body corporate established by or under the laws of, a country that is a party to an obligation in a treaty or other international agreement to which Nigeria is a party;
 - (b) the work is first published in a country which is a party to an obligation in a treaty or other international agreement to which Nigeria is party.
- (2) Where the question arises as to whether a country is a party to an obligation in a treaty or other international agreement to which Nigeria is also a party, a certificate from the Commission to that effect shall be conclusive proof of that fact.

Nature of copyright in literary and musical works

- 8(1) Subject to the exceptions specified in sections 20 to 23, copyright in a literary or musical work shall be the exclusive right to do and authorise the doing in Nigeria of any of the following acts-
- (a) reproduce the work;
 - (b) publish the work;
 - (c) perform the work in public;
 - (d) produce, reproduce, perform or publish any translation of the work;
 - (e) make any film or a record in respect of the work;
 - (f) distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;
 - (g) broadcast the work;
 - (h) communicate the work to the public;
 - (i) make any adaptation of the work;
 - (j) do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (i) to (vii) of this paragraph;

Nature of copyright in artistic works

- 9(1) Subject to the exceptions specified in sections 20 to 23, copyright in an artistic work shall be the exclusive right to do and authorise the doing in Nigeria of any of the following acts-
- (a) reproduce the work,
 - (b) publish the work,
 - (c) include the work in any film,
 - (d) make any adaptation of the work,
 - (e) do in relation to an adaptation of the work any of the acts specified in relation to the work in

subparagraphs (i) to (iii) of this paragraph;

- (2) the protection of a three dimensional work of artistic craftsmanship shall not extend to its functional or utilitarian aspects,
- (3) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original, but not the right to control the reconstruction in the same style as the original of a building to which the copyright relates.

Nature of copyright in films

10 Subject to the exceptions specified in sections 20 to 23, copyright in a film shall be the exclusive right to do and authorise the doing in Nigeria of any of the following acts-

- (a) reproduce the film,
- (b) adapt the film ;
- (c) cause the film, in so far as it consists of visual images to be seen in public and, in so far as it consists of sounds, to be heard in public,
- (d) communicate the film to the public;
- (e) broadcast the film;
- (f) make any copy of the sound track associated with the film by utilising such sound track,
- (g) distribute to the public, for commercial purposes copies of the film, by way of rental, lease, hire, loan or similar arrangement.

Nature of copyright in sound recordings

11 Subject to the exceptions specified in sections 20 to 23, copyright in a sound recording shall be the exclusive right to do and authorise the doing in Nigeria of any of the following acts-

- (a) the reproduction, broadcasting or communication to the public of the whole or a substantial part of the recording either in its original form or in any form recognisably derived from the original;
- (b) reproduce the sound recording;
- (c) adapt the sound recording ;
- (d) communicate the sound recording to the public;
- (e) broadcast the sound recording;
- (f) distribute to the public, for commercial purposes copies of the sound recording, by way of rental, lease, hire, loan or similar arrangement.

Nature of copyright in broadcast

12(1) Subject to the exceptions specified in sections 20 to 23, copyright in a broadcast shall be the exclusive right to do and authorise the doing in Nigeria of any of the following acts-

- (a) broadcasting or other communication to the public of the broadcast;
- (b) fixation of the broadcast;
- (c) reproduction of a fixation of the broadcast;
- (d) adaptation of a fixation of the broadcast; and
- (e) distribution of a fixation of the broadcast or copies thereof for commercial purposes by way of rental, lease, hire, loan or similar arrangement .

(2) The copyright in a television broadcast shall include the right to control the taking of still photographs from the broadcast.

(3) Cable retransmission operators who merely retransmit the broadcasts of broadcasting organizations shall not have the rights provided for in subsection (1) of this section in respect of the broadcasts retransmitted.

Moral Rights

- 13**(1) Subject to sections 20 to 23, the author of a work in which copyright subsists has the right—
- (a) to claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in sections 8 to 10 of this Act except when the work is included incidentally or accidentally when reporting current events by means of broadcasting;
 - (b) to object and to seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his work, where such action would be or is prejudicial to his honour or reputation.
- (2) The rights referred to in subsection (1) of this section shall not be transmissible during the life of the author, but upon his death, shall be transmissible by testamentary disposition or by operation of law.
- (3) The rights conferred by this section shall subsist for the duration of the copyright in the work.

Right to remuneration for broadcasting or communication to the public

- 14** (1) Performers and producers of sound recordings shall enjoy the right to a single equitable remuneration for the direct or indirect use of sound recordings published for commercial purposes for broadcasting or any other communication to the public, regardless of the place of their publication.
- (2) The remuneration referred to in subsection (1) of this section shall be paid by the natural or legal persons who use the sound recordings or copies thereof.
- (3) The amount of remuneration and the conditions of the payment thereof shall be agreed between the users of sound recordings and the performers and producers of sound recordings, or their representatives; and failing such agreement, it shall be determined by the Commission.
- (4) Unless otherwise provided for in an agreement, the remuneration referred to in subsection (1) of this section shall be distributed in equal shares between the performers and producers of sound recordings.
- (5) The remuneration referred to in subsection (1) of this section shall be collected and distributed to performers and producers of sound recordings by the collective management organizations approved by the Commission under this Act.

Provided that where the remuneration is to be received by more than one collective management organization, the collective management organizations concerned shall agree on which of them shall collect such remuneration on their behalf, failing which the Commission may specify accordingly.

- (6) The provisions of subsection (1) shall be exercised without prejudice to the right of a copyright owner to obtain remuneration for the use of his work fixed in such sound recording.
- (7) For the purposes of this section, sound recordings made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.

Broadcasting of works incorporated in a film

- 15** (1) Where the owner of the copyright in any literary, musical or artistic work authorises a person to incorporate the work in a film and a broadcasting organization broadcasts the film, the owner of the copyright shall, in the absence of any express agreement to the contrary between the owner and that person, be deemed to have authorised the broadcast.
- (2) Notwithstanding subsection (1) of this section, the owner of the right to broadcast the work

shall, subject to this Act, be entitled to receive fair compensation from the broadcasting organization.

- (3) In the absence of an agreement on the compensation payable under subsection (2) of this section, the amount of compensation shall be determined by the Commission.

Right to share in proceeds of sale

16 (1) Notwithstanding any assignment or sale of the original work, the authors of graphic works, three-dimensional works and manuscripts shall have an inalienable right to a share in the proceeds of any sale of that work or manuscript by public auction or through a dealer whatever the method used by the latter to carry out the operation.

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

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

(4) The foregoing provisions of this section shall not apply to architectural works or applied art.

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

Scope of rights

17. The doing of any of the acts referred to in sections 8 to 12 shall be in respect of the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original.

Commencement of rights

18 The rights of the author or other owner of copyright under this Act shall commence upon the creation of the work.

Term of Copyright

19(1) The term of copyright conferred under this Act shall be as follows:

(a) In the case of literary, musical or artistic works other than photographs, seventy years after the end of the year in which the author dies and in the case of government or a body corporate, seventy years after the end of the year in which the work was first published.

(b) In the case of films and photographs, fifty years after the end of the year in which the work was first published.

(c) In the case of sound recordings, fifty years after the end of the year in which the recording was first made.

(d) In the case of Broadcasts, fifty years after the end of the year in which the broadcast first took place.

(2) In the case of anonymous or pseudonymous literary, musical or artistic works the copyright therein shall subsist until the end of the expiration of seventy years from the end of the year in which the work was first published:

Provided that, when the author becomes known, the term of copyright shall be in accordance with subsection(1) of this section.

(3) In the case of a work of joint authorship, a reference to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person under this Act.

PART II
Exceptions from Copyright Control

General exceptions

20(1) The rights conferred in respect of a work by sections 8 to 12 of this Act do not include the right to control -

(a) the doing of any of the acts mentioned in the said sections by way of fair dealing for purposes of research, teaching, education, private use, criticism, review or the reporting of current events, subject to the condition that, if the use is public, where practicable, it shall be accompanied by an acknowledgment of the title of the work and its authorship except where the work is incidentally included in a broadcast;

Provided that in determining whether the use made of a work in any particular case is fair dealing, the factors to be considered shall include—

(i) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes;

(ii) the nature of the work;

(iii) the amount and substantiality of the portion used in relation to the work as a whole;

(iv) the effect of the use upon the potential market for or value of the work; and

(v) if the use does not conflict with a normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the owner of copyright.

(b) the doing of any of the aforesaid acts by way of parody, satire, pastiche, or caricature;

(c) the inclusion in a film or a broadcast of an artistic work situated in a place where it can be viewed by the public;

(d) the reproduction and distribution of copies of any artistic work permanently situated in a place where it can be viewed by the public;

(e) the incidental inclusion of an artistic work in a film or broadcast;

(f) the inclusion in a collection of literary or musical works which includes not more than two excerpts from the work, if the collection bears a statement that it is designed for educational use, includes an acknowledgment of the title and authorship of the work and does not materially impinge on the economic interest of the owner of copyright

(g) subject to section 23 of this Act, the making of a sound recording of a literary or musical work, and the reproduction of such a sound recording by the maker or under licence from him, where the copies thereof are intended for retail sale in Nigeria and the work has already been previously recorded under licence from the owner of the relevant part of the copyright whether in Nigeria or abroad, subject to such conditions and to the payment of such compensation as may be prescribed;

(h) the reading or recitation in public or in a broadcast by any person of any reasonable extract from a published literary work if accompanied by sufficient acknowledgment:

(i) any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centres and scientific or other institutions as may be prescribed, where the use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work so used provided that the use does not substantially affect the potential market or value of the work;

(j) the reproduction of a work by or under the direction or control of a broadcasting organization where the reproduction or any copies thereof are intended exclusively for a lawful broadcast and are destroyed before the end of the period of six months immediately following the making of the reproduction or such longer period as may be agreed between the broadcasting organization and the owner of the relevant part of the copyright in the work, so however that any reproduction of a work made under this paragraph –

(i) may if it is of an exceptional documentary character be preserved in the archives of

- (ii) the broadcasting organization;
subject to this Act, shall not be used for broadcasting or for any other purpose without the consent of the owner of the relevant part of the copyright in the work;
- (iii) lawful broadcast in this paragraph means a broadcast that does not infringe on the copyright in the work being broadcast.

(k) the broadcasting of a work already lawfully made accessible to the public and subject to the condition that the owner of the broadcasting right in the work shall receive a fair compensation determined, in the absence of agreement, by the Commission ;

(l) news of the day publicly broadcast or publicly communicated by any other means;

(m) any use made of a work for the purpose of judicial or legislative proceedings or the reporting of such proceedings;

(n) the making of not more than three copies of a work by or under the direction of the person in charge of a public library for the use of the library if such a work is not available for sale in Nigeria;

(o) the reproduction for the purpose of research or private study of an unpublished literary or musical work kept in a library, museum or other institutions to which the public has access;

(p) temporary acts of reproduction which are transient or incidental and an integral and essential part of a technological process and whose sole purpose is to enable a transmission in a network between third parties by an intermediary; or for other lawful use, where such use has no independent economic significance.

(q) without prejudice to section 22 of this Act, use for the benefit of people with disability, which is directly related to the disability and of a non-commercial nature, to the extent required by the specific disability;

(r) reproduction and distribution of copies of any artistic work, permanently situated in a place where it can be viewed by the public ;

(s) use of an artistic work in the form of a building model or a drawing or plan of a building for the purposes of reconstructing the building;

(t) use by communication or making available, for the purpose of research or private study, to individual members of the public by dedicated terminals on the premises of publicly accessible libraries, educational establishments, museums and archives, of works and other subject matter not subject to purchase or licensing terms which are contained in their collections.

(2) Notwithstanding the provisions of section 8, the reproduction of a copy or the adaptation of a computer program is permitted, if the copy or adaptation is necessary for:

- (a) use with a computer for the purpose for which the computer program was obtained;
- (b) archival purposes or as a replacement, in the event that the original copy of the computer program is lost, destroyed or rendered unusable.

(c) the activation of a machine that lawfully contains an authorized copy of the computer program, for purposes only of maintenance or repair of that machine, subject to the condition that:

(i) such new copy is used in no other manner and is destroyed immediately after the maintenance or repair is completed; and

(ii) with respect to any computer program or part thereof that is not necessary for that machine to be activated, such program or part thereof is not accessed or used other than to make such new copy by virtue of the activation of the machine

Special provisions for archives, libraries, museums and galleries

21(1) Notwithstanding the provisions of sections 8 to 12, a library located in Nigeria may supply to another library, works protected under this Act as part of its ordinary functions, of preserving and lending of works to users:

Provided that if a work is supplied by digital transmission, the electronic file is deleted immediately after the printing of a paper copy of an electronic copy of the work.

(2) Notwithstanding the provisions of sections 8 to 12 of this Acts, archives, libraries, museums and galleries located in Nigeria, may in accordance with paragraphs (a)-(e) hereunder, use and distribute copies of works protected under this Act as part of their ordinary activities, provided this is not done for commercial purposes-

- (a) Such institutions may make copies of works in their collection for the purpose of back-up and preservation.
- (b) If a work or a copy of such work, in such an institution's collection, is incomplete, such an institution may make or procure a copy of the missing parts from another institution, unless the work can reasonably be acquired through general trade or from the publisher.
- (c) Such institutions may make copies of works that are or should be available in their collections in their chosen format, if they cannot reasonably be acquired in such format through general trade or from the publisher.
- (d) Such institutions may make copies of works where the permission of the author or other owner of copyright cannot, after reasonable endeavour, be obtained or where the work is not available by general trade or from the publisher.
- (e) Copies in whatever format made in accordance with paragraphs (a)-(d) of this subsection may be used by users for personal use or study on the premises of the institutions with or without the means of technical equipment and can be lent to users.

Special exceptions for Blind, Visually Impaired, or Otherwise Print Disabled Persons

22(1) Without prejudice to any other section of this Act, it shall be permitted, without the authorization of the author or owner of copyright, to make an accessible format copy of a work or subject matter, or otherwise procure an accessible format copy, and supply those copies to beneficiary persons by any means, including by non-commercial lending or by electronic communication by wire or wireless means, subject to the following conditions:

- (a) the person wishing to undertake the said activity has lawful access to that work or subject matter, or a copy of that work or subject matter;
- (b) the work or subject matter is converted to an accessible format copy, which may include any means needed to navigate information in the accessible format, but does not introduce changes other than those needed to make the work accessible to the beneficiary person;
- (c) such accessible format copies are supplied exclusively to be used by beneficiary persons; and
- (d) the activity is undertaken on a non-profit basis;

(2) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, may make an accessible format copy of a work or other subject matter for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or a copy of that work. This provision is without prejudice to any other limitations or exceptions under this Act.

(3) It shall be permitted without the authorization of the author or other owner of copyright to import from another country, copies of an accessible format of a work or other subject matter referred to in subsection (1), by a beneficiary person or an organisation that serves beneficiary persons, as long as such activity is undertaken on a non-profit basis by that person or

organization.

(4) In this section “accessible format copy” means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to have access as feasibly and comfortably as a person without visual impairment or other print disability.

(5) A beneficiary person is 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.

(6) This exception is subject to the obligations of indicating the source and the name of the author on the copy as far as practicable, and maintaining the integrity of the original work, without prejudice to changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons.

Special exceptions in respect of a sound recording of a musical work

23(1) The copyright in a musical work is not infringed by a person (in this section referred to as “the record producer”) who makes a recording of the work or of an adaptation thereof in Nigeria, if –

(a) records of the work, or, as the case may be, of a similar adaptation of the work, have previously been made in, or imported into Nigeria for the purposes of retail sale, and were so made or imported by, or with the licence of, the owner of the copyright in the work;

(b) before making the recording, the record producer gave to the owner of the copyright the prescribed notice of his intention to make it;

(c) the record producer intends to sell the record by retail, or to supply it for the purpose of its being sold by retail by another person, or intends to use it for making other records which are to be sold or supplied; and

(d) the record producer pays the owner of the copyright in the prescribed manner and at the prescribed time, a royalty of an amount equal to a percentage of the ordinary retail selling price of the record calculated in the prescribed manner.

(2) In the case of a record which comprises, with or without other material, and either in their original form or in the form of adaptations, two or more musical works in which copyright subsists, if the owners of the copyright in the works are different persons, the royalty shall be apportioned among them in such manner as they may agree or, in default of such agreement, may be determined by the Commission.

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

(a) the works consist or form part of a literary or dramatic work in which copyright subsists; and

(b) such previous records as are referred to in paragraph (a) of subsection (1) of this section were made or imported by, or with the licence of the owner of the copyright in that literary or dramatic work; and

- (c) the conditions specified in paragraphs (b) and (d) of subsection (1) of this section are fulfilled in relation to the owner of that copyright;

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

Provided that this paragraph shall not be construed as requiring more than one royalty to be paid in respect of a record; and if copyright subsists both in the musical work and in the literary or dramatic work, and their owners are different persons, the royalty shall be apportioned among them, or among them and any other person entitled to a share thereof as they may agree or as, in default of agreement, may be determined by the Commission.

(4) For the purpose of this section, an adaptation of a work shall be taken to be similar to an adaptation thereof contained in previous records if the two adaptations are similar in that they do not differ substantially in their treatment of the work, in respect of style or, apart from a difference in number, in respect of the performers required to perform the adaptations.

(5) The Commission shall have power to make regulations providing for conditions necessary to give effect to the purposes of this section.

PART III

Ownership, Transfers and Licences

First ownership of copyright

24(1) Copyright conferred by this Act, shall vest initially in the author unless otherwise stipulated in writing under a contract.

(2) Where a person, in the absence of agreement to the contrary, creates a work under the direction or control of a Government, a Ministry, Department or Agency of a Government, or a prescribed international or inter-governmental organization, the copyright in that work shall vest in that Government, Ministry, Department, Agency, prescribed international or inter-governmental organization.

Ownership of copyright in collective works

25 (1) Unless otherwise provided by agreement, copyright in a collective work shall vest in the natural or legal person on the initiative and under the direction of whom the work has been created.

(2) The authors of the works incorporated in a collective work shall retain the exclusive right to exploit their works independently of the use of the collective work, unless otherwise provided for by agreement.

Assignment and licence

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

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to only some of the acts which the owner of the copyright has the exclusive right to control, or to a part only of the period of the copyright, or to a specified country or other geographical area.

(3) No assignment of copyright and no exclusive licence to do an act the doing of which is controlled by copyright shall have effect unless it is in writing

(4) A non-exclusive licence to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct.

(5) An assignment or licence granted by one copyright owner shall have effect as if granted by his co-owner also, and, subject to any contract between them, fees received by the grantors shall be

divided equitably between all the co-owners.

- (6) For the purposes of this subsection, persons shall be deemed to be co-owners –
- (a) if they share a joint interest in the whole or any part of a copyright; or
 - (b) if they have interests in the various copyrights in a composite production, that is to say, a production consisting of two or more works.
- (7) Ownership of the material object in which a work is embodied shall not infer ownership of copyright in that work.
- (8) Where an owner of copyright transfers the right of ownership of the material object in which the work is embodied, he shall not be deemed to have transferred his copyright or to have granted a licence for the exploitation of the work, unless otherwise provided by a written agreement.
- (9) Unless otherwise provided by agreement, an author or other owner of copyright who has transferred his copyright or granted a licence for the exploitation of a work shall not be deemed to have transferred the right of ownership in the material object in which the work is embodied.
- (10) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work or an existing work in which copyright does not yet subsist; and the prospective copyright in any such work shall be transmissible by operation of law as movable property; provided that it shall not be permitted to transfer the rights in all future works of an author.
- (11) A testamentary disposition of material on which a work is first written or otherwise recorded shall, in the absence of any contrary indication, be presumed to include any copyright or prospective copyright in the work which is vested in the deceased.

Compulsory licence for translation and reproduction of certain works

- 27(1) Any qualified person may apply to the Commission for a licence to produce and publish a translation of a literary work which has been published in printed or analogous forms of reproduction for the purposes of teaching, scholarship or research.
- (2) An application under this section shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.
- (3) Every applicant for a licence under this section shall along with his application, deposit with the Commission such fee as may be prescribed.
- (4) Where an application is made to the Commission under this section it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in the application subject to the condition that –
- (a) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Commission may, in the circumstances of each case, determine in the prescribed manner, except that the royalties shall be consistent with the standards normally operating in the case of licences freely negotiated between persons in Nigeria and owners of translation rights in the country of the owner of the right of translation; and
 - (b) the licence shall not extend to the export of copies of the translation of the work outside Nigeria and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in Nigeria.
- (5) Subsection (4) of this section shall not apply to the export by the Government or any authority under the Government of copies of such translation in language other than English to any country if –
- (a) such copies are sent to citizens of Nigeria residing outside Nigeria or to any association of such citizens outside Nigeria; or
 - (b) such copies are meant to be used for purposes of teaching, scholarship or research and not

for any commercial purpose, and in either case, the government of the country to which the copies are exported has agreed to the receipt or distribution, or both, of the copies exported to that country.

- (6) No licence shall be granted by the Commission under this section until the expiration of whichever of the following periods is applicable –
- (a) one year from the date of first publication of the work where the application is for a licence for translation into any language spoken in Nigeria other than English;
 - (b) three years from the date of first publication of the work where the application is for a licence for translation into English.
- (7) No licence shall be granted by the Commission unless –
- (a) the Commission is satisfied that no translation of the work into the language in question has been published in printed or analogous forms of reproduction, by or with the authorization of the owner of the right of translation, or that all previous editions in that language are out of print;
 - (b) the applicant has proved to the satisfaction of the Commission that he had requested and had been denied authorization by the owner of the copyright to produce and publish such translation, or that he was, after due diligence on his part, unable to find such owner;
 - (c) where the applicant was, after due diligence on his part, unable to find the owner of the copyright, he had sent a copy of his request for such authorization by registered post to the publisher whose name appears from the work, not less than two months before the application for the licence;
 - (d) the applicant had at the time he submitted an application under this section informed any national or international information centre designated for this purpose by the government of the country in which the publisher of the work to be translated is believed to have his principal place of business;
 - (e) the Commission is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this Act;
 - (f) a period of six months, in the case of an application for a licence for translation into English or nine months in the case of an application for a licence for translation into any language spoken in Nigeria other than English, has lapsed from the date of making the request under paragraph (b) of this subsection or where a copy of the request has been sent under paragraph (c) of this subsection from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;
 - (g) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;
 - (h) if the work is composed mainly of illustrations, the provisions of section 28 of this Act are complied with;
 - (i) the author has not withdrawn from circulation copies of the work; and
 - (j) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

License to produce and publish works for certain purposes

28(1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary or artistic work–

- (a) the copies of such edition are not made available in Nigeria; or
 - (b) such copies have not been put on sale in Nigeria for a period of six months,
- by the owner of the right of reproduction or by any person authorised by him in that behalf to the general public, or in connection with systematic instructional activities at a price reasonably

related to that normally charged in Nigeria for comparable works, any qualified person may apply to the Commission for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or at a lower price for the purposes of systematic instructional activities.

(2) Every such application shall be made in such forms as may be prescribed and shall state the proposed retail price of a copy of the work to be reproduced.

(3) Every applicant for a licence under this section shall, along with his application, deposit with the Commission such fee as may be prescribed.

(4) Where an application is made to the Commission under this section it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that—

(a) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Commission may, in the circumstances of each case, determine in the prescribed manner, except that the royalties shall be consistent with the standards normally operating in the case of licences freely negotiated between persons in Nigeria and owners of reproduction rights in the country of the owner of the reproduction right;

(b) a licence granted under this section shall not extend to the export of copies of the reproduction of the work outside Nigeria and every copy of such reproduction shall contain a notice that the copy is available for distribution only in Nigeria.

(5) No licence shall be granted to an applicant under this section unless—

(a) the applicant has proved to the satisfaction of the Commission that he had requested and been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;

(b) where the applicant was unable to find the owner of the copyright, a copy of his request for such authorisation by registered air-mail post to the publisher whose name appears on the work not less than three months before the application for the licence;

(c) the applicant had informed any national or international centre designated for this purpose by the government of the country in which the publisher of the work to be reproduced is believed to have his principal place of business;

(d) the Commission is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this section;

(e) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Commission, being a price reasonably related to the price normally charged in Nigeria for works of the same standard on the same or similar subjects;

(f) a period of six months in the case of an application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has lapsed from the date of making the request under paragraph (a) of this subsection, or where a copy of the request has been sent under paragraph (b) of this subsection, from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or three months, as the case may be;

(g) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;

(h) the author has not withdrawn from circulation copies of the work; and

(i) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

(6) No licence to reproduce and publish the translation of a work shall be granted unless such

translation has been published by the owner of the right of translation in a language spoken in Nigeria.

(7) The provisions of sections 27 and 28 shall also apply to the reproduction and publication, or translation into a language spoken in Nigeria, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.

(8) For the purposes of sections 27 and 28—

“relevant period”, in relation to any work, means a period of —

- (a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to fiction, poetry, drama, music or art;
- (b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to natural science, physical science, mathematics or technology.

Licence for domestic broadcasting organization

29(1) Any broadcasting organisation in Nigeria or any qualified person who is the holder of a licence for a television or broadcasting station may apply to the Commission for a licence to produce and publish the translation of—

- (a) a work referred to in section 27 of this Act and published in printed or analogous forms of reproduction; or
- (b) any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities, for broadcasting such translation for the purpose of teaching or for the dissemination of the results of specialized, technical or scientific research to the experts in any particular field.

Definitions for purposes of sections 27 to 29

30 In the context of sections 27 to 29 of this Act—

(1) “qualified person” means —

- (a) a citizen of Nigeria or an individual habitually resident in Nigeria; or
- (b) a body corporate incorporated under any written law in Nigeria;

(2) “research” shall not include industrial research, or research carried out by bodies corporate (not being bodies corporate owned or controlled by the Government), companies, associations or bodies of persons carrying on any business;

(3) “purposes of teaching, research or scholarship” includes —

- (a) purposes of instruction activity at all levels in educational institutions; and
- (b) purposes of all types of organised educational activity.

Compulsory licenses for public interest

31(1) Notwithstanding any other section of this Act, the Commission may authorize the use of a work by any person for the following purposes—

- (a) to rectify abuse of dominant market position;
- (b) to remedy abuse of rights;
- (c) to promote public interest.

(2) In authorizing the use of a work under subsection 1 of this section, the Commission shall take into consideration the following—

- (a) that prior to such use, the proposed user has made efforts to obtain authorization from the owner of copyright on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time:

Provided that the Commission may waive this condition in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use; and

- (b) the owner of copyright is accordingly notified;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized;
- (d) such use shall be non-exclusive and non-assignable;
- (e) any such use shall be authorized exclusively for the domestic market of Nigeria;
- (f) subject to adequate protection of the legitimate interests of the persons so authorized, the authorization may be terminated if and when the circumstances which led to it being granted ceases to exist and are unlikely to recur;
- (g) payment of adequate remuneration to the copyright owner, taking into account the economic value of the work authorized to be used.

Provided that the Commission may not apply the foregoing conditions where the authorization is intended to remedy a market dominant position

(3) An authorisation granted by the Commission under this section or any remuneration required to be paid pursuant to such authorization may be reviewed by the court.

PART IV

Copyright Infringements

Infringement of copyright

32(1) Copyright is infringed by any person who without the licence or authorization of the owner of the copyright –

- (a) does, or causes any other person to do an act, the doing of which constitutes a violation of exclusive rights conferred under this Act;
- (b) imports or causes to be imported into Nigeria any copy of a work which if it had been made in Nigeria would be an infringing copy under this section of this Act;
- (c) sells, offers for sale or hire any work in respect of which copyright is infringed under paragraph (a) of this subsection;
- (d) makes or has in his possession, plates, master tapes, machines, equipment or contrivances used for the sole purpose of making infringed copies of the work;
- (e) permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;
- (f) performs or causes to be performed for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

Action for infringement

33(1) Subject to this Act, infringement of copyright shall be actionable at the suit of the owner, assignee or an exclusive licensee of the copyright, as the case may be, in the Court exercising jurisdiction in the place where the infringement occurred; and in any action for such an infringement, all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

(2) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee may not, without the leave of court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

(3) Where in an action for infringement of copyright, it is proved or admitted that an infringement was committed but that at the time of the infringement, the defendant was not aware and had no

reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement, whether or not any other relief is granted under this section.

(4) Where in an action under this section, an infringement of copyright is proved or admitted, and the court in which the action is brought, having regard, apart from all other material considerations, to—

(a) the flagrancy of the infringement; and

(b) any benefit shown to have accrued to the defendant by reason of the infringement,

is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(5) No injunction shall be issued in proceedings for infringement of copyright which requires a completed or partly completed building to be demolished or prevents the completion of a partly completed building.

(6) In this section, "action" includes a counter-claim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.

Order for inspection and seizure

34(1) In any action for infringement of any right under this Act, where an *ex parte* application is made to the court, supported by affidavit, that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any plate, film or contrivance used or intended to be used for making infringing copies or capable of being used for the purpose of making copies or any other article, book or document by means of or in relation to which any infringement under this Act has been committed, the court may issue an order upon such terms as it deems just, authorising the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer or a Copyright Inspector, and

(a) seize, detain and preserve any such infringing copy or contrivance;

(b) inspect all or any documents in the custody or under the control of the defendant relating to the action.

(2) Any person who knowingly gives false information under this section shall be guilty of an offense and liable on conviction to a fine of N10,000 or imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

Limitation to the right of action

35 Notwithstanding the provisions of this Act or any other law, no action for the infringement of copyright or any right under this Act shall be commenced or maintained by any person—

(a) carrying on the business of negotiating and granting of licence; or

(b) collecting and distributing royalties in respect of copyright works; or

(c) representing more than 50 owners of copyright in any category of works protected by this Act,

unless it is approved under section 74 of this Act to operate as a collective management organization or is otherwise issued with a certificate of exemption by the Commission.

Delivery up of Infringing Copies

36 Where a person has an infringing copy of a work in his possession, custody, or control in the course of a business, or has in his possession, custody or control an article specifically designed or adapted for making copies of a particular copyright work, knowing or having reason to believe that it has been or is to be used to make infringing copies, the owner of the copyright in the work may

apply to the court for an order that the infringing copy or article be-

- (a) forfeited to him or any other person, or
- (b) destroyed or otherwise dealt with as the court may think fit.

Infringement actionable as a breach of statutory duty

37(1)An infringement of the rights conferred by section 13 of this Act is actionable as a breach of statutory duty owed to the person entitled to the right.

(2)In proceedings for infringement of the rights conferred by the said section 13 of this Act, the person whose rights have been infringed shall be entitled to an award of damages, injunction and any other remedies as the court may deem fit to award in the circumstances.

PART V *Copyright Offences*

Criminal liability

38(1) Any person who

- (a) makes or causes to be made for sale, hire, or for the purposes of trade or business any infringing copy of a work in which copyright subsists; or
- (b) imports or causes to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy, or
- (c) makes, causes to be made, or has in his possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of any such work;

shall be guilty of an offence and liable on conviction to a fine of an amount not exceeding N1,000 for every copy dealt with in contravention of this section or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment.

(2)Any person who—

- (a) sells or lets for hire or for the purposes of trade or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists; or
- (b) distributes for the purposes of trade or business any infringing copy of any such work; or
- (c) has in his possession other than for his private or domestic use, any infringing copy of any such work,
- (d) has in his possession, sells, lets for hire or distribution for the purposes of trade or business or exposes or offers for sale or hire any copy of a work which if it had been made in Nigeria would be an infringing copy,

shall be guilty of an offence and liable on conviction to a fine of N500 for every copy dealt with in contravention of this section, or to a term of imprisonment not exceeding three years or in the case of an individual to both such fine and imprisonment.

(3) A defendant shall not be guilty of an offence under subsections (1) and (2) above if he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy of any such work, or that such plate, master tape, machine, equipment or contrivance was not for the purpose of making infringing copies of any such work.

(4)Any person who, without the consent of the owner, distributes, in public for commercial purposes, by way of rental, lease, hire, loan or similar arrangement, copies of a work in which copyright subsists shall be guilty of an offence under this Act, and shall be liable upon conviction to a fine of N500 for every copy dealt with or imprisonment for three years or to both such fine and imprisonment.

(5)The court before which any proceedings are taken for any offence under subsections (1), (2) and (3) of this section, whether the alleged offender is convicted or not, may order all copies of the

works, plates, master tapes, machines, equipment and contrivances in the possession of the alleged offender, which appear, to be infringing copies, of the works, to be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may deem fit.

(6) Where an article has been seized by a law enforcement officer in connection with a suspected offence under this Act, a court may on the application of a Copyright Inspector or owner of the copyright in connection with which such offence is suspected to have been committed, order that the article be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit, notwithstanding that no person has been charged with the suspected offence.

(7) Any person who without the consent of the owner communicates to the public for commercial purpose a work in which copyright subsists shall be guilty of an offence under this Act and liable on conviction to a fine of N1,000, 000.00 or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

(8) Any person who without the consent of the owner does any of the acts specified in Section 12(1)(a) (b) (c) and (e) of this Act in respect of a broadcast shall be guilty of an offence under this Act and liable on conviction to a fine of N1,000, 000.00 or a term of imprisonment not exceeding five years or to both such fine and imprisonment.

(9) Any person who upon demand refuses or omits to pay any royalty accruing by virtue of a right of remuneration under this Act, as may be agreed by the parties or determined by the Commission, shall be guilty of an offence and liable upon conviction to a fine of N200,000.00 or a term of imprisonment not exceeding 12 months or to both such fine and imprisonment.

Aiding and procuring copyright offence

39(1) Any person who aids or procures another person to commit an offence under this Act is guilty of an offence and shall be liable upon conviction to the same punishment as is prescribed under this Act for the commission of the main offence.

Offence by bodies corporate

40(1) Where an offence under this Act has been committed by a body corporate, the body corporate and every person who at the time the offence was committed was in charge of, or was responsible to the body corporate for the conduct of the business of the body corporate shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1) of this section, where an offence under this Act has been committed by a body corporate and it is proved that the offence was committed with the consent or connivance of, any director, manager, secretary or other officer of the body corporate such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of this section –

“body corporate” includes a firm or other association of persons; and

“director” in relation to a firm includes a partner in the firm.

(4) Where a body corporate is convicted of an offence under this Act, the court may order that its assets and property be forfeited if the sole business of the body corporate is that for which it has been convicted.

Simultaneous actions

41 Notwithstanding the provisions of any law to the contrary, it shall be permissible for both criminal

and civil actions to be taken simultaneously in respect of the same infringement under this Act.

PART VI

Anti-Piracy and Other Measures

Duty of publishers, printers, etc.

42(1) Publishers, printers, producers or manufacturers of works in which copyright subsists shall keep a register of all works produced by them showing the following, that is –

- (a) the name of the author;
- (b) the title;
- (c) year of production;
- (d) the quantity of the work produced; and
- (e) any other information as may be prescribed by the Commission from time to time

(2) Any person who –

- (a) fails to keep a register required under this section; or
- (b) makes or causes to be made a false entry in such register; or
- (c) produces or tenders, or causes to be produced or tendered as evidence any such entry or writing knowing the same to be false,

shall be guilty of an offence under this section and be liable on conviction to a fine not exceeding N100,000.

Anti-piracy measures

43(1) The Commission shall have powers, with the consent of the Minister, to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in, or in connection with any work in which copyright subsists.

(2) Any person who-

- (a) sells, rents, hires or
- (b) offers for sale, rent or hire,

any work in contravention of the prescription made pursuant to subsection (1) of this section commits an offence and is liable on conviction to a fine not exceeding N500,000 or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) Any person who without the permission of the Commission-

- (a) imports into Nigeria; or
- (b) has in his possession,

any machine, instrument or other contrivance intended for use in the production of the anti-piracy device, commits an offence and is liable on conviction to a fine not exceeding N1,000, 000.00 or imprisonment for a term not exceeding five years, or to both such fine and imprisonment.

(4) Any person who without the permission of the Commission-

- (a) is in possession of; or
- (b) reproduces, or
- (c) counterfeits,

any anti-piracy device prescribed under this section commits an offence and is liable on conviction to a fine not exceeding N200,000.00 or imprisonment to a term not exceeding two years, or to both such fine and imprisonment.

(5) The Commission shall have power, with the consent of the Minister, to make regulations specifying the conditions necessary to give effect to the purpose of this section.

Circumvention of technological protection measures

44(1) Subject to sections 20-23, no person shall circumvent a technological protection measure that

effectively protects a work under this Act.

(2) No person shall manufacture, import, sell, offer to the public, provide, or otherwise traffic in any technology, product, service, device, or part thereof, that—

(a) is primarily designed or produced for the purpose of circumventing or is capable of circumventing protection afforded by a technological measure that effectively protects a work under this Act; or

(b) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a work under this Act.

(3) As used in this section—

(a) “Circumvent a technological protection measure” means avoiding, bypassing, removing, deactivating, decrypting or otherwise impairing a technological measure.

(b) a technological measure effectively protects a work under this Act if the measure, in the ordinary course of its operation, prevents, restricts, or otherwise limits access to the work.

(4) A non-profit library, archive, or educational institution which gains access to a commercially exploited copyright work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this Act shall not be in violation of the provisions of this section:

Provided however that a copy of a work to which access has been gained under this subsection;

(a) may not be retained longer than necessary to make such good faith determination; and

(b) may not be used for any other purpose.

(5) The exemption made available under paragraph (a) shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

(6) A non-profit library, archives, or educational institution that wilfully for the purpose of commercial advantage or financial gain violates the provision of this section shall forfeit the exemption provided for under paragraph (a).

(7) This section does not prohibit any lawfully authorized investigative, protective, information security, intelligence activity, or computer security measures.

(8) The provision of this section shall not affect the exceptions provided in this Act as it relates to the work in respect of which the technological protection measure is applied.

(9) Notwithstanding the provisions of this section, a person who has lawfully obtained the right to use a copy of a computer programme may circumvent a technological measure that effectively controls access to a particular portion of that programme for the sole purpose of identifying and analyzing those elements of the programme that are necessary to achieve interoperability of an independently created computer programme with other programmes, and that have not previously been readily available to the person engaging in the circumvention, to the extent that any such acts of identification and analysis do not constitute infringement under this Act.

(10) For purposes of this subsection, the term “interoperability” means the ability of computer programmes to exchange information and of such programmes mutually to use the information, which has been exchanged.

Falsification, alteration or removal of electronic rights management information

45(1) No person shall knowingly and with the intent to induce, enable, facilitate, or conceal infringement provide copyright management information that is false, or

(2) No person shall, without the authority of the copyright owner,

(a) intentionally remove or alter any electronic rights management information,

(b) sell, offer for sale, distribute, import for distribution, broadcast or communicate to the public, works or copies of works knowing that electronic rights management information has been removed or altered without authority, knowing, or having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any right under this Act.

(3) As used in this section, “rights management information” means information which identifies the work, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.

Actions for circumvention of technological protection measures and right management information

46(1) Any person whose right is affected by acts under sections 44 or 45 of this Act may bring an action for such acts and the Court before which such action is brought may grant all such reliefs by way of damages, injunction, accounts or otherwise as shall be available to a Plaintiff in any corresponding proceedings in respect of infringement of other proprietary rights.

(2) A court before which an action is brought under this section, may order that any device or product that is in the custody or control of the alleged violator, which the court has reasonable cause to believe was involved in the violation, to be impounded on such terms as it deems necessary

(3) Any person who, in the course of business, makes or imports into Nigeria a technology or device for circumvention of a technological protection measure, knowing that it is likely to be so used is guilty of an offence and liable on conviction to a fine not exceeding N1,000,000.00 or imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(4) Any person who, in the course of business, sells, distributes, lets for hire, offers or exposes for sale or hire, a technology or device for circumvention of a technological protection measure, knowing that it is likely to be so used is guilty of an offence and liable on conviction to a fine not exceeding N500, 000. 00 or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(5) Any person who, in the course of business, provides a service to another knowing that the service is to enable or assist that other person to circumvent a technological protection measure is guilty of an offence and liable on conviction to a fine not exceeding N200,000.00 or imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART VII

Provisions Relating to Online Content

Notice for take down

47 (1) The owner of copyright in a work in respect of which copyright has been infringed, may issue notice of such infringement to the relevant service provider requesting the service provider to take down or disable access to any infringing content or link to such content, hosted on its systems or networks.

(2) To be effective under this section, a notification of an alleged infringement must be made in writing to the service provider or his designated agent and must include substantially the following—

- (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (b) identification of each work claimed to have been infringed;
- (c) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material
- (d) information reasonably sufficient to permit the service provider to contact the complaining party, such as an electronic mail address, telephone number, or a location address at which the complaining party may be contacted;
- (e) a statement under penalty of perjury that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the owner of copyright or his agent, or the law; and
- (f) a statement that the information in the notification is accurate, and that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(3) As used in this Act, the term “service provider” means a provider of online services or network access, or the operator of facilities therefor, and includes an entity offering the transmission, routing, or providing of connections for digital online communications, between or among points specified by a user, of material of the user's choosing, without modification to the content of the material as sent or received.

Take down of infringing content

48(1) A service provider, upon receiving notice of infringement under section 47 shall promptly notify the subscriber responsible for the content for which the notice relates informing him of the content of the notice;

(2) If within 10 days of having notified the subscriber, the subscriber fails to provide any information justifying the continued keeping of the content complained about, the service provider shall take down or disable access to the infringing content or links to such content hosted on its systems or networks, and thereafter, notify the owner of copyright accordingly.

(3) Where a subscriber has provided information justifying the keeping of the content complained about, or the service provider is otherwise convinced that the complaint of the owner of copyright is without merit, he shall promptly inform the owner of copyright of his decision not to take down the content.

(4) The service provider may resume access to or restore removed content or a link, if he receives a written counter notice from the subscriber which he has forwarded to the owner of copyright immediately upon receipt; and he did not receive, within 10 days, a notice from the owner of copyright, indicating that no authorization has been granted for the subscriber to make the content available

(5) Any person dissatisfied with a determination or action by the service provider or owner of copyright under this section may refer the matter to the Commission for determination.

(6) A service provider shall not be liable to any person for any action taken under this section in good faith.

Procedure for suspension of accounts of repeat infringers

49(1) A service provider, upon receiving a notification from an owner of copyright or his authorized agent that a particular account has been engaged in repeated infringement, shall;

- (a) promptly send a warning to the subscriber who has been identified, informing the subscriber that another notification will lead to suspension of the account and requiring the subscriber to confirm receipt of the warning; and

- (b) after the second such notification relating to the same account, if no challenge is pending pursuant to subsection (2) below, promptly suspend the account for a period of at least one month.

(2) A subscriber receiving a warning may challenge the notice on grounds of mistake or misidentification as follows:

- (a) Within 10 days from the date of the warning, send a signed counter-notice to the service provider, furnishing his full contact details and the factual basis of his belief that his account has been misidentified or that the use of the content was not infringing.
- (b) If the basis for the challenge under the foregoing subsection cannot be resolved within 10 days of the receipt of the counter-notice, the matter shall be referred to the Commission to determine the validity of the challenge.

(3) A service provider acting in good faith in suspending the account of a subscriber, relying on the information contained in a notification referred to in the foregoing subsection shall not be liable to any person for any claim based solely on that suspension.

Misrepresentations

50 Any person who knowingly materially misrepresents under this Part —

- (a) that material or activity is infringing; or
- (b) that material or activity was removed or disabled by mistake or misidentification;

shall be liable for any damages, incurred by the alleged infringer, by any owner of copyright or neighbouring rights or his authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

Information residing on systems or networks at direction of users

51 Except as otherwise provided in this Act, a service provider shall not be liable for monetary relief, or injunctive or other equitable relief, for infringement of copyright or other subject matter by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider—

- (a) does not have actual knowledge that the material or an activity using the material on the system or network is infringing; or in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;
- (b) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and
- (c) upon notification of claimed infringement as described in section 46, responds expeditiously to remove, or disable access to the material that is claimed to be infringing or to be the subject of infringing activity.

Information location tools

52 Except as otherwise provided in this Act, a service provider shall not be liable for monetary relief, or for injunctive or other equitable relief, for infringement of copyright or neighbouring rights by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider—

- (a) does not have actual knowledge that the material or activity is infringing; or in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or upon obtaining such knowledge or awareness, acts expeditiously to remove, or

disable access to, the material;

(b) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(c) upon notification of claimed infringement as described in section 47, responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity,

Identification of infringer

53(1) An owner of copyright or other subject matter under this Act, or his agent may apply to the court to issue an order to a service provider for identification of an alleged infringer in accordance with this section.

(2) The application may be accompanied by—

(a) a copy of a notification described in section 47;

(b) a sworn declaration to the effect that the purpose for which the order is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this Act.

(3) The court may issue an order to the service provider to expeditiously disclose to the owner of copyright or other subject matter under this Act, or person authorized by the owner, information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(4) The procedure for issuance and delivery of the order, and the remedies for noncompliance with the order, shall be governed by applicable rules of civil procedure.

Blocking access to online content

54 Notwithstanding the provisions of any other law, the Commission may, directly or with the assistance of any other person, block or disable access to any content or link, hosted on a system or network, which it reasonably believes to infringe copyright under this Act.

PART VIII

Performer's Rights

Performer's right

55(1) A performer shall have the exclusive right to control, in relation to his performance, the following acts, that is –

(a) performing;

(b) recording;

(c) broadcasting live;

(d) reproducing in any material form;

(e) adaptation of the performance; and

(f) communication to the public.

(2) In this section, "performance" includes –

(a) a dramatic performance (which includes dance and mime);

(b) a musical performance; and

(c) a reading or recitation of literary act or any similar presentation which is or so far as it is, a live performance given by one or more individuals.

(2) In this part, “performer” includes actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore irrespective of whether the work was fixed or only fixed during performance

Protected performances

56The rights granted to a performer under this Act shall apply in respect of-

- (a) any performance that take place, or is broadcast without fixation or is first fixed in Nigeria;
- (b) any performance that take place, or is broadcast without fixation or is first fixed in a country which by its law grants in its territory similar rights to performers in respect of performances in Nigeria.

Restrictions on use of performances.–

57(1)Subject to the provisions of this Act, no person shall without the consent of the performer–

- (a) broadcast or communicate to the public a performance of such performer, unless the performance used in the broadcast or the public communication is itself already a broadcast performance or is made from a fixation of the performance or from a reproduction of such a fixation; or
- (b) make a fixation of the unfixed performance of such performer; or
- (c) make a reproduction of a fixation of a performance of such performer–
 - (i) if the original fixation, other than a fixation excluded by section 12 from the necessity for obtaining the consent of the performer, was itself made without his consent; or
 - (ii) if the reproduction is made for purposes other than those in respect of which such performer gave his consent to the making of the original fixation or of a reproduction thereof; or
 - (iii) if the original fixation was made in accordance with the provisions of section 12, and the reproduction is made for purposes not covered by those provisions.

(2) In the absence of an agreement to the contrary, a performer's consent to the broadcasting of his performance shall be deemed to include his consent to the rebroadcasting of his performance, the fixation of his performance for broadcasting purposes, and the reproduction for broadcasting purposes of such fixation.

Moral rights of performers

58(1) A performer shall have the right:

- (a) to be identified as the performer in connection with any use of his performance or the fixation thereof; and
- (b) to object to, and prevent any distortion, mutilation or other modification of his performance or the fixation thereof, and any other derogatory action in relation thereto where such action would be or is prejudicial to his honour or reputation.

(2) The rights referred to in subsection (1) of this section shall not be transmissible during the life of the performer, but upon his death, shall be transmissible by testamentary disposition or by operation of law.

(3) The rights conferred by this section shall subsist for the duration of the performer's right

Collective performances

59Where several performers as a group take part in the same performance, it shall suffice if the consent required under section 57 is given by any person in charge of the group and any payment for the use of the performance may, unless otherwise stipulated, be made to such person.

Exceptions to performer's rights

60(1) If a performer consents to the incorporation of his performance in a visual or audio-visual fixation, section 57 shall cease to apply in respect of the performance so fixed.

(2) A performance, a fixation of a performance or a reproduction of such a fixation may be used

without the consent required by section 57

- (a) if it is for the purpose of judicial, legislative or administrative proceedings; or
- (b) if it is for the demonstration of recording, amplifying or similar apparatus, provided that the demonstration is made by a licensed dealer on his premises to a specific client.
- (c) reproduction of short extracts from an object of performer's rights in reports on current events, to the extent justified by that purpose;
- (d) use for the purpose of research or private study of an object of performer's rights kept in publicly accessible libraries, educational establishments, museums or archives, on the premises of the said institutions;
- (e) making of an ephemeral recording of an object of performer's rights by broadcasting organizations by means of their own facilities and for their own broadcasts. Such recordings may be preserved for a period not exceeding thirty days and must be erased after their use for broadcasting. The recordings of an exceptional documentary character may be transferred to designated archives for preservation;
- (f) reproduction for the benefit of people with a disability, which is directly related to the disability and of a non-commercial nature, to the extent required by the disability;
- (g) use for the sole purpose of illustration for teaching or scientific research, criticism or review, as long as the source, including the author's name, is indicated, unless this turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;
- (h) incidental inclusion of an object of performer's rights in other material;
- (i) use for the purpose of caricature or parody.

(3) The general exceptions from copyright protection of literary and artistic works provided in section 20 of this Act, shall apply mutatis mutandis in respect of performances.

Transfer of performer's rights

61(1) The provisions of section 26 of this Act shall apply mutatis mutandis to performer's rights.

(2) A performer who has authorized the fixation of his performance shall, in the absence of any agreement to the contrary, be deemed to have granted to the person by whom the arrangements for such fixation is made, the exclusive right to receive remuneration in respect of any broadcast, transmission or communication to the public of such fixed performance: provided that the performer is entitled to share in any payment received by the person who arranges for the fixation, or his successor in title.

(3) In the absence of any agreement between the performer and the person by whom arrangement for the fixation is made, on or relating to how the remuneration referred to in subsection (1) may be shared, either of the parties may refer the matter to the Commission to determine the proportion of remuneration due to each party.

Terms of performer's right

62 The right conferred by section 56 of this Act shall subsist in relation to the performance until the end of the period of fifty years from the end of the year in which the performance first took place.

Infringement of performer's right

63 Performer's right is infringed by a person who, without the performer's consent or authorisation in writing, does any of the following, that is—

- (a) makes a recording of the whole or substantial part of a live performance:
Provided that where the consent sought is to make a recording of the work for research, private or domestic use, such consent shall not be unreasonably refused;
- (b) communicates to the public, broadcasts live, or includes live in a cable programme, the whole or a substantial part of the live performance;

- (c) performs in public the whole or a substantial part of the performance;
- (d) shows or plays in public the whole or a substantial part of the performance for commercial purposes;
- (e) broadcasts, or includes in a cable programme, a substantial part of the performance by means of recording which is, and which that person knows or has reason to believe was made without the performer's consent;
- (f) imports into the country otherwise than for his private or domestic use, a recording of a performer's work which is an infringing recording; or
- (g) in the course of trade or business, sells or lets for hire, offers, distributes or displays for sale or hire a recording of a performer's work which is an infringing recording.

Action for Infringement of performer's right

64(1) An infringement of a right protected under section 56 and section 58 of this Act shall be actionable by the person entitled to the right as a breach of statutory duty and the performer shall be entitled to damages, injunction, account for profit or conversion.

(2) Where a person has in his possession, custody or control, in the course of trade or business or otherwise than for a private or domestic use, an unauthorized recording of a performance, a person having the performer's right or recording rights in relation to the performance under this section shall be entitled to an order of the court that the recording be forfeited and delivered up to him.

Criminal liability in respect of infringement of performer's right

65(1) A person who does any of the acts set out in section 63 shall, unless he proves to the satisfaction of the court that he did not know that his conduct was an infringement of the performer's right, be guilty of an offence and liable on conviction—

- (a) in the case of an individual, to a fine not exceeding N100,000.00 or to imprisonment for a term of 12 months or to both such fine and imprisonment; and
- (b) in the case of a body corporate, to a fine not exceeding N2,000,000.00

(2) A court before which an offense under this section is tried may order that the recording or any other part thereof be delivered to the performer.

PART IX

Expressions of Folklore

Protection of expressions of folklore

66(1) Expressions of folklore are protected against —

- (a) reproduction;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means;
- (c) adaptations, translations and other transformations, when such expressions are made either for commercial purposes or outside their traditional or customary context.

(2) The right conferred in subsection (1) of this section shall not include the right to control—

- (a) the doing of any of the acts by way of fair dealing for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgment of the title of the work and its source;
- (b) the utilisation for purposes of education;
- (c) utilisation by way of illustration in an original work of an author:

Provided that the extent of such utilisation is compatible with fair practice;

- (d) the borrowing of expressions of folklore for creating an original work of an author: Provided that the extent of such utilisation is compatible with fair practice;
- (e) the incidental utilisation of expressions of folklore.

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

(4) The right to authorise acts referred to in subsection (1) of this section shall vest in the Nigerian Copyright Commission.

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

- (a) folklore, folk poetry, and folk riddles;
- (b) folk songs and instrumental folk music;
- (c) folk dances and folk plays;
- (d) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewelry, handicrafts, costumes, and indigenous textiles.

Infringement of folklore

67. Any person who, without the consent of the Nigerian Copyright Commission, uses an expression of folklore in a manner not permitted by section 66 of this Act shall be in breach of statutory duty and be liable to the Commission in damages, injunctions and any other remedies as the court may deem fit to award in the circumstances.

Criminal liability in respect of infringement of folklore

68(1) Any person who intentionally and with commercial purpose-

- (a) does any of the acts set out in section 31 of this Act without the consent or authorisation of the Commission; or
- (b) does not comply with the requirement in subsection (4) of section 66 of this Act; or
- (c) willfully misrepresents the source of an expression of folklore; or
- (d) willfully distorts an expression of folklore in a manner prejudicial to the honour, dignity or cultural interests of the community in which it originates, commits an offence under this Act.

(2) A person convicted of an offence under subsection (1) of this section is liable on conviction-

- (a) in the case of an individual, to a fine not exceeding N100,000.00 or to imprisonment for a term of 12 months or to both such fine and imprisonment; and
- (b) in the case of a body corporate, to a fine of N2,000,000.00

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

PART X

Administration of Copyright

Establishment of the Nigerian Copyright Commission

69(1) There is hereby established a body to be known as the Nigerian Copyright Commission (hereinafter referred to as the Commission).

(2) The Commission shall be a body corporate with perpetual succession and a common seal and

may sue and be sued in its corporate name.

(3)The Commission shall –

- (a) be responsible for all matters affecting copyright in Nigeria as provided for in this Act;
- (b) monitor and supervise Nigeria's position in relation to international conventions and advise Government thereon;
- (c) advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country;
- (d) enlighten and inform the public on matters relating to copyright;
- (e) maintain an effective data bank on authors and their works;
- (f) be responsible for such other matters as relate to copyright in Nigeria as the Minister may, from time to time, direct.

Establishment, membership and functions of the Governing Board

70(1)The Commission shall have a governing board (hereinafter referred to as “the Board”) which shall consist of the following members-

- (a) a Chairman, who shall be a person knowledgeable in copyright matters, to be appointed by the President, on the recommendation of the Minister;
- (b) the Director-General of the Commission;
- (c) one representative of the Nigeria Police Force, not below the rank of a Commissioner of Police;
- (d) one representative of the Nigeria Customs Service, not below the rank of a Comptroller of Customs;
- (e) six other persons to be appointed by the Minister who shall represent as far as possible the authors in the following areas-
 - (i) literary works;
 - (ii) artistic works;
 - (iii) musical works;
 - (iv) films;
 - (v) sound recordings; and
 - (vi) broadcasts.

(2)The Board shall adopt rules governing its procedure and method of operation.

Appointment of the Director-General and other staff of the Commission

71(1)There shall be for the Commission, a Director General who shall be appointed by the President on the recommendation of the Minister.

(2)A person to be appointed as the Director General of the Commission shall be a legal practitioner of not less than fifteen years post-call experience and knowledgeable in copyright law and administration.

(3)The Director-General shall be responsible for the day-to-day administration of the Commission.

(4)Without prejudice to the generality of subsection (1) of this section, the Commission shall have power –

- (a) to appoint such other staff as it may determine;
- (b) to pay its staff such remuneration and allowances as it may, from time to time, determine;
- (c) as regards any staff in whose case it decides so to do, to pay to or in respect of such staff such pensions and gratuities as are payable to persons of equivalent grade in the public service of the Federation.

(5)It is hereby declared that service in the Commission shall be approved service for the purposes of

the law regulating pensions in the public service and accordingly, officers and other persons employed in the Commission shall be entitled to pensions, gratuities and other retirement benefits as are prescribed thereunder, so however that nothing in this section shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity or any other retirement benefit in respect of that office.

Copyright Inspectors

72(1) The Commission may appoint copyright inspectors as it may deem fit.

(2) A copyright inspector shall for the purposes of this Act have the power—

- (a) to enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under this Act;
- (b) to arrest any person who he reasonably believes to have committed an offence under this Act;
- (c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;
- (d) to require the production of the register required to be kept under section 14 of this Act and to inspect, examine or copy it;
- (e) to require any person who, he finds in such building or premises to give such information as it is in his power to give in relation to any purposes specified in this Act and seize, confiscate, take into custody any infringing copy, contrivance, material, equipment used in committing an offence under this Act.;
- (f) seal up premises and carry out such examination, test or analysis within or outside the premises as is required to give effect to any provision of this act and to take instant photographs where such examination, test, analysis or photograph is carried out within the premises and such examination, test, analysis or photograph shall be required to be endorsed by the occupier of the premises or his agent but a refusal by an occupier to endorse any document containing the result of an examination, test, analysis or photograph shall not invalidate the result or finding of the examination, test, analysis or photograph; and
- (g) to exercise such other powers as the Commission may delegate to it to give effect to the provisions of this Act;

(3) A copyright inspector may prosecute, conduct or defend before a court any charge, information, complaint or other proceedings arising under this Act.

(4) Any person who obstructs a copyright inspector in the performance of his duties shall be guilty of an offence and liable on conviction to a fine not exceeding N100,000.00 or to imprisonment for a term not exceeding twelve months or to both such fine and imprisonment.

(5) A Copyright Inspector shall have all the powers, rights and privileges of a police officer as defined under the Police Act and under any other relevant enactment pertaining to the investigation, prosecution or defence of a civil or criminal matter under this Act.

Registration of works

73(1) The Commission shall establish and maintain a Register of works.

(2) Without prejudice to the sections conferring copyright under this Act, all works eligible for copyright protection may be registered in the Register upon an application made in the prescribed form by or on behalf of the author, owner, assignee or exclusive licensee of the work.

(3) The Register shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein or extract there from certified by the Commission

shall be admissible in evidence in all proceedings without further proof or production of the original.

(4)The Commission shall have power to reproduce and store all or any part of the registered works in an electronic or any other format.

(5)The Commission may, with the approval of the Minister, make regulations for the purpose of this section.

(6)Any person who makes or causes to be made a false entry in the Register shall be guilty of an offence under this section and be liable on conviction to a fine of N200,000.00 or to a term of imprisonment not exceeding two years or to both such fine and imprisonment.

Collective Management Organization

74(1) A collective management organization (in this section referred to as “a CMO”) may be formed in respect of any one or more rights of copyright owners for the benefit of such owners, and the CMO may apply to the Commission for approval to operate as a collective management organization for the purpose of this Act.

(2)The Commission may approve a CMO if it is satisfied that –

- (a) it is incorporated as a company limited by guarantee;
- (b) its objects are to carry out the general duty of negotiating and granting copyright licenses and collecting royalties on behalf of copyright owners and distributing same to them;
- (c) it represents a substantial number of owners of copyright in any category of works protected by this Act; in this paragraph of this subsection, “owners of copyright” includes owners of performer's rights;
- (d) it complies with the terms and conditions prescribed by regulations made by the Commission under this section.

(3)The Commission shall not approve another CMO in respect of any class of copyright owners if it is satisfied that an existing approved CMO adequately protects the interests of that class of copyright owners.

(4)It shall be unlawful for any group of persons, howsoever described, to purport to perform the duties of a CMO without the approval of the Commission as required under this section.

(5)Any person who contravenes the provisions of subsection (4) of this section, shall be guilty of an offence and liable on conviction to a fine of N500, 000.00 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(6) Where the contravention is by a body corporate, it shall be guilty of an offence and liable on conviction to a fine not exceeding N2, 000,000.00

(7) The Commission shall have power to make regulations specifying the conditions necessary to give effect to the purposes of this section of this Act.

(8)For the purposes of this section –

“collective management organization” means an association of copyright owners which has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works;

“group of persons” includes “a body corporate”.

(9)The Commission may, where it finds it expedient, assist in establishing a collective management organization for any class of copyright owners.

(10)Notwithstanding the provisions of this Act or any other law, a CMO may issue licences permitting the use of works of owners of copyright who are not members of the CMO:

Provided that:

- (a) such works are of the same category as works for which it is approved to issue licences;
- (b) the owners of copyright in such works are not otherwise represented by any other CMO;
- (c) the owners of copyright in such works have not specifically opted out of collective management of their rights and
- (d) the CMO does not discriminate against such owners in terms of the tariffs for the use of their works and the royalties paid to such owners.

Levy on copyright materials

75(1) There shall be paid a levy on every material capable of being used to reproduce, or infringe copyright in, a work;

(2) The levy payable under this section and any exemptions therefrom shall be as may be prescribed by the Minister by Order published in the *Gazette*, and different rates of levies may be imposed on different categories of materials.

(3) The levies prescribed under this section shall be paid into the Fund of the Commission and the Commission shall, subject to deductions, disburse the funds amongst approved Collective Management Organisations in accordance with the regulation made by the Commission.

(4) In this section, “material” includes any object, equipment, machine, contrivances or any other device used or capable of being used to reproduce, or infringe copyright in, a work.

PART XI *Miscellaneous*

Establishment of dispute resolution panel

76(1) The Commission may constitute a dispute resolution panel (hereinafter referred to as “the Panel”) to resolve any dispute in respect of payment of royalties or terms of a licence; or determine any matter in respect of which a determination by the Commission is required under this Act.

(2) The Panel shall comprise of three persons knowledgeable in copyright matters, one of whom shall be designated as chairman.

(3) A person shall not be appointed as a member of the Panel if he has any interest in any matter which is required to be determined by the Panel.

(4) Where proceedings before the Panel has been commenced and a member of the Panel is unable to continue, the Panel shall remain duly constituted for the purpose of those proceedings so long as two members remain.

(5) The Commission shall make regulations providing for the procedure of the Panel.

(6) Any person dissatisfied with a decision of the Panel may appeal to the court.

Admission of affidavit evidence

77(1) An affidavit made before a Commissioner for Oaths, notary public or other person competent to administer an oath in terms of the law of the country where the oath is made which—

- (a) purports to have been made by or on behalf of the owner of the copyright in a work; and
- (b) states that—
 - (i) at the time specified therein, copyright subsists in the work,
 - (ii) the person named therein is the owner of the copyright in the work,

- (iii) a copy of the work exhibited to the affidavit is a true copy of the work,
- (iv) the author of the work is a citizen of or domiciled in a country named in the affidavit,
- (v) the author of the work is a body corporate established or incorporated by or under the laws of the country named in the affidavit,
- (vi) the work was first made or published in the country named in the affidavit,
- (vii) the certificate attached to the affidavit is a true copy of the certificate of registration of that incorporation, shall be admitted as evidence of the facts stated therein without further proof in any proceedings under this Act.

(2) The court before which an affidavit is produced under subsection (1) of this section shall presume, until the contrary is proved, that the statements made therein are true.

Presumption

78. In any action for an infringement of copyright in a work, whether civil or criminal, the following shall be presumed, in the absence of any evidence to the contrary –

- (a) that copyright subsists in a work which is the subject matter of an alleged infringement; (d) that the name appearing on a work purporting to be the name of the author, is the name of such author;
- (e) that the name appearing on a work purporting to be that of the publisher or producer of a work is the name of such publisher or producer;
- (f) where the author is dead, that the work is an original work;
- (g) that it was published or produced at the place and on the date appearing on the work.

Restriction on importation

79(1) The owner of copyright in a work may give notice in writing to the Director General of the Commission requesting the Commission and customs officials, during the period specified in the notice, to treat as prohibited goods any work in respect of which the right has been infringed.

(2) The Director General shall, upon receipt of a notice under subsection (1) of this section or upon reasonable suspicion that an infringing copyright work is being imported, notify the Comptroller General of Customs, or any other officer in charge of the relevant border, furnishing him with information that may be relevant for the purpose of identifying and intercepting the infringing work which is the subject matter of the notice or suspicion.

(3) Acting upon the information of the Director General under this section, the Comptroller General or such other officer shall intercept and impound the infringing works and shall permit the Director General or any person acting on his behalf to inspect the impounded works and take custody of same pending the initiation of any proceedings in accordance with the provisions of this Act: Provided that any work or material impounded under this section shall not be kept for a period exceeding ten working days, which in appropriate cases may be extended by another ten working days, within which the right owner or the Commission shall decide whether to initiate any proceedings in accordance with the provisions of this Act.

(4) Where an infringing work is intercepted or impounded under this section, the Comptroller General or any other officer in charge of the relevant border, shall notify the importer and the right holder or their authorised representatives accordingly, stating the reasons for the action taken.

(5) The period specified in a notice under this section shall not exceed five years and shall not extend beyond the end of the period for which the copyright subsists.

(6) Where a notice has been given under this section, the importation into Nigeria or exportation from Nigeria during the period specified in the notice, except for private and domestic use, of any works to which the notice relates shall, be prohibited and the Director General or any person acting

on his behalf may enter any vehicle, aircraft, ship, vessel, dock, or premises to examine the works which is the subject of the notice and take further action in accordance with the provisions of the Act.

(7) Any person giving notice under this section shall be required to undertake to indemnify the importer or exporter of the works against any injury that may be occasioned through the official action taken in respect thereof if it is found that the notice ought not to have been given.

(8) Without prejudice to subsections (1) and (2) of this section, the Comptroller General of Customs, or any other officer in charge of a border may, in respect of any imported goods, which he reasonably believes to infringe copyright, suspend the release of such goods and shall promptly notify the importer and the right owner accordingly.

(9) This section applies to works made inside or outside of Nigeria, which if they had been made or manufactured in Nigeria, would be an infringement under this Act.

(10) Any authorised person acting in good faith under this section shall not be liable for any decision or action taken pursuant to this section.

(11) The Commission may make regulations prescribing procedure and any further requirements for giving notice under this section.

Regulations

80(1) Where no other provision is made in that behalf, the Minister may make Regulations prescribing anything required to be prescribed for the purposes of this Act.

(2) The Commission shall, with the consent of the Minister, have power to make regulations specifying the conditions necessary for the operation of a business involving the production, public exhibition, hiring or rental of any work in which copyright subsists under this Act.

Jurisdiction

81(1) The Federal High Court shall have exclusive jurisdiction for the trial of offences or disputes under this Act.

(2) Trial of offences under this Act shall be by summary trial.

Limitation on suit against the Commission, etc.

82(1) Notwithstanding anything in any other enactment, no suit against the Commission, a member of the Governing Board or any staff of the Commission, for an act done-

- (a) in pursuance or execution of his duties under this Act or any other enactment or law; or
- (b) in respect of any alleged neglect or default in the execution of this Act or any other enactment,

shall lie or be instituted in any court unless the suit is commenced within twelve months next after the act, neglect or default complained of or where the damage or injury continues within twelve months next after the damage or injury ceases.

(2) No suit shall be commenced against the Commission or any member of staff of the Commission before the expiration of a period of three months after written notice of intention to commence the suit is served upon the Commission by the intending plaintiff or his agent.

(3) The notice referred to in subsection (2) of this section shall clearly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

Service of documents

83 A notice, summons, or other document required or authorised to be served upon the

Commission under the provisions of this Act or any other enactment or law may be served by delivering the same to the Director-General of the Commission or by sending it by registered post addressed to the Director-General at the Head Office of the Commission.

Restriction on execution against the property of the Commission

84(1)In any action, or suit against the Commission, no execution or attachment or process in the nature thereof shall be issued against the Commission.

(2) Any sum of money which is by judgment of a court awarded against the Commission shall, subject to any direction given by the court where notice of appeal has been given by the Commission in respect of the judgment, be paid by the Commission from its general fund.

Interpretation

85(1)In this Act, unless the context otherwise requires –

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

“artistic work” includes, irrespective of artistic quality, any of the following works or works similar thereto –

(a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;

(b) maps, plans and diagrams;

(c) works of sculpture;

(d) photographs not comprised in a film;

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

(f) works of artistic craftsmanship, including pictorial woven tissues and articles of applied handicraft;

“author” in the case of film means the person by whom the arrangements for the making of the film were made, unless the parties to the making of the film, provide otherwise by contract between themselves;

“author” in the case of literary, artistic or musical works, means the creator of the work;

“author” in the case of a photographic work, means the person who took the photograph;

“author” in the case of sound recording, means the person by whom the arrangements for the making of the sound recording were made;

“author” in the case of a broadcast transmitted from within any country, means the person by whom the arrangements for the making or the transmission from within that country were undertaken;

“broadcast” means sound or television broadcast by wireless telegraphy or wire or both, or by satellite or cable programmes and includes re-broadcast;

“broadcasting organization” means any authority established under any law in Nigeria or elsewhere providing broadcasting services for public reception;

“building” includes any structure;

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

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

(b) for presentation to members of the public;

“choreographic work” means a composition of movements for dancing or any other patterned succession of gestures mostly created to accompanying music;

“film” includes the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a sound

track associated with the film;

“communication to the public” includes, live performance or delivery, any mode of visual or acoustic presentation, making available the work or copies thereof to the public, including by digital transmission over computer networks, but does not include a broadcast or re-broadcast;

“computer programme” means a set of statements or instructions, whatever may be the mode or form of their expression, to be used directly or indirectly in a computer in order to bring about a certain result;

“copy” means a reproduction in any form including a digital copy.

“copyright” means copyright under this Act;

“court” means the Federal High Court;

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

“Government” includes Federal, State and Local Government.

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

“literary work” includes, irrespective of literary quality, any of the following works or works similar thereto—

(a) novels, stories and poetical works;

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

(c) choreographic works;

(d) computer programmes;

(e) text-books, treatises, histories, biographies, essays and articles;

(f) encyclopaedias, dictionaries, directories and anthologies;

(g) letters, reports and memoranda;

(h) lectures, addresses and sermons;

(i) law reports, excluding decisions of courts;

(j) written tables and compilations, including table or compilation of data stored or embodied in a computer or any medium;

“Minister” means the Minister charged with the responsibility for copyright matters;

“musical work” means any musical composition, irrespective of musical quality and includes works composed for musical accompaniment;

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

“reproduction” means the making of one or more copies of a literary, musical or artistic work, film or sound recording;

“sound recording” means the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced but does not include a sound track associated with a film;

“work” includes translations, adaptation, new versions or arrangements of pre-existing works, and anthologies or collection of works which, by reason of the selection and arrangement of their content, present an original character;

“work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of each author is inseparable from the contribution of the other author or authors;

“year” means—

(a) in section 79 of this Act, a period of twelve months; and

(b) elsewhere in this Act, a calendar year, that is to say, a period of twelve months beginning on 1 January and ending on 31 December.

(2) The following provisions shall apply with respect to publication, that is to say—

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

- (b) where in the first instance, a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;
- (c) a publication in any country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere if the two publications took place within a period of not more than thirty days.

Repeals and transitional, etc. provisions

86(1) The Copyright Act 1988 as amended is hereby repealed.

(2) Sections 491, 492 and 493 of the First Schedule to the Criminal Code Act¹ and Sections 426 and 427 of the Penal Code are hereby repealed.

(3) The transitional and saving provisions in section 88 of this Act shall have effect notwithstanding sub-section (1) of this section or any other provisions of this Act.

Transitional and Savings Provisions

87(1) This Act applies in relation to works made before the commencement of this Act as it applies in relation to works made after the commencement of this Act.

(2) Proceedings for infringement of copyright may be taken notwithstanding that the alleged infringement occurred before the commencement of this Act.

(3) Where an act done before the commencement of this Act was then an infringement of copyright but is not an infringement of copyright under this Act, proceedings in respect of the act may be taken as if this Act had not been made.

(4) Contracts for the licensing of any act in respect of copyright that were effective immediately before the commencement of this Act, shall continue in force as if they related to the corresponding copyright under this Act.

(5) A notice given under section 44 of the repealed Act and not withdrawn before the commencement of this Act shall continue in force as if it had been given under section 79 of this Act.

(6) Any subsidiary legislation which was in force immediately before the commencement of this Act shall remain in force, subject to any necessary modifications, as if it had been made under this Act, and may be added to, amended, revoked or varied accordingly.

Short title

88 This Act may be cited as the Copyright Act.

[End of document]

¹Cap. C28 *Laws of the Federation of Nigeria, 2004.*