

**THE COPYRIGHT ACT, 1956**  
(4 & 5 Eliz. 2. c. 74)  
(Applied to Botswana 4th December, 1965)

as amended by

**THE PERFORMERS' PROTECTION ACTS 1958 and 1963**  
(6 & 7 Eliz. 2 c. 44 and 1963 c. 53)

and

**THE FILMS ACT, 1960**  
(8 & 9 Eliz. 2 c. 57)

and

**THE COPYRIGHT (BECHUANALAND) ORDER, 1965**  
(S.I. 1965 No. 2009 as published in L.N. No. 13 of 1966)

and

**THE REVISED EDITION OF LAWS (COPYRIGHT ACT, 1956)**  
**ORDER, 1969**  
(S.I. No. 23 of 1969)

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## **CHAPTER 74**

*Copyright Act, 1956*

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**AN ACT TO MAKE NEW PROVISION IN RESPECT OF COPYRIGHT AND RELATED MATTERS, IN SUBSTITUTION FOR THE PROVISIONS OF THE COPYRIGHT ACT, 1911, AND OTHER ENACTMENTS RELATING THERETO; AND FOR PURPOSES CONNECTED WITH THE MATTERS AFORESAID.**

Be it enacted by the Queen's most Excellency Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

**PART I**

**COPYRIGHT IN ORIGINAL WORKS**

**Nature of Copyright under this Act.**

1.—(1) In this Act "copyright" in relation to a work (except where the context otherwise requires) means the exclusive right, by virtue and subject to the provisions of this Act, to do, and to authorise other persons to do, certain acts in relation to that work in Botswana<sup>1</sup> or in any other country to which the relevant provision of this Act extends.

The said acts, in relation to a work of any description, are those acts which, in the relevant provision of this Act, are designated as the acts restricted by the copyright<sup>1</sup> in a work of that description.

(2) In accordance with the preceding subsection, but subject to the following provisions of this Act, the copyright in a work is infringed by any person *who, not being the owner of the copyright, and without the licence of the owner thereof, does, or authorises another person to do, any of the said acts in relation to the work in Botswana<sup>1</sup> or in any other country to which the relevant provision of this Act extends.*

(3) In the preceding subsections references to the relevant provision of this Act, in relation to a work of any description, are references to the provision of this Act whereby it is provided that (subject to compliance with the conditions specified therein) copyright shall subsist in works of that description.

(4) The preceding provisions of this section shall apply in relation to any subject matter (other than a work) of a description to which every provision of Part II of this Act relates, as they apply in relation to a work.

(5)<sup>2</sup> For the purposes of any provision of this Act which specifies the conditions under which copyright may subsist in any description of work or other subject matter, "qualified person" —

1. S.I. No. 23 of 1969

2. Subsection substituted by S.I. No. 23 of 1969.

- (a) in the case of an individual, means a person who is a citizen of Botswana or (not being a citizen of Botswana) is domiciled or resident in Botswana or in another country to which that provision extends; and
- (b) in the case of a body corporate, means a body incorporated under the laws of Botswana or of another country to which that provision extends.

### **Copyright in Literary, Dramatic and Musical Works**

2.—(1) Copyright shall subsist, subject to the provisions of this Act, in every original literary, dramatic or musical work which is unpublished, and of which the author was a qualified person at the time when the work was made, or, if the making of the work extended over a period, was a qualified person for a substantial part of that period.

(2) Where an original literary, dramatic or musical work has been published, then, subject to the provisions of this Act, copyright shall subsist in the work (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) if, but only if —

- (a) the first publication of the work took place in Botswana<sup>1</sup>, or in another country to which this section extends, or
- (b) the author of the work was a qualified person at the time when the work was first published, or
- (c) the author had died before that time, but was a qualified person immediately before his death.

(3) Subject to the last preceding subsection, copyright subsisting in a work by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the author died, and shall then expire:

Provided that if before the death of the author none of the following acts had been done, that is to say, —

- (a) the publication of the work,
- (b) the performance of the work in public,
- (c) the offer for sale to the public of records of the work, and
- (d) the broadcasting of the work,

the copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year which includes the earliest occasion on which one of those acts is done.

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1. Amended by S.I. No. 23 of 1969.

(4) In the last preceding subsection references to the doing of any act in relation to a work include references to the doing of that act in relation to an adaptation of the work.

(5) The acts restricted by the copyright in a literary, dramatic or musical work are —

- (a) reproducing the work in any material form ;
- (b) publishing the work ;
- (c) performing the work in public ;
- (d) broadcasting the work ;
- (e) causing the work to be transmitted to subscribers to a diffusion service ;
- (f) making any adaptation of the work ;
- (g) doing, in relation to an adaptation of the work, any of the acts specified in relation to the work in paragraphs (a) to (e) of this subsection.

(6) In this Act “adaptation” —

- (a) in relation to a literary or dramatic work, means any of the following, that is to say, —
  - (i) in the case of a non-dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a dramatic work ;
  - (ii) in the case of a dramatic work, a version of the work (whether in its original language or a different language) in which it is converted into a non-dramatic work ;
  - (iii) a translation of the work ;
  - (iv) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical ; and
- (b) in relation to a musical work, means an arrangement or transcription of the work,

so however that the mention of any matter in this definition shall not affect the generality of paragraph (a) of the last preceding subsection.

### **Copyright in Artistic Works**

3.—(1) In this Act “artistic work” means a work of any of the following descriptions, that is to say, —

- (a) the following, irrespective of artistic quality, namely paintings, sculptures, drawings, engravings and photographs ;

- (b) works of architecture, being either buildings or models for buildings;
- (c) works of artistic craftsmanship, not falling within either of the preceding paragraphs.

(2) Copyright shall subsist, subject to the provisions of this Act, in every original artistic work which is unpublished, and of which the author was a qualified person at the time when the work was made, or, if the making of the work extended over a period, was a qualified person for a substantial part of that period.

(3) Where an original artistic work has been published, then, subject to the provisions of this Act, copyright shall subsist in the work (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) if, but only if,—

- (a) the first publication of the work took place in Botswana<sup>1</sup> or in another country to which this section extends, or
- (b) the author of the work was a qualified person at the time when the work was first published, or
- (c) the author had died before that time, but was a qualified person immediately before his death.

(4) Subject to the last preceding subsection, copyright subsisting in a work by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the author died, and shall then expire :

Provided that —

- (a) in the case of an engraving, if before the death of the author the engraving had not been published, the copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which it is first published;
- (b) the copyright in a photograph shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the photograph is first published, and shall then expire.

(5) The acts restricted by the copyright in an artistic work are —

- (a) reproducing the work in any material form;
- (b) publishing the work;
- (c) including the work in a television broadcast;
- (d) causing a television programme which includes the work to be transmitted to subscribers to a diffusion service.

1. Amended by S.I. No. 23 of 1969.

### **Ownership of Copyright in Literary, Dramatic, Musical and Artistic Works**

4. (1) Subject to the provisions of this section, the author of a work shall be entitled to any copyright subsisting in the work by virtue of this Part of this Act.

(2) Where a literary, dramatic or artistic work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall be entitled to the copyright in the work in so far as the copyright relates to publication of the work in any newspaper, magazine or similar periodical, or to reproduction of the work for the purpose of its being so published; but in all other respects the author shall be entitled to any copyright subsisting in the work by virtue of this Part of this Act.

(3) Subject to the last preceding subsection, where a person commissions the taking of a photograph, or the painting or drawing of a portrait, or the making of an engraving, and pays or agrees to pay for it in money or money's worth, and the work is made in pursuance of that commission, the person who so commissioned the work shall be entitled to any copyright subsisting therein by virtue of this Part of this Act.

(4) Where, in a case not falling within either of the two last preceding subsections, a work is made in the course of the author's employment by another person under a contract of service or apprenticeship, that other person shall be entitled to any copyright subsisting in the work by virtue of this Part of this Act.

(5) Each of the three last preceding subsections shall have effect subject, in any particular case, to any agreement excluding the operation thereof in that case.

(6) The preceding provisions of this section shall all have effect subject to the provisions of Part VI of this Act.

### **Infringements by Importation, Sale and Other Dealings**

5.-(1) Without prejudice to the general provisions of section 1 as to infringements of copyright, the provisions of this section shall have effect in relation to copyright subsisting by virtue of this Part of this Act.

(2) The copyright in a literary, dramatic, musical or artistic work is infringed by any person who, without the licence of the owner of the copyright, imports an article (otherwise than for his private and domestic use) into Botswana<sup>1</sup> or into any other country to which this section extends, if to his knowledge the making of that article constituted an infringement of that copyright, or would have constituted such an infringement if the article had been made in the place into which it is so imported.

<sup>1</sup> Amended by S.I. No. 23 of 1969.

(3) The copyright in a literary, dramatic, musical or artistic work is infringed by any person who, in Botswana<sup>1</sup> or in any other country to which this section extends, and without the licence of the owner of the copyright,—

(a) sells, lets for hire, or by way of trade offers or exposes for sale or hire any article, or

(b) by way of trade exhibits any article in public,

if to his knowledge the making of the article constituted an infringement of that copyright, or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it was imported.

(4) The last preceding subsection shall apply in relation to the distribution of any articles either —

(a) for purposes of trade, or

(b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright in question,

as it applies in relation to the sale of an article.

(5) The copyright in a literary, dramatic or musical work is also infringed by any person who permits a place of public entertainment to be used for a performance in public of the work, where the performance constitutes an infringement of the copyright in the work:

Provided that this subsection shall not apply in a case where the person permitting the place to be so used —

(a) was not aware, and had no reasonable grounds for suspecting, that the performance would be an infringement of the copyright, or

(b) gave the permission gratuitously, or for a consideration which was only nominal or (if more than nominal) did not exceed a reasonable estimate of the expenses to be incurred by him in consequence of the use of the place for the performance.

(6) In this section “place of public entertainment” includes any premises which are occupied mainly for other purposes, but are from time to time made available for hire to such persons as may desire to hire them for purposes of public entertainment.

#### **General Exceptions from Protection of Literary, Dramatic and Musical Works**

6.—(1) No fair dealing with a literary, dramatic or musical work for purposes of research or private study shall constitute an infringement of the copyright in the work.

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1. Amended by S.I. No. 23 of 1969.

(2) No fair dealing with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.

(3) No fair dealing with a literary, dramatic or musical work shall constitute an infringement of the copyright in the work if it is for the purpose of reporting current events —

(a) in a newspaper, magazine or similar periodical, or

(b) by means of broadcasting, or in a cinematograph film,

and, in a case falling within paragraph (a) of this subsection, is accompanied by a sufficient acknowledgment.

(4) The copyright in a literary, dramatic or musical work is not infringed by reproducing it for the purposes of a judicial proceeding, or for the purposes of a report of a judicial proceeding.

(5) The reading or recitation in public by one person of any reasonable extract from a published literary or dramatic work, if accompanied by a sufficient acknowledgment, shall not constitute an infringement of the copyright in the work:

Provided that this subsection shall not apply to anything done for the purposes of broadcasting.

(6) The copyright in a published literary or dramatic work is not infringed by the inclusion of a short passage therefrom in a collection intended for the use of schools, if —

(a) the collection is described in its title, and in any advertisements thereof issued by or on behalf of the publisher, as being so intended, and

(b) the work in question was not published for the use of schools, and

(c) the collection consists mainly of material in which no copyright subsists, and

(d) the inclusion of the passage is accompanied by a sufficient acknowledgment:

Provided that this subsection shall not apply in relation to the copyright in a work if, in addition to the passage in question, two or more other excerpts from works by the author thereof (being works in which copyright subsists at the time when the collection is published) are contained in that collection, or are contained in that collection taken together with every similar collection (if any) published by the same publisher within the period of five years immediately preceding the publication of that collection.

(7) Where by virtue of an assignment or licence a person is authorised to broadcast a literary, dramatic or musical work from a place in Botswana<sup>1</sup>, or in another country to which section 2 of this Act extends, but (apart from this subsection) would not be entitled to make reproductions of it in the form of a record or of a cinematograph film, the copyright in the work is not infringed by his making such a reproduction of the work solely for the purpose of broadcasting the work:

Provided that this subsection shall not apply if —

- (a) the reproduction is used for making any further reproduction therefrom, or for any other purposes except that of broadcasting in accordance with the assignment or licence, or
- (b) the reproduction is not destroyed before the end of the period of twenty-eight days beginning with the day on which it is first used for broadcasting the work in pursuance of the assignment or licence, of such extended period (if any) as may be agreed between the person who made the reproduction and the person who (in relation to the making of reproductions of the description in question) is the owner of the copyright.

(8) The preceding provisions of this section shall apply to the doing of any act in relation to an adaptation of a work as they apply in relation to the doing of that act in relation to the work itself.

(9) The provisions of this section shall apply where a work, or adaptation of a work, is caused to be transmitted to subscribers to a diffusion service as they apply where a work or adaptation is broadcast.

(10) In this Act "sufficient acknowledgment" means an acknowledgment identifying the work in question by its title or other description and, unless the work is anonymous or the author has previously agreed or required that no acknowledgment of his name should be made, also identifying the author.

#### **Special Exceptions as Respects Libraries and Archives**

7.—(1) The copyright in an article contained in a periodical publication is not infringed by the making or supplying of a copy of the article, if the copy is made or supplied by or on behalf of the librarian of a library of a class prescribed by regulations made under this subsection by the Minister<sup>2</sup>, and the conditions prescribed by those regulations are complied with.

(2) In making any regulation for the purposes of the preceding subsection the Minister<sup>2</sup> shall make such provision as the Minister<sup>2</sup> may consider appropriate for securing —

- (a) that the libraries to which the regulations apply are not established or conducted for profit;

1. Amended by S.I. No. 23 of 1969.

2. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966) and by S.I. No. 23 of 1969.

- (b) that the copies in question are supplied only to persons satisfying the librarian, or a person acting on his behalf, that they require them for purposes of research or private study and will not use them for any other purpose ;
- (c) that no person is furnished under the regulations with two or more copies of the same article ;
- (d) that no copy extends to more than one article contained in any one publication ; and
- (e) that persons to whom copies are supplied under the regulations are required to pay for them a sum not less than the cost (including a contribution to the general expenses of the library) attributable to their production,

and may impose such other requirements (if any) as may appear to the Minister<sup>1</sup> to be expedient.

(3) The copyright in a published literary, dramatic or musical work, other than an article contained in a periodical publication, is not infringed by the making or supplying of a copy of part of the work, if the copy is made or supplied by or on behalf of the librarian of a library of a class prescribed by regulations made under this subsection by the Minister<sup>1</sup>, and the conditions prescribed by those regulations are complied with :

Provided that this subsection shall not apply if, at the time when the copy is made, the librarian knows the name and address of a person entitled to authorise the making of the copy, or could by reasonable inquiry ascertain the name and address of such a person.

(4) The provisions of subsection (2) of this section shall apply for the purposes of the last preceding subsection :

Provided that paragraph (d) of the said subsection (2) shall not apply for those purposes, but any regulations made under the last preceding subsection shall include such provision as the Minister<sup>1</sup> may consider appropriate for securing that no copy to which the regulations apply extends to more than a reasonable proportion of the work in question.

(5) The copyright in a published literary, dramatic or musical work is not infringed by the making or supplying of a copy of the work, or of part of it, by or on behalf of the librarian of a library of a class prescribed by regulations made under this subsection by the Minister<sup>1</sup>, if

- (a) the copy is supplied to the librarian of any library of a class so prescribed ;
- (b) at the time when the copy is made, the librarian by or on whose behalf it is supplied does not know the name and address of any person entitled to

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1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966) and S.I. No. 23 of 1969.

authorise the making of the copy, and could not by reasonable inquiry ascertain the name and address of such a person ; and

(c) any other conditions prescribed by the regulations are complied with :

Provided that the condition specified in paragraph (b) of this subsection shall not apply in the case of an article contained in a periodical publication.

(6) Where, at a time more than fifty years from the end of the calendar year in which the author of a literary, dramatic or musical work died, and more than one hundred years after the time, or the end of the period, at or during which the work was made,—

(a) copyright subsists in the work, but

(b) the work has not been published, and

(c) the manuscript or a copy of the work is kept in a library, museum or other institution where (subject to any provisions regulating the institution in question) it is open to public inspection,

the copyright in the work is not infringed by a person who reproduces the work for purposes of research or private study, or with a view to publication.

(7) Where a published literary, dramatic or musical work (in this subsection referred to as "the new work") incorporates the whole or part of a work (in this subsection referred to as "the old work") in the case of which the circumstances specified in the last preceding subsection existed immediately before the new work was published, and —

(a) before the new work was published, such notice of the intended publication as may be prescribed by regulations made under this subsection by the Minister<sup>1</sup> had been given, and

(b) immediately before the new work was published, the identity of the owner of the copyright in the old work was not known to the publisher of the new work,

then for the purposes of this Act —

(i) that publication of the new work, and

(ii) any subsequent publication of the new work, either in the same or in an altered form,

shall, in so far as it constitutes a publication of the old work not be treated as an infringement of the copyright in the old work or as an unauthorised publication of the old work :

Provided that this subsection shall not apply to a subsequent publication incorporating a part of the old work which was not included in the new work as

1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966) and S.I. No. 23 of 1969.

originally published, unless (apart from this subsection) the circumstances specified in the last preceding subsection, and in paragraphs (a) and (b) of this subsection, existed immediately before that subsequent publication.

(8) In so far as the publication of a work, or of part of a work, is, by virtue of the last preceding subsection, not to be treated as an infringement of the copyright in the work, a person who subsequently broadcasts the work, or that part thereof, as the case may be, or causes it to be transmitted to subscribers to a diffusion service, or performs it in public, or makes a record of it, does not thereby infringe the copyright in the work.

(9) In relation to an article or other work which is accompanied by one or more artistic works provided for explaining or illustrating it (in this subsection referred to as "illustrations"), the preceding provisions of this section shall apply as if —

- (a) wherever they provide that the copyright in the article or work is not infringed, the reference to that copyright included a reference to any copyright in any of the illustrations ;
- (b) in subsections (1) and (2), references to a copy of the article included references to a copy of the article together with a copy of the illustrations or any of them ;
- (c) in subsections (3) to (5), references to a copy of the work included references to a copy of the work together with a copy of the illustrations or any of them, and references to a copy of part of the work included references to a copy of that part of the work together with a copy of any of the illustrations which were provided for explaining or illustrating that part ; and
- (d) in subsections (6) and (7), references to the doing of any act in relation to the work included references to the doing of that act in relation to the work together with any of the illustrations.

(10) In this section "article" includes an item of any description.

#### **Special Exception in Respect of Records of Musical Works**

8.—(1) The copyright in a musical work is not infringed by a person (in this section referred to as "the manufacturer") who makes a record of the work or of an adaptation thereof in Botswana<sup>1</sup>, 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, Botswana<sup>1</sup> 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 record, the manufacturer gave to the owner of the copyright the prescribed notice of his intention to make it ;

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1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966)

- (c) the manufacturer 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 so sold or supplied; and
- (d) in the case of a record which is sold by retail, the manufacturer pays to the owner of the copyright, in the prescribed manner and at the prescribed time, a royalty of an amount ascertained in accordance with the following provisions of this section.

(2) Subject to the following provisions of this section, the royalty mentioned in paragraph (d) of the preceding subsection shall be of an amount equal to six an one-quarter per cent, of the ordinary retail selling price of the record, calculated in the prescribed manner:

Provided that if the amount so calculated includes a fraction of a cent<sup>1</sup>, that fraction shall be reckoned as one cent and if, apart from this proviso, the amount of the royalty would be less than three-cents<sup>1</sup>, the amount thereof shall be three-cents<sup>1</sup>.

(3)<sup>2</sup> If it appears to the Minister that the ordinary rate of royalty, or the minimum amount thereof, in accordance with the provisions of the last preceding subsection, or in accordance with the provisions as last varied by an order under this subsection has ceased to be equitable, either generally or in relation to any class of records, the Minister may hold a public inquiry in the prescribed manner; and if, in consequence of such an inquiry, the Minister is satisfied of the need to do so, the Minister may make an order prescribing such different rate or amount, either generally or in relation to any one or more classes of records, as the Minister may consider just:

Provided that where an order comprising a class of records (that is to say, either a general order or an order relating specifically to that class, or to that class together with one or more classes of records) has been made under this subsection, no further order comprising that class of records shall be made thereunder less than five years after the date on which the previous order comprising that class (or, if more than one, the last previous order comprising that class) was made thereunder.

(4) 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 —

- (a) the minimum royalty shall be three-cents in respect of each of those works;<sup>1</sup>
- (b) 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 as, in default of agreement, may be determined by arbitration.

1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966)

2. Subsection substituted by S.I. No. 23 of 1969.

(5) Where a record comprises (with or without other material) a performance of a musical work, or of an adaptation of a 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 words 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 subsection 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 in accordance with the last preceding subsection) as they may agree or as, in default of agreement, may be determined by arbitration.

(6) For the purposes 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 do not substantially differ in their treatment of the work, either in respect of style or (apart from any difference in numbers) in respect of the performers required for performing them.

(7) Where, for the purposes of paragraph (a) of subsection (1) of this section, the manufacturer requires to know whether such previous records as are mentioned in that paragraph were made or imported as therein mentioned, the manufacturer may make the prescribed inquiries; and if the owner of the copyright fails to reply to those inquiries within the prescribed period the previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

(8) The preceding provisions of this section shall apply in relation to records of part of a work or adaptation as they apply in relation to records of the whole of it:

Provided that subsection (1) of this section —

- (a) shall not apply to a record of the whole of a work or adaptation unless the previous records referred to in paragraph (a) of that subsection were records of the whole of the work or of a similar adaptation, and
- (b) shall not apply to a record of part of a work or adaptation unless those previous records were records of, or comprising, that part of the work or of a similar adaptation.

(9) In relation to musical works published before the 1st day of July, nineteen hundred and twelve, the preceding provisions of this section shall apply as if paragraph (a) of subsection (1), paragraph (b) of subsection (5), subsections (6) and (7), and the proviso to the last preceding subsection, were omitted:

Provided that this subsection shall not extend the operation of subsection (5) of this section to a record in respect of which the condition specified in paragraph (b) of that subsection is not fulfilled, unless the words comprised in the record (as well as the musical work) were published before the 1st day of July, nineteen hundred and twelve, and were so published as words to be sung to, or spoken incidentally to or in association with, the music.

(10) Nothing in this section shall be construed as authorising the importation of records which could not lawfully be imported apart from this section; and accordingly, for the purposes of any provision of this Act relating to imported articles, where the question arises whether the making of a record made outside Botswana<sup>1</sup> would have constituted an infringement of copyright if the record had been made in Botswana<sup>1</sup> that question shall be determined as if subsection (1) of this section had not been enacted.

(11) In this section "prescribed" means prescribed by regulations made under this section by the Minister<sup>1,2</sup>; and any such regulations made for the purposes of paragraph (d) of subsection (1) of this section may provide that the taking of such steps as may be specified in the regulations (being such steps as the Minister<sup>1,2</sup> considers most convenient for ensuring the receipt of the royalties by the owner of the copyright) shall be treated as constituting payment of the royalties in accordance with that paragraph.

#### **General Exceptions from Protection of Artistic Works**

9.-(1) No fair dealing with an artistic work for purposes of research or private study shall constitute an infringement of the copyright in the work.

(2) No fair dealing with an artistic work shall constitute an infringement of the copyright in the work if it is for purposes of criticism or review, whether of that work or of another work, and is accompanied by a sufficient acknowledgment.

(3) The copyright in a work to which this subsection applies which is permanently situated in a public place, or in premises open to the public, is not

1. U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966)

2. Amended by S.I. No. 23 of 1969.

infringed by the making of a painting, drawing, engraving or photograph of the work, or the inclusion of the work in a cinematograph film or in a television broadcast.

This subsection applies to sculptures, and to such works of artistic craftsmanship as are mentioned in paragraph (c) of subsection (1) of section 3.

(4) The copyright in a work of architecture is not infringed by the making of a painting, drawing, engraving or photograph of the work, or the inclusion, of the work in a cinematograph film or in a television broadcast.

(5) Without prejudice to the two last preceding subsections, the copyright in an artistic work is not infringed by the inclusion of the work in a cinematograph film or in a television broadcast, if its inclusion therein is only by way of background or is otherwise only incidental to the principal matters represented in the film or broadcast.

(6) The copyright in an artistic work is not infringed by the publication of a painting, drawing, engraving, photograph or cinematograph film, if by virtue of any of the three last preceding subsections the making of that painting, drawing, engraving, photograph or film did not constitute an infringement of the copyright.

(7) The copyright in an artistic work is not infringed by reproducing it for the purposes of a judicial proceeding or for the purposes of a report of a judicial proceeding.

(8) The making of an object of any description which is in three dimensions shall not be taken to infringe the copyright in an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description, to be a reproduction of the artistic work.

(9) The copyright in an artistic work is not infringed by the making of a subsequent artistic work by the same author, notwithstanding that part of the earlier work —

(a) is reproduced in the subsequent work, and

(b) is so reproduced by the use of a mould, cast, sketch, plan, model or study made for the purposes of the earlier work,

if in making the subsequent work the author does not repeat or imitate the main design of the earlier work.

(10) Where copyright subsists in a building as a work of architecture, the copyright is not infringed by any reconstruction of that building; and where a building has been constructed in accordance with architectural drawings or plans in which copyright subsists, and has been so constructed by, or with the licence of, the owner of that copyright, any subsequent reconstruction of the building by reference to those drawings or plans shall not constitute an infringement of that copyright.

(11) The provisions of this section shall apply in relation to a television programme which is caused to be transmitted to subscribers to a diffusion service as they apply in relation to a television broadcast.

#### **Special Exception in Respect of Industrial Designs**

10.—(1) Where copyright subsists in an artistic work, and a corresponding design is registered under the Registered Designs Act, 1949 (in this section referred to as “the Act, of 1949”), it shall notwithstanding the provisions of that Act as read with section 2 of the Patents and Designs Protection Proclamation (Chapter 155)<sup>1</sup> not be an infringement of the copyright in the work —

- (a) to do anything, during the subsistence of the copyright in the registered design under the Act of 1949, which is within the scope of the copyright in the design, or
- (b) to do anything, after the copyright in the registered design has come to an end, which, if it had been done while the copyright in the design subsisted, would have been within the scope of that copyright as extended to all associated designs and articles :

Provided that this subsection shall have effect subject to the provisions of the First Schedule to this Act in cases falling within that Schedule.

(2) Where copyright subsists in an artistic work, and —

- (a) a corresponding design is applied industrially by or with the licence of the owner of the copyright in the work, and
- (b) articles to which the design has been so applied are sold, let for hire, or offered for sale or hire, and
- (c) at the time when those articles are sold, let for hire, or offered for sale or hire, they are not articles in respect of which the design has been registered under the Act of 1949.

the following provisions of this section shall apply.

(3) Subject to the next following subsection,—

- (a) during the relevant period of fifteen years, it shall not be an infringement of the copyright in the work to do anything which, at the time when it is done, would have been within the scope of the copyright in the design if the design had, immediately before that time, been registered in respect of all relevant articles ; and
- (b) after the end of the relevant period of fifteen years, it shall not be an infringement of the copyright in the work to do anything which, at the time when it is done, would, if the design had been registered immediately

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1. Amended by S.I. No. 23 of 1969.

before that time, have been within the scope of the copyright in the design as extended to all associated designs and articles.

In this subsection "the relevant period of fifteen years" means the period of fifteen years beginning with the date on which articles, such as are mentioned in paragraph (b) of the last preceding subsection, were first sold, let for hire, or offered for sale or hire in the circumstances mentioned in paragraph (c) of that subsection; and "all relevant articles", in relation to any time within that period, means all articles falling within the said paragraph (b) which had before that time been sold, let for hire, or offered for sale or hire in those circumstances.

(4) For the purposes of subsections (2) and (3) of this section no account shall be taken of any articles in respect of which, at the time when they were sold, let for hire, or offered for sale or hire, the design in question was excluded from registration under the Act of 1949 by rules made under subsection (4) of section 1 of that Act (which relates to the exclusion of designs for articles which are primarily literary or artistic in character); and for the purposes of any proceedings under this Act a design shall be conclusively presumed to have been so excluded if —

- (a) before the commencement of those proceedings an application for the registration of the design under the Act of 1949 in respect of those articles had been refused;
- (b) the reason or one of the reasons stated for the refusal was that the design was excluded from such registration by rules made under the said subsection (4); and
- (c) no appeal against that refusal had been allowed before the date of the commencement of the proceeding or was pending on that date.

(5)<sup>1</sup>

(6) In this section, references to the scope of the copyright in a registered design are references to the aggregate of the things, which, by virtue of section 7 of the Act of 1949 the registered proprietor of the design has the exclusive right to do, and references to the scope of the copyright in a registered design as extended to all associated designs and articles are references to the aggregate of the things which, by virtue of that section the registered proprietor would have had the exclusive right to do if —

- (a) when that design was registered, there had at the same time been registered every possible design consisting of that design with modifications or variations not sufficient to alter the character or substantially to affect the identity thereof, and the said proprietor had been registered as the proprietor of every such design, and

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1. Lapsed by operation of section 1 of the Botswana Independence Order.

(b) the design in question, and every other design such as is mentioned in the preceding paragraph, had been registered in respect of all the articles to which it was capable of being applied.

(7) In this section "corresponding design", in relation to an artistic work, means a design which, when applied to an article, results in a reproduction of that work.

#### **Provision as to Anonymous and Pseudonymous Works, and Works of Joint Authorship**

11.—(1) The preceding provisions of this Part of this Act shall have effect subject to the modifications specified in the Second Schedule to this Act in the case of works published anonymously or pseudonymously.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to works of joint authorship.

(3) In this Act "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is not separate from the contribution of the other author or authors.

## **PART II**

### **COPYRIGHT IN SOUND RECORDINGS, CINEMATOGRAPH FILMS, BROADCASTS, ETC.**

#### **Copyright in Sound Recordings**

12.—(1) Copyright shall subsist, subject to the provisions of this Act, in every sound recording of which the maker was a qualified person at the time when the recording was made.

(2) Without prejudice to the preceding subsection, copyright shall subsist, subject to the provisions of this Act, in every sound recording which has been published, if the first publication of the recording took place in Botswana<sup>1</sup> or in another country to which this section extends.

(3) Copyright subsisting in a sound recording by virtue of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the recording is first published, and shall then expire.

(4) Subject to the provisions of this Act, the maker of a sound recording shall be entitled to any copyright subsisting in the recording by virtue of this section:

Provided that where a person commissions the making of a sound recording, and pays or agrees to pay for it in money or money's worth, and the recording is

1. Amended by S.I. No. 23 of 1969

made in pursuance of that commission, that person, in the absence of any agreement to the contrary, shall, subject to the provisions of Part VI of this Act, be entitled to any copyright subsisting in the recording by virtue of this section.

(5) The acts restricted by the copyright in a sound recording are the following, whether a record embodying the recording is utilised directly or indirectly in doing them, that is to say, —

- (a) making a record embodying the recording ;
- (b) causing the recording to be heard in public ;
- (c) broadcasting the recording.

(6) The copyright in a sound recording is not infringed by a person who does any of those acts in Botswana<sup>1</sup> in relation to a sound recording, or part of a sound recording, if —

- (a) records embodying that recording, or that part of the recording, as the case may be, have previously been issued to the public in Botswana<sup>1</sup>, and
- (b) at the time when those records were so issued, neither the records nor the containers in which they were so issued bore a label or other mark indicating the year in which the recording was first published :

Provided that this subsection shall not apply if it is shown that the records in question were not issued by or with the licence of the owner of the copyright, or that the owner of the copyright had taken all reasonable steps for securing that records embodying the recording or part thereof would not be issued to the public in Botswana<sup>1</sup> without such a label or mark either on the records themselves or on their containers.

(7) Where a sound recording is caused to be heard in public —

- (a) at any premises where persons reside or sleep, as part of the amenities provided exclusively or mainly for residents or inmates therein, or
- (b) as part of the activities of, or for the benefit of a club, society or other organisation which is not established or conducted for profit and whose main objects are charitable or are otherwise concerned with the advancement of religion, education or social welfare,

the act of causing it to be so heard shall not constitute an infringement of the copyright in the recording :

Provided that this subsection shall not apply —

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1. Amended by U.K S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

- (i) in the case of such premises as are mentioned in paragraph (a) of this subsection, if a special charge is made for admission to the part of the premises where the recording is to be heard; or
- (ii) in the case of such an organisation as is mentioned in paragraph (b) of this subsection, if a charge is made for admission to the place where the recording is to be heard, and any of the proceeds of the charge are applied otherwise than for the purposes of the organisation.

(8) For the purposes of this Act a sound recording shall be taken to be made at the time when the first record embodying the recording is produced, and the maker of a sound recording is the person who owns that record at the time when the recording is made.

(9) In this Act "sound recording" means the aggregate of the sounds embodied in, and capable of being reproduced by means of, a record of any description, other than a sound-track associated with a cinematograph film; and "publication", in relation to a sound recording, means the issue to the public of records embodying the recording or any part thereof.

#### **Copyright in Cinematograph Films**

13.-(1) Copyright shall subsist, subject to the provisions of this Act, in every cinematograph film of which the maker was a qualified person for the whole or a substantial part of the period during which the film was made.

(2) Without prejudice to the preceding subsection, copyright shall subsist, subject to the provisions of this Act, in every cinematograph film which has been published, if the first publication of the film took place in Botswana<sup>1</sup> another country to which this section extends.

(3)<sup>2</sup> Copyright subsisting in a cinematograph film by virtue of this section shall continue to subsist until the film is published and thereafter until the end of the period of fifty years from the end of the calendar year which includes the date of its first publication and shall then expire, or, if copyright subsists in the film by virtue only of the last preceding subsection, it shall continue to subsist as from the date of its first publication until the end of the period of fifty years from the end of the calendar year which includes that date and then expire.

(4) Subject to the provisions of Part VI of this Act, the maker of a cinematograph film shall be entitled to any copyright subsisting in the film by virtue of this section.

(5) The acts restricted by the copyright in a cinematograph film are —

(a) making a copy of the film;

1. Amended by S.I. No. 23 of 1969.

2. Amended by the Third Schedule of 8 & 9 Eliz. 2 c. 57 and substituted by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

(b) causing the film, in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public ;

(c) broadcasting the film ;

(d) causing the film to be transmitted to subscribers to a diffusion service.

(6) The copyright in a cinematograph film is not infringed by making a copy of it for the purposes of a judicial proceeding, or by causing it to be seen or heard in public for the purposes of such a proceeding.

(7) Where by virtue of this section copyright has subsisted in a cinematograph film, a person who, after that copyright has expired, causes the film to be seen, or to be seen and heard, in public does not thereby infringe any copyright subsisting by virtue of Part I of this Act in any literary, dramatic, musical or artistic work.

(8) In the case of any film consisting wholly or mainly of photographs which, at the time they were taken were means of communicating news<sup>1</sup>, the copyright in the film is not infringed by causing it to be seen or heard in public after the end of the period of fifty years from the end of the calendar year in which the principal events depicted in the film occurred.

(9) For the purposes of this Act a cinematograph film shall be taken to include the sounds embodied in any sound-track associated with the film, and references to a copy of a cinematograph film shall be construed accordingly :

Provided that where those sounds are also embodied in a record, other than such a sound-track or a record derived (directly or indirectly) from such a sound-track, the copyright in the film is not infringed by any use made of that record.

(10) In this Act —

“cinematograph film” means any sequence of visual images recorded on material of any description (whether translucent or not) so as to be capable, by the use of that material,—

(a) of being shown as a moving picture, or

(b) of being recorded on other material (whether translucent or not), by the use of which it can be so shown ;

“the maker”, in relation to a cinematograph film, means the person by whom the arrangements necessary for the making of the film are undertaken ;

“publication”, in relation to a cinematograph film, means the sale, letting on hire, or offer for sale or hire, of copies of the film to the public ;

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1. Amended by the Third Schedule of 8 & 9 Eliz. 2 c. 57 and by U.K. S.1. 1965 No. 2009 (L.N. No. 13 of 1966).

“copy”, in relation to a cinematograph film, means any print, negative, tape or other article on which the film or part of it is recorded,

and references in this Act to a sound-track associated with a cinematograph film are references to any record of sounds which is incorporated in any print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded, or which is issued by the maker of the film for use in conjunction with such an article.

(11)<sup>1</sup> . . . . .

### **Copyright in Television Broadcasts and Sound Broadcasts**

14.—(1)<sup>2</sup> Copyright shall subsist, subject to the provisions of this Act —

- (a) in every television broadcast made by any person or body specified by the Minister by notice in the *Gazette* as being a person to whom this section relates (in this Act referred to as a specified authority) from a place in Botswana; and
- (b) in every sound broadcast made by a specified authority from such place.

(2) Subject to the provisions of this Act, the specified authority<sup>3</sup> shall be entitled to any copyright subsisting in a television broadcast or sound broadcast made by it; and any such copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the broadcast is made, and shall then expire.

(3) In so far as a television broadcast or sound broadcast is a repetition (whether the first or any subsequent repetition) of a television broadcast or sound broadcast previously made as mentioned in subsection (1) of this section (whether by a specified authority<sup>3</sup>), and is made by broadcasting material recorded on film, records or otherwise, —

- (a) copyright shall not subsist therein by virtue of this section if it is made after the end of the period of fifty years from the end of the calendar year in which the previous broadcast was made; and
- (b) if it is made before the end of that period, any copyright subsisting therein by virtue of this section shall expire at the end of that period.

(4) The acts restricted by the copyright in a television broadcast or sound broadcast are —

- (a) in the case of a television broadcast in so far as it consists of visual images, making, otherwise than for private purposes, a cinematograph film of it or a copy of such a film;

1. Substituted by the Third Schedule 8 & 9 Eliz. 2 c. 57 and omitted by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

2. Substituted by S.I. No. 23 of 1969.

3. Amended by S.I. No. 23 of 1969.

- (b) in the case of a sound broadcast, or of a television broadcast in so far as it consists of sounds, making, otherwise than for private purposes, a sound recording of it or a record embodying such a recording ;
- (c) in the case of a television broadcast, causing it in so far as it consists of visual images, to be seen in public, or, in so far as it consists of sounds, to be heard in public, if it is seen or heard by a paying audience ;
- (d) in the case either of a television broadcast or of a sound broadcast, re-broadcasting it.

(5) The restrictions imposed by virtue of the last preceding subsection in relation to a television broadcast or sound broadcast made by a specified authority<sup>1</sup> shall apply whether the act in question is done by the reception of the broadcast or by making use of any record, print, negative, tape or other article on which the broadcast has been recorded.

(6) In relation to copyright in television broadcasts, in so far as they consist of visual images, the restrictions imposed by virtue of subsection (4) of this section shall apply to any sequence of images sufficient to be seen as a moving picture ; and accordingly, for the purpose of establishing an infringement of such copyright, it shall not be necessary to prove that the act in question extended to more than such a sequence of images.

(7) For the purposes of subsection (4) of this section a cinematograph film or a copy thereof, or a sound recording or a record embodying a recording, shall be taken to be made otherwise than for private purposes if it is made for the purposes of the doing by any person of any of the following acts, that is to say,—

- (a) the sale or letting for hire of any copy of the film, or, as the case may be, of any record embodying the recording ;
- (b) broadcasting the film or recording ;
- (c) causing the film or recording to be seen or heard in public.

(8) For the purposes of paragraph (c) of subsection (4) of this section, a television broadcast shall be taken to be seen or heard by a paying audience if it is seen or heard by persons who either —

- (a) have been admitted for payment to the place where the broadcast is to be seen or heard, or have been admitted for payment to a place of which that place forms part, or
- (b) have been admitted to the place where the broadcast is to be seen or heard in circumstances where goods or services are supplied there at prices which exceed the prices usually charged at that place and are partly attributable to the facilities afforded for seeing or hearing the broadcast:

<sup>1</sup>. Amended by S.I. No. 23 of 1969.

Provided that for the purposes of paragraph (a) of this subsection no account shall be taken —

- (i) of persons admitted to the place in question as residents or inmates therein, or
- (ii) of persons admitted to that place as members of a club or society, where the payment is only for membership of the club or society and the provision of facilities for seeing or hearing television broadcasts is only incidental to the main purposes of the club or society.

(9) The copyright in a television broadcast or sound broadcast is not infringed by anything done in relation to the broadcast for the purposes of a judicial proceeding.

(10) In this Act “television broadcast” means visual images broadcast by way of television, together with any sounds broadcast for reception along with those images, and “sound broadcast” means sounds broadcast otherwise than as part of a television broadcast; and for the purposes of this Act a television broadcast or sound broadcast shall be taken to be made by the body by whom, at the time when, and from the place from which the visual images or sounds in question, or both, as the case may be, are broadcast.

#### **Copyright in Published Editions of Works**

15.—(1) Copyright shall subsist, subject to the provisions of this Act, in every published edition of any one or more literary, dramatic or musical works in the case of which either —

- (a) the first publication of the edition took place in Botswana<sup>1</sup>, or in another country to which this section extends, or
- (b) the publisher of the edition was a qualified person at the date of the first publication thereof:

Provided that this subsection does not apply to an edition which reproduces the typographical arrangement of a previous edition of the same work or works.

(2) Subject to the provisions of this Act, the publisher of an edition shall be entitled to any copyright subsisting in the edition by virtue of this section; and any such copyright shall continue to subsist until the end of the period of twenty-five years from the end of the calendar year in which the edition was first published, and shall then expire.

(3) The act restricted by the copyright subsisting by virtue of this section in a published edition is the making, by any photographic or similar process, of a reproduction of the typographical arrangement of the edition.

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1. Amended by S.I. No. 23 of 1969.

(4) The copyright under this section in a published edition is not infringed by the making by or on behalf of a librarian of a reproduction of the typographical arrangement of the edition, if he is the librarian of a library of a class prescribed by regulations made under this subsection by the Minister<sup>1,2</sup>, and the conditions prescribed by those regulations are complied with.

### **Supplementary Provisions for Purposes of Part II**

16.—(1) The provisions of this section shall have effect with respect to copyright subsisting by virtue of this Part of this Act in sound recordings, cinematograph films, television broadcasts, and sound broadcasts and in published editions of literary, dramatic and musical works; and in those provisions references to the relevant provisions of this Part of this Act, in relation to copyright in a subject-matter of any of those descriptions, are references to the provision of this Part of this Act whereby it is provided that (subject compliance with the conditions specified therein) copyright shall subsist in that description of subject-matter.

(2) Any copyright subsisting by virtue of this Part of this Act is infringed by any person who, without the licence of the owner of the copyright, imports an article (otherwise than for his private and domestic use) into Botswana<sup>1</sup>, or into any other country to which the relevant provision of this Part of this Act extends, if to his knowledge the making of that article constituted an infringement of that copyright, or would have constituted such an infringement if the article had been made in the place into which it is so imported.

(3) Any such copyright is also infringed by any person who in Botswana<sup>1</sup>, or in any other country to which the relevant provision of this Part of this Act extends, and without the licence of the owner of the copyright,—

(a) sells, lets for hire, or by way of trade offers or exposes for sale or hire any article, or

(b) by way of trade exhibits any article in public,

if to his knowledge the making of the article constituted an infringement of that copyright, or (in the case of an imported article) would have constituted an infringement of that copyright if the article had been made in the place into which it was imported.

(4) The last preceding subsection shall apply in relation to the distribution of any articles either —

(a) for purposes of trade, or

(b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright in question,

as it applies in relation to the sale of an article.

1. Amended by S.I. No. 23 of 1969.

2. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

(5) The three last preceding subsections shall have effect without prejudice to the general provisions of section 1 as to infringements of copyright.

(6) Where by virtue of this Part of this Act copyright subsists in a sound recording, cinematograph film, broadcast or other subject-matter, nothing in this Part of this Act shall be construed as affecting the operation of Part I of this Act in relation to any literary, dramatic, musical or artistic work from which that subject-matter is wholly or partly derived; and copyright subsisting by virtue of this Part of this Act shall be additional to, and independent of, any copyright subsisting by virtue of Part I of this Act;

Provided that this subsection shall have effect subject to the provisions of subsection (7) of section 13.

(7) The subsistence of copyright under any of the preceding sections of this Part of this Act shall not affect the operation of any other of those sections under which copyright can subsist.

### **PART III**

#### **REMEDIES FOR INFRINGEMENTS OF COPYRIGHT**

##### **Action by Owner of Copyright for Infringement**

17.—(1) Subject to the provisions of this Act, infringements of copyright shall be actionable at the suit of the owner of the copyright; and in any action for such an infringement all such relief, by way of damages, interdict<sup>1</sup> or otherwise, shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringements of other proprietary rights.

(2) Where in an action for infringement of copyright it is proved or admitted —

- (a) that an infringement was committed, but
- (b) 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 or other subject-matter to which the action relates,

the damages which may be claimed by the plaintiff in respect of such infringement shall be restricted to the profit enuring to the defendant by reason of such infringement<sup>1</sup>.

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1. Amended by S.I. No. 23 of 1969.

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

- (a) the flagrancy of the infringement, and
- (b) any benefit shown to have accrued to the 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.

(4) In an action for infringement of copyright in respect of the construction of a building, no interdict<sup>1</sup> or other order shall be made —

- (a) after the construction of the building has been begun, so as to prevent it from being completed, or
- (b) so as to require the building, in so far as it has been constructed, to be demolished.

(4A)<sup>2</sup> No action in respect of an infringement of copyright shall be commenced after the expiration of a period of six years from the date at which the right of action accrued.

(5) In this Part of this Act “action” includes a counterclaim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.

(6)<sup>3</sup>

### **Rights of Owner of Copyright in Respect of Infringing Copies, etc.**

18.—(1) Subject to the provisions of this Act, the owner of any copyright shall be entitled to all such rights and remedies, in respect of the conversion or detention by any person of any infringing copy, or of any plate used or intended to be used for making infringing copies, as he would be entitled to if he were the owner of every such copy or plate and had been the owner thereof since the time when it was made :

Provided that where a cause of action in respect of the conversion or detention by any person of any such copy or plate has accrued under this subsection to the owner of the copyright, and notwithstanding that before he recovers possession of such copy or plate, a further conversion or detention takes place, the owner of the copyright shall not be entitled to any rights or remedies under this subsection in respect of anything done in relation to that copy or plate after the

1. Amended by S.I. No. 23 of 1969.

2. Inserted by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

3. Omitted by U.K. S.I. 1965 No. 2009.

expiration of six years from the accrual of the cause of action in respect of the original conversion or detention<sup>1</sup>.

(2) A plaintiff shall not be entitled by virtue of this section to any damages or to any other pecuniary remedy (except costs) if it is proved or admitted that, at the time of the conversion or detention in question,—

- (a) the defendant was not aware, and had no reasonable grounds for suspecting, that copyright subsisted in the work or other subject-matter to which the action relates, or
- (b) where the articles converted or detained were infringing copies, the defendant believed, and had reasonable grounds for believing, that they were not infringing copies, or
- (c) where the article converted or detained was a plate used or intended to be used for making any articles, the defendant believed, and had reasonable grounds for believing, that the articles so made or intended to be made were not, or (as the case may be) would not be, infringing copies.

(3) In this Part of this Act “infringing copy” —

- (a) in relation to a literary, dramatic, musical or artistic work, or to such a published edition as is mentioned in section 15, means a reproduction otherwise than in the form of a cinematograph film,
  - (b) in relation to a sound recording, means a record embodying that recording,
  - (c) in relation to a cinematograph film, means a copy of the film, and
  - (d) in relation to a television broadcast or a sound broadcast, means a copy of a cinematograph film of it or a record embodying a sound recording of it,
- being (in any such case) an article the making of which constituted an infringement of the copyright in the work, edition, recording, film or broadcast, or, in the case of an imported article, would have constituted an infringement of that copyright if the article had been made in the place into which it was imported; and “plate” includes any stereotype, stone, block, mould, matrix, transfer, negative or other appliance.

(4)<sup>2</sup>

### **Proceedings in Case of Copyright Subject to Exclusive Licence**

19.—(1) The provisions of this section shall have effect as to proceedings in the case of any copyright in respect of which an exclusive licence has been granted and is in force at the time of the events to which the proceedings relate.

(2) Subject to the following provisions of this section —

1. Proviso substituted by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966)

2. Omitted U.K. S.I. 1965 No. 2009.

- (a) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, under section 17 as if the licence had been an assignment, and those rights and remedies shall be concurrent with the rights and remedies of the owner of the copyright under that section;
- (b) the exclusive licensee shall (except against the owner of the copyright) have the same rights of action, and be entitled to the same remedies, by virtue of the last preceding section as if the licence had been an assignment; and
- (c) the owner of the copyright shall not have any rights of action, or be entitled to any remedies, by virtue of the last preceding section which he would not have had or been entitled to if the licence had been an assignment.

(3) Where an action is brought either by the owner of the copyright or by the exclusive licensee, and the action, in so far as it is brought under section 17, relates (wholly or partly) to an infringement in respect of which they have concurrent rights of action under that section, the owner or licensee, as the case may be, shall not be entitled, except with the leave of the court, to proceed with the action, in so far as it is brought under that section and relates to that infringement, unless the other party is either joined as a plaintiff in the action or added as a defendant:

Provided that this subsection shall not affect the granting of a temporary interdict<sup>1</sup> on the application of either of them.

(4) In any action brought by the exclusive licensee by virtue of this section, any defence which would have been available to a defendant in the action, if this section had not been enacted and the action had been brought by the owner of the copyright, shall be available to that defendant as against the exclusive licensee.

(5) Where an action is brought in the circumstances mentioned in subsection (3) of this section, and the owner of the copyright and the exclusive licensee are not both plaintiffs in the action, the court, in assessing damages in respect of any such infringement as is mentioned in that subsection,—

- (a) if the plaintiff is the exclusive licensee, shall take into account any liabilities (in respect of royalties or otherwise) to which the licence is subject, and
- (b) whether the plaintiff is the owner of the copyright or the exclusive licensee, shall take into account any pecuniary remedy already awarded to the other party under section 17 in respect of that infringement, or, as the

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1. Amended by S.I. No. 23 of 1969.

case may require, any right of action exercisable by the other party under that section in respect thereof.

(6) Where an action, in so far as it is brought under section 17, relates (wholly or partly) to an infringement in respect of which the owner of the copyright and the exclusive licensee have concurrent rights of action under that section, and in that action (whether they are both parties to it or not) an account of profits is directed to be taken in respect of that infringement, then, subject to any agreement of which the court is aware, whereby the application of those profits is determined as between the owner of the copyright and the exclusive licensee, the court shall apportion the profits between them as the court may consider just, and shall give such directions as the court may consider appropriate for giving effect to that apportionment.

(7) In an action brought either by the owner of the copyright or by the exclusive licensee, —

- (a) no judgment or order for the payment of damages in respect of an infringement of copyright shall be given or made under section 17, if a final judgment or order has been given or made awarding an account of profits to the other party under that section in respect of the same infringement; and
- (b) no judgment or order for an account of profits in respect of an infringement of copyright shall be given or made under that section, if a final judgment or order has been given or made awarding either damages or an account of profits to the other party under that section in respect of the same infringement.

(8) Where, in an action brought in the circumstances mentioned in subsection (3) of this section, whether by the owner of the copyright or by the exclusive licensee, the other party is not joined as a plaintiff (either at the commencement of the action or subsequently), but is added as a defendant, he shall not be liable for any costs in the action unless he enters an appearance and takes part in the proceedings.

(9) In this section “exclusive licence” means a licence in writing, signed by or on behalf of an owner or prospective owner of copyright, authorising the licensee, to the exclusion of all other persons, including the grantor of the licence, to exercise a right which by virtue of this Act would (apart from the licence) be exercisable exclusively by the owner of the copyright, and “exclusive licensee” shall be construed accordingly; “the other party”, in relation to the owner of the copyright, means the exclusive licensee, and, in relation to the exclusive licensee, means the owner of the copyright; and “if the licence had been an assignment” means if, instead of the licence, there had been granted (subject to terms and conditions corresponding as nearly as may be with those

subject to which the licence was granted) an assignment of the copyright in respect of its application to the doing, at the places and times authorised by the licence, of the acts so authorised.

### **Proof of Facts in Copyright Actions**

20.—(1) In any action brought by virtue of this Part of this Act —

- (a) copyright shall be presumed to subsist in the work or other subject-matter to which the action relates, if the defendant does not put in issue the question whether copyright subsists therein, and
- (b) where the subsistence of the copyright is proved or admitted, or is presumed in pursuance of the preceding paragraph, the plaintiff shall be presumed to be the owner of the copyright, if he claims to be the owner of the copyright and the defendant does not put in issue the question of his ownership thereof.

(2) Subject to the preceding subsection, where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author appeared on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appeared (if it was his true name or a name by which he was commonly known) shall, in any action brought by virtue of this Part of this Act, be presumed, unless the contrary is proved, —

- (a) to be the author of the work, and
- (b) to have made the work in circumstances not falling within subsection (2), subsection (3) or subsection (4) of section 4.

(3) In the case of a work alleged to be a work of joint authorship, the last preceding subsection shall apply in relation to each person alleged to be one of the authors of the work, as if references in that subsection to the author were references to one of the authors.

(4) Where, in an action brought by virtue of this Part of this Act with respect to a literary, dramatic, musical or artistic work, subsection (2) of this section does not apply, but it is established —

- (a) that the work was first published in Botswana<sup>1</sup> or in another country to which section 2, or, as the case may be, section 3, of this Act extends, and was so published within the period of fifty years ending with the beginning of the calendar year in which the action was brought, and
- (b) that a name purporting to be that of the publisher appeared on copies of the work as first published,

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1. Amended by S.I. No. 23 of 1969.

then, unless the contrary is shown, copyright shall be presumed to subsist in the work and the person whose name so appeared shall be presumed to have been the owner of that copyright at the time of the publication.

For the purposes of this subsection a fact shall be taken to be established if it is proved or admitted, or if it is presumed in pursuance of the following provisions of this section.

(5) Where in an action brought by virtue of this Part of this Act with respect to a literary, dramatic, musical or artistic work it is proved or admitted that the author of the work is dead,—

- (a) the work shall be presumed to be an original work unless the contrary is proved, and
- (b) if it is alleged by the plaintiff that a publication specified in the allegation was the first publication of the work, and that it took place in a country and on a date so specified, that publication shall be presumed, unless the contrary is proved, to have been the first publication of the work, and to have taken place in that country and on that date.

(6) Paragraphs (a) and (b) of the last preceding subsection shall apply where a work has been published, and —

- (a) the publication was anonymous, or was under a name alleged by the plaintiff to have been a pseudonym, and
- (b) it is not shown that the work has ever been published under the true name of the author, or under a name by which he was commonly known, or that it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry,

as those paragraphs apply in a case where it is proved that the author is dead.

(7) In any action brought by virtue of this Part of this Act with respect to copyright in a sound recording, if records embodying that recording or part thereof have been issued to the public, and at the time when those records were so issued they bore a label or other mark comprising any one or more of the following statements, that is to say,—

- (a) that a person named on the label or mark was the maker of the sound recording;
- (b) that the recording was first published in a year specified on the label or mark;
- (c) that the recording was first published in a country specified on the label or mark,

that label or mark shall be sufficient evidence of the facts so stated except in so far as the contrary is proved.

### **Penalties and Summary Proceedings in Respect of Dealings which Infringe Copyright**

21.—(1) Any person who, at a time when copyright subsists in a work, —

(a) makes for sale or hire, or

(b) sells or lets for hire, or by way of trade offers or exposes for sale or hire,  
or

(c) by way of trade exhibits in public, or

(d) imports into Botswana<sup>1</sup>, otherwise than for his private and domestic use, any article which he knows to be an infringing copy of the work, shall be guilty of an offence under this subsection.

(2) Any person who, at a time when copyright subsists in a work, distributes, either —

(a) for purposes of trade, or

(b) for other purposes, but to such an extent as to affect prejudicially the owner of the copyright,

articles which he knows to be infringing copies of the work, shall be guilty of an offence under this subsection.

(3) Any person who, at a time when copyright subsists in a work, makes or has in his possession a plate, knowing that it is to be used for making infringing copies of the work shall be guilty of an offence under this subsection.

(4) The preceding subsections shall apply in relation to copyright subsisting in any subject-matter by virtue of Part II of this Act, as they apply in relation to copyright subsisting by virtue of Part I of this Act.

(5) Any person who causes a literary, dramatic or musical work to be performed in public, knowing that copyright subsists in the work and that the performance constitutes an infringement of the copyright, shall be guilty of an offence under this subsection.

(6) The preceding provisions of this section apply only in respect of acts done in Botswana<sup>1</sup>.

(7) A person guilty of an offence under subsection (1) or subsection (2) of this section shall on conviction —

(a) if it is his first conviction of an offence under this section, be liable to a fine not exceeding R4 for each article to which the offence relates ;

1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966)

(b) in any other case, be liable to such a fine, or to imprisonment for a term not exceeding two months:

Provided that a fine imposed by virtue of this subsection shall not exceed R100 in respect of articles comprised in the same transaction.

(8)<sup>1</sup> A person guilty of an offence under subsection (3) or subsection (5) of this section shall on conviction —

(a) if it is his first conviction of an offence under this section, be liable to a fine not exceeding R100;

(b) in any other case, be liable to such a fine, or to imprisonment for a term not exceeding two months.

(9) The court before which a person is charged with an offence under this section may, whether he is convicted of the offence or not, order that any article in his possession which appears to the court to be an infringing copy, or to be a plate used or intended to be used for making infringing copies, shall be destroyed or delivered up to the owner of the copyright in question or otherwise dealt with as the court may think fit.

(10) An appeal shall lie to the High Court from any order made under the last preceding subsection by a subordinate court<sup>2</sup>.

#### **Provision for Restricting Importation of Printed Copies**

22.—(1) The owner of the copyright in any published literary, dramatic or musical work may give notice in writing to the Financial Secretary<sup>1, 3</sup>,

(a) that he is the owner of the copyright in the work, and

(b) that he requests the Financial Secretary<sup>1, 3</sup> during a period specified in the notice, to treat as prohibited goods copies of the work to which this section applies:

Provided that the period specified in a notice under this subsection shall not exceed five years and shall not extend beyond the end of the period for which the copyright is to subsist.

(2) This section applies, in the case of a work, to any printed copy made outside Botswana<sup>1</sup> which, if it had been made in Botswana<sup>1</sup>, would be an infringing copy of the work.

(3) Where a notice has been given under this section in respect of a work, and has not been withdrawn, the importation into Botswana<sup>1</sup>, at a time before the end of the period specified in the notice, of any copy of the work to which this

1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

2. Subsection substituted by S.I. 1965 No. 2009.

3. Amended by S.I. No. 23 of 1969.

section applies shall, subject to the following provisions of this section, be prohibited:

Provided that this subsection shall not apply to the importation of any article by a person for his private and domestic use.

(4) The Minister<sup>1,2</sup> may make regulations prescribing the form in which notices are to be given under this section, and requiring a person giving such a notice, either at the time of giving the notice or at the time when the goods in question are imported, or at both those times, to furnish the Minister<sup>1,2</sup> with such evidence, and to comply with such other conditions (if any), as may be specified in the regulations; and any such regulations may include such incidental and supplementary provisions as the Minister considers<sup>1,2</sup> expedient for the purposes of this section.

(5) Without prejudice to the generality of the last preceding subsection, regulations made under that subsection may include provision for requiring a person who has given a notice under subsection (1) of this section, or a notice purporting to be a notice under that subsection, —

- (a) to pay such fees in respect of the notice as may be prescribed by the regulations;
- (b) to give to the Minister<sup>1,2</sup> such security as may be so prescribed, in respect of any liability or expense which they may incur in consequence of the detention, at any time within the period specified in the notice, of any copy of the work to which the notice relates, or in consequence of anything done in relation to a copy so detained;
- (c) whether any such security is given or not, to keep the Minister<sup>1,2</sup> indemnified against any such liability or expense as is mentioned in the last preceding paragraph.

(6)<sup>3</sup> Any fees paid in pursuance of regulations made under this section shall be treated as moneys collected on account of the Consolidated Fund.

(7) Notwithstanding anything in the Customs Proclamation, 1956 (No. 68 of 1956) a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section.

#### PART IV<sup>4</sup>

#### REFORMING RIGHT TRIBUNAL

1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

2. Amended by S.I. No. 23 of 1969.

3. Substituted by S.I. 1965 No. 2009.

4. This Part is not applicable in Botswana — see S.I. 1965 No. 2009.

## PART V

### EXTENSION OR RESTRICTION OF OPERATION OF ACT

31<sup>1</sup>.

#### Application of Act to Countries to which it does not Extend

32.—(1) The President may by order in the *Gazette*<sup>2</sup> make provision for applying any of the provisions of this Act specified in the order, in the case of a country to which those provisions do not extend, in any one or more of the following ways, that is to say, so as to secure that those provisions —

- (a) apply in relation to literary, dramatic, musical or artistic works, sound recordings, cinematograph films or editions first published in that country as they apply in relation to literary, dramatic, musical or artistic works, sound recordings, cinematograph films or editions first published in Botswana<sup>2</sup>;
- (b) apply in relation to persons who, at a material time, are citizens or subjects of that country as they apply in relation to persons who, at such a time, are citizens of Botswana<sup>2</sup>;
- (c) apply in relation to persons who, at a material time, are domiciled or resident in that country as they apply in relation to persons who, at such a time, are domiciled or resident in Botswana<sup>2</sup>;
- (d) apply in relation to bodies incorporated under the laws of that country as they apply in relation to bodies incorporated under the laws of any part of Botswana<sup>2</sup>;
- (e) apply in relation to television broadcasts and sound broadcasts made from places in that country, by one or more organisations constituted in, or under the laws of, that country, as they apply in relation to television broadcasts and sound broadcasts made from places in Botswana by a specified authority<sup>2</sup>.

(2) An order under this section —

- (a) may apply the provisions in question as mentioned in the preceding subsection, but subject to exceptions or modifications specified in the order;
- (b) may direct that the provisions in question shall so apply either generally or in relation to such classes of works, or other classes of cases, as may be specified in the order.

(3) The President<sup>2</sup> shall not make an order<sup>2</sup> under this section applying any of the provisions of this Act in the case of a country, other than a country

1. Repealed by S.I. No. 23 of 1969.

2. Amended by S.I. No. 23 of 1969.

which is a party to a Convention relating to copyright to which Botswana<sup>1</sup> is also a party, unless the President<sup>1</sup> is satisfied that, in respect of the class of works or other subject-matter to which those provisions relate, provision has been or will be made under the laws of that country whereby adequate protection will be given to owners of copyright under this Act.

### **Provisions as to International Organisations**

33.—(1)<sup>2</sup> Where it appears to the President that one or more sovereign powers, or the government or governments thereof, are members of an organization, and that it is expedient that the provisions of this section should apply to that organization, the President may by order in the *Gazette* declare that the organization is one to which this section applies.

(2) Where an original literary, dramatic, musical or artistic work is made by or under the direction or control of an organization to which this section applies in such circumstances that —

(a) copyright would not subsist in the work apart from this subsection, but

(b) if the author of the work had been a citizen of Botswana<sup>1</sup> at the time when it was made, copyright would have subsisted in the work immediately after it was made and would thereupon have vested in the organisation,

copyright shall subsist in the work as if the author had been a citizen of Botswana<sup>1</sup> when it was made, that copyright shall continue to subsist so long as the work remains unpublished, and the organisation shall, subject to the provisions of this Act, be entitled to that copyright.

(3) Where an original literary, dramatic, musical or artistic work is first published by or under the direction or control of an organisation to which this section applies, in such circumstances that, apart from this subsection, copyright does not subsist in the work immediately after the first publication thereof, and either —

(a) the work is so published in pursuance of an agreement with the author which does not reserve to the author the copyright (if any) in the work, or

(b) the work was made in such circumstances that, if it had been first published in Botswana<sup>1</sup>, the organisation would have been entitled to the copyright in the work,

copyright shall subsist in the work (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist) as if it had been first published in Botswana<sup>1</sup>, that copyright shall subsist until the end of the period of fifty years from the end of the calendar year in which the work was first

1. Amended by S.I. No. 23 of 1969.

2. Substituted by S.I. No. 23 of 1969.

published, and the organisation shall, subject to the provisions of Part VI of this Act, be entitled to that copyright.

(4) The provisions of Part I of this Act, with the exception of provisions thereof relating to the subsistence, duration or ownership of copyright, shall apply in relation to copyright subsisting by virtue of this section as they apply in relation to copyright subsisting by virtue of the said Part I.

(5) An organisation to which this section applies which otherwise has not, or at some material time otherwise had not, the legal capacities of a body corporate shall have, and shall be deemed at all material times to have had, the legal capacities of a body corporate for the purpose of holding, dealing with and enforcing copyright and in connection with all legal proceedings relating to copyright.

#### **Extended Application of Provisions Relating to Broadcasts**

34. The President may by order in the *Gazette*<sup>1</sup> provide that, subject to such exceptions and modifications (if any) as may be specified in the order, such provisions of this Act relating to television broadcasts or to sound broadcasts as may be so specified shall apply in relation to the operation of wireless telegraphy apparatus by way of the emission (as opposed to reception) of electromagnetic energy —

- (a) by such persons or classes of persons, other than a specified authority<sup>1</sup>, as may be specified in the order, and
- (b) for such purposes (whether involving broadcasting or not) as may be so specified,

as they apply in relation to television broadcasts, or, as the case may be, to sound broadcasts, made by a specified authority<sup>1</sup>.

#### **Denial of Copyright to Citizens of Countries not Giving Adequate Protection to Botswana Works**

35.—(1) If it appears to the President<sup>1</sup> that the laws of a country fail to give adequate protection to Botswana<sup>1</sup> works to which this section applies, or fail to give such protection in the case of one or more classes of such works (whether the lack of protection relates to the nature of the work or the country of its author or both), the President may by order in the *Gazette*<sup>1</sup> designate that country and making such provision in relation thereto as is mentioned in the following provisions of this section.

(2) An order under this section shall provide that, either generally or in such classes of cases as are specified in the order, copyright under this Act shall not subsist in works to which this section applies which were first published

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1. Amended by S.I. No. 23 of 1963.

after a date specified in the order, if at the time of their first publication the authors thereof were —

(a) citizens or subjects of the country designated by the order, not being at that time persons domiciled or resident in Botswana<sup>1</sup> or in another country to which the relevant provision of this Act extends, or

(b) bodies incorporated under the laws of the country designated by the order.

(3) In making an order under this section the President<sup>1</sup> shall have regard to the nature and extent of the lack of protection for Botswana<sup>1</sup> works in consequence of which the order is made.

(4) This section applies to the following works, that is to say, literary, dramatic, musical and artistic works, sound recordings and cinematograph films.

(5) In this section —

“Botswana work” means a work of which the author, at the time when the work was made, was a qualified person for the purposes of the purposes of the relevant provision of this Act;

“author”, in relation to a sound recording or a cinematograph film, means the maker of the recording or film;

“the relevant provision of this Act”, in relation to literary, dramatic and musical works means section 2, in relation to artistic works means section 3, in relation to sound recordings means section 12, and in relation to cinematograph films means section 13.

## PART VI

### MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

#### Assignments and Licences in Respect of Copyright

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

(2) An assignment of copyright may be limited in any of the following ways, or in any combination of two or more of those ways, that is to say,—

(a) so as to apply to one or more, but not all, of the classes of acts which by virtue of this Act the owner of the copyright has the exclusive right to do (including any one or more classes of acts not separately designated in this Act as being restricted by the copyright, but falling within any of the classes of acts so designated);

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1. Amended by S.I. No. 23 of 1969.

(b) so as to apply to any one or more, but not all, of the countries in relation to which the owner of the copyright has by virtue of this Act that exclusive right;

(c) so as to apply to part, but not the whole, of the period for which the copyright is to subsist;

and references in this Act to a partial assignment are references to an assignment so limited.

(3) No assignment of copyright (whether total or partial) shall have effect unless it is in writing signed by or on behalf of the assignor.

(4) A licence granted in respect of any copyright by the person who, in relation to the matters to which the licence refers, is the owner of the copyright shall be binding upon every successor in title to his interest in the copyright, except a purchaser in good faith for valuable consideration and without notice (actual or constructive) of the licence or a person deriving title from such a purchaser; and references in this Act, in relation to any copyright, to the doing of anything with, or (as the case may be) without, the licence of the owner of the copyright shall be construed accordingly.

#### **Prospective Ownership of Copyright**

37.—(1) Where by an agreement made in relation to any future copyright, and signed by or on behalf of the prospective owner of the copyright, the prospective owner purports to assign the future copyright (wholly or partially) to another person (in this subsection referred to as "the assignee"), then if upon the coming into existence of the copyright, the assignee or a person claiming under him would, apart from this subsection, be entitled as against all other persons to require the copyright to be vested in him (wholly or partially, as the case may be), the copyright shall, on its coming into existence, vest in the assignee or his successor in title accordingly by virtue of this subsection and without further assurance.

(2) Where, at the time when any copyright comes into existence, the person who, if he were then living, would be entitled to the copyright is dead, the copyright shall devolve as if it had subsisted immediately before his death and he had then been the owner of the copyright.

(3) Subsection (4) of the last preceding section shall apply in relation to a licence granted by a prospective owner of any copyright as it applies in relation to a licence granted by the owner of a subsisting copyright, as if any reference in that subsection to the owner's interest in the copyright included a reference to his prospective interest therein.

(4)<sup>1</sup>

<sup>1</sup>. Omitted U.K. 1965 No. 2009 (L.N. No. 23 of 1969).

(5) In this Act "future copyright" means copyright which will or may come into existence in respect of any future work or class of works or other subject-matter, or on the coming into operation of any provisions of this Act, or in any other future event, and "prospective owner" shall be construed accordingly and, in relation to any such copyright, includes a person prospectively entitled thereto by virtue of such an agreement as is mentioned in subsection (1) of this section.

#### **Copyright to Pass under Will with Unpublished Work**

38. Where under a bequest (whether specific or general) a person is entitled, beneficially or otherwise, to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless a contrary intention is indicated in the testator's will or a codicil thereto, be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

#### **Provisions as to State<sup>1</sup> and Government Departments**

39. (1) In the case of every original literary, dramatic, musical or artistic work made by or under the direction or control of the State<sup>1</sup> or a Government department,—

- (a) if apart from this section copyright would not subsist in the work, copyright shall subsist therein by virtue of this subsection, and
- (b) in any case, the State<sup>1</sup>, subject to the provisions of this Part of this Act, be entitled to the copyright in the work.

(2) The State<sup>1</sup> shall, subject to the provisions of this Part of this Act, be entitled —

- (a) to the copyright in every original literary, dramatic or musical work first published in Botswana<sup>1</sup>, or in another country to which section 2 extends, if first published by or under the direction or control of the State<sup>1</sup> or a Government department;
- (b) to the copyright in every original artistic work first published in Botswana<sup>1</sup>, or in another country to which section 3 extends, if first published by or under such direction or control.

(3) Copyright in a literary, dramatic or musical work, to which the State<sup>1</sup> is entitled in accordance with either of the preceding subsections,—

- (a) where the work is unpublished, shall continue to subsist so long as the work remains unpublished, and
- (b) where the work is published, shall subsist (or, if copyright in the work subsisted immediately before its first publication, shall continue to subsist)

1. Amended by S.I. No. 23 of 1969.

until the end of the period of fifty years from the end of the calendar year in which the work was first published, and shall then expire.

(4) Copyright in an artistic work to which the State<sup>1</sup> is entitled in accordance with the preceding provisions of this section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the work was made, and shall then expire :

Provided that where the work in question is an engraving or a photograph, the copyright shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the engraving or photograph is first published.

(5) In the case of every sound recording or cinematograph film made by or under the direction or control of the State<sup>1</sup> or a Government department,—

- (a) if apart from this section copyright would not subsist in the recording or film, copyright shall subsist therein by virtue of this subsection, and
- (b) in any case, the State<sup>1</sup> shall, subject to the provisions of this Part of this Act, be entitled to the copyright in the recording or film, and it shall subsist for the same period as if it were copyright subsisting by virtue of, and owned in accordance with, section 12 or, as the case may be, section 13 on this Act.

(6) The preceding provisions of this section shall have effect subject to any agreement made by or on behalf of the State<sup>2</sup> or a Government department with the author of the work, or the maker of the sound recording or cinematograph film, as the case may be, whereby it is agreed that the copyright in the work, recording or film shall vest in the author or maker or in another person designated in the agreement in that behalf.

(7) In relation to copyright subsisting by virtue of this section —

- (a) in the case of a literary, dramatic, musical or artistic work, the provisions of Part I of this Act, with the exception of provisions thereof relating to the subsistence, duration or ownership of copyright, and
- (b) in the case of a sound recording or cinematograph film, the provisions of Part II of this Act, with the exception of provisions thereof relating to the subsistence or ownership of copyright,

shall apply as those provisions apply in relation to copyright subsisting by virtue of Part I or, as the case may be, Part II of this Act.

(8)<sup>2</sup>

1. Amended by S.I. No. 23 of 1969.

2. Omitted U.K. S.I. 1965 No. 2009 (L.N. No. 23 of 1966).

(9) In this section "Government Department" means any department of the Government of Botswana<sup>1</sup> or any department or agency of the Government of any country to which this section extends.

### **Broadcasts of Sound Recordings and Cinematograph Films, and Diffusion of Broadcast Programmes**

40.—(1) Where a sound broadcast or television broadcast is made by a specified authority<sup>2</sup>, and a person, by the reception of that broadcast, causes a sound recording to be heard in public, he does not thereby infringe the copyright (if any) in that recording under section 12.

(2) Where a television broadcast or sound broadcast is made by a specified authority<sup>2</sup>, and the broadcast is an authorised broadcast, any person who, by the reception of the broadcast, causes a cinematograph film to be seen or heard in public shall be in the like position, in any proceedings for infringement of the copyright (if any) in the film under section 13, as if he had been the holder of a licence granted by the owner of that copyright to cause the film to be seen or heard in public by the reception of the broadcast.

(3)<sup>3</sup>

(4) If, in the circumstances mentioned in the last preceding subsection<sup>4</sup> the person causing the cinematograph film to be seen or heard<sup>4</sup>, infringed the copyright in question, by reason that the broadcast was not an authorised broadcast,—

- (a) no proceedings shall be brought against that person under this Act in respect of his infringement of that copyright, but
- (b) it shall be taken into account in assessing damages in any proceedings against a specified authority<sup>2</sup>, as the case may be in respect of that copyright, in so far as that copyright was infringed by them in making the broadcast.

(5) For the purposes of this section, a broadcast shall be taken, in relation to<sup>4</sup> cinematograph film, to be an authorised broadcast if, but only if, it is made by, or with the licence of, the owner of the copyright in the work or film.

### **Use of Copyright Material for Education**

41.—(1) Where copyright subsists in a literary, dramatic, musical or artistic work, the copyright shall not be taken to be infringed by reason only that the work is reproduced, or an adaptation of the work is made or reproduced,—

- (a) in the course of instruction, whether at a school or elsewhere, where the reproduction or adaptation is made by a teacher or pupil otherwise than by the use of a duplicating process, or

1. Substituted by S.I. No. 23 of 1969.

2. Amended by S.I. No. 23 of 1969.

3. Omitted by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1968).

4. Amended by U.K. S.I. 1965 No. 2009.

(b) as part of the questions to be answered in an examination, or in an answer to such a question.

(2) Nothing in the preceding subsection shall apply to the publication of a work or of an adaptation of a work ; and, for the purposes of section 5, the fact that to a person's knowledge the making of an article would have constituted an infringement of copyright but for the preceding subsection shall have the like effect as if, to his knowledge, the making of it had constituted such an infringement.

(3) For the avoidance of doubt it is hereby declared that where a literary, dramatic or musical work —

(a) is performed in class, or otherwise in the presence of an audience, and

(b) is so performed in the course of the activities of a school by a person who is a teacher in, or a pupil in attendance at, the school,

the performance shall not be taken for the purposes of this Act to be a performance in public if the audience is limited to persons who are teachers in, or pupils in attendance at, the school, or are otherwise directly connected with the activities of the school.

(4) For the purposes of the last preceding subsection a person shall not be taken to be directly connected with the activities of a school by reason only that he is a parent or guardian of a pupil in attendance at the school.

(5) The two last preceding subsections shall apply in relation to sound recordings, cinematograph films and television broadcasts as they apply in relation to literary, dramatic and musical works, as if any reference to performance were a reference to the act of causing the sounds or visual images in question to be heard or seen.

(6) Nothing in this section shall be construed —

(a) as extending the operation of any provision of this Act as to the acts restricted by copyright of any description, or

(b) as derogating from the operation of any exemption conferred by any provision of this Act other than this section.

(7)<sup>1</sup>

### **Special Provisions as to Public Records**

42. Where any work in which copyright subsists, or a reproduction of any such work, is comprised in any records belonging to the State<sup>2</sup> forming part of the archives of the State<sup>2</sup>, which are open to public inspection the copyright in the work is not infringed by the making, or the supplying to any person, of any

1. Amended by U.K. S.I. No. 2009 (L.N. No. 13 of 1969.)

2. Amended by S.I. No. 23 of 1969.

reproduction of the work by or under the direction of the officer in charge of such records.

### **False Attribution of Authorship**

43.—(1) The restrictions imposed by this section shall have effect in relation to literary, dramatic, musical or artistic works; and any reference in this section to a work shall be construed as a reference to such a work.

(2) A person (in this subsection referred to as “the offender”) contravenes those restrictions as respects another person if, without the licence of that other person, he does any of the following acts in Botswana<sup>1</sup>, that is to say, he —

- (a) inserts or affixes that other person’s name in or on a work of which that person is not the author, or in or on a reproduction of such a work, in such a way as to imply that the other person is the author of the work, or
- (b) publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, a work in or on which the other person’s name has been so inserted or affixed, if to the offender’s knowledge that person is not the author of the work, or
- (c) does any of the acts mentioned in the last preceding paragraph in relation to, or distributes, reproductions of a work, being reproductions in or on which the other person’s name has been so inserted or affixed, if to the offender’s knowledge that person is not the author of the work, or
- (d) performs in public, or broadcasts, a work of which the other person is not the author, as being work of which he is the author, if to the offender’s knowledge that person is not the author of the work.

(3) The last preceding subsection shall apply where, contrary to the fact, a work is represented as being an adaptation of the work of another person as it applies where a work is so represented as being the work of another person.

(4) In the case of an artistic work which has been altered after the author parted with the possession of it, the said restrictions are contravened, in relation to the author, by a person who in Botswana<sup>1</sup>, without the licence of the author,—

- (a) publishes, sells or lets for hire, or by way of trade offers or exposes for sale or hire the work as so altered, as being the unaltered work of the author, or
- (b) publishes, sells or lets for hire, or by way of trade offers or exposes for sale or hire a reproduction of the work as so altered, as being a reproduction of the unaltered work of the author,

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1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

if to his knowledge it is not the unaltered work, or, as the case may be, a reproduction of the unaltered work, of the author.

(5) The three last preceding subsections shall apply with respect to anything done in relation to another person after that person's death, as if any reference to that person's licence were a reference to a licence given by him or by his personal representatives :

Provided that nothing in those subsections shall apply to anything done in relation to a person more than twenty years after that person's death.

(6) In the case of an artistic work in which copyright subsists, the said restrictions are also contravened, in relation to the author of the work, by a person who in Botswana<sup>1</sup> —

- (a) publishes, or sells or lets for hire, or by way of trade offers or exposes for sale or hire, or by way of trade exhibits in public, a reproduction of the work, as being a reproduction made by the author of the work, or
- (b) distributes reproductions of the work as being reproductions made by the author of the work,

if (in any such case) the reproduction or reproductions was or were to his knowledge not made by the author.

(7) The preceding provisions of this section shall apply (with the necessary modifications) with respect to acts done in relation to two or more persons in connection with the same work.

(8) The restrictions imposed by this section shall not be enforceable by any criminal proceedings ; but any contravention of those restrictions, in relation to a person, shall be actionable at his suit, or, if he is dead, at the suit of his personal representatives, as a breach of statutory duty.

(9) Any damages recovered under this section by personal representatives, in respect of a contravention committed in relation to a person after his death, shall devolve as part of his estate, as if the right of action had subsisted and had been vested in him immediately before his death.

(10) Nothing in this section shall derogate from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than by virtue of this section :

Provided that this subsection shall not be construed as requiring any damages recovered by virtue of this section to be disregarded in assessing damages in any proceedings instituted otherwise than by virtue of this section and arising out of the same transaction.

(11) In this section "name" includes initials or a monogram.

1. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

44.<sup>1</sup>

45.<sup>2</sup>

### **Savings**

46.—(1)<sup>3</sup>

(2) Nothing in this Act shall affect any right or privilege of the State<sup>3</sup> subsisting otherwise than by virtue of an enactment; and nothing in this Act shall affect any right or privilege of the State<sup>3</sup> or of any other person under any enactment<sup>4</sup>; except in so far as that enactment is expressly repealed, amended or modified by this Act.

(3) Nothing in this Act shall affect the right of the State<sup>3</sup> or of any person deriving title from the State<sup>3</sup> to sell, use or otherwise deal with articles forfeited under the laws relating to customs or excise, including any article so forfeited by virtue of this Act or of any enactment repealed by this Act.

(4) Nothing in this Act shall affect the operation of any rule relating to breaches of trust or confidence.

(5) Subject to the preceding provisions of this section no copyright, or right in the nature of copyright, shall subsist otherwise than by virtue of this Act or of some other enactment in that behalf.

### **General Provision as to Regulations**

47.—(1)<sup>4</sup>

(2)<sup>2</sup>

(3)<sup>2</sup>

(4) Where a power to make regulations<sup>4</sup> is conferred by any provision of this Act, regulations<sup>4</sup> under that power may be made either as respects all, or as respects any one or more, of the matters to which the provision relates; and different provision may be made by any such regulations or rules as respects different classes of cases to which the regulations or rules apply.

(5)<sup>2</sup>

(6)<sup>2</sup>

### **Interpretation**

48.—(1) In this Act, except in so far as the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

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1. Section repealed by S.I. No. 23 of 1969.

2. Omitted S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

3. Amended by S.I. No. 23 of 1969.

4. Amended U.K. S.I. 1965 No. 2009.

- “adaptation”, in relation to a literary, dramatic or musical work, has the meaning assigned to it by section 2;
- “artistic work” has the meaning assigned to it by section 3;
- “building” includes any structure;
- “cinematograph film” has the meaning assigned to it by section 13;
- “construction” includes erection, and references to reconstruction shall be construed accordingly;
- “country” includes any territory;
- “dramatic work” includes a choreographic work or entertainment of dumb show if reduced to writing in the form in which the work or entertainment is to be presented, but does not include a cinematograph film, as distinct from a scenario or script for a cinematograph film;
- “drawing” includes any diagram, map, chart or plan;
- “engraving” includes any etching, lithograph, woodcut, print or similar work, not being a photograph;
- “future copyright” and “prospective owner” have the meanings assigned to them by section 37;
- “judicial proceeding” means a proceeding before any court, tribunal or person having by law power to hear, receive and examine evidence on oath;
- “literary work” includes any written table or compilation;
- “manuscript”, in relation to a work, means the original document embodying the work, whether written by hand or not;
- “performance” includes delivery, in relation to lectures, addresses, speeches and sermons, and in general, subject to the provisions of subsection (5) of this section, includes any mode of visual or acoustic presentation, including any such presentation by the operation of wireless telegraph apparatus, or by the exhibition of a cinematograph film, or by the use of a record, or by any other means, and references to performing a work or an adaptation of a work shall be construed accordingly;
- “photograph” means any product of photography or of any process akin to photography, other than a part of a cinematograph film, and “author”, in relation to a photograph, means the person who, at the time when the photograph is taken, is the owner of the material on which it is taken;
- “qualified person” has the meaning assigned to it by section 1;
- “record” means any disc, tape, perforated roll or other device in which sounds are embodied so as to be capable (with or without the aid of some other instrument) of being automatically reproduced therefrom, and references to a

record of a work or other subject-matter are references to a record (as herein defined) by means of which it can be performed;

“reproduction”, in the case of a literary, dramatic or musical work, includes a reproduction in the form of a record or of a cinematograph film, and, in the case of an artistic work, includes a version produced by converting the work into a three-dimensional form, or, if it is in three dimensions, by converting it into a two-dimensional form, and references to reproducing a work shall be construed accordingly;

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

“sound recording” has the meaning assigned to it by section 12;

“specified authority” has the meaning assigned to it in section 14;

“sufficient acknowledgment” has the meaning assigned to it by section 6;

“television broadcast” and “sound broadcast” have the meanings assigned to them by section 14;

“wireless telegraphy” means the emitting or receiving, over paths which are not provided by any material substance constructed or arranged for that purpose, of electromagnetic energy of a frequency not exceeding three million megacycles a second, being energy which either —

- (a) serves for the conveying of messages, sound or visual images (whether the messages, sound or images are actually received or not), or for the actuation or control of machinery or apparatus; or
- (b) issued in connection with the determination of position, bearing or distance, or for the gaining of information as to the presence, absence, position or motion of any objects of any class;

“work of joint authorship” has the meaning assigned to it by section 11;

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

(2)<sup>2</sup> References in this Act to broadcasting are references to broadcasting by wireless telegraphy whether by way of sound broadcasting or of television.

(3) References in this Act to the transmission of a work or other subject-matter to subscribers to a diffusion service are references to the transmission thereof in the course of a service of distributing broadcast programmes, or other programmes (whether provided by the person operating the service or other persons), over wires, or other paths provided by a material substance, to the premises of subscribers to the service; and for the purposes of this Act, where a work or other subject-matter is so transmitted,—

1. Inserted by S.I. No. 23 of 1969.

2. Amended by S.I. No. 23 of 1969.

- (a) the person operating the service (that is to say, the person who, in the agreements with subscribers to the service, undertakes to provide them with the service, whether he is the person who transmits the programmes or not) shall be taken to be the person causing the work or other subject-matter to be so transmitted, and
- (b) no person, other than the person operating the service shall be taken to be causing it to be so transmitted, notwithstanding that he provides any facilities for the transmission of the programmes :

Provided that, for the purposes of this subsection, and of references to which this subsection applies, no account shall be taken of a service of distributing broadcast or other programmes, where the service is only incidental to a business of keeping or letting premises where persons reside or sleep, and is operated as part of the amenities provided exclusively or mainly for residents or inmates therein.

(4) References in this Act to the doing of any act by the reception of a television broadcast or sound broadcast made by a specified authority<sup>1</sup> are references to the doing of that act by means of receiving the broadcast either —

- (a) from the transmission whereby the broadcast is made by a specified authority<sup>1</sup> as the case may be, or
- (b) from a transmission made by a specified authority<sup>1</sup> as the case may be, otherwise than by way of broadcasting, but simultaneously with the transmission mentioned in the preceding paragraph,

whether (in either case) the reception of the broadcast is directly from the transmission in question or from a re-transmission thereof made by any person from any place, whether in Botswana<sup>2</sup> or elsewhere; and in this subsection "re-transmission" means any re-transmission, whether over paths provided by a material substance or not, including any re-transmission made by making use of any record, print, negative, tape or other article on which the broadcast in question has been recorded.

(5) For the purposes of this Act, broadcasting, or the causing of a work or other subject-matter to be transmitted to subscribers to a diffusion service, shall not be taken to constitute performance, or to constitute causing visual images or sounds to be seen or heard; and where visual images or sounds are displayed or emitted by any receiving apparatus, to which they are conveyed by the transmission of electromagnetic signals (whether over paths provided by a material substance or not), —

- (a) the operation of any apparatus whereby the signals are transmitted, directly or indirectly, to the receiving apparatus shall not be taken to constitute

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1. Amended by S.I. No. 23 of 1969.

2. Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

performance or to constitute causing the visual images or sounds to be seen or heard; but

- (b) in so far as the display or emission of the images or sounds constitutes a performance, or causes them to be seen or heard, the performance, or the causing of the images or sounds to be seen or heard, as the case may be, shall be taken to be effected by the operation of the receiving apparatus.

(6) Without prejudice to the last preceding subsection, where a work or an adaptation of a work is performed, or visual images or sounds are caused to be seen or heard, by the operation of any apparatus to which this subsection applies, being apparatus provided by or with the consent of the occupier of the premises where the apparatus is situated, the occupier of those premises shall, for the purposes of this Act, be taken to be the person giving the performance, or causing the images or sounds to be seen or heard, whether he is the person operating the apparatus or not.

This subsection applies to any such receiving apparatus as is mentioned in the last preceding subsection, and to any apparatus for reproducing sounds by the use of a record.

(7) Except in so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to the enactment as amended or extended by or under any other enactment.

#### **Supplementary Provisions as to Interpretation**

49.—(1) Except in so far as the context otherwise requires, any reference in this Act to the doing of an act in relation to a work or other subject-matter shall be taken to include a reference to the doing of that act in relation to a substantial part thereof, and any reference to a reproduction, adaptation or copy of a work, or a record embodying a sound recording, shall be taken to include a reference to a reproduction, adaptation or copy of a substantial part of the work, or a record embodying a substantial part of the sound recording, as the case may be:

Provided that, for the purposes of the following provisions of this Act; namely subsections (1) and (2) of section 2, subsections (2) and (3) of section 3, subsections (2) and (3) of section 33, section 38, and subsections (2) to (4) of section 39, this subsection shall not affect the construction of any reference to the publication, or absence of publication of a work.

(2) With regard to publication, the provisions of this subsection shall have effect for the purposes of this Act, that is to say,—

- (a) the performance, or the issue of records, of a literary, dramatic or musical work, the exhibition of an artistic work, the construction of a work of architecture, and the issue of photographs or engravings of a work of architecture or of a sculpture, do not constitute publication of the work;
- (b) except in so far as it may constitute an infringement of copyright or a contravention of any restriction imposed by section 43, a publication which

is merely colourable, and not intended to satisfy the reasonable requirements of the public, shall be disregarded;

- (c) subject to the preceding paragraphs, a literary, dramatic or musical work, or an edition of such a work, or an artistic work, shall be taken to have been published if, but only if, reproductions of the work or edition have been issued to the public;
- (d) a publication in Botswana<sup>1</sup>, or in any other 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;

and in determining, for the purposes of paragraph (c) of this subsection, whether reproductions of a work or edition have been issued to the public, the preceding subsection shall not apply.

(3) In determining for the purposes of any provision of this Act —

- (a) whether a work or other subject-matter has been published, or
- (b) whether a publication of a work or other subject-matter was the first publication thereof, or
- (c) whether a work or other subject-matter was published or otherwise dealt with in the lifetime of a person.

no account shall be taken of any unauthorised publication or of the doing of any other unauthorised act; and (subject to subsection (7) of section 7 a publication or other act shall for the purposes of this subsection be taken to have been unauthorised —

- (i) if copyright subsisted in the work or other subject-matter and the act in question was done otherwise than by, or with the licence of, the owner of the copyright, or
- (ii) if copyright did not subsist in the work or other subject-matter, and the act in question was done otherwise than by, or with the licence of, the author (or, in the case of a sound recording or a cinematograph film, or an edition of a literary, dramatic or musical work, the maker or publisher, as the case may be) or persons lawfully claiming under him:

Provided that nothing in this subsection shall affect any provisions of this Act as to the acts restricted by any copyright or as to acts constituting infringements of copyrights, or any provisions of section 43.

(4) References in this Act to the time at which, or the period during which, a literary, dramatic or musical work was made are references to the time or period at or during which it was first reduced to writing or some other material form.

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1. Amended by U.K. S.I. 2009 (L.N. No. 13 of 1966).

(5) In the case of any copyright to which (whether in consequence of a partial assignment or otherwise) different persons are entitled in respect of the application of the copyright—

- (a) to the doing of different acts or classes of acts, or
- (b) to the doing of one or more acts or classes of acts in different countries or at different times,

the owner of the copyright, for any purpose of this Act, shall be taken to be the person who is entitled to the copyright in respect of its application to the doing of the particular act or class of acts, or, as the case may be, to the doing thereof in the particular country or at the particular time, which is relevant to the purpose in question; and, in relation to any future copyright to which different persons are prospectively entitled, references in this Act to the prospective owner of the copyright shall be construed accordingly.

(6) Without prejudice to the generality of the last preceding subsection, where under any provision of this Act a question arises whether an article of any description has been imported or sold, or otherwise dealt with, without the licence of the owner of any copyright, the owner of the copyright, for the purpose of determining that question, shall be taken to be the person entitled to the copyright in respect of its application to the making of articles of that description in the country into which the article was imported, or, as the case may be, in which it was sold or otherwise dealt with.

(7) Where the doing of anything is authorised by the grantee of a licence, or a person deriving title from the grantee and it is within the terms (including any implied terms) of the licence for him to authorise it, it shall for the purposes of this Act be taken to be done with the licence of the grantor and of every other person (if any) upon whom the licence is binding.

(8) References in this Act to deriving title are references to deriving title either directly or indirectly.

(9) Where, in the case of copyright of any description, —

- (a) provisions contained in this Act specify certain acts as being restricted by the copyright, or as constituting infringements thereof, and
- (b) other provisions of this Act specify certain acts as not constituting infringements of the copyright,

the omission or exclusion of any matter from the latter provisions shall not be taken to extend the operation of the former provisions.

(10) Any reference in this Act to countries to which a provision of this Act extends includes a country to which that provision extends subject to exceptions, modifications or additions.

### **Transitional Provisions, and Repeals**

50.—(1) The transitional provisions contained in the Seventh Schedule to this Act shall have effect for the purposes of this Act; and the provisions of the Eighth Schedule to this Act shall have effect in accordance with those transitional provisions.

(2)<sup>1</sup> The Order in Council made under section 28 of the Copyright Act, 1911, and dated 24th June, 1912, shall cease to have effect in the case of Botswana and accordingly the Copyright Act, 1911 and the Copyright Order Confirmation (Mechanical Instrument) Royalties of Act, 1928 shall be deemed to be repealed in the law of Botswana.

### **Short Title, Commencement and Extent**

51.—(1) This Act may be cited as the Copyright Act, 1956.

(2)<sup>2</sup>

(3)<sup>3</sup>

## **SCHEDULES**

### **FIRST SCHEDULE**

#### **Section 10**

#### **FALSE REGISTRATION OF INDUSTRIAL DESIGNS**

1. The provisions of this Schedule shall have effect where —

- (a) copyright subsists in an artistic work, and proceedings are brought under this Act relating to that work;
- (b) a corresponding design has been registered under the Act of 1949, and the copyright in the design subsisting by virtue of that registration has not expired by effluxion of time before the commencement of those proceedings; and
- (c) it is proved or admitted in the proceedings that the person registered as the proprietor of the design was not the proprietor thereof for the purposes of the Act of 1949, and was so registered without the knowledge of the owner of the copyright in the artistic work.

2. For the purposes of those proceedings (but subject to the next following paragraph) the registration shall be treated as never having been effected, and accordingly, in relation to that registration, subsection (1) of section ten of this Act shall not apply, and nothing in section five of the Registration of United Kingdom Trade Marks Proclamation (Cap. 154)<sup>4</sup> shall be construed as affording any defence in those proceedings.

1. Substituted by S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

2. This, as amended by S.I. 1965 No. 2009 provided for the coming into operation of the Act.

3. Omitted by U.K. S.I. 1965 No. 2009.

4. Amended by U.K. S.I. No. 2009 of 1965.

3. Notwithstanding anything in the last preceding paragraph, if in the proceedings it is proved or admitted that any act to which the proceedings relate—

- (a) was done in pursuance of an assignment or licence made or granted by the person registered as proprietor of the design, and
- (b) was so done in good faith in reliance upon the registration and without notice of any proceedings for the cancellation of the registration or for rectifying the entry in the register of designs relating thereto.

subsection (1) of section ten of this Act shall apply in relation to that act for the purposes of the first-mentioned proceedings.

4. In this Schedule "the Act, of 1949" means the Registered Designs Act 1949, to the extent that this is applicable in Botswana by virtue of the provisions of section 2 of the Patents and Designs Protection Proclamation (Cap. 155)<sup>1</sup> and "corresponding design" has the meaning assigned to it by subsection (7) of section ten of this Act.

## SECOND SCHEDULE

### Section 11

#### DURATION OF COPYRIGHT IN ANONYMOUS AND PSEUDONYMOUS WORKS

1. Where the first publication of a literary, dramatic, or musical work, or of an artistic work other than a photograph, is anonymous or pseudonymous, then subject to the following provisions of this Schedule —

- (a) subsection (3) of section two of this Act, or, as the case may be, subsection (4) of section three of this Act, shall not apply, and
- (b) any copyright subsisting in the work by virtue of either of those sections shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the work was first published, and shall then expire.

2. The preceding paragraph shall not apply in the case of a work if, at any time before the end of the period mentioned in that paragraph, it is possible for a person without previous knowledge of the facts to ascertain the identity of the author by reasonable inquiry.

3. For the purposes of this Act a publication of a work under two or more names shall not be taken to be pseudonymous unless all those names are pseudonyms.

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1. Amended by No. 23 of 1969.

## THIRD SCHEDULE

### Section 11

#### WORKS OF JOINT AUTHORSHIP

1. In relation to a work of joint authorship, the references to the author in subsections (1) and (2) of section two of this Act, in subsections (2) and (3) of section three of this Act, and in paragraph 2 of the Second Schedule to this Act, shall be construed as references to any one or more of the authors.

2. In relation to a work of joint authorship, other than a work to which the next following paragraph applies, references to the author in subsection (3) of section two, in subsection (4) of section three, and in subsection (6) of section seven, of this Act, shall be construed as references to the author who died last.

3.—(1) This paragraph applies to any work of joint authorship which was first published under two or more names, of which one or more (but not all) were pseudonyms.

(2) This paragraph also applies to any work of joint authorship which was first published under two or more names all of which were pseudonyms, if, at any time within the period of fifty years from the end of the calendar year in which the work was first published, it is possible for a person without previous knowledge of the facts to ascertain the identity of any one or more (but not all) of the authors by reasonable inquiry.

(3) In relation to a work to which this paragraph applies, references to the author in subsection (3) of section two of this Act, and in subsection (4) of section three of this Act, shall be construed as references to the author whose identity was disclosed, or, if the identity of two or more of the authors was disclosed, as references to that one of those authors who died last.

(4) For the purposes of this paragraph the identity of an author shall be taken to have been disclosed if either —

- (a) in his case, the name under which the work was published was not a pseudonym, or
- (b) it is possible to ascertain his identity as mentioned in subparagraph (2) of this paragraph.

4.—(1) In relation to a work of joint authorship of which one or more of the authors are persons to whom this paragraph applies, subsection (1) of section four of this Act shall have effect as if the author or authors, other than persons to whom this paragraph applies, had been the sole author, or (as the case may be) sole joint authors, of the work.

(2) This paragraph applies, in the case of a work, to any person such that, if he had been the sole author of the work, copyright would not have subsisted in the work by virtue of Part I of this Act.

5. In the proviso to subsection (6) of section six of this Act, the reference to other excerpts from works by the author of the passage in question —

- (a) shall be taken to include a reference to excerpts from works by the author of that passage in collaboration with any other person, or
- (b) if the passage in question is from a work of joint authorship, shall be taken to include a reference to excerpts from works by any one or more of the authors of that passage, or by any one or more of those authors in collaboration with any other person.

6. Subject to the preceding provisions of this Schedule any reference in this Act to the author of a work shall (unless it is otherwise expressly provided) be construed, in relation to a work of joint authorship, as a reference to all the authors of the work.

#### FOURTH SCHEDULE<sup>1</sup>

#### FIFTH SCHEDULE<sup>1</sup>

#### SIXTH SCHEDULE<sup>2</sup>

#### SEVENTH SCHEDULE

### Section 50

#### TRANSITIONAL PROVISIONS

#### PART I

#### PROVISIONS RELATING TO PART I OF ACT

##### *Conditions of subsistence of copyright*

1. In the application of sections two and three to works first published before the commencement of those sections, subsection (2) of section two, and subsection (3) of section three, shall apply as if paragraphs (b) and (c) of those subsections were omitted.

##### *Duration of copyright*

2. In relation to any photograph taken before the commencement of section three, subsection (4) of that section shall not apply but, subject to subsection (3) of that section, copyright subsisting in the photograph by virtue of that section shall continue to subsist until the end of the period of fifty years from the end of the calendar year in which the photograph was taken, and shall then expire.

1. Not applicable in Botswana: see U.K S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

2. Repealed by section 9, 6 & 7. Eliz. 2 c. 44.

*Ownership of copyright*

3.—(1) Subsections (2) to (4) of section four shall not apply —

- (a) to any work made as mentioned in subsection (2) or subsection (4) of that section, if the work was so made before the commencement of that section, or
- (b) to any work made as mentioned in subsection (3) of that section, if the work was or is so made in pursuance of a contract made before the commencement of that section.

(2) In relation to any work to which the preceding subparagraph applies, subsection (1) of section four shall have effect subject to the proviso set out in paragraph 1 of the Eighth Schedule to this Act (being the proviso to subsection (1) of section five of the Act of 1911).

*Infringements of copyright*

4. For the purposes of section five, the fact that, to a person's knowledge, the making of an article constituted an infringement of copyright under the Act of 1911, or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if, to that person's knowledge, the making of the article had constituted an infringement of copyright under this Act.

5. Subsection (7) of section six does not apply to assignments made or licences granted before the commencement of that section.

6.—(1) References in section eight to records previously made by or with the licence of, the owner of the copyright in a work include references to records previously made by, or with the consent of, the owner of the copyright in that work under the Act of 1911.

(2) The repeal by this Act of any provisions of section nineteen of the Act of 1911, or of the provisions of the Copyright Order Confirmation (Mechanical Instruments: Royalties) Act, 1928, shall not affect the operation of those provisions, or of any regulations of order made thereunder, in relation to a record made before the repeal.

7.—(1) In relation to a painting, drawing engraving, photograph or cinematograph film made before the commencement of section nine, subsection (6) of that section shall apply if, by virtue of subsection (3) or subsection (4) of that section, the making of the painting, drawing, engraving, photograph or film would not have constituted an infringement of copyright under this Act if this Act had been in operation at the time when it was made.

(2) In subsection (10) of section nine, the reference to construction by, or with the licence of, the owner of the copyright in any architectural drawings or plans includes a reference to construction by or with the licence of, the person

who, at the time of the construction, was the owner of the copyright in the drawings or plans under the Act of 1911, or under any enactment repealed by that Act.

8.—(1) Section ten and the First Schedule to this Act do not apply to artistic works made before the commencement of that section.

(2) Copyright shall not subsist by virtue of this Act in any artistic work made before the commencement of section ten which, at the time when the work was made, constituted a design capable of registration under the Registered Designs Act, 1949, or under the enactments repealed by that Act, and was used, or intended to be used, as a model or pattern to be multiplied by any industrial process.

(3) The provisions set out in paragraph 2 of the Eighth Schedule to this Act (being relevant provisions of the Copyright (Industrial Designs) Rules, 1949) shall apply for the purposes of the last preceding sub-paragraph.

9.—(1) Where, before the repeal by this Act of section three of the Act of 1911, a person has, in the case of a work, given the notice requisite under the proviso set out in paragraph 3 of the Eighth Schedule to this Act (being the proviso to the said section three), then, as respects reproductions by that person of that work after the repeal of that section by this Act, that proviso shall have effect as if it had been re-enacted in this Act as a proviso to subsection (2) of section one:

Provided that the said proviso shall so have effect subject to the provisions set out in paragraphs 4 and 5 of the Eighth Schedule to this Act (being so much of subsection (1) of sections sixteen and seventeen respectively of the Act of 1911 as is applicable to the said proviso), as if those provisions had also been re-enacted in this Act.

(2) For the purposes of the operation of the said proviso in accordance with the preceding sub-paragraph, any regulations made by the Board of Trade thereunder before the repeal of section three of the Act of 1911 shall have effect as if they had been made under this Act, and the power of the Minister to make further regulations thereunder shall apply as if the proviso had been re-enacted as mentioned in the preceding sub-paragraph.

*Works of joint authorship*

10.—(1) Notwithstanding anything in section eleven, or in the Third Schedule to this Act, copyright shall not subsist by virtue of Part I of this Act in any work of joint authorship first published before the commencement of section eleven, if the period of copyright had expired before the commencement of that section.

(2) In this paragraph "the period of copyright" means whichever is the longer of the following periods, that is to say —

- (a) the life of the author who died first and a term of fifty years after his death, and
- (b) the life of the author who died last.

## PART II

### PROVISIONS RELATING TO PART II OF ACT

#### *Sound recordings*

11. In the case of a sound recording made before the commencement of section twelve, subsection (3) of that section shall apply with the substitution, for the period mentioned in that subsection, of the period of fifty years from the end of the calendar year in which the recording was made.

12. Subsection (6) of section twelve shall not apply to a sound recording made before the commencement of that section.

13. Notwithstanding anything in section twelve, copyright shall not subsist by virtue of that section in a sound recording made before the first day of July, nineteen hundred and twelve, unless, immediately before the commencement of that section, a corresponding copyright subsisted, in relation to that recording, by virtue of subsection (8) of section nineteen of the Act of 1911 (which relates to records made before the commencement of that Act).

#### *Cinematograph films*

14. Section thirteen shall not apply to cinematograph films made before the commencement of that section.

15. Where a cinematograph film made before the commencement of section thirteen was an original dramatic work within the definition of "dramatic work" set out in paragraph 9 of the Eighth Schedule to this Act (being the definition thereof in the Act of 1911), the provisions of this Act, including the provisions of this Schedule other than this paragraph, shall have effect in relation to the film as if it had been an original dramatic work within the meaning of this Act; and the person who was the author of the work for the purposes of the Act of 1911 shall be taken to be the author thereof for the purposes of the said provisions as applied by this paragraph.

16. The provisions of this Act shall have effect in relation to photographs forming part of a cinematograph film made before the commencement of section thirteen as those provisions have effect in relation to photographs not forming part of a cinematograph film.

#### *Television broadcasts and sound broadcasts*

17. Copyright shall not subsist by virtue of section fourteen in any television broadcast or sound broadcast made before the commencement of that section.

18. For the purposes of subsection (3) of section fourteen, a previous television broadcast or sound broadcast shall be disregarded if it was made before the commencement of that section.

*Supplementary*

19. For the purposes of subsections (2) to (4) of section sixteen, the fact that, to a person's knowledge, the making of an article constituted an infringement of copyright under the Act of 1911, or would have constituted such an infringement if the article had been made in the place into which it is imported, shall have the like effect as if, to that person's knowledge, the making of the article had constituted an infringement of copyright under this Act.

**PART III**

**PROVISIONS RELATING PART III OF ACT**

20. Nothing in section seventeen shall apply to any infringement of copyright under the Act of 1911, or shall affect any proceedings under that Act, whether begun before or after the commencement of that section.

21. Section eighteen shall not apply with respect to any article made, or, as the case may be, imported, before the commencement of that section; but, notwithstanding the repeal by this Act of section seven of the Act of 1911 (which contains provisions corresponding to subsection (1) of section eighteen), proceedings may (subject to the provisions of that Act) be brought or continued by virtue of the said section seven in respect of any article made or imported before the repeal, although the proceedings relate to the conversion or detention thereof after the repeal took effect.

22. Section nineteen shall not apply to any licence granted before the commencement of that section, and shall not affect any proceedings under the Act of 1911, whether begun before or after the commencement of that section.

23. For the purposes of section twenty-one the definition of "infringing copy" in section eighteen shall apply as if any reference to copyright in that definition included a reference to copyright under the Act of 1911.

24. Where before the commencement of section twenty-two a notice had been given in respect of a work under section fourteen of the Act of 1911 (which contains provisions corresponding to section twenty-two), and that notice had not been withdrawn and had not otherwise ceased to have effect before the commencement of section twenty-two, the notice shall have effect after the commencement of that section as if it had been duly given thereunder:

Provided that a notice shall not continue to have effect by virtue of this paragraph after the end of the period of six months beginning with the commencement of section twenty-two.

**PART IV**  
**PROVISIONS RELATING TO PART IV OF ACT**

25.<sup>1</sup>

26.<sup>1</sup>

**PART V**  
**PROVISIONS RELATING TO PART V OF ACT**

27. In section thirty-three, subsection (2) shall not apply to works made before the commencement of that section, and subsection (3) shall not apply to works first published before the commencement of that section.

**PART VI**  
**PROVISIONS RELATING TO PART VI OF ACT**

*Assignments, licences and bequests*

28.—(1) Where by virtue of any provision of this Act copyright subsists in a work, any document or event which —

- (a) was made or occurred before the commencement of that provision, and
- (b) had any operation affecting the title to copyright in the work under the Act to 1911, or would have had such an operation if the Act of 1911, had continued in force.

shall have the corresponding operation relation to the copyright in the work under this Act:

Provided that, if the operation of any such document was or would have been limited to a period specified in the document it shall not have any operation in relation to the copyright under this Act, except in so far as that period extends beyond the commencement of the provision of this Act by virtue of which copyright subsists in the work.

(2) For the purposes of the operation of a document in accordance with the preceding sub-paragraph —

- (a) expressions used in the document shall be construed in accordance with their effect immediately before the commencement of the provision in question, notwithstanding that a different meaning is assigned to them for the purposes of this Act; and
- (b) subsection (1) of section thirty-seven shall not apply.

(3) Without prejudice to the generality of sub-paragraph (1) of this paragraph, the proviso set out in paragraph 6 of the Eighth Schedule to this Act

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1. Omitted U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

(being the proviso to subsection (2) of section five of the Act of 1911) shall apply to assignments and licences having effect in relation to copyright under this Act in accordance with that sub-paragraph, as if that proviso had been re-enacted in this Act.

(4) In relation to copyright under this Act in a sound recording or in a cinematograph film, the preceding provisions of this paragraph shall apply subject to the following modifications, that is to say —

- (a) in the case of a sound recording, references to the copyright under the Act of 1911 shall be construed as references to the copyright under that Act in records embodying the recording, and
- (b) in the case of a cinematograph film, references to the copyright under the Act in the film (in so far as it constituted a dramatic work for the purposes of the Act of 1911) or in photographs forming part of the film.

(5) In this paragraph "operation affecting the title", in relation to copyright under the Act of 1911, means any operation affecting the ownership of that copyright, or creating, transferring or terminating an interest, right or licence in respect of that copyright.

29.—(1) Section thirty-eight shall not apply to a bequest contained in the will, or a codicil to the will, of a testator who died before the commencement of that section.

(2) In the case of an author who died before the commencement of section thirty-eight, the provision set out in paragraph 7 of the Eighth Schedule to this Act (being subsection (2) of section seventeen of the Act of 1911) shall have effect as if it had been re-enacted in this Act.

*State and Government departments*

30. Subsection (4) of section thirty-nine shall apply in relation to photographs taken before the commencement of that section as if the proviso to that subsection were omitted.

31.—(1) In the application of subsection (5) of section thirty-nine to a sound recording made before the commencement of that section, paragraph (b) of that subsection shall apply as if for the period mentioned in that paragraph there were substituted the period of fifty years from the end of the calendar year in which the recording was made.

(2) With respect to cinematograph films made before the commencement of section thirty-nine —

- (a) subsection (5) of that section shall not apply, but
- (b) in the case of a cinematograph film made as mentioned in that subsection, but before the commencement of section thirty-nine, if it was an original

dramatic work as mentioned in paragraph 15 of this Schedule, the provisions of subsections (1) to (3) of section thirty-nine shall apply in accordance with that paragraph, and

- (c) in relation to photographs forming part of such a cinematograph film the provisions of subsections (1), (2) and (4) of section thirty-nine (as modified by the last preceding paragraph) shall apply as they apply in relation to photographs not forming part of a cinematograph film.

*False attribution of authorship*

32.—(1) Paragraphs (b) and (c) of subsection (2) of section forty-three shall apply to any such act as is therein mentioned, if done after the commencement of that section, notwithstanding that the name in question was inserted or affixed before the commencement of that section.

(2) Subject to the preceding sub-paragraph no act done before the commencement of section forty-three shall be actionable by virtue of that section.

(3) In this paragraph "name" has the same meaning as in section forty-three.

*Other provision*

33.—(1) In the application of subsection (2) of section forty-nine to a publication effected before the commencement of that section, the reference in paragraph (d) to thirty days shall be treated as a reference to fourteen days.

(2) For the purposes of the application of subsection (3) of section forty-nine to an act done before the commencement of a provision of this Act to which that subsection applies, references to copyright include references to copyright under the Act of 1911, and, in relation to copyright under that Act, references to the licence of the owner are references to the consent or acquiescence of the owner.

## **PART VII**

### **WORKS MADE BEFORE 1ST JULY, 1912**

34.—(1) This Part of this Schedule applies to works made before the first day of July, nineteen hundred and twelve.

(2) In this Part of this Schedule "right conferred by the Act of 1911", in relation to a work, means such a substituted right as, by virtue of section twenty-four of the Act of 1911, was conferred in place of a right subsisting immediately before the commencement of that Act.

35. Notwithstanding anything in Part I of this Schedule, neither subsection (1) or subsection (2) of section two, nor subsection (2) or subsection (3) of section three, shall apply to a work to which this Part of this Schedule applies, unless a right conferred by the Act of 1911 subsisted in the work immediately before the commencement of section two or section three, as the case may be.

36.—(1) Where, in the case of a dramatic or musical work to which this Part of this Schedule applies, the right conferred by the Act of 1911 did not include the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as not including those specified in sub-paragraph (3) of this paragraph.

(2) Where, in the case of a dramatic or musical work to which this Part of this Schedule applies, the right conferred by the Act of 1911 consisted only of the sole right to perform the work in public, then, in so far as copyright subsists in the work by virtue of this Act, the acts restricted by the copyright shall be treated as consisting only of those specified in sub-paragraph (3) of this paragraph.

(3) The said acts are —

- (a) performing the work or an adaptation thereof in public;
- (b) broadcasting the work or an adaptation thereof;
- (c) causing the work or an adaptation thereof to be transmitted to subscribers to a diffusion service.

37. Where a work to which this Part of this Schedule applies consists of an essay, article or portion forming part of and first published in a review, magazine or other periodical or work of a like nature, and immediately before the commencement of section two a right of publishing the work in a separate form subsisted by virtue of the provision set out in paragraph 8 of the Eighth Schedule to this Act (being the note appended to the First Schedule to the Act of 1911), that provision shall have effect, in relation to that work, as if it had been re-enacted in this Act with the substitution, for the word "right" where it first occurs, of the word "copyright".

38.—(1) Without prejudice to the generality of sub-paragraph (1) of paragraph 28 of this Schedule, the provisions of this paragraph shall have effect where —

- (a) the author of a work to which this Part of this Schedule applies had, before the commencement of the Act of 1911, made such an assignment or grant as is mentioned in paragraph (a) of the proviso to subsection (1) of section twenty-four of that Act (which relates to transactions whereby the author had assigned, or granted an interest in, the copyright or performing right in a work for the full term of that right under the law in force before the Act of 1911), and
- (b) copyright subsists in the work by virtue of any provision of this Act.

(2) If, before the commencement of that provision of this Act, any event occurred, or notice was given, which in accordance with paragraph (a) of the said proviso had any operation affecting the ownership of the right conferred by the Act of 1911 in relation to the work, or creating, transferring or terminating an interest, right or licence in respect of that right, that event or notice shall have

the corresponding operation in relation to the copyright, in the work under this Act.

(3) Any right which, at a time after the commencement of that provision of this Act, would, by virtue of paragraph (a) of the said proviso, have been exercisable in relation to the work, or to the right conferred by the Act of 1911, if this Act had not been passed, shall be exercisable in relation to the work or to the copyright therein under this Act, as the case may be.

(4) If, in accordance with paragraph (a) of the said proviso, the right conferred by the Act of 1911 would have reverted to the author or his personal representatives on the date referred to in that paragraph, and the said date falls after the commencement of the provision of this Act whereby copyright subsists in the work, then on that date —

- (a) the copyright in the work under this Act shall revert to the author or his personal representatives, as the case may be, and
- (b) any interest of any other person in that copyright which subsists on that date by virtue of any document made before the commencement of the Act of 1911 shall thereupon determine.

## **PART VIII**

### **GENERAL AND SUPPLEMENTARY PROVISIONS**

39.—(1) The provisions of this paragraph shall have effect for the construction of any reference in any provision of this Act —

- (a) to countries to which that provision extends, or
- (b) to qualified persons.

(2) Where, at any time after the commencement of any provisions of this Act, a provision which contains such a reference —

- (a) has not yet been extended by virtue of section thirty-one to a country to which the Act of 1911 extended (or which, by virtue of that Act, was to be treated as a country to which it extended), and
- (b) has not been applied in the case of that country by virtue of section thirty-two,

then, with respect to any time before the provision is so extended or applied, the reference shall be construed as if the provision did extend to that country.

(3) For the purpose of determining whether copyright subsists in any work or other subject-matter at a time when a provision containing such a reference has been extended to a country other than the United Kingdom, the reference shall be construed, in relation to past events, as if that provision had always been in operation and had always extended to that country.

(4) In relation to photographs taken before the commencement of section three, and to sound recordings made before the commencement of section twelve, the definition of "qualified person" in subsection (5) of section one shall apply as if, in paragraph (b) of that subsection for the words "body incorporated under the laws of" there were substituted the words "body corporate which has established a place of business in".

40.<sup>1</sup>

41.<sup>1</sup>

42. The mention of any particular matter in the preceding provisions of this Schedule with regard to the repeal of any of the provisions of the Act of 1911 shall not affect the general application to this Act of section thirty-eight of the Interpretation Act, 1889 (which relates to the effect of repeals), either in relation to the Act of 1911 or to any other enactment repealed by this Act.

43. For the purposes of the application, by virtue of any of the preceding paragraphs of this Schedule, of any of the provisions set out in the Eighth Schedule to this Act, —

- (a) the expressions of which definitions are set out in paragraph 9 of that Schedule (being the definitions of those expressions in the Act of 1911) shall notwithstanding anything in this Act, be construed in accordance with those definitions; and
- (b) where, for those purposes, any of those provisions is to be treated as if re-enacted in this Act, it shall be treated as if it had been so re-enacted with the substitution, for the words "this Act", wherever the reference is to the passing or the commencement of the Act of 1911, of the words "the Copyright Act, 1911".

44. Without prejudice to the operation of any of the preceding provisions of this Schedule —

- (a) any enactment or other document referring to an enactment repealed by this Act shall be construed as referring (or as including a reference) to the corresponding enactment of this Act;
- (b) any enactment or other document referring to copyright, or to works in which copyright subsists, if apart from this Act it would be construed as referring to copyright under the Act of 1911, or to works in which copyright subsists under that Act, shall be construed as referring (or as including a reference) to copyright under this Act, or, as the case may be, to works or any other subject-matter in which copyright subsists under this Act;
- (c) any reference in an enactment or other document to the grant of an interest in copyright by licence shall be construed, in relation to copyright under

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1. Omitted U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

this Act, as a reference to the grant of a licence in respect of that copyright.

45.—(1) Except in so far as it is otherwise expressly provided in this Schedule, the provisions of this Act apply in relation to things existing at the commencement of those provisions as they apply in relation to things coming into existence thereafter.

(2) For the purposes of any reference in this Schedule to works, sound recordings or cinematograph films made before the commencement of a provision of this Act, a work, recording or film, the making of which extended over a period shall not be taken to have been so made unless the making of it was completed before the commencement of that provision.

46.—(1) Any reference in this Schedule to a numbered section shall, unless the reference is to a section of a specified Act, be construed as a reference to the section bearing that number in this Act.

(2) Any reference in this Schedule to the commencement of a provision of this Act is a reference to the date on which that provision comes into operation as part of the law of Botswana.<sup>1</sup>

47.—(1) In this Schedule “photograph” has the meaning assigned to it in the definition set out in paragraph 9 of the Eighth Schedule to this Act, and not the meaning assigned to it by section forty-eight.

(2) In this Schedule “the Act of 1911” means the Copyright Act, 1911.

## EIGHTH SCHEDULE

### Section 50

#### PROVISIONS OF COPYRIGHT ACT, 1911, AND RULES, REFERRED TO IN SEVENTH SCHEDULE

1. *Proviso to s. 5 (1) of the Copyright Act, 1911 (referred to in paragraph 3 of Seventh Schedule):—*

Provided that —

- (a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and
- (b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the

<sup>1</sup> Amended by U.K. S.I. 1965 No. 2009 (L.N. No. 13 of 1966).

first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

*2. Rule 2 of the Copyright (Industrial Designs) Rules, 1949 (referred to in paragraph 8 of Seventh Schedule):—*

A design shall be deemed to be used as a model or pattern to be multiplied by any industrial process —

- (a) when the design is reproduced or is intended to be reproduced on more than 50 single articles, unless all the articles in which the design is reproduced or is intended to be reproduced together form only a single set of articles as defined in subsection (1) of Section 44 of the Registered Designs Act, 1949, or
- (b) when the design is to be applied to—
  - (i) printed paper hangings,
  - (ii) carpets, floor cloths or oil cloths, manufactured or sold in lengths or pieces,
  - (iii) textile piece goods, or textile goods manufactured or sold in lengths or pieces, or
  - (iv) lace, not made by hand.

*3. Proviso to s. 3 of the Copyright Act, 1911 (referred to in paragraph 9 of Seventh Schedule):—*

Provided that at any time after the expiration of twenty-five years, or in the case of a work in which copyright subsists at the passing of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent. on the price at which he publishes the work; and, for the purposes of this proviso, the Board of Trade may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

4. S. 16 (1) of the Copyright Act, 1911 (referred to in paragraph 9 of Seventh Schedule):—

In the case of work of joint authorship. . . . . references in this Act to the period after the expiration of any specified number of years from the death of the author shall be construed as references to the period after the expiration of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter. . . . .

5. S. 17 (1) of Copyright Act, 1911 (referred to in paragraph 9 of Seventh Schedule):—

In the case of a literary, dramatic or musical work, or an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor, in the case of a lecture, been delivered in public, before that date. . . . . the proviso to section three of this Act shall. . . . . apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.

6. Proviso to s. 5 (2) of the Copyright Act, 1911 (referred to in paragraph 28 of Seventh Schedule):—

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiration of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his legal personal representatives as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

7. S. 17 (2) of the Copyright Act, 1911 (referred to in paragraph 29 of Seventh Schedule):—

The ownership of an author's manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public shall be *prima facie* proof of the copyright being with the owner of the manuscript. nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

8. *Note to First Schedule to the Copyright Act, 1911 (referred to in paragraph 37 of Seventh Schedule):—*

In the case of an essay, article, or portion forming part of and first published in a review, magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would, if this Act had not been passed, have become entitled under section eighteen of the Copyright Act, 1842.

9. *Definitions in s. 35 (1) of the Copyright Act, 1911 (referred to in paragraphs 15, 43 and 47 of Seventh Schedule):—*

“literary work” includes maps, charts, plans, tables, and compilations;

“dramatic work” includes any piece for recitation, choreographic work or entertainment in dumb show the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

“performance” means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

“photograph” includes photo-lithograph and any work produced by any process analogous to photography;

“collective work” means —

(a) any encyclopaedia, dictionary, year book, or similar work;

(b) a newspaper, review, magazine, or similar periodical; and

(c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

“delivery” in relation to a lecture, includes delivery by means of any mechanical instrument;

“lecture” includes address, speech and sermon.

NOTE—In this Schedule “this Act” means the Copyright Act, 1911.

## NINTH SCHEDULE<sup>1</sup>

1. Not applicable in Botswana see U.K. S.I. 1965 No. 2009 (L.N. No. 23 of 1969).