CHAPTER 49:03

COPYRIGHT

ARRANGEMENT OF SECTIONS

SECTION

PART I

PRELIMINARY

1. Short title
2. Interpretation

PART II

COPYRIGHT

3. Copyright
4. Works in which copyright subsist

PART III

LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

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

PART IV
TRANSFER OF RIGHTS AND COMPULSORY LICENCES

Division I—Transfer of Copyright
14. Transferability of copyright
15. Contracts for authorization of use of rights under this Act
16. Commissioned work

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

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

PART VI
BROADCASTERS, PERFORMERS AND PRODUCERS OF SOUND RECORDINGS

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

PART VII
PUBLIC DOMAIN

40. Works in the public domain

PART VIII
THE COPYRIGHT SOCIETY OF MALAWI

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

PART IX

INFRINGEMENT, OFFENCES AND MISCELLANEOUS PROVISIONS

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

Schedule

9 of 1989
22 of 1989
30 of 1994
G.N. 55/1989
An Act to make provision for copyright in literary, dramatic, musical and artistic works, audio-visual works, sound recordings and broadcasts; the rights of performers; the establishment of the Copyright Society of Malawi; and for matters incidental thereto or connected therewith

[22ND JUNE 1989]

PART I

PRELIMINARY

[Ch4903s1] 1. Short title

This Act may be cited as the Copyright Act.

[Ch4903s2] 2. Interpretation

In this Act, unless the context otherwise requires—

“adaptation”—

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

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

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

(i) a translation of the work; or

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

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

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

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

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

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

(d) sculpture; or

(e) works of architecture in the form of buildings or models; or
works of applied art, whether handicraft or produced on an industrial scale;

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

22 of 1989“association” means an association of persons whose works are protected under this Act;

“author” means the person who creates a work, and—

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

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

22 of 1989“Board” means the Board for the management of the Society as referred to in section 46;

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

“building” includes any structure;

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

“broadcasting organization” means the Malawi Broadcasting Corporation, established by the Malawi Broadcasting Act and any other broadcaster whether licensed under that Act or any other written law; Cap. 20:01

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

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

“communication to the public” means making a work accessible to the public;

“computer software” means a set of instructions, whether expressed in words or in schematic or other form, which is capable, when incorporated in a machine-readable medium, of causing an electronic or other device having information processing capabilities to indicate, perform or achieve a particular function, task or result;
“copy” means a reproduction of a work in a written form, or in the form of a recording or in any other material form, but an object shall not be taken to be a copy of an architectural work unless the object is a building or model;

“copyright” means copyright protected under this Act;

“derivative work” means a work resulting from adaptation, translation or other transformation of an original work in so far as it constitutes an independent creation;

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

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

“dramatic work” includes—
(a) a choreographic show or entertainment in dumb show;
(b) a scenario or script for an audio-visual work but does not include the audio-visual work;

“engraving” does not include a photograph;

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

“folklore” means all literary, dramatic, musical and artistic works belonging to the cultural heritage of Malawi created, preserved and developed by ethnic communities of Malawi or by unidentified Malawi authors, and includes, in particular—
(a) folk tales, folk poetry and riddles;
(b) folk songs and instrumental folk music;
(c) folk dances, plays and artistic forms of rituals;
(d) production of folk art, in particular drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket and costumes;
(e) traditional musical instruments; and
(f) any works designated as such by the Minister by notice published in the Gazette;

“infringement of copyright” has the meaning assigned thereto in section 47;

“infringing copies of a work” means copies of a work produced by any process and in any form the making of which involves infringement of the copyright in the work or the rights granted to performers, broadcasters and producers of sound recordings under this Act and includes copies the making of which infringe the provisions of this Act relating to folklore;
“literary work” irrespective of literary quality, includes any of the following—

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

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

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

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

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

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

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

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

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

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

“rebroadcasting” means the simultaneous or subsequent broadcasting in part or in whole by one broadcasting organization of the broadcast of another broadcasting organization;
“reproduction” means the making of one or more copies of a literary, dramatic, musical or artistic work or expressions of folklore or fixation in any material form including any audio-visual work or sound recording, and in the case of an artistic work, includes converting a work into a three dimensional form or, if existing in three dimensional, converting it into a two dimensional form;

“Society” means the Copyright Society of Malawi established under section 41;

“sound recording” means—

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

(b) a recording of a literary, dramatic or musical work from which sounds reproducing the work may be produced, in either case, regardless of the medium on which the recording is made or the method by which the sounds are reproduced;

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

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

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

“works of joint-authorship” means a work created by the collaboration of two or more authors in which the contribution of each author is not separable from the contribution of the other author or authors.

PART II

COPYRIGHT

[Ch4903s3]3. Copyright

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

[Ch4903s4]4. Works in which copyright subsist

(1) Copyright shall subsist in accordance with this Act in—

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

(i) of an author who is a national of, or is resident in, Malawi;

(ii) which are first published in Malawi, irrespective of the nationality or residence of their authors;

(b) expressions of folklore developed and maintained in Malawi;
(c) performance, if—

(i) the performer is a national of Malawi; or

(ii) the performance took place in Malawi; or

(iii) the performance is fixed in a sound recording qualifying for copyright under paragraph (d); or

(iv) the performance, which has not been fixed in a sound recording, is embodied in a broadcast qualifying for protection under paragraph (e);

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

(i) the producer of audio-visual work or sound recording is a national of, or is resident in, Malawi; or

(ii) the first fixation of the audio-visual work or sound recording was made in Malawi; or

(iii) the audio-visual work or sound recording was first published in Malawi;

(e) broadcasts, where—

(i) the headquarters of the broadcasting organization is situated in Malawi; or

(ii) the broadcast was transmitted from a transmitter situated in Malawi; and

(f) typographical arrangements of works published in Malawi.

PART III

LITERARY, DRAMATIC, MUSICAL AND ARTISTIC WORKS

[Ch4903s5] 5. Copyright in literary, dramatic, musical and artistic works

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

(a) it is original in character; or

(b) it is derivative work,

and it is in writing or recorded or otherwise reduced to material form.

(2) A work shall be eligible for copyright under this Part irrespective of its form of expression, its quality and purpose for which it was created.
(3) For the purposes of this Part, a work is original if it is the product of the independent efforts of the author.

[Ch4903s6]6. Derivative works

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

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

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

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

[Ch4903s7]7. Works not subject to copyright protection

Copyright protection shall not extend to—

(a) written laws and decisions of courts and administrative bodies as well as to official translations thereof;

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

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

[Ch4903s8]8. Economic rights

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

(a) the reproduction of the work; or

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

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

(d) its communication to the public.

[Ch4903s9]9. Moral rights

(1) The author of any work eligible for copyright under this Part shall have the exclusive right—
(a) to claim authorship of his work and in particular to demand that his name or pseudonym be mentioned when any of the acts referred to in section 8 is done in relation to such work, except when the work is included when reporting current event by means of photography, audio-visual work, sound recording and broadcasting;

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

(c) to alter the work at any time.

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

10. Permitted free uses of a work

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

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

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

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

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

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

(c) in the case of any article published in newspapers or periodicals on current economic, political, social or religious topics, and in the case of any work of the same character broadcast or
distributed by cable, the reproduction of such article or such work in the press, or the communication of
it to the public, unless the article, when first published, or the work, when broadcast or distributed by
cable, was accompanied by any express condition prohibiting such use, and provided that the source of
the article or the work when used in such manner is clearly indicated;

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

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

(f) the reproduction, the photography, audio-visual work or sound recording or electronic
storage by public libraries, non-commercial documentation centres, scientific institutions and
educational establishments, or literary, dramatic, musical and artistic works which have already been
lawfully made available to the public;

Provided that such reproduction, the number of copies made and the use thereof are limited to
the needs of the regular activities of the body reproducing the work, and neither conflict with the
normal uses of the work nor unreasonably prejudice the legitimate interests of the author;

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

(i) any political speech delivered in public or any speech delivered during legal
proceedings; or

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

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

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

[Ch4903s11]11. Ownership of copyright

In determining the person vested with the copyright under this Part, the following principles
shall apply—
(a) if one person was the author of the work, the rights vest in that person;

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

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

[Ch4903s12] 12. Employed authors

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

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

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

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

[Ch4903s13] 13. Duration of copyright

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

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

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

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

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

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

(e) subject to paragraphs (f) and (g), in the case of a work owned by the Government or any body corporate, for fifty years commencing from the date on which the work was first made available to the public;
(f) in the case of computer programmes, for ten years calculated from either the date when the programme is first used or the date when the computer software is first sold, leased or licensed; and

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

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

PART IV

TRANSFER OF RIGHTS AND COMPULSORY LICENCES

Division I—Transfer of Copyright

[Ch4903s14]14. Transferability of copyright

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

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

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

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

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

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

(7) The Society shall assign reasons for its decision under subsection (8) and any appeal against that decision shall lie to the High Court.

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

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

[Ch4903s15]15. Contracts for authorization of use of rights under this Act

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

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

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

(4) Where a contract has been entered into and it is found that there is a gross disproportion
between the remuneration paid by the user of the work and the income derived by user from the use
thereof, the owner of the copyright may request an amendment of the contract so as to secure for
himself an equitable share of income, corresponding to standards generally prevailing in similar cases,
but such claim may not be made in advance of the use and it shall not be enforceable after the lapse of
two years from the time when the owner of copyright work first received knowledge of the
circumstances which give rise to the claim:

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

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

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

(a) from the grant of such right; or

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

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

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

16. Commissioned work

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

(2) Within the time allowed under subsection (1) for acceptance of commissioned work, the user may, once or repeatedly, return the work to the author and require him to amend or correct the work taking into consideration the purpose for which the creation of the work was agreed upon and such requests shall be made in writing and fix reasonable dates by which the amendment or correction shall be done.

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

Division II—Compulsory Licences

17. Compulsory translation licence

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

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

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

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

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

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

(b) following the expiration of the relevant period specified in subsection (3) the applicant either has requested the owner of the right of the translation for consent to translate the work but has been refused or, inspite of genuine efforts made by the applicant, he has been unable to locate the owner;

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

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

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

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

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

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

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

(8) When a work is composed mainly of illustrations, a licence to translate the text and to reproduce the illustrations shall be granted only if the conditions prescribed under section 18 are also fulfilled.
(9) Where the author of a work has withdrawn all copies of the work from circulation no licence shall be granted in respect of the work under this section.

[Ch4903s18] 18. Conditions of a compulsory licence

(1) A licence granted under section 17 shall—

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

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

(c) not be transferable by the licensee;

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

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

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

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

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

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

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

(3) A licence granted under section 17 shall terminate if a translation of the work in the same language and with substantially the same content as the edition for which the licence is granted is published in copies in Malawi by or under the authority of the owner of the right in translation at a price reasonably related to that normally charged in Malawi for comparable work; but so however that any copies already published before the licence is terminated may continue to be distributed until the stock is exhausted.

[Ch4903s19] 19. Translation licence for broadcasting purposes

(1) Subject to the provisions of sections 17 and 18, a licence to translate a work published in printed form or other form of reproduction may also be granted under this section to a broadcasting organization where the translation is—
(a) made from a work made or acquired in accordance with this Act;

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

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

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

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

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

[Ch 4903s20] 20. compulsory reproduction licence

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

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

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

(a) until the expiration of a period of—

(i) three years commencing from the date of publication of a work in the field of technology or of a natural or physical science including mathematics; or

(ii) seven years commencing from the date of publication of a work of fiction, poetry, drama or music or a book of art; or

(iii) five years commencing from the date of publication of any other work; and

(b) unless the Minister is first satisfied that—

(i) there has never been a sale or other distribution, authorized by the owner of the reproduction right, of copies of the particular edition in Malawi to the general public in connexion with systematic instructional activities, at a price reasonably related to that charged in Malawi for
comparable works, or that there has been no such sale or other distribution during the immediately proceeding six months;

(ii) the applicant either has requested from the owner of the right of reproduction for his authorization to reproduce the work and has been refused or, inspite of genuine efforts made by the applicant, he has been unable to locate the owner;

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

(iv) where the applicant cannot locate the owner of the right of reproduction, the applicant has by registered mail sent copies of the application to the publisher whose name appears in the work and also to the centres specified in subparagraph (iii).

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

(5) A licence under this section shall not be granted in respect of any application made until expiration of a period of six months commencing from the date of—

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

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

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

[Ch4903s21]21. Conditions of a compulsory reproduction licence for

(1) A licence granted under section 20 shall—

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

(b) not be transferable by the licensee;

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

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

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

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

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

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

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

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

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

22. Compulsory reproduction licence for audio-visual works

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

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

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

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

23. Production of recording of musical works

(1) A manufacturer of sound recordings may make a sound recording of any musical work or a similar adaptation thereof, including any literary work intended as an accompaniment to the work, if—
(a) copies of the musical work or a similar adaptation of them have previously been made in or imported into Malawi for the purpose of retail sale, and were so made with the licence of, or so imported by, the owner of the copyright in such work; and

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

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

(a) the name and address of the manufacturer;

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

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

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

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

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

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

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

PART V

EXPRESSIONS OF FOLKLORE

[Ch4903s24]24. Copyright in expressions of folklore to vest in Government

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

[Ch4903s25]25. Certain uses of expressions of folklore to be subject to authorization
Subject to the provisions of section 29, the following uses of the expressions of folklore shall be subject to prior written authorization by the Minister when they are made for gainful purposes or outside their traditional and customary context—

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

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

[Ch4903s26]26. Free uses of expressions of folklore

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

(a) for the purposes of education;

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

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

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

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

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

[Ch4903s27]27. Source of expressions of folklore to be acknowledged

In any printed publication or communication to the public wherein expressions of folklore have been used, except for uses referred to in section 25 (c) and (d), the user of the expression of folklore shall acknowledge in such publication or communication the source from where the expressions of folklore so used by him have been derived.

[Ch4903s28]28. Authorization for use of expressions of folklore

(1) Authorization of any use of expressions of folklore may be either general or special and may be granted upon application in writing to the Minister.
(2) In granting or refusing to grant an application for authorization under this Part, the Minister shall not be required to assign any reasons and his decision shall be final and not subject to appeal to, or review or question by, any court:

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

[Ch4903s29]29. Non-hindrance of development of folklore

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

[Ch4903s30]30. Protection under this Part to be additional

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

PART VI

BROADCASTERS, PERFORMERS AND PRODUCERS OF SOUND RECORDINGS

[Ch4903s31]31. Rights of broadcasters, performers, and producers of sound recording not to affect copyright

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

[Ch4903s32]32. Acts requiring authorization of performers

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

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

(i) is made from fixation of the performance, other than a fixation made under the provisions of section 39; or

(ii) is a broadcast or distribution by cable of performance, and is made or authorized by the organization initially broadcasting the performance;

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

(i) is made from a fixation of the performance; or

(ii) is made from a fixation of the performance, other than a fixation made under the provisions of section 39; or

(iii) is a broadcast or distribution by cable of performance, and is made or authorized by the organization initially broadcasting the performance;
(ii) is made from a broadcast or distribution by cable of the performance;

(c) the fixation of their unfixed performance;

(d) the reproduction of a fixation of their performance, in any of the following cases—
   (i) where the performance was initially fixed without their authorization; or
   (ii) where the reproduction is made for purposes different from those for which the performers gave their authorization; or
   (iii) where the performance was initially fixed in accordance with the provisions of section 39, but the reproduction is made for purposes different from any of those referred to in that section.

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

   (a) the authorization to broadcast or distribute a performance by cable does not imply—
      (i) an authorization to license other organization to broadcast or distribute the performance by cable;
      (ii) an authorization to fix the performance;
      (iii) an authorization to reproduce the fixation; and

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

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

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

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

[Ch4903s33]33. Granting of authorization by performers

(1) A binding authorization under section 32 may be given by the performer or by a duly appointed representative to which the performer has in writing granted the right to give such authorization.
(2) Any authorization given by the performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the claim or appointment, as the case may be, was not a valid one.

[Ch4903s34] 34. Acts requiring the authorization of producers of sound recording

30 of 1994(1) Without the authorization of the producer of sound recording, no person shall do any of the following acts—

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

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

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

30 of 1994(4) The protection referred to in subsection (1) shall subsist for fifty years computed from the end of the year in which the sound recording was published for the first time.

[Ch4903s35] 35. Obligations of producers of sound recordings

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

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

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

[Ch4903s36] 36. Notice of protection of rights of producers of sound recordings
(1) Where copies of a sound recording are made for commercial purposes, there shall be printed on the copies a notice consisting of—

(a) the symbol P; and

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

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

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

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

37. Sound recording performance in public places

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

38. Rights of broadcasting organizations

(1) A broadcasting organization shall have the exclusive right to authorize or prohibit—

(a) the rebroadcasting of its broadcasts;

(b) the fixation of its broadcasts; or

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

(i) the fixation used to make the reproduction is made without authorization; or

(ii) the broadcast is initially fixed in accordance with the provisions of this Act, but the reproduction is made for purposes other than those authorized.

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

39. Exceptions to certain provisions under this Part

The provisions of sections 33, 34, 35, 36 and 37 shall not apply where the acts referred to therein are concerned with—
(a) private use;
(b) the reporting of current events, except that no more than short excerpts of a performance, sound recording or broadcast are used;
(c) teaching or research;
(d) quotations in the form of short excerpts of a performance, sound recording or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations.

PART VII
PUBLIC DOMAIN

[Ch4903s40]40. Works in the public domain

(1) The following works shall belong to the public domain—

(a) works whose terms of protection have expired;
(b) works in respect of which authors have renounced their rights; and
(c) foreign works that do not enjoy protection in Malawi.

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

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

PART VIII
THE COPYRIGHT SOCIETY OF MALAWI

[Ch4903s41]41. Establishment of a Copyright Society of Malawi

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

[Ch4903s42]42. Functions of the Society

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

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

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

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

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

[Ch4903s43]43. Powers of the Society

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

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

(b) with the approval of the Minister and subject to the Finance and Audit Act, to borrow money whether by way of loan, overdraft or otherwise, on the security of its assets; Cap. 37:01

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

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

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

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

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

[Ch4903s44]44. Funds of the Society

The funds of the Society shall consist of—

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

(b) all fees payable under this Act; and

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

(1) The Society shall—

(a) keep proper accounts and other records relating thereto in respect of its funds and shall in every respect comply with the provisions of the Finance and Audit Act; Cap. 37:01

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

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

(3) The financial year of the Society shall be a period of twelve months beginning on 1st April every year and ending on 31st March the following year:

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

46. Constitution, proceedings and other matters of the Society

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

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

PART IX

INFRINGEMENT OF COPYRIGHT, OFFENCES AND MISCELLANEOUS PROVISIONS

47. Infringement of copyright, etc.

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

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

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

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

(d) exhibit or permit or cause to be communicated to the public, for commercial purposes by way of broadcast, public performance or otherwise,
any work or performance protected under this Act.

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

[Ch4903s48]48. Offences and penalties

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

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

(a) works of Malawian folklore; or

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

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

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

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

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

[Ch4903s49]49. Compensation to victims of offence

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

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

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

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

(3) in any proceedings to which subsection (2) (a) applies—

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

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

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

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

[Ch4903s50]50. Proof of facts in proceedings

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

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

(b) states all or any of the following—

(i) that at the time specified therein the rights of the owner of the copyright work
subsisted;

(ii) the nationality of the owner of the copyright;

(iii) the place where the work was first made;
(iv) the date and place of first publication of the work and the date of publication thereof in Malawi, if such publication was not first publication;

(v) that the person named therein is the owner of the copyright or his successor in title;

(vi) that a copy of the work exhibited to the affidavit is a true copy of the work,

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

[Ch4903s51]51. Inspectors

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

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

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

[Ch4903s52]52. Entry into premises

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

[Ch4903s53]53. Mode of inspection

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

(a) any substance or article appearing to him to be a work;

(b) any container or package used or intended to be used to contain any work; or

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

(2) An inspector may seize and detain any substance or article which he has reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which he has reasonable cause to believe that an offence under this Act has been or is being committed, and any document which he has reasonable cause to believe to be a document which may be required in proceedings under this Act.
(3) Where an inspector seizes any work he shall notify in writing the person from whom it is seized the fact of that seizure and shall in that notification specify any item seized.

(4) Any person who—

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

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

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

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

shall be guilty of an offence and shall be liable to a fine of K1,000 and to imprisonment for a term not exceeding six months.

[Ch4903s54]54. Inspectors not personally liable for acts done under this Act

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

[Ch4903s55]55. Extension of the application of this Act

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

[Ch4903s56]56. Regulations

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

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

(b) prescribe forms—

(i) of applications to be made;

(ii) of licences to be issued;

(iii) of contracts to be concluded,

pursuant to the provisions of this Act;
(c) prescribe fees payable under this Act;

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

22 of 1989(e) provide for the affiliation of associations to the Society and for the membership with such associations or with the Society of any persons whose works are protected under this Act.

[Ch4903s57]57. Applications to works created before and after commencement of this Act

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

SCHEDULEs. 46(1), G.N. 66/1990, 11/2001

CONSTITUTION, PROCEEDINGS AND OTHER MATTERS OF THE SOCIETY

1. Composition of the Society

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

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

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

(c) the Secretary for Justice or his designated representative; and

(d) five persons nominated at the annual general assembly of the Society and appointed by the Minister.

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

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

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

2. Vacation, etc., of members from office

(1) The Minister may require a member of the Board to vacate his office if the Minister is satisfied that the member— G.N. 66/1990

(a) has become insolvent or has assigned his estate for the benefit of, or made a composition or other arrangement with his creditors; or
(b) has been absent from three consecutive meetings of the Board, of which he has had notice, without the leave of the Chairman of the Board.

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

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

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

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

3. The Minister may resign his office by notice in writing to the Minister and if the Minister accepts such resignation.

3. Filling of vacancies in the Board

(1) On vacation of office by a member of the board, the vacancy shall be filled by a person appointed in accordance with paragraph 1 (a) under which the former member was appointed: G.N. 66/1990

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

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

4. Co-opted persons

The Board may in its discretion at any time and for any length of time invite any person, and the Minister may in the like manner nominate any officer in the public service, to attend any meeting of the Board and take part in the deliberations of the Board, but such person or officer shall not be entitled to vote at that meeting. G.N. 66/1990

5. Chairman and Vice-Chairman

(1) The Board shall elect a Vice-Chairman from amongst its members. The Vice-Chairman shall, subject to subparagraph (2) hold office for the duration of his membership in the Board. G.N. 66/1990, 11/2001

(2) The office of the Vice-Chairman shall become vacant—
(a) if the holder resigns his office by notice in writing to the Board; or

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

(c) if the Board so determines.

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

6. Meetings of the Board

(1) Subject to subparagraph (2), the Board shall hold ordinary meetings for the dispatch of its business at least four times in each year. G.N. 66/1990

(2) An extraordinary meeting of the Board—

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

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

(3) At any meeting of the Board—

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

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

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

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

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

7. Remuneration and expenses of members of the Board

Members of the Board shall be paid from the funds of the Board such allowances as the Minister may determine, and in determining the allowances the Minister may make provision for the reimbursement of any reasonable expenses incurred by a member of the Board in connexion with the business of the Board. G.N. 66/1990

8. Appointment of Copyright Administrator and other staff

(1) Subject to this paragraph, the Board— G.N. 66/1990
(a) shall appoint a Copyright Administrator upon such terms and conditions as may be approved by the Minister;

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

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

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

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

SUBSIDIARY LEGISLATION

COPYRIGHT (EXTENSION OF THE APPLICATION OF THE ACT) NOTICE

under s. 55

G.N. 40/1990

100/1993

1. Citation

This Notice may be cited as the Copyright (Extension of the Application of the Act) Notice.

2. Extension of application of the Act

The Act shall apply to any works, including expressions of folklore, performances, sound recordings and broadcasts which are first publications in a country, or created by a person who is a national of or resident, or a company incorporated, in a country specified in the Schedule, being a country which is a party to a treaty or convention specified in the Schedule in relation to that country and which grants reciprocal provisions in Malawi.

SCHEDULE para. 2

Berne Convention for the Protection of Literacy and Artistic Works as revised at Paris on 24th July, 1991, which has the following membership—

Argentina    Libya    Australia    Liechtenstein    Austria    Luxembourg    Bahamas
Madagascar    Barbados   Malaysia    Belgium    Mali    Benin    Malta    Brazil
Mauritania    Bulgaria    Mauritius    Burkina Faso    Mexico    Cameroon
COPYRIGHT (LICENSING OF PUBLIC PERFORMANCES) REGULATIONS

under s. 56

G.N. 61/1994

82/1998

31/2001

1. Citation

These Regulations may be cited as the Copyright (Licensing of Public Performances) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—“licence” means a licence issued under regulation 5(1).

3. Licence to hold public Performance

No person shall hold a public performance of a work in which copyright subsists except under a licence issued by the Society under these Regulations in respect of such public performance.

4. Application for Licence

Every application for a licence shall be made to the Society in the form set out in Part I of the Schedule hereto. Schedule, Part I

5. Issue of licence

(1) Subject to subregulation (3), the Society shall issue a licence in the form set out in Part II of the Schedule hereto subject to—Schedule, Part II

(a) Such conditions as it shall think fit including the submission, in the form set out in Part III of the Schedule hereto, of a performance return for each public performance; and Schedule, Part III
(b) the payment by the applicant of the fees corresponding to the appropriate tariff classifications specified in Part IV of the Schedule hereto. Schedule, Part IV

(2) A licence shall be valid only for the purposes in respect of which it has been issued and for the period, and with respect to the premises, specified thereon.

(3) The Society may refuse to issue a licence and the reasons for such refusal shall be communicated to the applicant.

6. Licence to be displayed

The applicant shall publicly display the licence in a prominent and visible position at or near the main entrance to the premises at which the public performance is to be held.

7. Issue of licence for foreign bands or groups

(1) Any person or organization that promotes and brings in any foreign band or foreign performing group into Malawi shall enter into a Contract with the Society at least twenty-one days before the foreign band or foreign performing group enters Malawi. G.N. 82/1998

(2) The Society shall after the signing of the Contract, facilitate the issuance of government clearance allowing the foreign band or foreign performing group to perform in Malawi.

(3) Any person or organization that promotes or brings any foreign band or performing group shall pay to the Society a non-refundable fee of K500 for the processing of the Contract.

8. Royalties

The Society shall pay in accordance with its procedures royalties or other appropriate remuneration accrued or due to the person entitled thereto out of the fees collected by the Society under these Regulations.

9. Appeals

An applicant who is aggrieved with any condition endorsed by the Society on a licence or with the decision of the Society refusing to issue a licence may, before the public performance is held and, in any case, within fourteen days from the date the condition is endorsed or the decision is made, appeal to the Minister to review or rescind the condition of decision, as the case may be.

10. Fees

The fees prescribed in Part V of the Schedule shall be payable in respect of the matters specified therein in relation to such fees. G.N. 31/2001

11. Penalty for failure to pay fees
In addition to the fees payable under these Regulations there shall be payable the infringement fees relatively specified in Part V of the Schedule hereto. Schedule, Part V

12. Validity of acts

Anything done by the Society before the commencement of these Regulations in respect of a public performance of any work and which thing is capable of being done under these Regulations shall be deemed to have been validly done under or pursuant to these Regulations.

SCHEDULE regs. 4 and 5, G.N. 31/2001

PART I

FORM APP 1

COPYRIGHT SOCIETY OF MALAWI

COPYRIGHT ACT

(CAP. 49:03)

Application No. ............

COPYRIGHT (LICENSING OF PUBLIC PERFORMANCES) REGULATIONS

APPLICATION FOR LICENCE FOR PUBLIC PERFORMANCES OF WORKS IN WHICH COPYRIGHT SUBSISTS

I/We .............................................. .......... Proprietor(s)/Manager(s) of .............. .......................... apply for a licence to hold public performances of works in which copyright neighbouring rights subsists under the Copyright Act. Address.............................. Telephone No............................................................. Location............................................................ District.................. ...........


Name of place/recorded music

No. of rooms with radio/TV

No. of launges and sitting capacity .................................................................

I/We .............................................. the manager/proprietor of the above mentioned certify that the above information is true to the best of my/our knowledge and belief.
Signature of Manager or Proprietor

FOR OFFICIAL USE ONLY

Tariff applicable ..............................................................................................

Fee Payable ....................................................................................................

File Number .................................................................................................

Application Number ......................................................................................

Signature of Licensing Officer

Checked by: .........................

Return to:

The Executive Director

Copyright Society of Malawi

P.O. Box 30784

Lilongwe 3

Tel. 01 751 148/783 992/752 717

PART II

FORM APP 2

COPYRIGHT SOCIETY OF MALAWI

Licence No. .....................

COPYRIGHT ACT

(CAP. 49:03)

COPYRIGHT (LICENSING OF PUBLIC PERFORMANCES) REGULATIONS LICENCE

(Regulation 5 (1))
(name)
(address)

is hereby licensed to hold public performances of works in which copyright subsists under the
Copyright Act at .........

(name and location of premises)

in the district of .............................................................. subject to the conditions specified
hereunder.

This certificate is valid from ..........................................., 20 ............
to ............................................................... 20 ............

Copyright Administrator

CONDITIONS

To be inserted on first issue of licence.*Date of application

Previous certificate number ..........................................................

PART III G.N. 31/2001

FORM APP 3

COPYRIGHT SOCIETY OF MALAWI

COPYRIGHT ACT

(CAP. 49:03)

COPYRIGHT (LICENSING OF PUBLIC PERFORMANCES) REGULATIONS

PROGRAMME RETURN OF WORKS PERFORMED

SEQTitle of WorkAuthorComposerArrangerProducer/1. 2.

PLAYS
I/We declare that the works stated above were to the best of my/our knowledge and belief actually performed as stated.

/ Date ..................................... Band/Group Leader /.............................................

Return to:

The Executive Director

Copyright Society of Malawi

P.O. Box 30784

Lilongwe 3

Telephone No. 01 751 148/783 992/752717


FEES

<table>
<thead>
<tr>
<th>Tariff Classification</th>
<th>Fee per year</th>
<th>Infringement fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tariff B</td>
<td>For radio/television /broadcasts in Malawi</td>
<td>Percentage of gross air time revenue/gross operating costs as follows—Nil Percentage of musical content Percentage of gross revenue/operating costs 1–101% 11–202% 21–303% 31–404% 41–505% 51–606% 61–707% 71–808% 81–909% 91–100% Minimum fee = K50,000.00</td>
</tr>
<tr>
<td>Tariff PBG</td>
<td>For public performance of sound recordings in or upon premises where liquor is sold or consumed</td>
<td>1–50 m² = K24.00/m² 51–75 m² = K22.00/m² 76–100 m² = K18.00/m² Over 100 m² = K12.00/m² Minimum fee = K800.00</td>
</tr>
<tr>
<td>Tariff PHS</td>
<td>For public performance of sound recordings in restaurants, cafes, coffee shops or workers eating houses</td>
<td>Class A—restaurants, cafes or coffee shops in hotels, motels or inns 1–50 m² = K24.00/m² 51–75 m² = K22.00/m²</td>
</tr>
</tbody>
</table>

For unauthorized performance, the infringement fee shall be assessed at double the tariff in the "fee, per year" column.
<table>
<thead>
<tr>
<th>Area (m²)</th>
<th>Tariff (K)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–50</td>
<td>18.00/m²</td>
</tr>
<tr>
<td>51–75</td>
<td>15.00/m²</td>
</tr>
<tr>
<td>76–100</td>
<td>12.00/m²</td>
</tr>
<tr>
<td>Over 100</td>
<td>10.00/m²</td>
</tr>
</tbody>
</table>

Minimum fee = K800.00

**Class B——all other restaurants, cafes or coffee shops**

<table>
<thead>
<tr>
<th>Area (m²)</th>
<th>Tariff (K)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–50</td>
<td>18.00/m²</td>
</tr>
<tr>
<td>51–75</td>
<td>15.00/m²</td>
</tr>
<tr>
<td>76–100</td>
<td>12.00/m²</td>
</tr>
<tr>
<td>Over 100</td>
<td>10.00/m²</td>
</tr>
</tbody>
</table>

Minimum fee = K700.00

**Class C——Workers eating houses**

<table>
<thead>
<tr>
<th>Area (m²)</th>
<th>Tariff (K)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–50</td>
<td>15.00/m²</td>
</tr>
<tr>
<td>51–75</td>
<td>12.00/m²</td>
</tr>
<tr>
<td>76–100</td>
<td>10.00/m²</td>
</tr>
<tr>
<td>Over 100</td>
<td>7.00/m²</td>
</tr>
</tbody>
</table>

Minimum fee = K600.00

For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee per year” column.

4. **Tariff AT**

For public performance of sound recordings in or upon airport terminals— For unauthorized performance, the infringement fee shall be assessed double the tariff in the “fee, per year” column. (a) for domestic flights K3,000.00 (b) for international flights K6,000.00

5. **Tariff PD**

For public performance of sound recording at discotheques

<table>
<thead>
<tr>
<th>Area (m²)</th>
<th>Tariff (K)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–50</td>
<td>120.00/m²</td>
</tr>
<tr>
<td>51–75</td>
<td>90.00/m²</td>
</tr>
<tr>
<td>76–100</td>
<td>60.00/m²</td>
</tr>
<tr>
<td>Over 100</td>
<td>30.00/m²</td>
</tr>
</tbody>
</table>

Minimum fee = K4,800.00

(1 Customer’s dancing area = 1 m²) For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column.

6. **Tariff ML**

For live public performances in Malawi by local musicians in hotels, motels, inns, clubs and similar establishments K1,500.00 per function

For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column.

7. **Tariff MF**

For live public performance in Malawi by foreign musicians

5% of gross admission charges per performance

For unauthorized performance, the infringement fee shall be assessed at 10% of gross revenue of the performance.

8. **Tariff MLF**

For public performances of musical, literary and dramatic works at festivals, fan-fairs, concerts, balls or similar functions K1,500.00 per function

For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column.

9. **Tariff L**

For public distribution of video or audio cassettes for sale, hire or rental— For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column. (a) distribution of video cassettes K3,500.00
(b)distribution of audio cassettes— (i) up to 1000 cassettes in stock K8,000.00 (ii) above 1000 cassettes in stock K2,000.00

10. Tariff J  For public performances of sound recordings by means of juke boxes K2,000.00 For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column.

11. Tariff V  For projection of cinematographic films and other sound or visual recordings— For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column. (a) for cinematographic film/shows ...... K2,000.00 (b) for other sound or visual recordings including video shows .......... K600.00

12. Tariff PT  For public performances of sound recordings in— For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column. (a) buses, trains, minibuses, taxis, ships and hire vehicles K15.00 per seat (b) commercial aeroplanes K25.00 per seat

13. Tariff H  For indoor public performances or presentation of musical, literary and dramatic works in hall— For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column. (a) at education institutions 1–50 m2 = K5.00/m2

51–75 m2 = K3.00/m2
76–100 m2 = K2.00/m2
Over 100 m2 = K1.50/m2
Minimum fee = K500.00
(Customer’s seating/dancing area = 1 m2)

(b) in other places 1–50 m2 = K70.00/m2
51–75 m2 = K5.00/m2
76–100 m2 = K3.00/m2
Over 100 m2 = K2.00/m2
Minimum fee = K800.00
(Customer’s seating/dancing area = 1 m2)

14. Tariff R  For public reception of radio/television broadcasts of national or foreign origin or recorded music in places such as shops, stores, saloons show-rooms, etc. 1–50 m2 = K24.00/m2

51–75 m2 = K22.00/m2
76–100 m2 = K18.00/m2
Over 100 m2 = K12.00/m2
Minimum fee = K800.00

(Customer’s standing/seating/ area = 1 m²)

For unauthorized reception the infringement fee shall be assessed at double the tariff in the “fee, per year” column.

15. Tariff RT

(a) For public reception of radio or television broadcasts of national or foreign origin in hotels, motels boarding houses and similar multi-roomed establishments

hotel rooms K100.00 per room

For unauthorized performance, the infringement fee shall be assessed at double the tariff in the “fee, per year” column.

(b) Lounge—

1–10 seats = K60.00 per seat/customer

11–20 seats = K50.00 per seat/customer

Over 20 seats = K40.00 per seat/customer

Minimum fee K700.00

COPYRIGHT (PRODUCTION, IMPORTATION AND DISTRIBUTION OF SOUND AND AUDIO-VISUAL RECORDINGS) LICENSING REGULATIONS

under s. 56

G.N. 27/1998

7/2003

1/2008

1. Citation

These Regulations may be cited as the Copyright (Production, Importation and Distribution of Sound and Audio-Visual Recordings) Licensing Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“hologram” means an adhesive label issued by the Society.

3. Licence

No person shall produce, distribute or import for distribution sound recordings, audio-visual recordings or audio works in Malawi except under a licence issued by the Society and as set out in Parts V, VI, VII, VIII and IX of the First Schedule. First Schedule

4. Adhesive label
A hologram shall be affixed to each and every sound recording, audio-visual recording or audio works which is distributed or offered or otherwise exposed to the public for distribution by way of sale, hire, rental or otherwise within Malawi.

5. Society to issue adhesive labels

The hologram shall be delivered exclusively by the Society after verification that the sound recording, audio-visual recording or audio works has been produced and/or published in Malawi or imported into Malawi without infringing any copyright granted under the Act.

6. Seizure

Any sound recording, audio-visual recording or audio works without a hologram and which is imported, distributed, offered or exposed to the public for sale, rental or otherwise within Malawi shall be considered as a copy infringing copyright granted under the Act and shall be seized by the Society, a police officer or an officer of the Department of Customs and Excise.

7. Length of seizure and revocation

(1) The Society shall retain the seized infringing copies for a period of up to sixty days from the date of the seizure.

(2) The owner of the seized infringing copies may submit an objection against the seizure to the Society within the sixty days of giving reasons for the objection.

8. Destruction of recordings

The Society under the supervision of officers from the Department of Customs and Excise or Malawi Police Service, shall destroy the sound recording, audio-visual recording or audio works seized and kept for more than sixty days where—

(a) no person raises an objection against the seizure of the recordings; or

(b) the Society deems that despite the objection, the seized recordings are infringing copies.

9. Seizure by a customs officer

A customs officer shall seize or impound or retain any sound recording, audio-visual recording or audio works imported into Malawi exceeding a quantity of three copies of the same recording until such importation has been consented to or verified and authenticated by the Society.

10. Clearance of application form

Every application to clear imported pre-recorded sound recordings, audio-visual recording or audio works shall be made to the Society in the form set out in Part I of the First Schedule hereto. First Schedule
11. Authorization Certificate

The Society shall issue an authorization certificate in the form set out in Part II of the First Schedule subject to— First Schedule

(a) evidence being given that the recordings are or shall be produced in conformity with the Act and the regulations made thereunder;

(b) the applicant shall affix a hologram to each recording offered for sale, hire or rental;

(c) the levy for the holograms acquired by the applicant shall be paid to the Society.

12. Application to purchase holograms

Every application to purchase a hologram shall be made in the form set out in Part III of the First Schedule hereto. First Schedule

13. Approval to purchase holograms

The Society shall give the approval to purchase holograms in the form set out in Part IV of the First Schedule hereto. First Schedule

14. Application for importation Licence

Every application for importation licence shall be made to the Society in the form set out in Part V of the First Schedule hereto. First Schedule

15. Importation Licence

The Society shall issue an importation licence in the form set out in Part VI of the First Schedule hereto. First Schedule

16. Application for a production licence

Every application for a production licence shall be made to the Society in the form set out in Part VII of the First Schedule hereto. First Schedule

17. Production licence

The Society shall issue a production licence in the form set out in Part VIII of the First Schedule hereto. First Schedule

18. Application form for distribution licence

Every application for a distribution licence shall be made to the Society in the form set out in Part IX of the First Schedule hereto. First Schedule

19. Distribution licence
The Society shall issue a distribution licence in the form set out in Part X of the First Schedule hereto. First Schedule

20. Cost of hologram

A hologram shall be purchased at a price set out in the Second Schedule hereto. Second Schedule

21. Offence

Any person who contravenes these Regulations shall be guilty of an offence and if convicted liable to a fine of K1,000 and to imprisonment for three months.

22. Legal proceedings

In any legal proceedings, the Society shall, unless proved to the contrary, be presumed to represent all national and foreign authors and other copyright holders.

FIRST SCHEDULE reg. 10

PART I

COPYRIGHT ACT

(CAP. 49:03)

FORM A

APPLICATION FOR CLEARANCE OF IMPORTED SOUND RECORDINGS, AUDIO-VISUAL RECORDINGS OR AUDIO WORKS FROM THE CUSTOMS AND EXCISE DEPARTMENT

1. Name of Importer/Applicant: .................................................................

2. Address: ..............................................................................................

   Telephone Number:................................................................. Fax:.................................

3. (1) Title of work(s) for which clearance is being sought: .........................

   (2) Quantity of material being imported: ..........................................................

4. Name of author(s) or work:......................................................................

5. (1) Name of producer of work: .................................................................

   (2) Address: ...........................................................................................

   ..............................................................................................................
6. (1) Has importer obtained the authorization of the producer or his authorized representative to import the said work(s)? Yes/No;

(2) If yes please attach proof of authorization.

7. Declaration:

I/We declare on my/our honour that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/our application null and void.

Declared at: .................................................................................. on........................ 20........
....................................................................
........................................................................

Signature of Applicant

NOTE:

IMPORTER SHOULD HAVE—

(1) Genuine hologram of the country of origin of the imported works affixed on to the work; or

(2) Authorization from the producer of the work to import.

PART II reg. 11

COPYRIGHT ACT

(CAP. 49:03)

FORM B

AUTHORIZATION CERTIFICATE

Approval is hereby given to ........................................................................................................ of

........................................................................................................ to clear the sound recordings, audio-visual recordings or audio works entitled ................................................................. and produced by
......................................................................................... of ........................................... from the Customs and Excise Department.

...........................................................................................................Copyright AdministratorDate

NOTE:

Clearance is for specific works only and is not applicable to any work not mentioned in the clearance.

PART III reg. 12
COPYRIGHT ACT

(CAP. 49:03)

FORM C

APPLICATION TO PURCHASE HOLOGRAM FROM THE COPYRIGHT SOCIETY OF MALAWI

1. Name of Importer/Applicant: ........................................................................................................

2. Address: ........................................................................................................................................

   Telephone Number: ................................ Fax: .................................................................

3. Number of holograms required: ........................................................................................................

4. Name of author(s) of work: ............................................................................................................

5. (1) Has importer obtained the authorization of the producer or his authorized representative to
   import the said work(s): Yes/No.

   (2) If yes please attach evidence.

6. Declaration:

   I/We declare on my/our honour that the information given above is true to the best of my/our
   knowledge and that any misinformation provided by me/us renders my/our application null and void.

Declared at: ........................................................................ on........................ 20..............

.................................................................................................

Signature of Applicant

NOTE:

1. Genuine hologram of the country of origin of the imported works affixed on to the works; or

2. Authentication from the producer of the work to import the work(s) for which this approval is
   being sought.

PART IV reg. 13

COPYRIGHT ACT

(CAP. 49:03)

FORM D

APPROVAL TO PURCHASE HOLOGRAMS FROM THE COPYRIGHT SOCIETY OF MALAWI
Approval is hereby given to: .................................................. of ..................................................

.................................................. to purchase ............................................... holograms numbered .................................................. to .................................................. in respect of the sound recordings, audio-visual recordings or audio works as detailed hereunder:

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>Title</th>
<th>Composer</th>
<th>Producer</th>
<th>Quantity</th>
<th>For Official Use</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td></td>
<td></td>
<td></td>
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<td>2.</td>
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<td>3.</td>
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<tr>
<td>4.</td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>

For Official Use

Checked by: ..................................................................................................................................

Date: ............................................................................................................................................

Payment received by:....................................................................................................................

Approved by: ................................................................................................................................

NOTE:

Holograms are not transferable from one work to the other without the express permission of the Copyright Administrator.

PART V reg. 14

COPYRIGHT ACT

(CAP. 49:03)

FORM E

APPLICATION FOR IMPORTATION LICENCE

1. Name ....................................................................................................................... of Importer:

2. Postal Address: ..............................................................................................................

3. Physical Address: ..........................................................................................................  

4. Telephone Number: ................................................................................................. Fax: ................................................................

5. Name of Foreign Supplier: .................................................................................................. 

6. Postal Address: ..................................................................................................................

7. Physical Address: ..............................................................................................................

8. Telephone Number: ................................................................................................. Fax: ................................................................
9. E-mail Address (If there are several suppliers give their details on a separate sheet).

10. Declaration:

   I/We declare that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/our application null and void.

   Declared at: ................................................................................................................................. on....................... 20........
   ........................................................................................

   Signature of Applicant

For Official Use Only

   Checked by: ...................................................................................................................................

   Date: ...................................................................................................................................................

   Approved by: ......................................................................................................................................

PART VI reg. 15

COPYRIGHT ACT

(CAP. 49:03)

FORM F

IMPORTATION LICENCE

Name: ................................................................................................................................. of ................................................................. is hereby licensed to import pre-recorded sound recordings or audio-visual recordings or audio works subject to conditions set out at the back of the licence.

   This licence may be revoked if any one of the conditions are not adhered to. Copies imported in contravention of the conditions shall be considered infringing copies and subject to seizure as provided for in the Act.

   The licence is valid from:

   ......................................................................................................................................................

   Amount:  K

   .............................................................................................................................................................

   Amount in words: .................................................................................................................................

   .............................................................................................................................................................

   .............................................................................................................................................................
CONDITIONS OF THE IMPORTATION LICENCE

(i) Production of the imported sound recordings, audio-visual or audio works has been done under authorization of the owner or his authorized representative in the country of production.

(ii) A royalty of 10 per cent at an ordinary selling price has been paid subject to a minimum set by the Society.

(iii) An adhesive label has been affixed on each copy imported before the same is offered for sale.

PART VII reg. 16
COPYRIGHT ACT
(CAP. 49:03)
FORM G
APPLICATION FOR A PRODUCTION LICENCE

1. Name of Applicant: ..............................................................
2. Postal Address: ..............................................................
3. Physical Address: ............................................................
4. Telephone Number: .................................................
5. Music Production Format: Tape CDDAT (Tick where applicable)
6. Capacity of equipment: ............................................................
   Cassettes and CDs (Tick where applicable)
   0-10,000 10,000-20,000 Above 20,000
7. Declaration: I/We declare that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/our application null and void. Declared at: ......................................................... on .................... 20 ...............................................................
PRODUCTION LICENCE

Name: ........................................... of ........................................... is hereby licensed to undertake sound recordings, audio-visual recordings or audio works production and manufacturing subject to the conditions contained at the back of the licence.

This licence is valid from: ............................................ to ...............................................

Amount: K ........................................................................................................................

Amount in words: ..............................................................................................................

....................................................................

Copyright Administrator

CONDITIONS FOR THE GRANT OF THE LICENCE

(i) Each instance of production and manufacturing has been subjected to specific authorization agreement.

(ii) A mechanical royalty has been paid at 10 per cent of the ordinary retail selling price but subject to a minimum set by the Society from time to time.

(iii) An adhesive label acquired from the Society has been affixed on each copy produced before the same is offered for sale.

This licence may be revoked if any one of the above three conditions are not adhered to. Copies produced in contravention of the above-conditions shall be considered infringing copies and subject to seizure as provided for in the Act.

COPYRIGHT ACT
FORM I

APPLICATION FOR A DISTRIBUTION LICENCE

1. Name of Distributor: .................................................................
2. Postal Address: .................................................................
3. Physical Address: .................................................................
4. Telephone Number: ................................ Fax: ...........
5. Type of Distribution: Wholesale Retail (Tick where applicable)
6. (Indicate quantity) Sales volume in units: CD/DVD Sales volume in units: Tapes
7. Declaration: I/We declare that the information given above is true to the best of my/our knowledge and that any misinformation provided by me/us renders my/our application null and void. Declared at: .................................. on ......... 20 ..........

Signature of Applicant

For Official Use Only

Checked by: .................................................................

Date: .................................................................

Approved by: .................................................................

PART X reg. 19

COPYRIGHT ACT

FORM J

DISTRIBUTION LICENCE

Name: ................................................................. of ................................................................. is hereby licensed to undertake the business of sound recordings, audio-visual recordings or audio works distribution for the period .................................. to .................................. subject to the following condition:

All copies being distributed have an adhesive label acquired from the Society affixed to them.
This licence may be revoked if the above-condition is not adhered to and the infringing copies shall be subject to seizure as provided for in the Act.

Amount: Retail K .................................................................

Wholesale .................................................................

K

Amount in words: .......................................................................................................................... ................................................................

Copyright Administrator

SECOND SCHEDULE reg. 20

COPYRIGHT ACT

(CAP. 49:03)

COST OF HOLOGRAM

One Hologram .................. K5.00