



THE COPYRIGHT ACT, 2003

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SCHEDULE



A CT NO. 14 OF 2003

I ASSENT

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{ AMANI ABEID KARUME }

PRESIDENT OF ZANZIBAR

AND

CHAIRMAN OF THE REVOLUTIONARY COUNCIL

16th DECEMBER, 2003

**AN ACT TO PROTECT THE COPYRIGHT AND
RELATED RIGHTS AND OTHER MATTERS
CONNECTED THEREWITH**

ENACTED by the House of Representatives of Zanzibar.

**PART 1
PRELIMINARY PROVISIONS**

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|-------------------------------|--|
| Short title and Commencement. | 1. This Act may be cited as the Copyright Act, 2003 and shall come into operation immediately after being assented to by the President. |
| Interpretation. | 2. In this Act, unless the content otherwise requires:

"audiovisual work" means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds, susceptible of being made audible; |



"computer program" is a set of instructions expressed in word, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, of causing a computer to perform or achieve a particular task or result;

"Economic rights" means the rights mentioned in Section 6 of this Act;

"expression of folklore" means a group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the Zanzibarian community as an adequate expression of its cultural and social identity, in standards and values as transmitted orally, by imitation or by other means, including:

- (a) folktales, folk poetry, and folk riddles;
- (b) folk songs and instrumental folk music;
- (c) folk dances and folk plays;
- (d) production of folk arts in particular, drawings, paintings, carvings, sculptures, pottery terra-cotta, mosaic, woodwork, metal ware, jewellery, handicrafts, costumes, and indigenous textiles and any other thing of that nature;

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

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



"minister" means the minister for the time being responsible for copyright and related rights.

"moral rights" means the rights mentioned in section 8 of this Act;

"owner of copyrights" means:-

- (i) where the economic rights are vested in the author, the author;
- (ii) where the economic rights are originally vested in a physical person other than the author or in a legal entity, that person or entity;
- (iii) where the ownership of the economic rights has been transferred to a physical person or legal entity, that person or entity;

"performers" means singers, musicians, actors, dancers and other persons who sing, deliver, declaim, play in, or otherwise perform literary and artistic works or expressions of folklore;

"a photographic work" means a recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made; a still picture extracted from an audiovisual work shall not be considered a "photographic work" but apart of the audiovisual work concerned;



"President" means the President of Zanzibar and Chairman of the Revolutionary Council;

"producer" means of an audiovisual work or a sound recording is the physical person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording;

"public display" means the showing of the original or a copy of the work directly, by means of a film, slide, television image or otherwise on screen, or by means of any other device or process, or, in the case of an audiovisual work, the showing of individual images consequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time or at different places and or times, and where the work can be displayed without communication to the public, such as a public library or archive;

"public performance" means:-

- (a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- (b) in the case of an audiovisual work, the showing of images in sequence and the making of accompanying sounds audible; and



(c) in the case of a sound recording, making the recording sounds audible, in each case at a places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places and or times, and where the performance can be perceived without the need for communication to the public;

“published” refers to a work or a sound recording, tangible copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for other transfer of the ownership or the possession of the copies, provided that, in the case of a work, the making available to the public took place with the consent of the author or other owner of copyright, and in the case of a sound recording, with the consent of the producer of the sound recording or his successor in title;

“related rights” means the secondary right of copyright which performers, producers of phonograms and broadcasting organizations are entitled;

“rental” means the transfer of the possession of the original or a copy of a work or sound recording for a limited period of time for profit-making purposes;

“reproduction” means the making of one or more copies of a work or sound recording in any manner or form, including any permanent or



temporary storage of the work or sound recording in electronic form;

"rights management information" means any information which identifies the author, the work the performer, the performance of the performer, the producer of the sound recording, the sound recording, the broadcaster, the broadcast, the owner of any right under this Act, or information about the terms and conditions of use of the work, the performance, the sound recording or the broadcast, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work, a fixed performance, a sound recording or a fixed broadcast, or appears in connection with the broadcasting, communication to the public or making available to the public of a work, a fixed performance, a sound recording or a broadcast;

"sound recording" means any exclusively aural fixation of the sounds of a performance or of other sounds, or of a representation of sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied; it does not include a fixation of sounds and images, such as the sound track of an audiovisual work;

"work" means any literary, artistic or scientific work under sections 3 and 4 of this Act;

"work of applied art" means an artistic creation with utilitarian functions or incorporated in a



useful article, whether made by hand or produced on an industrial scale;

"work of joint authorship" means a work to the creation of which two or more authors have contributed, provided the work does not qualify as a "collective work" as defined under this Act.

PART II COPYRIGHT WORKS

Works protected.

3.(1) Literary, and artistic works (hereinafter referred to as "works") are original intellectual creations in the literary, artistic and scientific domain, including in particular:

- (a) books, pamphlets, articles, computer programs, scientific or artistic writings and other writings;
- (b) speeches, lectures, addresses, sermons and other oral works;
- (c) dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions;
- (d) musical works, with or without accompanying words;
- (e) audiovisual works;
- (f) works of architecture;



- (g) works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- (h) photographic works;
- (i) works of applied art;
- (j) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.

(2) Works shall be protected by the sole fact of their creation and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Derivative works.

4.(1) The following shall also be protected as works:

- (a) translations, adaptations, arrangements and other transformations or modifications of works; and
- (b) collection of works, collections of mere data (databases), whether in machine readable or other form, and collections of expressions of folklore, provided that such collections are original by reason of the selection or arrangement of their contents.

(2) The protection of any work referred to in subsection (1) of this section shall be without prejudice to any protection of a pre-existing work or expression of folklore incorporated in or utilized for the making of such a work.



Subject matter not protected.

5. Notwithstanding the provisions of sections 3 and 4 of this Act, no protection shall extend under this Act to:

- (a) any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work;
- (b) any official text of a legislative, administrative or legal nature, as well as any official translation thereof.

Economic rights.

6.(1) Subject to the provisions of sections 9 to 17, the author or other owner of copyright shall have the exclusive right to carry out or to authorize the following acts in relation to the work:

- (a) reproduction of the work;
- (b) translation of the work;
- (c) adaptation, arrangement or other transformation of the work;
- (d) distribution to the public by sale, rental, public lending or otherwise of the original or a copy of the work that has not already been subject to a distribution authorized by the owner of copyright;
- (e) rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;



- (f) importation of copies of the work;
- (g) public display of the original or a copy of the work;
- (h) public performance of the work;
- (i) broadcasting of the work;
- (j) other communication to the public of the work.

(2) The rights of rental and lending under paragraph (e) of subsection (1), of this section do not apply to rental or lending. of computer programs where the program itself is not the essential object of the rental or lending.

Right to share in proceeds of sale.

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

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

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

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

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



Moral rights.

8.(1) Independently of his economic rights, and even where he is no longer the owner of the said rights, the author of a work shall have the right:

- (a) to have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable;
- (b) to not have his name indicated on the copies and in connection with any public use of his work, and the right to use a pseudonym;
- (c) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honor or reputation.

(2) None of the rights mentioned in subsection (1) of this section shall be transmissible during the life of the author, but the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law following the death of the author.

(3) The author may waive any of the moral rights mentioned in subsection (1) of this section, provided that such a waiver is in writing and clearly specifies the right of rights waived and the circumstances in which the waiver applies and provided further, that any waiver of the right under paragraph (c) of subsection (1) of this section specifies the nature and extent of the modification or other action in respect of which the right is waived.

(4) Following the death of the author, the physical person or legal entity upon whom or which the



moral rights have devolved shall have the right to waive the said rights.

Private reproduction for personal purposes.

9.(1) Notwithstanding the provisions of section 6(1)(a), and subject to the provisions of subsection (2) of this section, the private Personal of a published work in a single copy shall be permitted without the authorization of the author or owner of copyright, where the reproduction is made by a physical person exclusively for his own personal purposes.

(2) The permission under subsection (1) of this section shall not extend to reproduction:

- (a) of a work of architecture in the form of building or other construction;
- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notation;
- (c) of the whole or a substantial part of a database in digital form;
- (d) of a computer program, except as provided in section 15; and
- (e) of any work in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or other owner of the copyright.

Temporary reproduction.

10. Notwithstanding the provisions of section 6(1)(a), the temporary reproduction of a work shall be permitted if all the following conditions are met:



- (a) the reproduction is made in the process of a digital transmission of the work or an act of making a digitally stored work perceptible;
- (b) it is caused by a person or entity that, by way of authorization by the owner of copyright or of operation of law, is entitled to make that transmission or making perceptible of the work; and
- (c) It is an accessory to the transmission or making perceptible, that occurs during the normal operation of the equipment used and entails the automatic deletion of the copy without enabling the retrieval of the work for any other purpose than those, referred to in paragraphs (a) and (b) of this section.

Quotation.

11.(1) Notwithstanding the provisions of section 6(1) (a), the reproduction, in the form of quotation, of a short part of a published work shall be permitted without authorization of the author or other owner of copyright, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose.

(2) The quotation shall be accompanied by an indication of source and the name of the author, if his name appears in the work from which the quotation is taken.

Reproduction for teaching.

12.(1) Notwithstanding the provisions of section 6(1)(a), the following acts shall be permitted without authorization of the author, or other owner of copyright:

- (a) the reproduction of a short part of a published work for teaching purposes by



way of illustration, in writings or sound or visual recordings, provided that such reproduction is compatible with fair practice and does not exceed the extent justified by the purpose;

(b) the reprographic reproduction, for face-to-face teaching in educational institutions the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that

(i) the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions, and

(ii) there is no collective license available (that is, offered by a collective administration organization of which the educational institution is or should be aware) under which such reproduction can be made.

(2) The source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under subsection (1) of this section.

13. Notwithstanding the provisions of section 6(l)(a), any library or archive whose activities do not serve direct or indirect gain may, without the authorization of the author or other owner of copyright, make a single copy of the work by reprographic reproduction.

Reprographic reproduction by libraries and archives.



- (a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a physical person, provided that :
- (i) the library or archive is satisfied that the copy will be used solely for the purposes of study, scholarship or private research;
 - (ii) the act of reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions; and
 - (iii) there is no collective license available (that is, offered by a collective administration organization of which the library or archive is or should be aware) under which such copies can be made; or
- (b) where the copy is made in order to preserve and, if necessary, replace a copy or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archive, provided that it is impossible to obtain such a copy under reasonable conditions, and provided further that the act of reprographic reproduction is an isolated case occurring, if repeated, on separate and unrelated occasions.



Reproduction,
broadcasting and
other
communication
to the public for
informatory
purposes.

14. Notwithstanding the provisions of section 6(1)(a), (l) and (j), the following acts shall be permitted in respect of a work without the authorization of the author or other owner of copyright, subject to the obligation to indicate the source and the name of the author as far as practicable:

- (a) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast work of the same character; this permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies by the author or other owner of copyright, or in connection with broadcasting or other communication to the public of the work;
- (b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a work seen or heard in the course of such events, to the extent justified by the purpose;
- (c) the reproduction in a newspaper or periodical, the broadcasting or other communication to the public of a political speech, a lecture, address, sermon other work of a similar nature delivered in public, or a speech delivered during legal proceedings to the extent justified by the purpose of providing current information.



Reproduction and adaptation of computer programs.

15.(1) Notwithstanding section 6(l)(a) and (c), the reproduction, in a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer program shall be permitted without the authorization of the author or the owner of copyright, provided that the copy or adaptation is necessary:

- (a) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained;
- (b) for archival purposes and for the replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

(2) No copy or adaptation of a computer program shall be used for any purpose other than those specified in subsection (1) of this section, and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

Importation for personal purposes.

16. Notwithstanding the provisions of section 6(l)(f), the importation of a copy of a work by a physical person for his own personal purposes shall be permitted without the authorization of the author or other owner of copyright.

Display of works.

17. Notwithstanding the provisions of section 6(l)(g), the public display of originals or copies of works shall be permitted without the authorization of the author, provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process, and provided further that the work has been published or



the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

Duration of
copyright.

18.(1) Subject to the provisions of subsections (2) to (5) of this section, the economic rights shall be protected during the life of the author and for fifty years after his death.

(2) In the case of a work of joint authorship, the economic rights shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic rights shall be protected for fifty years from the date on which the work was either made, first made available to the public, or first published, whichever date is the latest.

(4) In the case of a work published anonymously or under a pseudonym, the economic rights shall be protected for fifty years from the date on which the work was either made, first made available to the public or first published, whichever date is the latest, provided that where the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2) of this section shall apply, as the case may be.

(5) In the case of a work of applied art, the economic rights shall be protected for twenty five years from the making of the work.



(6) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

Original
ownership of
economic rights.

19.(1) Subject to the provisions of subsections (2) to (5) of this section, the original owner of economic rights is the author who has created the work.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights, if, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in the part that he has created.

(3) In respect of a collective work, the physical person or legal entity at the initiative and under the direction of whom or which the work has been created shall be the original owner of the economic rights.

(4) In respect of a work created by an author employed by a physical person or legal entity in the course of his employment, or commissioned by a physical person or legal entity and the person or entity which has commissioned the work has undertaken to pay an agreed sum for the creation of the work, the original owner of the economic rights shall be, unless provided otherwise in a contract, the employer.

(5) In respect of an audiovisual work, the original owner of the economic rights shall be the producer, unless provided otherwise in a contract. The co-authors of the audiovisual work and the authors of the pre-existing works included in or adapted for the making of the audiovisual work shall, however, maintain their economic rights in their contributions of pre-



existing works, respectively, to the extent that those contributions or pre-existing works can be subject of acts covered by their economic rights separately from the audiovisual work.

Presumption of authorship and of representation of the author.

20.(1) The physical person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work.

(2) This provisions of subsection (1) shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

(3) In the case of an anonymous or pseudonymous work, subject to the provisions of subsection (2) of this section, the publisher whose name appears on the work shall, in the absence of proof to the contrary, be presumed to represent the author and, in this capacity, shall be entitled to exercise and enforce the moral and economic rights of the author. This presumption shall cease to apply when the author reveals his identity.

Assignment and license of authors' rights.

21.(1) Economic rights shall be assignable in whole or in part for consideration or free of charge.

(2) Any assignment of an economic right, and any license to do an act subject to authorization by the author or other owner of copyright, shall be in writing signed by the assignor and the assignee, or by the licensor and the licensee.

(3) An assignment in whole or in part of any economic right, or a license to do an act subject to authorization by the author or other owner of copyright, shall not include or be deemed to include the



assignment or license of any other rights not explicitly referred to therein.

(4) Subject to subsection (5) of this section, where a person to whom an economic right in a work has been assigned, or a licensee does not exercise his right, or does so only inadequately, and the author's legitimate interests are prejudiced by such failure, the author may revoke the assignment or license.

(5) A revocation in accordance with subsection (4) of this section shall not be affected where the non-exercise or inadequate exercise of a right is primarily due to circumstances, which the author can be expected to remedy.

(6) The right to revoke an assignment or a license in accordance with subsection (4) of this section shall be exercised after giving the assignee a reasonable time.

PART III PROTECTION OF PERFORMERS, PRODUCERS OF SOUND RECORDINGS AND BROADCASTING ORGANIZATIONS

Acts requiring
authorization of
performers.

22.(1) Subject to the provisions of section 26 of this Act a performer shall have the exclusive right to carry out or to authorize any of the following acts:

- (a) the broadcasting or other communication to the public of his performance, except where the broadcasting or the other communication;
 - (i) is made from a fixation of the performance, other than a fixation



made under the terms of section 26 of this Act or otherwise made without the authorization of the performer; or

- (ii) is a rebroadcast made or authorized by the organization initially broadcasting the performance;
- (b) the fixation of his unfixed performance;
- (c) the direct or indirect reproduction of a fixation of his performance, in any manner or form;
- (d) distribution to the public, through sale or other transfer of ownership, of a fixation of his performance or a copy thereof that has not already been subject to a distribution authorized by the performer;
- (e) rental to the public or public lending of a fixation of his performance or copies thereof, irrespective of the ownership of the copy rented or lent;
- (f) the making available to the public of his fixed performance, by wire or
- (g) wireless means, in such a way that members of the public may access them;
- (h) from a place or at a time individually chosen by them.

(2) Once the performer has authorized the incorporation of his performance in an audiovisual fixation, the provisions of subsection (1) of this section shall have no further application.



(3) Independently of the performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances and performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.

(4) The provisions of subsections (2) and (3) of section 8 of this Act apply *mutatis mutandis* to the rights granted under this section.

(5) Nothing in this section shall be construed to deprive performers of the right to agree by contracts on terms and conditions more favorable for them in respect of their performances.

(6) The rights under this section shall be protected until the end of the fiftieth calendar year following the year in which the performance was fixed in a phonogram, or in the absence of such a fixation, from the end of the year in which the performance took place.

Acts requiring authorization of producers of sound recordings.

23.(1) Subject to the provisions of section 26 of this Act a producer of a sound recording shall have the exclusive right to carry out or to authorize any of the following acts:

- (a) direct or indirect reproduction of the sound recording, in any manner or form;
- (b) importation of copies of the sound recording;



- (c) distribution to the public, through sale or other transfers of ownership, of the original or a copy of the sound recording that has not already been subject to a distribution authorized by the producer;
- (d) rental to the public or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent;
- (e) the making available to the public of the sound recording, by wire or wireless means, in such a way that members of the public may access it from a place or at a time individually chosen by them.

(2) The rights under subsection (1) of this section shall be protected from the publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published from the fixation of the sound recording until the end of the fiftieth calendar year, following the year of fixation.

Equitable remuneration for use of sound recordings.

24.(1) If a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or other communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received by the producer under subsection (1) of this section shall be paid by the producer to the performer or performers.



(3) The right to an equitable remuneration under this Section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

(4) For the purposes of this section, sound recordings that have been made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they have been published for commercial purposes.

Acts requiring authorization of broadcasting organizations.

25.(1) Subject to the provisions of section 26 of this Act a broadcasting organization shall have the exclusive right to carry out or to authorize any of the following acts:

- (a) the rebroadcasting of its broadcast;
- (b) the communication to the public of its broadcast;
- (c) the fixation of its broadcast;
- (d) the reproduction of a fixation of its broadcast.

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year which the broadcast takes place.



Limitation on protection

26. Sections 22, 23, 24 and 25 shall not apply where the acts referred to in those sections are related to:

- (a) using short excerpts for reporting current events to the extent justified by the purpose of providing current information;
- (b) reproduction solely for scientific research;
- (c) reproduction solely for the purpose of face-to-face teaching activities except for performances and phonograms which have been published as teaching or instructional materials;
- (d) cases where, under Part I, a work can be used without the authorization of the author or other owner of copyright.

PART IV PROTECTION OF EXPRESSION OF FOLKLORE AGAINST ILLICIT EXPLOITATION

Protected expression of folklore.

27. This Act protects Zanzibar expression of folklore herein referred as expression folklore such as :

- (a) folk tales, folk poetry, riddles;
- (b) folk songs and instrumental folk music;
- (c) folk dances, play and artistic forms of rituals;
- (d) Production of folk art, in particular drawing; painting, carvings, sculpture,



- (e) Pottery, terracotta; mosaic, woodwork, metal ware, jewellery, baskets weaving, costumes needle work;

Traditional musical instruments.

Utilization subject to authorization

28. Subject to the exception provided for in section 29, the following utilization of the expression of folklore are subject to authorization by the competent authority, when they are both with gainful intent and outside their traditional or customary context:

- (a) any application, reproduction and distribution of copies of expressions of folklore;
- (b) communication to public, including recitation, performance, broadcasting; or
- (c) distribution by cable; of expressions of folklore.

Exceptions.

29. The provisions of section 28 of this Act shall not apply in the following cases:

- (a) utilization for the purposes of education;
- (b) utilization by way of illustration in an original work of an author or authors, provided that the extent of such utilization is compatible with fair practice;
- (c) borrowing expressions of folklore for creating an original work of a Zanzibar author or authors inspired by folklore;
- (d) incidental utilization of an expression of folklore, including in particular-



- (i) utilization of an expression of folklore that can be seen or heard in the course of a current for the purposes of reporting on the current event by means of photograph broadcasting or sound or visual recording, provided that the extent of such utilization is justified by the informatory purpose;
- (ii) utilization of objects containing the expression of folklore which are permanently located in a place where they can be viewed by the public, if the utilization consists including their image in a photograph, in a film or in a television broadcasting.

Acknowledgement
of source.

30.(1) In all printed publication, and in connection with any communications to the public, of any identifiable expression of folklore is source shall be indicated in an appropriate manner, by mentioning the community and or geographic place from where the expression utilized has been derived.

(2) The provisions of subsection (1) shall not apply to utilization referred to in of section 29(c) and (d) of this Act.

Authorization.

31.(1) Application, for individual or blanket authorisation of any utilization of expression of folklore subject to authorization under this Act shall be made in writing to the competent authority.

(2) Where the competent authority grants authorization, it may fix the amount of any collection fees corresponding to a tariff approved by the supervisory authority and the fees collected shall be



used for the purpose of promoting or safeguarding national culture.

(3) Appeals against the decisions of the competent authority shall be made by the person applying for the authorisation or the representative of the interested community and shall be with the supervisory authority.

Competent authorities.

32.(1) For the purposes of this Act, the expression "competent authority" means the Zanzibar Arts and Music Council established under The Zanzibar Arts and Music Council Act No.6 of 1983

(2) For the purpose of this Act, the expression 'supervisory' means the Minister.

Interpretation.

33.(1) The provisions of the folklore under this Act shall in no way be interpreted so as to hinder the normal use, maintaining and development of such expressions.

(2) The provisions of this part of the Act shall in no way limit or prejudice any protection applicable to expressions of folklore under other part of this Act, or the laws protecting industrial property, or any other law or international treaty to which the United Republic of Tanzania is a party, nor shall it in any way prejudice other forms of protection provided for the safeguard and preservation of folklore.

(3) The amount of damages shall be awarded in keeping with the relevant provisions of the Civil Procedure Decree, Cap. 8 taking into account the importance of the material and moral prejudice suffered by the owner of the right, as well as the importance of the infringer's profits attributable to the infringement.



(4) Where the infringer did not know or had no reasonable reason to know that he or it was engaged in infringing activity, the court may limit damages to the profits of the infringer attributable to infringement and or to pre-established damages.

(5) Where infringing copies exist, the court shall have the authority to order the destruction or other reasonable disposition of those copies and their packaging outside the channels of commerce in such a manner as to avoid harm to the right holder, unless the owner of the right requests otherwise. This provision shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

(6) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the right.

(7) Where there is a danger that acts of infringement may be continued, the court shall expressly order that such acts not be committed. Furthermore, the court shall impose a fine of between three hundred thousand and two million shillings, which shall be paid if the order is not respected.

PART V SANCTIONS

34(1) Any person whose rights under this Act, are in imminent danger of being infringed or have been infringed, may institute proceeding before the Court for:



- (a) an injunction to prevent the infringement or to prohibit the continuation of the infringement;
- (b) payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing person that are attributable to the infringement and if the infringement is found to have been prejudicial to the reputation of the person whose rights were infringed, the court may, at its discretion, award exemplary damage.

(2) Any object which was made in violation of this Act and any receipts of the person violating it and resulting from such violations, shall be subject to seizure.

35.(1) Subject to the provisions of the Penal Decree, Cap. 13 and the Criminal procedure Decree, Cap. 14, any infringement of a right protected under this Act, if committed wilfully or by gross negligence and for profit-making purposes, shall be punished by imprisonment for a period of between six months and three years, or by a fine of between three hundred thousand and two million, or by both.

(2) The court, taking into particular account the defendant's profits attributable to the infringement, shall impose the amount of the fine.

(3) The court shall have the authority to increase up to double the maximum penalties specified in subsection (1) of this section, where the defendant has been convicted for a new act of infringement within five years of a previous conviction for infringement.

Criminal
Sanctions.



(4) The court shall apply the measures and remedies referred to in section 34 of this Act also in criminal proceedings, provided that no decision has yet been taken on such remedies in a civil proceeding.

Measures,
remedies and
sanctions
[against abuses in
respect of
technical means
of protection
and rights
management
information]

36.(1) The following acts shall be considered unlawful and, shall be assimilated to infringements of the rights protected under this Act:

- (a) the manufacture or importation for sale or sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work, a sound recording or a broadcast, or to impair the quality of copies made;
- (b) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including by satellite, by those who are not entitled to receive the program;
- (c) the removal or alteration of any electronic rights management information without authority;
- (d) the distribution, import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, sound recordings or broadcast, knowing or having reason to know that electronic rights



management information has been removed or altered without authority.

(2) Any illicit device and means mentioned in subsection (1) of this section and any copy from which rights management information has been removed, or in which such information has been altered, shall be assimilated to infringing copies of works, and any illicit act referred to in subsection (1) of this section shall be treated as an infringement of copyright or related rights to which the civil remedies and criminal sanctions provided for in sections 34 to 35 are applicable.

Conservatory and provisional measures.

37.(1) The Court having jurisdiction of a Civil action arising under this Act, or Criminal Procedure Decree shall have the authority, subject to the relevant provisions of that Act, and on such terms as it may deem reasonable:

- (a) to grant injunctions to prohibit the committing, or continuation of committing of infringement of any right protected under this Act;
- (b) to order the impounding of copies of works or sound recordings suspected of being made or imported without the authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business paper referring to, such copies.

(2) The provisions of Civil Procedure Decree, Cap. 8 and the Criminal Procedure Decree, Cap. 14 dealing with search and seizure shall apply to infringements of rights under this Act.



PART VI COLLECTIVE ADMINISTRATION OF COPYRIGHT AND RELATED RIGHTS

The Copyright
Society of
Zanzibar.

38. There is hereby established an organization to be known as the Copyright Society of Zanzibar (in this Act referred to as the "Society") which shall:

- (a) be a body corporate having perpetual succession and a common seal;
- (b) under that name be capable of suing and being sued and of purchasing or otherwise acquiring, holding an alienating movable or immovable property¹ and
- (c) subject to the provisions of this Act of doing or performing all such acts or things as bodies corporate may by law do or perform.

Functions of the
Society.

39. The functions of the Society shall be:

- (a) to promote and protect the interest of authors, performers, producers of sound recordings, broadcasters, publishers, and in particular, to collect and distribute any royalties or other remuneration accorded to them in respect of their rights provided for in this Act;
- (b) to maintain registers of works, productions and associations of authors, performers, producers of sound recordings broadcasters and publishers;
- (c) to publicize the rights of owners and give evidence of the ownership of these rights 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 and rights of performers producers of recording and broadcasters.
- (e) to advise the Minister on all matters under this Act.

Fees Royalties
etc.

40. For the better performance of its functions, the Society shall, subject to this Act, have power:-

- (a) to determine the minimum rates of royalties to be levied in respect of uses to be made of works registered by it;
- (b) to levy fees upon registering works and associations;
- (c) to acquire, hire and dispose of property;
- (d) to borrow money whether by way of loan, overdraft or otherwise on the security of its assets;
- (e) to accept and administer any trusts or donations;
- (f) to join regional and international associations having similar objectives and functions;
- (g) to perform such other functions as may be assigned to it by the Board; and



- (h) to train and sensitize its members, institutions and other members of the public on Copyright matter;
- Funds of Society.
41. The funds of the Society shall consist of:
- (a) all fees payable under the Act;
 - (b) grants and bequests;
 - (c) such other moneys or assets as may vest in or accrue to the Society, including governments subsidy whether in the course of its functions or otherwise.
- Society's accounts and records.
- 42.(1) The Society shall
- (a) keep proper accounts and other records relating thereto in respect of its funds;
 - (b) publish and furnish to the Board annually, or as often as the Board may direct audited accounts and balance sheets and estimates of income and expenditure for the following financial year.
- (2) The accounts shall be examined and audited annually by auditors appointed by the Society and approved by the Board.
- (3) The financial year of the Society shall be a period of twelve calendar months beginning on 1st July, every year and ending on 30th June the following year.
- Society's composition.
- 43.(1) The composition, proceedings and other matters of the Society shall be in accordance with the provisions of the Schedule to this Act.



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

PART VII MISCELLANEOUS PROVISIONS

Scope of application.

44.(1) The provisions of this Law concerning the protection of literary, artistic and scientific works shall apply to:

- (a) works of authors who are citizens of the United Republic of Tanzania, or other nationals who have their habitual residence in Zanzibar;
- (b) works first published in United Republic of Tanzania, and works first published in another country and also published in United Republic of Tanzania within thirty days, irrespective of the nationality or residence of their authors;
- (c) audiovisual works, the producer of which has his headquarters or habitual residence in Zanzibar; and
- (d) works of architecture erected in Zanzibar and other artistic works incorporated in a building or other structure located in Zanzibar.

(2) The provisions of this Act shall also apply to:

- (a) works that are eligible for protection in United Republic of Tanzania by virtue of and in accordance with any international convention or other international agreement



to which the United Republic of Tanzania is party;

- (b) unpublished works first published in a foreign country of authors of foreign nationality and having their residence in a foreign country, provided that the country where their author has his or habitual residence or, in case of published works, the country of their first publication, grants similar protection to nationals or residents of United Republic of Tanzania for their unpublished works or to works first published in United Republic of Tanzania;
- (c) expression of foreign folklore provided that the country or the community from which such expression have been derived, grants similar protection to expression of folklore developed and maintained in United Republic of Tanzania.

Application.

45.(1) The provisions of this Act on the protection of performers shall apply to:

- (a) performers who are Zanzibaris;
- (b) performers who are not Zanzibaris but whose performances-
 - (i) take place in Zanzibar, or
 - (ii) are incorporated in sound recordings that are protected under this Act; or
 - (iii) have not been fixed in a sound recording but are included in



broadcasts qualifying for protection under this law.

(2) The provisions of this Act on the protection of sound recordings shall apply to:

- (a) sound recordings the producers of which are Zanzibaris;
- (b) sound recordings first published in Zanzibar; and
- (c) sound recordings first published in Zanzibar.

(3) The provisions of this Law on the protection of broadcasts shall apply to:

- (a) broadcasts of broadcasting organizations the headquarters of which are situated in Zanzibar; and
- (b) broadcasts transmitted from transmitters situated in Zanzibar.

(4) The provisions in this Act shall also apply to performers, producers of sound recordings and broadcasting organizations that are eligible for protection by virtue of and in accordance with any international convention or other international agreement to which the United Republic of Tanzania is party"

Regulations.

46. The Minister may make regulations prescribing such matters as are required or permitted by this Act to be prescribed or as are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.



Transitional provisions.

47. The provisions of this Act shall also apply to works, performances, sound recordings and broadcasts existing before the date of coming into effect of this Act, provided that the term of protection had not expired under the former legislation or under the legislation of the country of origin of such works, performances, sound recordings or broadcasts that are to be protected under an international treaty to which the United Republic of Tanzania is a party.

Contracts.

48. The provisions of this Act shall not affect contracts on works, performances, sound recordings and broadcasts concluded before the entering into force of this Act."

Repeal.

49. The English Copyright Act, 1956 extended to Zanzibar by order in Council of 1962, is hereby repealed.

SCHEDULE
(Under Section 43(1))

**CONSTITUTION, PROCEEDINGS AND
OTHER MATTERS OF THE SOCIETY**

1.(1) Subject to paragraph (3) the Society shall consist of the following II Board members appointed by the Minister:

- (a) the Commissioner for Culture or his representative;
- (b) the Executive Secretary of the Zanzibar Arts Council or his representative;



- (c) one member appointed from amongst senior officers of the Department dealing with intellectual property matters;
- (d) The Director of the Department of Archives and Museums or his representative;
- (e) The Attorney General or his representative;
- (f) One member representing authors in Zanzibar;
- (g) One member representing performers in Zanzibar;
- (h) One member representing producers of sound recording;
- (i) Zanzibar Broadcasting Commission;
- (j) The Commissioner of Customs or his representative;
- (k) The Director of the Department of Culture or his representative.

(2) One third of the ex officio members, except those mentioned under paragraph (b) and (c) of subsection (1), shall be removed from their position after every two years and the private stakeholders shall replace them.

(3) A member of the Society, not being a member ex officio, shall hold office for three years.

(4) The Minister may appoint such other person not exceeding three in number, as he considers suitably



qualified to assist the Society in its work and deliberations and such person shall not have the right to vote at meetings of the Society.

(5) Upon the appointment to the Society 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 society resulting upon such appointment.

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

2.(1) The Minister may require a member of the Board to vacate his office if the Minister is satisfied that the member:

- (a) is insolvent bankrupt; or
- (b) is absent from three consecutive meetings of the Society, of which he has had notice, without the leave of the Chairman of the Society;
- (c) is convicted of an offence under this Act;
- (d) is convicted within Tanzania of a criminal offence, or outside Tanzania of an offence by whatever name called which, if committed within Tanzania, would have been 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 Society.

(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) A member of the Board may resign his office by giving notice in writing addressed to the Minister and from the date of receipt of the notice by the Minister, he shall cease to be a member.

3.(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:

Provided that if the remaining period is less than six months the Minister may decide not to have 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 been granted leave to fill the vacancy during the absence of the member.

4. 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.



5.(1) The Chairman of the Board shall be appointed by the President from amongst persons who are:

- (a) knowledgeable;
- (b) with provable experience, and
- (c) has experience on copyright and related rights.

(2) The Board shall elect Vice-chairman from amongst its members. The vice-chairman shall, subject to subparagraph (3), hold office for the duration of his membership in the Board.

(3) The office of the Vice-chairman shall become vacant:

- (a) if the holder resigns his office by notice in writing to the society; or
- (b) if the holder of the office ceases to be a member of the Board; or
- (c) if the Board so determines.

(4) 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.(1) Subject to subparagraph (2), the Board shall hold ordinary meetings for the discharge of its business at least four times in each year.



- (2) An extraordinary meetings of the Board :
- (a) may be convened by the Chairman at any time;
 - (b) in the absence of both the Chairman and the Vice-Chairman the members present and forming the quorum shall elect one of their members to preside; and
 - (c) the quorum shall be formed by any six members.

(3) 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 any equality of votes in additions to his deliberate vote.

(4) 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. Members of the Board shall be paid from the funds of the Society 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 connection with the business of the Board.

8.(1) Subject to this paragraph, the Board:

- (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 supervisions of other staff of the Society.

Passed in the House of Representatives on the 17th day of October, 2003.

{ KHAMIS JUMA CHANDE }
CLERK OF THE HOUSE OF REPRESENTATIVES