



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 70

1994

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 6 of 1994: Copyright and Neighbouring Rights Protection Act, 1994.

**COPYRIGHT AND NEIGHBOURING
RIGHTS PROTECTION ACT, 1994****ACT**

To provide for the protection of copyright and performers' rights, and to provide for matters incidental thereto.

(Signed by the President on 14 April 1994)

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BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

INTRODUCTORY PROVISIONS

Interpretation.

1. (1) In this Act, unless the context otherwise indicates -

“adaptation”, in relation to -

(a) a literary work, includes -

(i) in the case of a non-dramatic work, a version of the work in which it is converted into a dramatic work;

(ii) in the case of a dramatic work, a version of the work in which it is converted into a non-dramatic work;

(iii) a translation of the work; or

(iv) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book or in a newspaper, magazine or similar periodical;

(b) a musical work, includes an arrangement or transcription of the work, if such arrangement or transcription has an original creative character;

(c) an artistic work, includes a transformation of the work in such a manner that the original or substantial features thereof remain recognisable;

(d) a computer program, includes -

(i) a version of the program in a programming language, code or notation different from that of the program; or

(ii) a fixation of the program in or on a medium different from the medium of fixation of the program;

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“artistic work” means, irrespective of its artistic quality -

- (a) a painting, sculpture, drawing, engraving or photograph;
- (b) a work of architecture, being either a building or a model of a building; or
- (c) a work of craftsmanship not falling within either a model of a building; or

“author”, in relation to -

- (a) a literary or musical work, or an artistic work other than a photograph, which is not computer-generated, means the person who first makes or creates the work, or in the case of such a work, which is computer-generated, means the person by whom the arrangements necessary for the creation of the work were undertaken;
- (b) photograph, means the person who is responsible for the composition of the photograph;
- (c) a sound recording, means the person by whom the arrangements for the making of the sound recording were made;
- (d) a cinematograph film, means the person by whom the arrangements for the making of the film were made;
- (e) a broadcast, means the first broadcaster;
- (f) a programme-carrying signal, means the first person emitting the signal to a satellite;
- (g) a published edition, means the publisher of the edition;
- (h) a computer program, which is not computer-generated, the person who exercised control over the making of the program, or in the case of a computer program, which is computer-generated, means the person by whom the arrangements necessary for the creation of the program were undertaken;

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“broadcast”, when used as a noun, means a broadcasting service as defined in section 1 of the Namibian Communications Commission Act, 1992 (Act 4 of 1992), and includes the emitting of programme-carrying signals to a satellite; and, when used as a verb, shall be construed accordingly;

“broadcaster” means a person who undertakes a broadcasting service as defined in section 1 of the Namibian Communications Commission Act, 1992 (Act 4 of 1992);

“broadcasting organisation” means the Namibian Broadcasting Corporation established by section 2 of the Namibian Broadcasting Act, 1991 (Act 9 of 1991) or any other broadcasting organisation licensed under the Namibian Communications Commission Act, 1992 (Act 4 of 1992) or any other law;

“building” includes any structure;

“cinematograph film” means the fixation by any means on film or any other material of a sequence of images capable, when used in conjunction with a mechanical, electronic or other device, of being seen as a moving picture and of being reproduced, and includes the sounds embodied in a soundtrack associated with the film, but shall not include a computer program;

“computer program” means a set of instructions fixed or stored in any manner and which, when used directly or indirectly in a computer, directs its operation to bring about a result;

“copy” means a reproduction of a work, and, in the case of a literary, musical or artistic work, a cinematograph film or a computer program, also an adaptation thereof, but an object shall not be taken to be a copy of a work of architecture unless the object is a building or a model of a building;

“copyright” means copyright under this Act;

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“country” includes a colony, protectorate or territory subject to the authority or under the suzerainty of any other country, and a territory over which trusteeship is exercised;

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

“diffusion service” means a telecommunication service of transmissions consisting of sounds, images, signs or signals, which takes place over wires or other paths provided by material substance and intended for reception by specific members of the public; and diffusion shall not be deemed to constitute a performance or a broadcast or as causing sounds, images, signs or signals to be seen or heard; and where sounds, images, signs or signals are displayed or emitted by a receiving apparatus to which they are conveyed by diffusion in such manner as to constitute a performance or a causing of sounds, images, signs or signals to be seen or heard in public, this shall be deemed to be effected by the operation of the receiving apparatus;

“distribution”, in relation to a programme-carrying signal, means an operation by which a distributor transmits a derived signal to the public;

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

“dramatic work” includes a choreographic work or entertainment in dumb show, if reduced to the material form in which the work or entertainment is to be presented, but does not include a cinematograph film as distinct from a scenario or script for a cinematograph film;

“drawing” includes a drawing of a technical nature or any diagram, map, chart or plan;

“engraving” includes any etching, lithograph, woodcut, print or similar work, but does not include a photograph;

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

“infringing copy”, in relation to -

- (a) a literary, musical or artistic work, or a published edition, means a copy thereof;
- (b) a sound recording, means a record embodying that recording;
- (c) a cinematograph film, means a copy of the film or a still photograph made therefrom;
- (d) a broadcast, means a cinematograph film of it or a copy of such a cinematograph film or a sound recording of it or a record embodying such a sound recording or a still photograph made therefrom; and
- (e) a computer program, means a copy of such computer program,

being, in any such case, an article the making of which constituted an infringement of the copyright in that work, recording, film, broadcast or program or, in the case of an imported article, would have constituted such an infringement if the article had been made in Namibia;

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

“licence scheme”, in relation to licences of any description, means a scheme prepared by one or more licensing bodies, setting out the classes of cases in which they are willing, or the person on whose behalf they act is willing, to grant licences of that description, and the charges, if any, and terms and conditions subject to which licences may be granted in those classes of cases, and includes anything in the nature of such a scheme, whether described as a scheme or as a tariff or by any other name;

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“literary work” includes, irrespective of literary quality and in whatever mode or form expressed -

- (a) novels, stories and poetical works;
- (b) dramatic works, stage directions, cinematograph film scenarios and broadcasting scripts;
- (c) textbooks, treatises, histories, biographies, essays and articles;
- (d) encyclopedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, speeches and sermons; and
- (g) tables and compilations,

but does not include a computer program;

“Minister” means the Minister of Information and Broadcasting;

“musical work” means a work consisting of music, exclusive of any words or action intended to be sung, spoken or performed with the music;

“performance” includes a mode of visual or acoustic presentation of a work, including such a presentation by the operation of a loudspeaker, a radio, television or diffusion receiver or by the exhibition of a cinematograph film or by the use of a record or by any other means, and in relation to lectures, speeches and sermons, includes delivery thereof; and references to “perform” in relation to a work shall be construed accordingly, but shall not include broadcasting or rebroadcasting or transmitting a work in a diffusion service;

“performer” means an actor, singer, musician, dancer or other person who acts, sings, delivers, declaims, plays in or otherwise performs, a literary or musical work;

“photograph” means a product of photography or of a process analogous to photography, but does not include any part of a cinematograph film;

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“plate” includes any stereotype, stone, block, mould, matrix, transfer, negative, record, disc, storage medium or any version of a work of any nature used to make copies;

“prescribed” means prescribed by regulation made under section 61;

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

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

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

“qualified person” means -

- (a) a natural person who is a Namibian citizen or is domiciled or resident in Namibia; or
- (b) a body incorporated under the laws of Namibia;

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

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

“reproduction”, in relation to -

- (a) a literary or musical work or a broadcast, includes a reproduction in the form of a record or a cinematograph film;
- (b) an artistic work, includes a version produced by converting the work into a three-dimensional form or, if it is in three dimensions, by converting it into a two-dimensional form;

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(c) any work, includes a reproduction made from a reproduction of that work;

(d) a performance, means a copy made of a fixation of a performance,

and references to “reproduce” and “reproducing” shall be construed accordingly;

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

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

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

“sound recording” means a fixation of sounds capable of being reproduced, but does not include a sound-track associated with a cinematograph film;

“this Act” includes the regulations made and in force under section 61;

“Tribunal” means the Copyright Tribunal established by section 35;

“work” means a work of any description mentioned in section 2;

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

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

(2) A reference in this Act to a sound-track associated with a cinematograph film shall be construed as a reference to a record of sounds which is incorporated in a print, negative, tape or other article on which the film or part of it, in so far as it consists of visual images, is recorded or which is issued by the author of the film for use in conjunction with such a print, negative, tape or other article.

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(3) A reference in this Act to the doing of an act in relation to a work, a performance, a fixation of a performance or a reproduction of such a fixation, shall, unless the context otherwise indicates, be construed as a reference also to the doing of that act in relation to a substantial part of that work, performance, fixation of a performance or reproduction of such a fixation, as the case may be.

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

(5) Notwithstanding paragraph (h) of the definition of "author" in subsection (1), the author of a computer program which is not computer-generated and made before the commencement of this Act, shall be deemed to be the person who first made or created that program, but if the program is original and has been published by a qualified person, that person shall be presumed to be the owner of the copyright subsisting in that program unless the contrary is proved.

(6) For the purposes of this Act the following provisions shall apply in connection with the publication of a work:

- (a) Subject to paragraph (e), a work shall be deemed to have been published if copies of that work have been issued to the public with the consent of the owner of the copyright in that work in sufficient quantities to reasonably meet the needs of the public, having regard to the nature of the work.
- (b) Publication of a cinematograph film or sound recording is the sale, letting, hire or offer for sale or hire, of copies thereof.
- (c) A publication shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere within a period of 30 days.

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- (d) Publication shall not include -
- (i) a performance of a musical or dramatic work, cinematograph film or sound recording;
 - (ii) a public delivery of a literary work;
 - (iii) a transmission in a diffusion service;
 - (iv) a broadcasting of a work;
 - (v) an exhibition of a work of art;
 - (vi) a construction of a work of architecture.
- (e) For the purposes of sections 7, 8 and 14, a work shall be deemed to be published if copies thereof have been issued to the public.

PART I**PROTECTION OF COPYRIGHT****CHAPTER 1****COPYRIGHT IN ORIGINAL WORKS**

Works eligible for copy-
right.

2. (1) Subject to the provisions of this Act, the original work of any of the following descriptions of works shall be eligible for copyright -

- (a) literary works;
- (b) musical works;
- (c) artistic works;
- (d) cinematograph films;
- (e) sound recordings;
- (f) broadcasts;

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- (g) programme-carrying signals;
- (h) published editions; and
- (i) computer programs.

(2) A work, other than a broadcast or programme-carrying signal, shall not be eligible for copyright unless it has been written down, recorded or otherwise reduced to material form.

(3) A broadcast or a programme-carrying signal shall not be eligible for copyright until, in the case of a broadcast, the broadcast has been made, and in the case of a programme-carrying signal, such signal has been transmitted by satellite.

(4) A work shall not be ineligible for copyright by reason only that the making of the work, or the doing of an act in relation to the work, constituted an infringement of copyright in any other work.

Copyright by virtue of nationality, domicile or residence.

3. (1) Subject to subsection (2), copyright shall subsist in every work eligible for copyright of which the author or, in the case of a work of joint authorship, one of the authors, is, at the time the work or a substantial part thereof is made, a qualified person and in respect of which copyright is not conferred by section 5.

(2) Notwithstanding subsection (1), copyright shall subsist in a work of architecture erected in Namibia or any other artistic work incorporated in a building or any other permanent structure in Namibia, whether or not the author was a qualified person.

Copyright by reference to country of origin.

4. Copyright shall subsist in every work eligible for copyright, which is a work in respect of which copyright is not conferred by section 3 or 5 and which -

- (a) being a literary, musical or artistic work or a sound recording, is first published in Namibia;
- (b) being a broadcast, is made in Namibia;
- (c) being a programme-carrying signal, is emitted to a satellite from a place in Namibia;

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- (d) being a cinematograph film, is first published or made in Namibia;
- (e) being a published edition, is first published in Namibia;
- (f) being a computer program, is first published or made in Namibia.

Copyright in relation to the State and certain international organisations.

5. (1) Copyright shall subsist in every work eligible for copyright and which is made by or under the direction or control of the State or such international organisations as may be prescribed.

(2) Copyright which vests in the State shall for administrative purposes be deemed to vest in such officer in the public service as may be designated by the President by proclamation in the *Gazette*.

Duration of protection of copyright.

6. (1) Copyright conferred by section 3 or 4 shall endure, in the case of -

(a) a literary or musical work or an artistic work, other than a photograph, during the life of the author and for a period of 50 years from the end of the year in which the author dies, but if such work or an adaptation thereof has not been made available to the public during the lifetime of the author through -

- (i) the publication thereof;
- (ii) the performance thereof in public;
- (iii) the offer for sale to the public of records thereof; or

(iv) the broadcasting thereof,

for a period of 50 years from the end of the year in which the work is so first made available to the public after the author's death;

(b) a cinematograph film, photograph or computer program, for a period of 50 years either from -

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- (i) the end of the year in which the film, photograph or program is made available to the public with the consent of the owner of the copyright; or
- (ii) if such film, photograph or program was not so made available to the public within 50 years of its making, the end of the year in which the film, photograph or program was made;
- (c) a sound recording or published edition, for a period of 50 years from the end of the year in which it is first published;
- (d) a broadcast, for a period of 50 years from the end of the year in which the broadcast is made;
- (e) a programme-carrying signal, for a period of 50 years from the end of the year in which the signal is emitted to a satellite.

(2) In the case of anonymous or pseudonymous works, the copyright shall endure for a period of 50 years from the end of the year in which the work is first made available to the public with the consent of the owner of the copyright or from the end of the year in which it is reasonable to presume that the author died, whichever term first expires.

(3) Where the identity of the author of a work referred to in subsection (2) becomes known before the expiration of the period referred to in that subsection, the term of the copyright in such work shall be calculated in accordance with subsection (1).

(4) In the case of a work of joint authorship the reference in subsections (1) and (2) to the death of the author shall be taken to refer to the author who dies last, whether or not he or she is a qualified person.

(5) Copyright conferred by section 5 shall endure, in the case of -

- (a) a literary or musical work or an artistic work, other than a photograph, for a period of 50 years from the end of the year in which the work is first published;

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- (b) a cinematograph film, photograph, sound recording, broadcast, programme-carrying signal, published edition or computer program, for the same term provided for in subsection (1) for a similar work.

Nature of copyright in
literary or musical works.

7. Copyright in a literary or musical work vests the exclusive right to do or authorise the doing of any of the following acts in Namibia:

- (a) Reproducing the work in any manner or form;
- (b) publishing the work if it was hitherto unpublished;
- (c) performing the work in public;
- (d) broadcasting the work;
- (e) causing the work to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster;
- (f) making an adaptation of the work;
- (g) doing in relation to an adaptation of the work any act specified in paragraphs (a) to (e).

Nature of copyright in
artistic works.

8. Copyright in an artistic work vests the exclusive right to do or to authorise the doing of any of the following acts in Namibia:

- (a) Reproducing the work in any manner or form;
- (b) publishing the work if it was hitherto unpublished;
- (c) including the work in a cinematograph film or a television broadcast;
- (d) causing a television or other programme, which includes the work, to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the work, and is operated by the original broadcaster;

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- (e) making an adaptation of the work;
- (f) doing in relation to an adaptation of the work any act specified in paragraphs (a) to (d).

Nature of copyright in cinematograph films.

9. Copyright in a cinematograph film vests the exclusive right to do or to authorise the doing of any of the following acts in Namibia:

- (a) Reproducing the film in any manner or form, including making a still photograph therefrom;
- (b) causing the film, in so far as it consists of images, to be shown in public, or, in so far as it consists of sounds, to be heard in public;
- (c) broadcasting the film;
- (d) causing the film to be transmitted in a diffusion service, unless such service transmits a lawful television broadcast, including the film, and is operated by the original broadcaster;
- (e) making an adaptation of the film;
- (f) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the film;
- (g) doing, in relation to an adaptation of the film, any act specified in paragraphs (a) to (d).

Nature of copyright in sound recordings.

10. Copyright in a sound recording vests the exclusive right to do or to authorise the doing of any of the following acts in Namibia:

- (a) Making, directly or indirectly, a record embodying the recording;
- (b) causing the recording to be heard in public;
- (c) broadcasting the recording;
- (d) causing the recording to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the recording, and is operated by the original broadcaster;

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- (e) letting, or offering or exposing for hire by way of trade, directly or indirectly, a reproduction of the recording.

Nature of copyright in broadcasts.

11. Copyright in a broadcast vests the exclusive right to do or to authorise the doing of any of the following acts in Namibia:

- (a) Reproducing, directly or indirectly, the broadcast in any manner or form, including, in the case of a television broadcast, making a still photograph therefrom;
- (b) rebroadcasting the broadcast;
- (c) causing the broadcast to be transmitted in a diffusion service, unless such service is operated by the original broadcaster.

Nature of copyright in programme-carrying signals.

12. Copyright in programme-carrying signals vest the exclusive right to undertake, or to authorise, the direct or indirect distribution of such signals by a distributor to the public in Namibia, or from Namibia.

Nature of copyright in published editions.

13. Copyright in a published edition vests the exclusive right to make or to authorise the making of a reproduction of the edition in any manner.

Nature of copyright in computer programs.

14. Copyright in a computer program vests the exclusive right to do or authorise the doing of any of the following acts in Namibia:

- (a) Reproducing the program in any manner or form;
- (b) publishing the program if it was hitherto unpublished;
- (c) making an adaptation of the program;
- (d) reproducing or publishing an adaptation of the program;
- (e) letting, or offering or exposing for hire by way of trade, directly or indirectly, a copy of the program.

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General exceptions re-
garding protection of li-
terary and musical works.

15. (1) Copyright shall not be infringed by a fair dealing in the use of a literary or musical work -

- (a) for the purpose of research or private study by, or the personal or private use of, the person using the work;
- (b) for the purpose of criticism or review of the work or of another work; or
- (c) for the purpose of reporting on a current event -
 - (i) in a newspaper, magazine or similar periodical; or
 - (ii) by means of broadcasting or in a cinematograph film,

provided, in the case of paragraphs (b) and (c)(i), the source and the name of the author, if that name appears on the work, are mentioned.

(2) The copyright in a literary or musical work shall not be infringed by using the work for the purposes of judicial proceedings or by reproducing it for the purposes of a report of judicial proceedings.

(3) The copyright in a literary or musical work which is lawfully available to the public shall not be infringed by a quotation therefrom, including a quotation from an article in a newspaper, magazine or similar periodical that is in the form of a summary of that work, provided -

- (a) the quotation is compatible with fair practice;
- (b) the extent of the quotation does not exceed that justified by the purpose; and
- (c) the source and the name of the author, if that name appears on the work, are mentioned.

(4) The copyright in a literary or musical work shall not be infringed by the use of such work by way of illustration in a publication, broadcast or sound or visual recording for teaching purposes, provided -

- (a) such use is compatible with fair practice;

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- (b) the extent of such use does not exceed that justified by the purpose; and
- (c) the source and the name of the author, if that name appears on the work, are mentioned.

(5) The copyright in a literary or musical work shall not be infringed by the reproduction of such work by any broadcasting organisation by means of its own facilities where that reproduction or a copy thereof -

- (a) is intended exclusively for lawful broadcasts of such broadcasting organisation; and
- (b) is destroyed before the expiration of a period of six months immediately following the making of the reproduction, or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work:

Provided that where such reproduction is of an exceptional documentary nature, it may be preserved in the archive of the broadcasting organisation, but shall, subject to the provisions of this Act, not be used for broadcasting or any other purpose without the consent of the owner of the relevant part of the copyright in the work.

(6) The copyright in a lecture, address or other work of a similar nature delivered in public shall not be infringed by its reproduction in the press or its communication in a broadcast, if such reproduction or communication is made for an informatory purpose, but the author thereof shall have the exclusive right of making or publishing a collection of such works.

(7) The copyright in an article published in a newspaper, magazine or similar periodical on a current economic, political or religious topic or in any work on such a topic communicated in a broadcast shall not be infringed by its reproduction in the press or its communication in a broadcast, unless such reproduction or communication was expressly reserved when such article was first published or such work was broadcast, provided the source is clearly mentioned in such reproduction or communication.

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(8) No copyright shall subsist in -

- (a) the official text of any work of a legislative, administrative or legal nature, or an official translation thereof;
- (b) a speech of a political nature or a speech delivered in the course of judicial proceedings; or
- (c) publications or broadcasts of news of the day,

but the author of speeches referred to in paragraph (b) shall have the exclusive right of making or publishing a collection thereof.

(9) Subsections (1) to (7) shall apply also with reference to the making or use of an adaptation of a work.

(10) Subsections (6) and (7) shall apply also with reference to a work or an adaptation thereof which is transmitted in a diffusion service.

(11) Subsections (1), (2), (3), (4), (6), (7) and (10) shall be construed as including the right to use the work in question either in its original language or to make a translation thereof in a different language, and, in the latter case, the right of translation of the author shall be deemed not to have been infringed.

(12) The copyright in a literary or musical work shall not be infringed by the use thereof in a *bona fide* demonstration of radio or television receivers or recording or playback equipment to clients by a dealer in such receivers or equipment.

(13) An authorisation to use a literary work as a basis for the making of a cinematograph film or as a contribution in such making, shall, in the absence of an agreement to the contrary, include the right to broadcast that film.

General exceptions in
respect of reproduction
of works.

16. In addition to reproductions permitted in terms of this Act reproduction of a work shall also be permitted in such circumstances as are prescribed, but in such a manner that the reproduction is not in conflict with a normal exploitation of the work and is not unreasonably prejudicial to the legitimate interests of the owner of the copyright.

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Special exception in respect of records of musical works.

17. (1) The copyright in a musical work shall not be infringed by a person (in this section referred to as the "manufacturer") who makes a record of the work or of an adaptation thereof in Namibia, whether from an imported disc, tape, matrix or otherwise, if -

- (a) records embodying the work or a similar adaptation of the work were previously made in or imported into Namibia for the purposes of retail sale and were so made or imported by, or with the licence of, the owner of the copyright in the work;
- (b) before making the record the manufacturer gave the prescribed notice to the owner of the copyright of his or her intention to make it;
- (c) the manufacturer intends to sell the record by retail or to supply it for the purpose of resale by retail by another person or to use it for making other records to be so sold or so supplied; and
- (d) in the case of a record which is sold by retail or supplied for the purpose of resale by retail, the manufacturer pays to the owner of the copyright the prescribed royalties in the prescribed manner and at the prescribed time.

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

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

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

(3) For the purposes of this section an adaptation of a work shall be deemed to be similar to an adaptation thereof embodied in a previous record if the two adaptations do not differ substantially in their treatment of the work, either in respect of style or, apart from a difference in number, in respect of the performers required to perform them.

(4) A manufacturer may for the purposes of paragraph (a) of subsection (1) make the prescribed enquiries in order to ascertain whether the previous records referred to in that paragraph were previously made or imported into Namibia, and if the owner of the copyright fails to reply to any such enquiry within the prescribed period, the previous records shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

(5) Subsections (1), (2), (3) and (4) shall apply also with reference to records of a part of a work or an adaptation thereof, but subsection (1) shall not apply with reference to -

- (a) a record of the whole of a work or an adaptation thereof unless the previous records contemplated in paragraph (a) of subsection (1) were records of the whole of the work or of a similar adaptation; or
- (b) a record of a part of a work or an adaptation thereof unless the records previously made in or imported into Namibia as contemplated in paragraph (a) of subsection (1) were records of, or which included, that part of the work or records of a similar adaptation.

General exceptions regarding protection of artistic works.

18. (1) The copyright in an artistic work shall not be infringed by its inclusion in a cinematograph film or television broadcast or its transmission in a diffusion service, if -

- (a) such inclusion is merely by way of background to the principal matters represented in the film, broadcast or transmission or incidental thereto;

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(b) such work is permanently situated in a street, square or a similar public place.

(2) The copyright in a work of architecture or in the relevant drawings of such work shall not be infringed by the reconstruction of such work on the same site in the same style as the original.

(3) The copyright in an artistic work of which three-dimensional reproductions were made available, whether inside or outside Namibia, to the public by or with the consent of the owner of the copyright (in this subsection referred to as "authorised reproductions"), shall not be infringed if a person without the consent of the owner makes or makes available to the public three-dimensional reproductions or adaptations of the authorised reproductions, provided the authorised reproductions primarily have a utilitarian purpose and are made by an industrial process.

(4) Sections 15(1), (2), (4), (5), (9) (10), (12) and (13) shall apply *mutatis mutandis* with reference to an artistic work.

General exceptions regarding protection of cinematograph films.

19. (1) Section 15(1)(b) and (c), (2), (3), (4), (12) and (13) shall apply *mutatis mutandis* with reference to a cinematograph film.

(2) Where sounds embodied in a sound-track associated with a cinematograph film are also embodied in a record other than such a sound-track or in a record derived directly or indirectly from such a sound-track, the copyright in the film shall not be infringed by the use of such record.

General exceptions regarding protection of sound recordings.

20. Section 15(1)(b) and (c), (2), (3), (4), (5), (12) and (13) shall apply *mutatis mutandis* with reference to a sound recording.

General exceptions regarding protection of broadcasts.

21. Section 15(1), (2), (3), (4), (5), (12) and (13) shall apply *mutatis mutandis* with reference to a broadcast.

General exceptions regarding protection of programme-carrying signals.

22. (1) Subject to subsection (2), the copyright in programme-carrying signals shall not be infringed by the distribution of short excerpts of the programme so carried -

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- (a) that consist of a report of a current event; or
- (b) as are compatible with fair practice,

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

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

General exceptions regarding protection of published editions.

23. Section 15(1), (2), (4), (5), (8), (12) and (13) shall apply *mutatis mutandis* with reference to a published edition.

General exceptions regarding protection of computer programs.

24. (1) Subject to section 29(2)(d), the provisions of section 15(1)(b) and (c), (2), (3), (4), (5), (12) and (13) shall apply *mutatis mutandis* with reference to a computer program.

(2) The copyright in a computer program shall not be infringed by a person who is in lawful possession of that program, or an authorised copy thereof, if -

- (a) such person makes copies thereof to the extent reasonably necessary for back-up purposes;
- (b) a copy so made is intended exclusively for personal or private purposes; and
- (c) such copy is destroyed when the possession of that program, or authorised copy thereof, ceases to be lawful.

Moral rights.

25. (1) Notwithstanding the transfer of the copyright in any work, being a literary, musical or artistic work, a cinematograph film or a computer program, the author shall have the right -

- (a) to claim authorship of the work, subject to the provisions of this Act; and
- (b) to object to a distortion, mutilation or other modification of the work where such distortion, mutilation or modification is or would be prejudicial to the honour or reputation of the author, but an author -