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Copyright Order, 1989

Order No. 13 of 1989

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COPYRIGHT ORDER, 1989

**ARRANGEMENT OF SECTIONS
PART I — PRELIMINARY**

- 1 Short title and commencement
- 2 Interpretation

PART II — COPYRIGHT

- 3 Works in which Copyright may subsist
- 4 Derivative works
- 5 Subject matter not protected
- 6 Substance of Copyright
- 7 Economic rights
- 8 Moral rights
- 9 Free use
- 10 Limitation of the right of translation
- 11 Limitation of the right of reproduction
- 12 Limitation of the right of recording musical works
- 13 Duration of author's rights
- 14 Ownership of Copyright
- 15 Assignment of author's rights
- 16 Licence contracts for the use of author's works
- 17 Contracts for commissioned works

**PART III — PROTECTION OF EXPRESSIONS OF
FOLKLORE AGAINST ILLICIT EXPLOITATION**

- 18 Protection of expressions of folklore
- 19 Utilization subject to authorization
- 20 Exceptions
- 21 Acknowledgement of source
- 22 Authorization
- 23 Scope of protection

PART IV — NEIGHBOURING RIGHTS

- 24 Acts requiring authorization of performers
- 25 Granting of authorization by performers
- 26 Acts requiring authorization of producers of phonograms
- 27 Equitable remuneration for use of phonograms
- 28 Notice of protection of phonograms
- 29 Acts requiring authorization of broadcasting organizations
- 30 Limitation of protection

PART V — SOCIETY, REGISTER AND REGISTRAR

- 31 Establishment and composition of Society
- 32 Functions of Society
- 33 Register of works, etc.

- 34 Registrar
- 35 Functions of the Registrar

PART VI — CIVIL REMEDIES AND SANCTIONS

- 36 Civil remedies
- 37 Offences and penalties

PART VII — GENERAL PROVISIONS

- 38 Application
- 39 Regulations
- 40 Repeals and savings

ORDER NO. 13 OF 1989

COPYRIGHT ORDER, 1989

(Date of Commencement: See Section 1)

ORDER

To make provision for copyright of literary, artistic and scientific works, to safeguard expressions of traditional and cultural productions and for connected purposes.

PART I — PRELIMINARY

1. This Order may be cited as the Copyright Order, 1989 and shall come into operation on a date to be appointed by the Minister by notice in the Gazette.

Short title
and
commence-
ment

2. In this Order, unless the context otherwise requires, "audiovisual works" means works that consist of a service of related images which are intrinsically intended to be shown by the use of devices such as projectors, viewers, or electronic equipment, together with accompanying sounds, regardless of the nature of the material objects, such as films, tapes, or set of slides, in which the works are embodied;

Interpre-
tion

"broadcasting" means the transmission over a distance of sounds or images or both sounds and images by electromagnetic waves propagated in space without artificial guide for the purpose of enabling the reception of the transmitted sounds or images or both sounds and images by the general public;

"communication to the public" means making a work or expression of folklore accessible to the public;

"distribution to the public of duplicates of a phonogram" means any act by which such duplicates are offered, directly or indirectly, to the general public or any section thereof;

"distribution by cable" means the operation by which electronically generated signals, carrying sounds or images or both sounds and images are guided by wire, beam or any other conductor device, to the public or any section thereof, for reception;

"duplicate of phonogram" means any article which contains sounds directly or indirectly from a phonogram and which embodies all or a substantial part of the sound fixed in that phonogram;

"expression of folklore" means production consisting of characteristic elements of the traditional artistic heritage developed and maintained over generations by a community or by individuals reflecting the traditional artistic expectations of their community;

"fixation" means the embodiment of sounds, images or both in a material form sufficiently permanent or stable to permit them to be perceived, reproduced or otherwise communicated during a period of more than transitory duration;

"licence" means a licence granted by the Minister in terms of section 10 or 11;

"literary, artistic and scientific" includes,

- (a) books, pamphlets, theses, dissertations and other writings;
- (b) lectures, addresses, sermons and other works expressed orally;
- (c) dramatic and dramatico-musical works;
- (d) musical works, vocal or instrumental, whether or not they include accompanying words;
- (e) choreographic works and pantomimes;
- (f) cinematographic and other audiovisual works;
- (g) works of drawing, painting, architecture, sculpture, engraving, lithography and tapestry;
- (h) photographic works, including works expressed by processes, analogous to photography;
- (i) works of applied art, whether handicraft or produced on an industrial scale;
- (j) illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture, technology or science;

"Minister" means the Minister of Tourism, Sports and Culture;

"performance" means public representation of a work or expression of folklore, by live action or by any technical means to listeners or spectators in their presence;

"performers" means actors, singers, musicians, dancers and other persons who act, sing, deliver, declaim, play in or otherwise perform literary or artistic works including expressions of folklore, and variety and circus artists as well as puppeteers;

"phonogram" means any exclusively aural fixation of sounds of a performance or of other sounds;

"producer of phonograms" means the person who, or the legal entity which, first fixes the sounds of a performance or of other sounds;

"publication of a phonogram" means the offering of copies of a phonogram to the public in a quantity sufficient to satisfy a reasonable demand for the phonogram;

"published works" means works reproduced with the consent of their authors in copies made available to the pu-

ble in a quantity sufficient to satisfy a reasonable demand for the work, having regard to the nature thereof;
 "rebroadcasting" means the unchanged broadcasting by one broadcasting organization of the broadcast, or a self-contained part of the broadcast, of another broadcasting organization;

"Registrar" means the person holding office in terms of section 34;

"reproduction" means the making of one or more copies of a literary, artistic or scientific work or expression of folklore or fixation, or a substantial part of the work, expression of folklore or fixation, in any material form including any sound or visual recording;

"Society" means the Society of authors and artists established under section 31 (1);

"video-recording" means the embodiment of inter-related changing images, with or without accompanying sounds, in some enduring material form permitting them to be repeatedly perceived, reproduced or communicated to the public;

"works first published in Lesotho" includes works first published abroad but thereafter published in Lesotho within 30 days;

A. 12 of 1967

"works of joint authorship" means works created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other.

PART II -- COPYRIGHT

3. (1) Authors of original literary, artistic and scientific works shall be entitled to copyright protection for their work under this Order, by the sole fact of the creation of such works.

Works in which copyright may subsist

(2) Works shall be protected irrespective of their form of expression, and the purpose for which they were created.

(3) Material fixation by the author of a work expressed otherwise in a reproducible manner is not a condition of the protection of the work.

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

Derivative works

(a) translations, adaptations, arrangements and other transformations of literary, artistic or scientific works;

(b) collections of literary, artistic or scientific works, such as encyclopedias and anthologies, which, by reason of the selection and arrangement of their contents, constitute intellectual creation; and

(c) works inspired by expressions of folklore.

(2) The protection of any work referred to in subsection (1)

Subject matter not protected	<p>shall be without prejudice to any protection of a pre-existing work or expression of folklore utilized for the making of such work.</p> <p>5. Notwithstanding sections 3 and 4, protection shall not extend to,</p> <ul style="list-style-type: none"> (a) rules or decisions of courts and administrative bodies, as well as to official translation thereof; (b) news of the day published, broadcast or publicly communicated by any other means; and (c) mere communications of facts and data.
Substance of copyright	<p>6. Copyright in a literary, artistic and scientific work comprises the exclusive economic and moral rights of the author provided for in sections 7 and 8.</p>
Economic rights	<p>7. Subject to sections 9 to 14 and the right of the Government to control the publication, presentation or circulation of any work to maintain public order, the author of a protected work shall have the exclusive right to do, or authorize any other person to do, the following acts in relation to the whole work or a substantial part thereof,</p> <ul style="list-style-type: none"> (a) reproduce the work; (b) communicate the work to the public by performance, broadcasting, distribution by cable or any other means; and (c) make an adaptation, translation, arrangement or other transformation of the work.
Moral rights	<p>8. (1) The author of a protected work shall have the right,</p> <ul style="list-style-type: none"> (a) to claim authorship of his work, in particular that his authorship be indicated in connection with any of the acts referred to in section 7 except where the work is included incidentally or accidentally when reporting current events by means of photography, sound or visual recording, broadcasting or distribution by cable; and (b) to object to, and to seek relief in connection with, any distortion, mutilation or other modification of, and any other derogatory action in relation to, his work, where such action would be or is prejudicial to his honour or reputation. <p>(2) The rights referred to in subsection (1) shall not be transferred, and after the death of the author, such rights shall be exercisable by his heirs.</p>
Free use	<p>9. Notwithstanding section 7, the following uses of a protected work, either in the original language or in translation, shall be permissible without the author's consent and without the obligation to pay remuneration for the use of the work,</p> <ul style="list-style-type: none"> (a) in the case of any work that has been made whether or not that work has been lawfully published, <ul style="list-style-type: none"> (i) the reproduction, translation, adaptation, arrangement or other transformation of such work exclu-

- sively for the user's personal and private use;
- (ii) the inclusion, subject to mention of the source and the name of the author, of quotations from such work in another work;

Provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries; and

- (iii) the utilization of the work by way of illustration in publications, broadcasts, distribution by cable, sound or visual recordings for teaching, to the extent justified by the purpose, or the communication for teaching purposes of the work broadcast or distributed by cable for use in schools, education, universities and professional training;

Provided that such use is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast, the programme distributed by cable or the recording;

- (b) the distribution by cable of any work broadcast where the beneficiaries of the distribution by cable live in one and the same building, or group of buildings none of which is separated from another building by a public street or road, if the cable distribution originates in such building or group of buildings and the distribution by cable is done without gainful intent;
- (c) in the case of any article published in newspapers or periodicals on current economic, political or religious topics, and in the case of any work of the same character broadcast or distributed by cable, the reproduction of such article or such work in the press, or the communication of it to the public, unless the said article when first published, or the said work when broadcast or distributed by cable, was accompanied by an express condition prohibiting such use, and provided that the source of the work when used in the said manner is clearly indicated;
- (d) for the purposes of reporting on a current event by means of photography, cinematography or communication to the public, the reproduction or making available to the public, to the extent justified by the informatory purpose, of any work that can be seen or heard in the course of the said current event;
- (e) the reproduction of works of art and of architecture in an audiovisual work or video-recording, and the communication to the public of the works so reproduced, if the said works are permanently located in a place where

they can be viewed by the public or are included in the audio-visual work or video-recording only by way of background or as incidental to the essential matters represented;

- (f) the reproduction, by photography, sound or video-recording, of electronic storage, by public libraries, national archives and museums, non-commercial documentation centres, scientific institutions and educational establishments, of literary artistic or scientific works which have already been lawfully made available to the public:

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

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

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

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

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

Provided, however, that where such recording has an exceptional documentary character, one copy of it may be preserved in official archives, without prejudice to the application of section 8.

Limitation
of the right
of translation

First
Schedule

Limitation
of right of
reproduction

Second
Schedule

10. Notwithstanding section 7, it is lawful, even without the author's authorization, to translate a work into English or Sesotho and publish the translation in Lesotho under a licence accorded by the Minister by regulations and under the conditions specified in the *First Schedule*.

11. Notwithstanding section 7, it is lawful, even without the author's authorization, to reproduce a work and publish a particular edition thereof in Lesotho under a licence accorded by the Minister by regulations and under the conditions specified in the *Second Schedule*.

12. (1) Where the owner of the copyright in a musical work has already authorized a person to make a sound recording of the performance of the work, and such recording has been made in, or imported into Lesotho, any other person may make such recording without the authorization of the owner of the copyright concerned:

Limitation
of right of
recording
musical
works

Provided that such other person shall, before making the record, give to the owner of the copyright a proper notice of his intention to make it, and pay to the owner an equitable remuneration as the Minister may prescribe.

(2) Subsection (1) shall apply also to any words accompanying the music.

(3) Subsection (1) shall be without prejudice to the application of section 8.

(4) The mode and manner of the assessment and payment of remuneration referred to in subsection (1) shall be as prescribed by the Minister by regulations.

13. (1) Unless expressly provided otherwise in this Order, the rights referred to in sections 7 and 8 shall be protected during the life of the author and for fifty years after his death.

Duration of
author's
rights

(2) In the case of a work of joint authorship, the rights referred to in sections 7 and 8 shall be protected during the life of the last surviving author and for fifty years after his death.

(3) In the case of a work published anonymously or under a pseudonym, the rights referred to in section 7 shall be protected until the expiration of fifty years from the date on which such work was first lawfully published:

Provided that where, before the expiration of the said period of fifty years the author's identity is revealed or is no longer in doubt, subsection (1) or (2) shall apply, as the case may be.

(4) In the case of a cinematographic or other audiovisual work, the rights referred to in section 7 shall be protected until the expiration of fifty years from the making of the work or, if the work is made available to the public during that period of fifty years with the consent of the author, fifty years from the date of its communication to the public.

(5) In the case of a photographic work or a work of applied art, the rights referred to in sections 6 and 7 shall be protected until the expiration of 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.

14. (1) The right in a work protected under this Order shall be owned in the first instance by the author or authors who created the work.

Ownership
of copyright

(2) The authors of a work of joint authorship shall be co-owners of the said rights.

(3) In the absence of proof to the contrary, the author of a work is the person under whose name the work is disclosed.

(4) In the case of a work created by an author for any person or body corporate in the course of fulfillment of his duties under a contract of service or employment, the rights in the work referred to in section 7 shall, in the absence of contractual provisions to the contrary, be deemed to be assigned to the employer of the author to such extent as may be necessary to its customary activity at the time of the conclusion of the relevant contract of service or employment.

P. 19 of 1935
A. 26 of 1973
P. 2 of 1953

(5) The rights referred to in sections 7 and 8 shall be inherited according to the Administration of Estates Proclamation 1935, the Law of Inheritance 1973 and the Interstate Succession Proclamation 1953.

Assignment
of author's
rights

15. (1) The rights referred to in section 7 may be assigned in whole or in part and assignment effects transfer of ownership of the right assigned.

(2) Any assignment of a right referred to in section 7 shall be in writing signed by the assignor and the assignee.

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

(4) The transfer of ownership of the original or of one or several copies of a work shall not imply the assignment of rights in the work.

Licence
contracts for
the use of
author's
works

16. (1) Authorization by the owner of copyright of the use of the work shall be granted to the user by a licence contract conferring on the latter the rights necessary for the envisaged use, under conditions to be stipulated by the Minister by regulations and limiting the exercise, but not conferring ownership, of the underlying author's rights.

(2) Unless otherwise provided for by the Minister by notice in the Gazette, the contract for the use of the work shall be made in writing.

(3) The rights conferred on the user shall be specifically mentioned in the contract.

(4) Where a contract for the use of the work provides for a conferment of one or more rights corresponding to the categories of rights referred to in section 7, without further specifying the rights conferred with regard to the intended use of the work, the scope of such a conferment of right or rights shall be limited to the extent justified by the nature of the use of the work provided for in the contract; and if the terms of the contract do not specify the ways in which the work may be used, the scope of the con-

ferment of the right or rights shall be determined in accordance with the purpose envisaged when concluding the contract.

The rights conferred on the user shall be non-exclusive unless explicitly granted as exclusive.

The user has standing to sue in his own name for an infringement of any exclusive right conferred on him.

Unless otherwise provided for by the Minister, by notice in the Gazette, the user shall be entitled to transfer the rights conferred on him under the contract for the use of the work only with the consent of the owner of copyright.

17. (1) Where a contract had been concluded for the use of a work to be created, the user shall be under the obligation to make a declaration concerning acceptance of the work within two months from the date on which the work was handed over, unless the Minister by notice in the Gazette otherwise provides; and if the user fails to make such a declaration within the time fixed by the Minister, the work shall be deemed to have been accepted.

Contracts for
commissioned
works

(2) Within the time open for acceptance of the work, the user shall be entitled to return the same to the author for corrections or amendments; such requests shall be motivated by him in writing taking into consideration the purpose for which the creation of the work was agreed upon.

(3) Justified requests for correction or amendments may be repeatedly made to the author, by fixing suitable dates therefor; and if the author refuses to comply with such a request or the amended work does not qualify for the stipulated purpose, the user may terminate the contract and shall be obliged to pay in consideration of the work done by the author an appropriate fee less than the remuneration agreed upon for the use of the work.

PART III — USE OF WORKS IN THE PUBLIC DOMAIN

18. (1) In the case of works in the public domain only the Registrar or a person duly authorised by him has the right to authorize the acts mentioned in section 7, with the restrictions referred to in sections 9 and 12.

Use of works
in the public
domain

(2) For the purposes of subsection (1), the following works shall be considered to be in the public domain,

- (a) works whose term of protection has expired;
- (b) works whose authors have no successors in title;
- (c) works whose owners have renounced copyright protection.

19 (1) Subject to the exceptions provided for in section 20, the following utilizations of expressions of folklore are subject to authorization by the Minister by regulations when they are made both with gainful intent and outside their traditional or customary context,

Utilizations
subject to
authoriza-
tion

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

(2) The following expressions shall be considered to be expressions of folklore,

- (a) folk tales, folk poetry, riddles;
- (b) folk songs and instrumental folk music;
- (c) folk dances, plays and artistic forms of rituals;
- (d) productions of folk art, in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, basket costumes; and
- (e) traditional musical instruments.

Exceptions

20. Section 19 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 an author or authors inspired by folklore;
- (d) incidental utilization of expressions of folklore, including, in particular,
 - (i) utilization of an expression of folklore that can be seen or heard in the course of a current event for the purpose of reporting on that current event by means of photography, broadcasting or sound or visual recording;

Provided that the extent of such utilization is justified by the informatory purposes; and

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

Acknowledgement of source

21. (1) Subject to subsection (2), in all printed publications, and in connection with any communication to the public, of any identifiable expression of folklore, its source shall be indicated in an appropriate manner, by mentioning the community or geographic place from where the expression utilized has been derived.

(2) Subsection (1) shall not apply to utilization referred to in section 19 (2) (c) and (d).

Authorisation

22. (1) Applications for individual or blanket authorization of any utilization of expressions of folklore subject to authorization under this Order shall be made in writing to the Minister.

(2) Where the Minister grants authorization, he may fix the amount of and collect such fees corresponding to such tariff as he may determine.

(3) Appeals against the decisions of the Minister may be made to court by the person applying for the authorization or the representative of the interested community.

23. (1) The protection of expressions of folklore under this Order shall in no way be interpreted so as to hinder the normal use, maintenance and development of such expressions. Scope of protection

(2) This Part shall be in addition to and not in derogation from the other parts of this Order, or other law applicable to expressions of folklore or international treaty to which Lesotho is a party relating to the protection of industrial property or any other forms of protection and preservation of expressions of folklore.

PART IV — NEIGHBOURING RIGHTS

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

- (a) the broadcasting or distribution by cable of their performance, except where the broadcast or distribution by cable,
 - (i) is made from a fixation of the performance, other than a fixation made under section 30 (3); or
 - (ii) is a broadcasting or distribution by cable of a broadcast performance, and is made or authorized by the organization initially broadcasting the performance;
- (b) the communication to the public of their performance, except where the communication is made from,
 - (i) a fixation of the performance; or
 - (ii) a broadcast or distribution by cable of the performance;
- (c) the fixation of their unfixed performance;
- (d) the reproduction of a fixation of their performance, in any of the following cases,
 - (i) where the performance was initially fixed without their authorization;
 - (ii) where the reproduction is made for purposes different from those for which the performers gave their authorization; or
 - (iii) where the performance was initially fixed in accordance with section 30, but the reproduction is made for purposes different from any of those referred to in that section.

Acts requiring authorization of performers

(2) In the absence of any contractual agreement to the contrary or of circumstances of employment from which the contrary would normally be inferred,

- (a) the authorization to broadcast or distribute by cable does not imply an authorization,

- (i) to license other organizations to broadcast or distribute by cable the performance; or
- (ii) to fix the performance;
- (b) the authorization to broadcast or distribute by cable and fix the performance does not imply an authorization to reproduce the fixation;
- (c) the authorization to fix the performance and to reproduce the fixation does not imply an authorization to broadcast or distribute by cable the performance from the fixation or any reproduction of such fixation.

(3) Once the performers have authorized the incorporation of their performance in a visual or audiovisual fixation, subsections (1) and (2) (b) and (c) shall have no further application.

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

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

Granting of authorization by performers

25. (1) A binding authorization under section 23 may be given by the performer or by a duly appointed representative to whom he has granted, in writing, the right to give such authorization.

(2) Any authorization given by a performer claiming that he has retained the relevant rights or by a person claiming to be the duly appointed representative of a performer shall be considered valid unless the recipient knew or had good reason to believe that the claim or appointment, as the case may be, was not a valid one.

Acts requiring authorization of producers of phonograms

26. (1) Without the authorization of the producer of phonograms, no person shall,

- (a) directly reproduce or indirectly reproduce by using any communication over a distance;
- (b) import for the purpose of distribution to the public; or
- (c) distribute to the public; duplicates of his phonogram.

(2) The protection referred to in subsection (1) shall subsist for twenty years computed from the end of the year in which the phonogram was published for the first time or, failing that, from the date on which it was initially made.

Equitable remuneration or use of phonograms

27. (1) If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting, distribution by cable or for other communication to the public, a single equitable remuneration for the performers and the producer of the phonogram shall be paid by the user to the producer.

(2) Unless otherwise agreed between the performers and the producer, half of the amount received from the producer un-

der subsection (1) shall be paid by the producer to the performers.

(3) The amount received from the producer under subsection (2) shall be divided among the performers or used by them, as agreed among them.

(4) The right to an equitable remuneration under this section shall subsist for twenty years computed from the end of the year in which the phonogram was published for the first time, or, failing that, from the date on which the phonogram was initially made.

(5) This section shall not apply where a broadcast is made for non-profit making purposes or where communication to the public in public places is not the result of a purely commercial activity.

28. (1) Where copies of phonograms are made for commercial purposes, there shall be printed on the copies a notice consisting of,

Notice of protection of phonogram

(a) the symbol (P); and

(b) the date of the first publication of the phonogram, placed in such manner as to give reasonable notice of claim of protection of the right of the producer.

(2) If the copies or their containers do not identify the producer by carrying his name, trademark or other appropriate designation, the notice shall also include the name of the person who owns the rights of the producer.

(3) If the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who owns the rights of such performers.

29. (1) No person shall, without the authorization of the broadcasting organization,

Acts requiring utilization of a broadcasting organization

(a) rebroadcast its broadcast or parts of it;

(b) distribute by cable its broadcast or parts of it;

(c) fix its broadcast or parts of it;

(d) reproduce a fixation of its broadcast or parts of it,

(i) where the fixation from which the reproduction is made was done without its authorization; or

(ii) where the broadcast was initially fixed in accordance with section 30, but the reproduction is made for purposes different from any of those referred to in that section.

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

30. (1) Sections 24, 26, 27 and 29 shall not apply where the acts referred to in those sections are made for,

Limitations of protection

(a) private use;

(b) the reporting of current events;

Provided that no more than short excerpts of performance, of a phonogram or of broadcast are used;

- (c) use solely for the purposes of short excerpts of performance, or of a phonogram, or of a broadcast:

Provided that such quotations are compatible with fair practice and are justified by the informatory purposes of such quotation; and

- (d) such other purposes as constitute exceptions in respect of copyright works under section 9.

(2) Licences shall be issued by the Ministry of Information and Broadcasting for the reproduction of duplicates of phonograms where such reproduction serves the exclusive purposes of education or scientific research, is made and distributed in Lesotho, to the exclusion of all importation of duplicates, and comprises an equitable remuneration for the phonogram producer, laid down by the aforementioned Ministry with particular reference to the number of duplicates to be made and distributed.

(3) The requirements for authorization under sections 24, 26, and 29 for making fixations of performances and broadcasts, for reproducing such fixations and for reproducing phonograms published for commercial purposes, respectively, shall not apply where the fixation or reproduction is made by a broadcasting organization by means of its own facilities and for its own broadcasts:

Provided that:

- (a) in respect of each broadcast of a fixation or a performance or of a reproduction thereof made under this subsection, the broadcasting organization has the right to broadcast the particular performance;
- (b) in respect of each broadcast of a fixation of a broadcast, and each broadcast of a reproduction of such a fixation of a broadcast, made under this subsection, the broadcasting organization has the right to broadcast the particular broadcast; and
- (c) in respect of any fixation made under this subsection or any reproduction thereof, the fixation and any reproduction thereof are destroyed within the same period as applies to fixations and reproductions of copyright works under section 9 (h), except for a single copy which may be preserved exclusively for archival purposes.

PART V — SOCIETY, REGISTER AND REGISTRAR

31. (1) There is established a Society to be known as the Society of Authors and Artists.

(2) The Society shall be a non-profit making body corporate.

(3) The composition of the Society, procedure, and quorum at its meetings shall be as provided for by the Minister by regulations.

Establishment and composition of Society

32. (1) The Society shall be responsible for the promotion and protection of the interests of authors, artists and performers who are its members.

(2) Without prejudice to the generality of subsection (1), the Society shall be responsible for the collection and distribution of any royalties or other remuneration accruing to its members in respect of their rights under section 7.

33. (1) The Society shall maintain a register in which shall be registered works, productions and associations of authors, artists and performers.

(2) The purposes of registration of works are,

- (a) to maintain a record of works; and
- (b) to publicize the rights of owners of such works.

(3) The publisher of a work in Lesotho may cause that work to be registered in the register kept by the Society within three months of publication of such work and a copy of the best edition shall be deposited at the office of the Society.

34. There shall be a Registrar whose office shall be an office in the public service.

Registrar

35. (1) The Registrar may, at any reasonable time, examine the register, records and books of the Society and may seize and remove any document kept by the Society for the purposes of securing compliance with this Order.

Functions of
the Registrar

(2) The Registrar shall be responsible for the collection and distribution of any royalties or other remuneration accruing from expressions of folklore.

(3) Save as otherwise provided in this Order or in any other law, the Registrar shall be responsible for the implementation of this Order.

PART VI — CIVIL REMEDIES AND SANCTIONS

36. (1) Any person whose rights under this Order are in imminent danger of being infringed or whose rights have been infringed, may institute proceedings in a court of competent jurisdiction in Lesotho for,

- (a) an interdict to prevent the infringement or to prohibit the continuation of the infringement; and
- (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.

(2) 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 damages.

(3) Any object which was made in violation of this Order and any receipts of the person violating it and resulting from such violations, shall be forfeited to the State.

(4) In addition to any punishment imposed by the court in respect of an offence under this Order, the court may, on application by the plaintiff, order that all reproductions, duplicates, extracts, imitations and other material involved in the infringement be forfeited and disposed of as the court may direct, having regard to all the circumstances relating to the infringement.

Offences
and
penalties

37. (1) Without prejudice to the remedies available under section 36 but subject to the provisions of this section, a person who violates or causes to be violated, the rights protected under this Order commits an offence and is liable on conviction to a fine of M12,000 or to imprisonment for 5 years or to both.

(2) A person who, without the authorization of the Minister, imports or distributes copies of expressions of folklore derived from Lesotho or copies of translations, adaptations, arrangements or other transformations of such expressions of folklore, made outside Lesotho without the authorization of the Minister, commits an offence and is liable on conviction to a fine of M12,000 or to imprisonment for 5 years or to both.

(3) A person who,

- (a) without the authorization of the Minister, utilizes an expression of folklore in violation of section 19; or
 - (b) contravenes section 21,
- commits an offence and is liable on conviction to a fine of M7,200 or to imprisonment for 3 years or to both.

(4) A person who,

- (a) wilfully deceives others in respect of the source of artefacts or subject matter of performance or recitations made available to the public by him in any direct or indirect manner, presenting such artefacts or subject matter as expressions of folklore of a certain community, from where in fact, they have not been derived;
- (b) publicly uses, in any direct or indirect manner, expressions of folklore, wilfully distorting the same in a way prejudicial to the cultural interests of the community; or
- (c) gives authorization on behalf of performers without being a duly appointed representative, or knowingly proceeds under such an unlawful authorization,

commits an offence and is liable on conviction to a fine of M1,000 or to imprisonment for 5 months or to both.

(5) A person who contravenes section 28 (1) or knowingly indicates false data in relation to the notice referred to in section 28 (1) (a) or (b), commits an offence and is liable on conviction to a fine of M1,000 or to imprisonment for 5 months or to both.

(6) A person who rebroadcasts, distributes by cable, fixes or reproduces broadcast of a broadcasting organization without the authorization of that organization in contravention of section 29 commits an offence and is liable on conviction to a fine of M7,200 or to imprisonment for 3 years or to both.

(7) A person who obstructs the Registrar in the exercise of his powers under section 34 (1) commits an offence and is liable on conviction to a fine of M1,000 or to imprisonment for 3 months or to both.

PART VII — GENERAL PROVISIONS

38. (1) This Order shall apply to,

- (a) works of authors who are nationals of, or have their habitual residence in Lesotho; and
- (b) works first published in Lesotho irrespective of the nationality or residence of their authors.

(2) The provisions of this Order relating to the protection of expressions of folklore apply to expressions of folklore developed and maintained in Lesotho.

(3) Protection of performers under this Order is available where,

- (a) the performer is a national of Lesotho;
- (b) the performance took place in Lesotho;
- (c) the performance is fixed in a phonogram qualifying for protection under subsection (4); or
- (d) the performance, which has not been fixed in a phonogram, is embodied in a broadcast qualifying for protection under subsection (5).

(4) Protection of phonograms under this Order is available where,

- (a) the producer is a national of Lesotho;
- (b) the first fixation of the sound was made in Lesotho; or
- (c) the phonogram was first published in Lesotho.

(5) Protection of broadcasts under this Order is available where,

- (a) the headquarters of the broadcasting organization is situated in Lesotho;
- (b) the broadcast was transmitted from a transmitter situated in Lesotho.

(6) Protection of performers, phonograms and broadcasts under this Order is also available where the performances, phonograms or broadcasts originate in certain foreign countries prescribed by the Minister in accordance with such requirements as the Minister may, by regulations, determine.

(7) This Order shall also apply to,

- (a) unpublished works and works first published in a foreign country of authors of foreign nationalities and having their residence in a foreign country:

Provided that the country where the author has his habitual residence or, in the case of published works, the country of their first publication, grants similar protection to nationals or residents of Lesotho for their unpublished works or to works first published in Lesotho;

- (b) expressions of foreign folklore:

Provided that the country of the community from which such

expressions have been derived, grants similar protection to expressions of folklore developed and maintained in Lesotho; and

- (c) works, expressions of folklore, performances, phonograms and broadcasts which are to be protected in Lesotho by virtue of, and in accordance with, international conventions to which Lesotho is a party.

Regulations

39. (1) The Minister may make regulations prescribing anything which under this Order is to be prescribed and generally for the better carrying out of the objects and purposes of this Order.

- (2) Without derogating from the generality of subsection (1), regulations made under this section may provide for,
- (a) the applications for licences for the translation of a work under section 10;
 - (b) the applications for licences for the reproduction of a work under section 11;
 - (c) the mode and manner of assessment and payment of remuneration for the recording of musical rights in terms of section 12;
 - (d) the conditions under which licence contracts for the use of authors' works may be granted;
 - (e) the authorisation of utilisations of the expressions of folklore;
 - (f) the fees and tariffs payable in respect of any matter under this Order;
 - (g) the composition, procedure and quorum of the Society in terms of section 31 (3);
 - (h) countries of origin in respect of certain protected performances, phonograms or broadcasts for purposes of section 37(1)(a); and
 - (i) the forms and licences required to be used under this Order.

Repeals and savings P. 33 of 1912

40. (1) The Copyright Proclamation, 1912 (Chapter 93) is repealed.

(2) Notwithstanding subsection (1), any fixations or reproductions lawfully made under the Proclamation repealed by this Order and in force immediately before the commencement of this Order shall continue in force until they expire.

SCHEDULES

FIRST SCHEDULE (Section 10) TRANSLATION LICENCES

Works covered

1. The provisions of this Schedule apply to works which have been published in printed or analogous forms of reproduction.

2. (1) Any national of Lesotho may, after the expiration of the relevant period provided by subsection (2), apply to the Minister for a licence to make a translation of the work into English and to publish the translation in printed or analogous forms of reproduction.

Application
for licence

(2) Subject to section 3, no licence shall be granted under this section,

- (a) until the expiration of three years from the date of first publication of the work, in the case of its translation into English; and
- (b) until the expiration of one year from the date of first publication of the work, in the case of its translation into Sesotho.

3. (1) Before granting a licence, the Minister shall be satisfied that,

Grant of
licence

- (a) no translation of the work into the language in question has been published in printed or analogous forms of reproduction by or with the authorization of the owner of the right of translation, or that all previous editions in that language are out of print;
- (b) the applicant for the licence has established that he either has requested, and has been denied, authorization from the owner of the right of translation, or, after due diligence on his part, he was unable to find such owner;
- (c) at the same time as addressing the request referred to in paragraph (b) to the owner, the applicant for the licence has informed any national or international information centre designated for this purpose by the government of the country in which the publisher of the work to be translated is believed to have his principal place of business;
- (d) if he is unable to find the owner of the right of translation, the applicant has sent, by registered mail, a copy of his application to the publisher whose name appears on the work and another such copy to any information centre referred to in paragraph (c).

(2) No licence shall be granted unless the owner of the right of translation, where known or located, has been given an opportunity to be heard.

(3) No licence shall be granted,

- (a) until the expiration of a further period of six months in the case of translation into English; and
- (b) until the expiration of nine months in the case of translation into Sesotho.

(4) Such further period as is referred to in subsection (3) shall be computed from the date on which the applicant complies with the requirements mentioned in subsection (1) (b) and (c) or, where the identity or the address of the owner of the right of translation is unknown, from the date on which the applicant also complies with the requirements mentioned in subsection (1) (d).

**Second
Schedule**

(5) If, during the said further period, a translation into the language in question has been published in printed or analogous forms of reproduction, by or with the authorization of the owner of the translation right, no licence shall be granted.

(6) For works composed mainly of illustrations, a licence shall be granted only if the conditions of the Second Schedule are fulfilled.

**Scope and
conditions of
the licence**

(7) No licence shall be granted where the author has withdrawn all copies of the work from circulation.

4. (1) A licence issued in terms of this Schedule,

(a) shall be only for the purpose of teaching, scholarship or research;

(b) shall only allow publication in a printed or analogous form of reproduction and only within Lesotho;

Provided that, where the Minister certifies that facilities do not exist in Lesotho for such printing or reproduction or that existing facilities are incapable, for economic or practical reasons of ensuring such reproduction, the reproduction may be made outside Lesotho if,

(i) the country where the work of reproduction is done is party to the Berne Convention;

(ii) all copies reproduced are sent to the licensee in one or more bulk shipments for the distribution exclusively within Lesotho and the contract between the licensee and the establishment doing the work of reproduction so requires;

(iii) the said contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and

(iv) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a licence has been granted under this Schedule;

(c) shall not extend to the export of copies made under the licence, except as provided in subsection (2);

(d) shall be non-exclusive; and

(e) shall not be transferrable.

(2) Copies of a translation published under a licence may

be sent abroad by the Government or other public entity if,

- (a) the translation is into a language other than English;
- (b) the recipients of the copies are individuals who are nationals of Lesotho or are organizations, groupings or individuals who are nationals of Lesotho;
- (c) the recipients will use the copies only for the purpose of teaching, scholarship or research;
- (d) both the sending of the copies abroad and their subsequent distribution to the recipients are without any commercial purposes;
- (e) the government of the foreign country to which the copies are sent has agreed to the receipt or distribution, or both, of the copies sent to that country.

(3) The licence shall provide for just compensation in favour of the owner of the right of translation that is consistent with standards of royalties normally operating in the case of licences freely negotiated between persons in Lesotho and owners of translation rights in the country of the owner of the right of translation.

(4) If the licensee is unable, by reason of currency laws, to transmit the compensation to the owner of the right of translation, he shall report the fact to the Minister who shall make all efforts, by the use of international machinery, to ensure such transmittal in internationally convertible currency or its equivalent.

(5) As a condition of maintaining the validity of the licence, the translation shall be correct and all published copies shall include the following,

- (a) the original title and name of the author of the work;
- (b) a notice in the language of the translation stating that the copy is available for distribution only in Lesotho; and
- (c) if the work which is translated was published with a copyright notice, a reprint of that notice.

(6) The licence shall terminate if a translation of the work in the same language and with substantially the same content as the translation published under the licence is published in printed or analogous forms of reproduction in Lesotho by or with the authorization of the owner of the right of translation, at a price reasonably related to that normally charged in Lesotho for comparable works.

(7) Any copies already made before the licence terminates may continue to be distributed until their stock is exhausted.

5. (1) A licence under this Schedule may also be granted to a domestic broadcasting organization if,

- (a) the translation is made from a copy made or acquired in accordance with the laws of Lesotho;

License for
broadcasting
organiza-
tions

- (b) the translation is only for use in broadcasts intended exclusively for teaching or for the dissemination of the results of specialised technical or scientific research to experts in a particular profession;
- (c) the translation is used exclusively for the purposes specified in paragraph (b) through broadcasts that are lawfully made and that are intended for recipients in Lesotho, including broadcasts made through the medium of sound or visual recording that have been made lawfully and for the sole purpose of such broadcasts;
- (d) sound or visual recordings of the translation may not be used by broadcasting organizations other than those having their headquarters in Lesotho; and
- (e) all uses made of the translation are without any commercial purpose.

(2) A licence may also be granted to a domestic broadcasting organization, under all the conditions stipulated in subsection (1), to translate any text incorporated in an audio-visual fixation that was itself prepared and published for the sole purpose of being used in connection with systematic instructional activities.

Applicability
of section 11
of Order and
First
Schedule

6. (1) Section 10 of the Order and this Schedule shall apply to works whose country of origin is Lesotho or any other country whose name with reference to this Schedule is indicated in an appropriate law promulgated by the legislature.

(2) The Minister may, by notice in the Gazette, discontinue the application of section 10 of the Order and this Schedule.

SECOND SCHEDULE (Section 11) REPRODUCTION LICENCES

Works
covered

1. Subject to section 5, the provisions of this Schedule apply to works which have been published in printed or analogous forms of reproduction.

Application
for licence

2. (1) Any national of Lesotho may, after the expiration of the relevant period provided by subsection (2), apply to the Minister for a licence to reproduce and publish a particular edition of the work in printed or analogous forms of reproduction.

(2) Subject to section 3, no licence shall be granted until the expiration of whichever of the following periods is applicable, commencing from the date of first publication of the particular edition of the work,

- (a) three years for works of technology and of the natural and physical sciences, including mathematics;
- (b) seven years for works of fiction, poetry, drama and music and for art books;
- (c) five years for all other works.

Grant of
licence

3. (1) Before granting a licence, the Minister shall be satis-

fied that,

- (a) no distribution, by or with the authorization of the owner of the right of reproduction, of copies in printed or analogous forms of reproduction of that particular edition has taken place in Lesotho, to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in Lesotho for comparable works, or that, under the same conditions, such copies have not been on sale in Lesotho for a continuous period of at least six months;
 - (b) the applicant for the licence has established that he either has requested, and has been denied, authorization from the owner of the right of reproduction, or that after due diligence on his part, he was unable to find such power;
 - (c) at the same time as addressing the request referred to in paragraph (b) to the owner, the applicant for the licence has informed any national or international information centre designated for this purpose by the government of the country in which the publisher of the work to be reproduced is believed to have his principal place of business;
 - (d) if he is unable to find the owner of the right of reproduction, the applicant has sent, by registered mail, a copy of his application to the publisher whose name appears on the work and another such copy to any information centre referred to in paragraph (c).
- (2) No licence shall be granted unless the owner of the right of reproduction, where known or located, has been given an opportunity to be heard.
- (3) Where the three-year period referred to in section 2 (2) (a) applies, no licence shall be granted until the expiration of six months computed from the date on which the applicant complies with the requirements stipulated in subsection (1) (a) and (c) or, where the identity or the address of the owner of the right of reproduction is unknown, from the date on which the applicant also complies with the requirements mentioned in subsection (1) (d).
- (4) Where the seven-year or five-year period referred to in section 2 (2) (a) or (c) apply and where the identity or the address of the owner of the right of reproduction is unknown, no licence shall be granted until the expiration of three months computed from the date on which the copies referred to in subsection (1) (d) have been mailed.
- (5) If, during the period of six or three months referred to in subsection (3) or (4), as the case may be, a distribution or placing on sale as described in subsection (1) (a) has taken

place, no licence shall be granted.

(6) No licence shall be granted if the author has withdrawn from circulation all copies of the edition which is the subject of application.

(7) Where the edition which is the subject of an application for licence under this Schedule is a translation, the licence shall only be granted if the translation is in a language indicated in section 7 of the Order and was published by or with the authorization of the owner of the right of translation.

Scope and conditions of the licence

4. (1) A licence under this Schedule,

(a) shall be only for use in connection with systematic instructional activities;

(b) shall, subject to section 5, only allow publication in a printed or analogous form of reproduction at a price reasonably related to, or lower than, that normally charged in Lesotho for comparable work;

(c) shall only allow publication within Lesotho and shall not extend to the export of copies made under the licence:

Provided that where the Minister certifies that facilities do not exist within Lesotho for such reproduction or that existing facilities are incapable, for economic or practical reasons, of such reproduction, the reproduction may be made outside Lesotho if,

(i) the country where the work of reproduction is done is party to the Berne Convention;

(ii) all copies reproduced are sent to the licensee in one or more bulk shipments for distribution exclusively in Lesotho and the contract between the licensee and the establishment doing the work of reproduction so requires;

(iii) the said contract provides that the establishment engaged for doing the work of reproduction guarantees that the work of reproduction is lawful in the country where it is done; and

(iv) the licensee does not entrust the work of reproduction to an establishment specially created for the purpose of having copies reproduced of works for which a licence has been granted under this Schedule;

(d) shall be non-exclusive; and

(e) shall not be transferrable.

(2) The licence shall provide for just compensation in favour of the owner of the right of reproduction that is inconsistent with standards of royalties normally operating in the

case of licences freely negotiated between persons in Lesotho and owners of reproduction rights in the country of the owner of the right of reproduction.

(3) If the licensee is unable, by reason of currency laws, to transmit the compensation to the owner of the right of reproduction, he shall report the fact to the Minister who shall make all efforts, by the use of international machinery, to ensure such transmittal in internationally convertible currency or its equivalent.

(4) As a condition of maintaining the validity of the licence, the reproduction of that particular edition shall be accurate and all published copies shall include the following,

- (a) the title and name of the author of the work;
- (b) a notice in the language of the publication stating that the copy is available for distribution only in Lesotho;
- (c) if the edition which is reproduced bears a copyright notice, a reprint of that notice.

(5) The licence shall terminate if copies of the work in printed or analogous forms of reproduction are distributed in Lesotho by or with the authorization of the owner of the right of reproduction, to the general public or in connection with systematic instructional activities, at a price reasonably related to that normally charged in Lesotho for comparable works, if such edition is in the same language and is substantially the same in content as the edition which was published under the licence.

(6) Any copies already made before the licence terminates may continue to be distributed until their stock is exhausted.

5. A licence may also be granted under the conditions stipulated in this Schedule,

*Licence for
audiovisual
fixations*

- (a) to reproduce in audiovisual form a lawfully made audiovisual fixation, including any protected works incorporated in it, if the fixation was prepared and published for the sole purpose of being used in connection with systematic instructional activities; and
- (b) to translate any text incorporated in the fixation into English.

6. (1) Section 11 of the Order and this Schedule shall apply to works whose country of origin is Lesotho or any other country whose name, with reference to this Schedule, is indicated in an appropriate law promulgated by the legislature.

*Applicability
of section
11 of Order
and Second
Schedule*

(2) The Minister may discontinue the application of section 11 of the Order and this Schedule.

