SB 688

A BILL FOR AN ACT TO REPEAL THE COPYRIGHT ACT CAP C28 LFN 2004 AND TO RE-ENACT THE COPYRIGHT ACT 2021 AND FOR MATTERS CONNECTED THEREWITH

Sponsor: Senator Mukhail Adetokunbo Abiru

BE IT ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

( ) Commencement

PART I
Copyright

1. Works eligible for copyright

(1) Subject to this section, the following shall be eligible for copyright—

(a) literary works;
(b) musical works;
(c) artistic works;
(d) audiovisual works;
(e) sound recordings; and
(f) broadcasts.

(2) A literary, musical or artistic work shall not be eligible for copyright unless—

(a) sufficient effort has been expended on making the work to give it an original character;

(b) the work has been fixed in any definite medium of expression now known or later to be developed, from which it can be perceived, reproduced or otherwise communicated either directly or with the aid of any machine or device.

(3) An artistic work shall not be eligible for copyright, if at the time when the work is made, it is intended by the author to be used as a model or pattern to be multiplied by any industrial process.

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

for copyright under this Act shall not be subject to any formality including

/right protects any eligible work immediately it is created or made.

opyright by virtue of nationality or domicile

) Copyright shall be conferred by this section on every work eligible for copyright of which the author or, in the case of a work of joint authorship, any of the authors is at the time when the work is made, a qualified person, that is to say—

(i) an individual who is a citizen of, or is domiciled in Nigeria; or

(ii) a body corporate incorporated by or under the laws of Nigeria.

(2) The term of copyright conferred by this section shall be calculated according to the table set out in the First Schedule to this Act.

(3) In the case of anonymous or pseudonymous literary, musical or artistic works, the copyright therein shall subsist until the end of the expiration of seventy years from the end of the year in which the work was first published:

Provided that, when the author becomes known, the term of copyright shall be calculated in accordance with paragraph 1 of the First Schedule to this Act.

(4) In the case of a work of joint authorship, a reference in the First Schedule to this Act to the death of the author shall be taken to refer to the author who dies last, whether or not he is a qualified person within subsection (1) of this section.

3. **Copyright by reference to country of origin**

(1) Copyright shall be conferred by this section on every work, other than a broadcast, which is eligible for copyright and which—

(a) being a literary, musical or artistic work or a audiovisual works, is first published in Nigeria; or

(b) being a sound recording, is made in Nigeria,
and which has not been the subject of copyright conferred by section 2 of this Act.

(2) Copyright conferred on a work by this section shall have the same duration as is provided by section 2 of this Act in relation to the same type of work.

4. **Copyright in works of Government, State authorities and International bodies**

(1) Copyright shall be conferred by this section on every work which is eligible for copyright and is made by or under the direction or control of the Government, a State authority or a prescribed International body.

(2) The term of copyright conferred by this section shall be calculated in accordance with the table set out in the First Schedule to this Act.

5. **Copyright by reference to international agreements**

(1) Copyright shall be conferred by this section on every work if—

(a) on the date of its first publication at least one of the authors is—

(i) a citizen of or domiciled in; or
(ii) a body corporate established by or under the laws of, a country that is a party to an obligation in a treaty or other international agreement to which Nigeria is a party;

(b) the work is first published—

(i) in a country which is a party to an obligation in a treaty or other international agreement to which Nigeria is party;

(ii) by the United Nations or any of its specialised agencies; or
(iii) by the Organisation of African Unity; or
(iv) by the Economic Community of West African States.
(vi) if the work qualifies as a work emanating from any of the countries listed in the 1972 Copyright (Reciprocal Extension) Order.

(2) Where the question arises as to whether a country is a party to an obligation in a treaty or other international agreement to which Nigeria is also a party, a certificate from the Commission to that effect shall be conclusive proof of that fact.

6. **Nature of copyright in literary, artistic, musical and audiovisual works**

(1) Subject to the exceptions specified in the Second Schedule to this Act, copyright in a work shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is—

[Second Schedule.]

(a) in the case of a literary or musical work, to do and authorise the doing of any of the following acts—

i. reproduce the work;
ii. publish the work;
iii. perform the work in public;
iv. produce, reproduce, perform or publish any translation of the work;
v. make any audiovisual work or a record in respect of the work;
vi. distribute to the public, for commercial purposes, copies of the work, by way of rental, lease, hire, loan or similar arrangement;
vii. broadcast the work;
viii. communicate the work to the public;
ix. make the work available to the public by wire, wireless or online means in such a way that members of the public are able to access the work from a place and at a time individually chosen by them.
x. make any adaptation of the work;
xi. do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (a) to (ix) of this paragraph;

(b) in the case of artistic works, to do or authorise the doing of any of the following acts, that is—

(i) reproduce the work,
(ii) publish the work,
(iii) include the work in any audiovisual work,
(iv) broadcast the work
(v) communicate the work to the public
(vi) make the work available to the public by wire or wireless means in such a way that members of the public are able to access the work from a place and at a time individually chosen by them.
(vii) make any adaptation of the work,
(viii) do in relation to an adaptation of the work any of the acts specified in relation to the work in subparagraphs (i) to (vi of this paragraph;

Provided always that the protection of a three dimensional work of artistic craftsmanship shall not extend to its functional or utilitarian aspects.

(c) in the case of audiovisual works, to do or authorise the doing of any of the following acts, that is—

(i) reproduce the audiovisual work,

(ii)adapt the audiovisual work ;

(iii)cause the audiovisual work, in so far as it consists of visual images to be seen in public and, in so far as it consists of sounds, to be heard in public,

(iv) communicate the audiovisual work to the public;

(v) broadcast the audiovisual work;

(vi) make any copy of the sound track of an audiovisual work.

(vii) make the work available to the public by wire, wireless on online means in such a way that members of the public are able to access the work from a place and at a time individually chosen by them.

(viii) distribute to the public, for commercial purposes copies of the audiovisual work, by way of rental, lease, hire, loan or similar arrangement;

(ix) make an adaptation of the audiovisual work;

(x) make a translation of the audiovisual work or any part thereof;

(xi) do in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-paragraphs (i) to (x) of this paragraph.

(2) The doing of any of the acts referred to in subsection (1) of this section shall be in respect of the whole or a substantial part of the work either in its original form or in any form recognisably derived from the original.

(3) Copyright in a work of architecture shall also include the exclusive right to control the erection of any building which reproduces the whole or a substantial part of the work either in its original form or any form recognisably derived from the original, but not the right to control the reconstruction in the same style as the original of a building to which the copyright relates.

(4) The provisions of the Third Schedule to this Act shall apply to musical works.

7. **Nature of copyright in sound recording**

(1) Copyright in a sound recording shall be the exclusive right to control in Nigeria—

(a) the production, broadcasting or communication to the public of the whole or a substantial part of the recording either in its original form or in any form recognisably derived from the original;

(b) reproduce the sound recording;

(c) communicate the sound recording to the public;

(d) make the sound recording available to the public by wire, wireless or online means in such a way that members of the public are able to access the sound recording from a place and at a time individually chosen by them.

(e) distribute to the public, for commercial purposes copies of the sound recording, by way of rental, lease, hire, loan or similar arrangement.

(2) The exceptions specified in the Second Schedule to this Act shall apply to the copyright in sound recording in like manner as they apply to copyright in literary, musical or artistic work or audiovisual works.

8. Nature of copyright in broadcast

(1) Subject to this section, copyright in a broadcast shall be the exclusive right to control the doing in Nigeria of any of the following acts, that is—

(a) broadcasting

(b) communication to the public of the broadcast;

(c) making the broadcast available to the public by wire, wireless or online means or online in such a way that members of the public are able to access the work from a place and at a time individually chosen by them;

(d) fixation of the broadcast;

(e) reproduction of a fixation of the broadcast;

(f) adaptation of a fixation of the broadcast; and

(g) distribution of a fixation of the broadcast or copies thereof for commercial purposes by way of rental, lease, hire, loan or similar arrangement.

(2) Cable retransmission operators who do nothing other than retransmit the broadcasts of broadcasting organizations shall not have the rights provided for in subsection (1) of this section in respect of the broadcasts retransmitted.

(3) The copyright in a television broadcast shall include the right to control the taking of still photographs from the broadcast.

(4) The exceptions specified in the Second Schedule to this Act shall apply to the copyright in a broadcast, in like manner as they apply to copyright in literary, musical or artistic work or audiovisual works.

[Second Schedule.]

9. **Broadcasting of works incorporated in audiovisual works**

(1) Where the owner of the copyright in any literary, musical or artistic work authorises a person to incorporate the work in an audiovisual work and a broadcasting authority broadcasts the audiovisual work, the owner of the copyright shall, in the absence of any express agreement to the contrary between the owner and that person, be deemed to have authorised the broadcast.

(2) Where a musical work or sound recording has been published for commercial purposes, the performer and owner of copyright of such musical work or sound recordings shall enjoy the right to equitable remuneration for any broadcast of the sound recording.

(3) Notwithstanding subsections (1) and (2) of this section, where a broadcasting authority broadcasts an audiovisual work in which a musical work or sound recording is incorporated, the owner of the right to broadcast the musical work or sound recording shall, subject to this Act, be entitled to receive fair compensation from the broadcasting authority.

(4) The remuneration referred to in subsection (1) or (2) of this section shall be paid by the natural or legal persons who use the musical works or sound recordings or copies thereof.

(5) The amount of remuneration and the conditions of the payment thereof shall be agreed between the users of musical works, or sound recordings and the performer and owner of copyright in sound recordings, or their representatives; and failing such agreement, it shall be determined by the Commission.

(6) Unless otherwise provided for in an agreement, the distribution of remuneration referred to in subsection (2) of this section between the performer and the owner of copyright in the musical works or sound recording shall be determined by the Commission.

(7) Where the remuneration is to be received by more than one collective management organization, the collective management organizations concerned shall agree on which of them shall collect such remuneration on their behalf, failing which the Commission may specify accordingly.

(8) For the purposes of this section, musical works or sound recordings made available to the public by wire or wireless means or online in such a way that members of the public may access them from a place and at a time individually chosen by them shall be deemed published for commercial purposes.

(9) In the exercise of the rights under this section, the performer and owner of copyright in the musical works or sound recordings shall have a right to the logs, statements and information relating to the broadcast of the sound recording.

(10) In the absence of an agreement on or relating to the compensation payable under subsection (2) of this section, the amount of compensation shall be determined by the Commission.

10. First ownership of copyright

(1) Copyright conferred by sections 2 and 3 of this Act, shall vest initially in the author.

(2) Notwithstanding sub section (1) of this section, where a person commissions the taking of a photograph, or the painting or drawing of a portrait or the making of an audiovisual work, the person who commissioned the photograph, portrait or audiovisual work shall unless there is a written agreement to the contrary, have:

a. a non-exclusive licence to exploit the photograph, portrait or audiovisual work and

b. A right to restrain the publication, exhibition, communication and distribution of the photograph, portrait or audiovisual work to the public.

(3) Notwithstanding subsection (6) of section 11 of this Act where a work—

(a) is commissioned by a person who is not the author's employer under a contract of service or apprenticeship; or

(b) not having been so commissioned, is made in the course of the author's employment, the copyright shall belong in the first instance to the author, unless otherwise stipulated in writing under the contract.

(4) Where a literary, artistic or musical work is made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship as is so made for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical; or to the reproduction of the work for the purpose of its being so published; but in all other respects, the author shall be the first owner of the copyright in the work.

(5) In the case of an audiovisual work or sound recording the author shall be obliged to conclude, prior to the making of the work, contracts in writing with all those whose works are to be used in the making of the work.

(6) Where a person, in the absence of agreement to the contrary, creates a work under the direction or control of a Government, a Ministry, Department or Agency of a Government, or a prescribed international or inter-governmental organization, the copyright in that work shall vest in that Government, Ministry, Department, Agency, prescribed international or inter- governmental organization.

(7) Copyright in a collective work shall vest in the natural or legal persons who commissioned the work unless there is a written agreement to contrary.

11. Assignment and Licence

(1) Subject to the provisions of this section, copyright shall be transmissible by assignment, by testamentary disposition or by operation of law, as movable property pursuant to Chapter 4 of the Nigerian Constitution.

(2) An assignment or testamentary disposition of copyright may be limited so as to apply to only some 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.

(3) No assignment of copyright and no exclusive licence to do an act, the doing of which is controlled by copyright, shall have effect unless it is in writing.

(4) A non-exclusive licence to do an act, the doing of which is controlled by copyright, may be written or oral, or may be inferred from conduct.

(5) An assignment or licence granted by one copyright owner shall have effect as if granted by his co-owner also, and, subject to any contract between them, fees received by the grantors shall be divided equitably between all the co-owners.

(6) For the purposes of this subsection, persons shall be deemed to be co-owners—

(a) if they share a joint interest in the whole or any part of a copyright; or

(b) if they have interest in the various copyrights in a composite production, that is to say, a production consisting of two or more works.

(7) An assignment, licence or testamentary disposition may be effectively granted or made in respect of a future work or an existing work in which copyright does not yet subsist; and the prospective copyright in any such work shall be transmissible by operation of law as movable property.

(8) A testamentary disposition of material on which a work is first written or otherwise recorded shall, in the absence of any contrary indication, be presumed to include any copyright or prospective copyright in the work which is vested in the deceased.

12. Right to claim authorship

The author of a work in which copyright subsists has the right—

(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 6 of this Act except when the work is included incidentally or accidentally when reporting current events by means of broadcasting;

(b) to object 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.

(2) The rights referred to in subsection (1) of this section, are perpetual, inalienable and imprescriptible.

(3) For the purpose of this section, "author" includes his heirs and successors in title.

13. Right to share in proceeds of sale

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

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

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

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

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

14. Duty of Keep Record of Work Produced

Any person carrying on the business of production or reproduction of works including publishers, printers, producers, manufacturers and aggregators of works in which copyright subsists shall keep a record of all works dealt with in the course of their business, showing the following, -

(a) the name of the author;
(b) the title of the work;
(c) date of use or production;
(d) the quantity of the work used or produced; and
(e) any other information as may be prescribed by the Commission from time to time

15. Infringement of copyright

(1) Copyright is infringed by any person who without the licence or authorisation of the owner of the copyright—

(a) does, or causes any other person to do an act, the doing of which is controlled by copyright under sections 6, 7, and 8 of this Act;

(b) imports or causes to be imported into Nigeria any copy of a work which, if it had been made in Nigeria, would be an infringing copy under this section of this Act;

(c) exhibits in public any article in respect of which copyright is infringed under paragraph (a) of this subsection;

(d) distributes by way of trade, offers for sale, hire or otherwise or for any purpose prejudicial to the owner of the copyright, any article in respect of which copyright is infringed under paragraph (a) of this subsection;

(e) makes or has in his possession plates, master tapes, machines, equipment or contrivances used for the purpose of making infringed copies of the work;

(f) permits a place of public entertainment or of business to be used for a performance in the public of the work, where the performance constitutes an infringement of the copyright in the work, unless the person permitting the place to be so used was not aware, and had no reasonable ground for suspecting that the performance would be an infringement of the copyright;

(g) performs or causes to be performed, for the purposes of trade or business or as supporting facility to a trade or business, any work in which copyright subsists.

(h) permits within its premises, the reproduction including photocopying, scanning and dubbing, of copyright material.

(2) Notwithstanding subsection (1) of this section, or any other provision of this Act, where any work in which copyright subsists, or a reproduction of any such works, is comprised in—

(a) the archives stored in the National Archives established under the National Archives Act; or

[Cap. N6.]

(b) the public records of a State, being records for the storage or custody of which provision is made by law, the copyright in the work is not infringed by the making or the supplying to any person of any reproduction of the work in pursuance of that Act or law.

16. **Action for infringement**

(1) Subject to this Act, infringement of copyright shall be actionable at the suit of the owner, assignee or an exclusive licensee of the copyright, as the case may be, in the Federal High Court exercising jurisdiction in the place where the infringement occurred; and in any action for such an infringement, all such relief by way of damages, injunction,

accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of infringement of other proprietary rights.

(2) Where an action for infringement of copyright brought by the copyright owner or an exclusive licensee relates to an infringement in respect of which they have concurrent rights of action, the copyright owner or the exclusive licensee may not, without the leave of court, proceed with the action unless the other is either joined as a plaintiff or added as a defendant.

(3) Where, in an action for infringement of copyright, it is proved or admitted that an infringement was committed but that at the time of the infringement the defendant was not aware and had no reasonable grounds for suspecting that copyright subsisted in the work to which the action relates, the plaintiff shall not be entitled under this section to any damages against the defendant in respect of the infringement, but shall be entitled to an account of profits in respect of the infringement, whether or not any other relief is granted under this section.

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

(a) the flagrancy of the infringement; and

(b) any benefit shown to have accrued to the defendant by reason of the infringement, is satisfied that effective relief would not otherwise be available to the plaintiff, the court, in assessing damages for the infringement, shall have power to award such additional damages by virtue of this subsection as the court may consider appropriate in the circumstances.

(5) No injunction shall be issued in proceedings for infringement of copyright which requires a completed or partly completed building to be demolished or prevents the completion of a partly completed building.

(6) In this section, "action" includes a counterclaim, and references to the plaintiff and to the defendant in an action shall be construed accordingly.

17. Limitation to the right of action

Notwithstanding the provisions of this Act or any other law, no action for the infringement of copyright or any right under this Act shall be commenced or maintained by any person—

(a) carrying on the business of negotiating and granting of licences;

(b) collecting and distributing royalties in respect of copyright works or representing more than fifty owners of copyright in any category of works protected by this Act, unless it is approved under section 58 of this Act to operate as a collecting society, a collective management organization, or is otherwise issued with a certificate of exemption by the Commission.

18. Conversion rights

All infringing copies of any work in which copyright subsists, or of any substantial part thereof, and all plates, master tapes, machines, equipment or contrivances used, or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner, assignee or exclusive licensee, as the case may be, of the copyright, who accordingly may take proceedings for the recovery of the possession thereof or in respect of the conversion thereof.

19. Infringement actionable as breach of statutory duty

(1) An infringement of the rights conferred by sections 10 and 12 of this Act is actionable as a breach of statutory duty owed to the person entitled to the right.
(2) In proceedings for infringement of the rights conferred by the said sections 10 and 12 of this Act, the person whose rights have been infringed shall be entitled to an award of damages, injunction and any other remedies as the court may deem fit to award in the circumstances.

20. Criminal Liability

(1) (a) makes or causes to be made for sale, hire, or for the purposes of trade or business any infringing copy of a work in which copyright subsists; or

(b) imports or causes to be imported into Nigeria a copy of any work which if it had been made in Nigeria would be an infringing copy, or

(c) makes, causes to be made, or has in his possession, any plate, master tape, machine, equipment or contrivance for the purposes of making any infringing copy of any such work;

shall be guilty of an offence and liable on conviction to a fine of not less than N50,000.00 for every copy dealt with in contravention of this section or to imprisonment for a term of not less than 5 years, or to both such fine and imprisonment.

(2) Any person who–

(a) sells or lets for hire or for the purposes of trade or business, exposes or offers for sale or hires any infringing copy of any work in which copyright subsists; or

(b) distributes for the purposes of trade or business any infringing copy of any such work; or

(c) has in his possession other than for his private or domestic use, any infringing copy of any such work,

(d) has in his possession, sells, lets for hire or distribution for the purposes of trade or business or exposes or offers for sale or hire any copy of a work which if it had been made in Nigeria would be an infringing copy, shall be guilty of an offence and liable on conviction to a fine of not less than N100,000.00 for every copy dealt with in contravention of this section, or to imprisonment for a term of not less than 3 years or in the case of an individual to both such fine and imprisonment.

(3) A defendant shall not be guilty of an offence under subsections (1) and (2) above if he proves to the satisfaction of the court that he did not know and had no reason to believe that any such copy was an infringing copy of any such work, or that such plate, master tape, machine, equipment or contrivance was not for the purpose of making infringing copies of any such work.

(4) Any person who, without the consent of the owner, distributes, in public for commercial purposes, by way of rental, lease, hire, loan or similar arrangement, copies of a work in which copyright subsists shall be guilty of an offense under this Act, and shall be liable upon conviction to a fine of not less than N50,000.00 for every copy dealt with or to imprisonment for a term of not less than 3 years or to both such fine and imprisonment.

(5) The court before which any proceedings are taken for any offense under subsections (1), (2) and (3) of this section, whether the alleged offender is convicted or not, may order all copies of the works, plates, master tapes, machines, equipment and contrivances in the possession of the alleged offender, which appear, to be infringing copies, of the works, to be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may deem fit.

(6) Where an article has been seized by a law enforcement officer in connection with a suspected offence under this Act, a court may on the application of a Copyright Inspector or owner of the copyright in connection with which such offence is suspected to have been committed, order that the article be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit, notwithstanding that no person has been charged with the suspected offence.

(7) Any person who without the consent of the owner communicates to the public or makes a work available to the public by wire, wireless or online means in such a way that members of the public are able to access the work from a place and at a time individually chosen by them for commercial purpose, a work in which copyright subsists shall be guilty of an offence under this Act and liable on conviction to a fine of not less than N1,000,000.00 or to imprisonment for a term of not less than 5 years or to both such fine and imprisonment.

(8) Any person who upon demand refuses or omits to pay any royalty accruing by virtue of a right of remuneration under this Act, or as agreed by of not less than N2,000,000.00 or to imprisonment for a term of not less than 12 months or to both such fine and imprisonment. the parties or determined by the Commission, shall be guilty of an offence and liable upon conviction to a fine.

(9) Any person who aids or procures another person to commit an offence under this Act is guilty of an offence and shall be liable upon conviction to the same punishment as is prescribed under this Act for the commission of the main offence.

21. Offence by bodies corporate

(1) Where an offence under this Act has been committed by a body corporate, the body corporate and every person who at the time the offence was committed was in charge of, or was responsible to the body corporate for the conduct of the business of the body corporate shall be deemed to be guilty of such offence and liable to be proceeded against and punished accordingly:

Provided that, nothing contained in this subsection shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1) of this section, where an offence under this Act has been committed by a body corporate and it is proved that the offence was committed with the consent or connivance of any director, manager, secretary or other officer of the body corporate, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) For the purposes of this section—

"body corporate" includes a firm or other association of persons; and

"director" in relation to a firm includes a partner in the firm.

22. Penalties for Failure to Keep Records or Making False Entries

(1) Any person who –

(a). fails to keep the record required under this section 14; or

(b) makes or causes to be made a false entry in such record; or

(c) produces or tenders, or causes to be produced or tendered as evidence any such entry knowing the same to be false, shall be guilty of an offense under this section and be liable on conviction to a fine of not less than N1,000,000.00.

(2) A copyright owner or any other person having an interest in a work shall upon written demand, be furnished with information relating to that work as contained in the record required to be kept under this section.

23. Civil and Criminal actions may be simultaneous

Notwithstanding the provisions of any law to the contrary, it shall be permissible for both criminal and civil actions to be taken simultaneously in respect of the same infringement under this Act.

24. Order for inspection and seizure

(1) In any action for infringement of any right under this Act, where an ex parte application is made to the court supported by affidavit, that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any plate, film or contrivance used or intended to be used for making infringing copies or capable of being used for the purposes of making copies or any other article, book or document by means of or in relation to which any infringement under this Act has been committed, the court may issue an order upon such terms as it deems just, authorising the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer or a Copyright Inspector and—

(a) seize, detain and preserve any such infringing copy or contrivance; and

(b) inspect all or any documents in the custody or under the control of the defendant relating to the action.

(2) Any person who knowingly gives false information under this section of this Act, is guilty of an offence and liable on conviction to a fine of N1,000,000.

PART II

Online and other Anti-Piracy Measures

Anti-piracy devices

25(1) The Commission shall have powers, with the consent of the Minister, to prescribe any design, label, mark, impression or any other anti-piracy device for use on, in, or in connection with any work in which copyright subsists.

(2) Any person who-

(a) sells, rents, hires or

(b) offers for sale, rent or hire,

any work in contravention of the prescription made pursuant to subsection (1) of this section commits an offence and is liable on conviction to a fine of not less than N500,000.00 or to imprisonment for a term of not less than 3 years or to both such fine and imprisonment.

(3) Any person who without the permission of the Commission-

(a) imports into Nigeria; or

(b) has in his possession, any machine, instrument or other contrivance intended for use in the production of the anti- piracy device, commits an offence and is liable on conviction to a fine of not less thanN1,000,000.00 or to imprisonment for a term of not less than 5 years, or to both such fine and imprisonment.

(4) Any person who without the permission of the Commission-

(a) is in possession of; or

(b) reproduces, or

(c) counterfeits,

any anti-piracy device prescribed under this section commits an offence and is liable on conviction to a fine of not less thanN200,000.00 or to imprisonment for a term of not less than2 years, or to both such fine and imprisonment.

(5) The Commission shall have power, with the consent of the Minister, to make regulations specifying the conditions necessary to give effect to the purpose of this section.

Circumvention of technological protection measures

26 (1) Subject to the provisions of Part II of this Act, no person shall knowingly circumvent a technological protection measure that effectively protects a work under this Act.
(2) No person shall manufacture, import, sell, offer to the public, provide, or otherwise traffic in any technology, product, service, device, or part thereof, that-

(a) is primarily designed or produced for the purpose of circumventing protection afforded by a technological measure that effectively protects a work under this Act; or

(b) has only limited commercially significant purpose or use other than to circumvent protection afforded by a technological measure that effectively protects a work under this Act.

(3) As used in this section-

(a) "Circumvent a technological protection measure" means avoiding, bypassing, removing, deactivating, decrypting or otherwise impairing a technological measure.

(b) a technological measure effectively protects a work under this Act if the measure, in the ordinary course of its operation, prevents or restrict acts in respect of the works, which are not authorized by the authors concerned or permitted by law.

Provided that this section does not extend to measures which in the normal cause of operation, only controls access to a work for non-infringing purposes

(4) A non-profit library, archive, or educational institution which gains access to a commercially exploited copyright work solely in order to make a good faith determination of whether to acquire a copy of that work for the sole purpose of engaging in conduct permitted under this Act shall not be in violation of the provisions of this section:

Provided however that a copy of a work to which access has been gained under this subsection;

(a) may not be retained longer than necessary to make such good faith determination; and

(b) may not be used for any other purpose.

(5) The exemption under subsection (4) of this section shall only apply with respect to a work when an identical copy of that work is not reasonably available in another form.

(6) A non-profit library, archives, or educational institution that willfully for the purpose of commercial advantage or financial gain violates the provision of this section shall forfeit the exemption provided for under subsection (4) of this section.

(7) This section does not prohibit any lawfully authorized investigative, protective, information security, intelligence activity, or computer security measures.

(8) The provision of this section shall not affect the exercise of any exception provided in this Act as it relates to the work in respect of which the technological protection measure is applied.

(9) Notwithstanding the provisions of this section, a person who has lawfully obtained the right to use a copy of a computer program may circumvent a technological measure that effectively controls access to a particular portion of that program for the sole purpose of identifying and analysing those elements of the program that are necessary to achieve interoperability of an independently created computer program with other programs, and that have not previously been readily available to the person engaging in the circumvention, to the extent that any such acts of identification and analysis do not constitute infringement under this Act.

(10) For purposes of this subsection, the term "interoperability" means the ability of computer programs to exchange information and of such programs mutually to use the information, which has been exchanged.

Falsification, alteration or removal of rights management information

27(1) No person shall knowingly and with intent to induce, enable, facilitate, or conceal infringement provide rights management information that is false.

(2) No person shall, without the authority of the copyright owner,

(a) Knowingly remove or alter any rights management information,

(b) sell, offer for sale, distribute, import for distribution, broadcast or communicate to the public, works or copies of works knowing that rights management information has been removed or altered without authority, knowing, or having reasonable grounds to

know, that it will induce, enable, facilitate, or conceal an infringement of any right under this Act.

(3) As used in this section, "rights management information" means information which identifies a work or other subject matter, the author of the work, the owner of any right in the work, or information about the terms and conditions of use of the work, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a work or appears in connection with the communication of a work to the public.

Actions for circumvention of technological protection measures and rights management information

28 (1) Any person whose right is affected by acts under this Act may bring an action for such acts and the Court before which such action is brought may grant all such reliefs by way of damages, injunction, accounts or otherwise as shall be available to a Plaintiff in any corresponding proceedings in respect of infringement of other proprietary rights.

(2) A court before which an action is brought under this section, may order that any device or product that is in the custody or control of the alleged violator, which the court has reasonable cause to believe was involved in the violation, to be impounded on such terms as it deems necessary

(3) Any person who, in the course of business, makes or imports into Nigeria a technology or device for the circumvention of a technological protection measure, knowing that it is likely to be so used is guilty of an offence and liable on conviction to a fine of not less thanN1,000,000.00 or to imprisonment for a term of not less than 5 years or to both such fine and imprisonment.

(4) Any person who, in the course of business, sells, distributes, lets for hire, offers or exposes for sale or hire, a technology or device for the circumvention of a technological protection measure, knowing that it is likely to be so used is guilty of an offence and liable on conviction to a fine of not less than N500,000. 00 or to imprisonment for a term of not less than 3 years or to both such fine and imprisonment.

(5) Any person who, in the course of business, provides a service to another knowing that the service is to enable or assist that other person to circumvent a technological protection measure is guilty of an offence and liable on conviction to a fine of not less thanN200, 000.00 or to imprisonment for a term of not less than 2 years or to both such fine and imprisonment.

Notice to Take Down

29 (1) The owner of copyright in a work, in respect of which copyright has been infringed, may issue notice of such infringement to the relevant service provider requesting the service provider to take down or disable access to any infringing content or link to such content, hosted on its systems or networks.

(2) To be effective under this section, a notification of an alleged infringement must be made in writing to the service provider or his designated agent and shall include the following–

(a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

(b) identification of each work claimed to have been infringed;
(c) identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material

(d) information reasonably sufficient to permit the service provider to contact the complaining party, such as an electronic mail address, telephone number, or a location address at which the complaining party may be contacted;

(e) a declaration on oath that the complaining party has good faith belief that use of the material in the manner complained of is not authorized by the owner of copyright or his agent, or the law; and

(f) a statement that the information in the notification is accurate, and that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Take down of infringing content

30 (1) A service provider, upon receiving notice of infringement under Section 29 shall promptly notify the subscriber responsible for the content for which the notice relates informing him of the content of the notice;

(2) If within 48 hours of the receipt of the notice of the takedown the subscriber fails to provide
any information justifying the continued keeping of the content complained about, the service provider shall take down or disable access to the infringing content or links to

such content hosted on its systems or networks, and thereafter, notify the owner of copyright accordingly.

(3) Where a subscriber has provided information justifying the keeping of the content complained about, or the service provider is otherwise convinced that the complaint of the owner of copyright is without merit, he shall promptly inform the owner of copyright of his decision not to take down the content.

(4) The service provider may resume access to or restore removed content or a link, if he receives a written counter notice from the subscriber which he has forwarded to the owner of copyright immediately upon receipt; and he did not receive, within 10 days after forwarding the counter notice, a notice from the owner of copyright, indicating that no authorization has been granted for the subscriber to make the content available.

(5) A service provider shall take all reasonable steps to prevent any content taken down or removed pursuant to the provisions of this Act from being reloaded onto its system or network and upon becoming aware of such content being uploaded, to promptly remove or disable access to the content without further notice to the subscriber.

(6) Any person dissatisfied with a determination or action by the service provider or owner of copyright under this section may refer the matter to the Commission for determination.

(7) A service provider shall not be liable to any person for any action taken under this section in good faith.

(8) A service provider who fails to comply with the provisions of subsection (1) and (2) of this section, shall be liable for such failure as a breach of statutory duty; and for infringement of the content which is subject matter of the notice under *section 29* to the same extent as the person responsible for placing of such content on the system or network.

(9) Without prejudice to subsection (8) of this section, a service provider, who upon receipt of a notice to take down infringing contents under *section 29* of this Act, and fails to comply with the provisions of subsection (1) and (2) of this section, commits an offence, and shall be liable on conviction to a fine of not less than N2,000,000 or to imprisonment for a term of not less than 2 years, or to both such fine and imprisonment.

Procedure for suspension of accounts of repeat infringers

31. (1) A service provider, upon receiving a notification from an owner of copyright or his authorized agent that a particular account has been engaged in repeated infringement, shall:

(a) promptly send a warning to the subscriber who has been identified, informing that subscriber that another notification will lead to suspension of the account and requiring the subscriber to confirm receipt of the warning; and

(b) after a second notification relating to the same account, if no challenge is pending pursuant to subsection (2) below, promptly suspend the account for a period of at least one month.

(2) A subscriber receiving a warning may challenge the notice on grounds of mistake or misidentification as follows:

(a) Within 10 days from the date of the warning, send a signed counter-notice to the service provider, furnishing his full contact details and the factual basis of his belief that his account has been misidentified or that the use of the content was not infringing.

(b) If the basis for the challenge under the foregoing subsection cannot be resolved within 10 days of the receipt of the counter-notice, the matter shall be referred to the Commission to determine the validity of the challenge.

(3) A service provider acting in good faith in suspending the account of a subscriber, relying on the information contained in a notification referred to in the foregoing subsection shall not be liable to any person for any claim based solely on that suspension.

Misrepresentations

32. Any person who knowingly materially misrepresents under this Part –
(a) that material or activity is infringing; or

(b) that material or activity was removed or disabled by mistake or misidentification; shall be liable for any damages, incurred by the alleged infringer, by any owner of copyright or other subject matter or his authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.

Information residing on systems or networks at direction of users

33. Except as otherwise provided in this Act, a service provider shall not be liable for monetary relief, for infringement of copyright or other subject matter by reason of the storage at the direction of a user of material that resides on a system or network controlled or operated by or for the service provider, if the service provider–

(a) does not have actual knowledge that the material or an activity using the material on the system or network is infringing; or in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(b) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(c) upon notification of claimed infringement as described in section 51, responds expeditiously to remove, or disable access to the material that is claimed to be infringing or to be the subject of infringing activity.

(d) complies with the procedure for suspension of accounts of repeat infringers as provided in this Act.

Information location tools

34. Except as otherwise provided in this Act, a service provider shall not be liable for monetary relief, for infringement of copyright or neighbouring rights by reason of the provider referring or linking users to an online location containing infringing material or infringing activity, by using information location tools, including a directory, index, reference, pointer, or hypertext link, if the service provider–

(a) does not have actual knowledge that the material or activity is infringing; or in the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;

(b) does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and

(c) upon notification of claimed infringement as described in section 29, responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.

Identification of infringer

35 (1) An owner of copyright or other subject matter under this Act, or his agent may apply to the court to issue an order to a service provider for identification of an alleged infringer in accordance with this section.

(2) The application may be accompanied by-

(a) a copy of a notification described in *section 29;*

(b) a sworn declaration to the effect that the purpose for which the order is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this Act.

(3) The court may issue an order to the service provider to expeditiously disclose to the owner of copyright or other subject matter under this Act, or person authorized by the owner, information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(4) The procedure for issuance and delivery of the order, and the remedies for noncompliance with the order, shall be governed by applicable rules of civil procedure.

Blocking access to online content

36.Notwithstanding the provisions of any other law, the Commission may, directly or with the assistance of any other person block or disable access to any content, link or website hosted on a system or network, which it reasonably believes to infringe copyright under this Act.

Application of this Part

37 (1) The limitations to liability under this Part shall apply only to;

(a) the neutral, automatic and passive activities of a service provider; and

(b) service providers who do not take an active role, intervene or participate in the making available of content.

(2) The provisions of this Part of the Act shall be without prejudice to the powers of the court or any administrative authority to require or direct the service provider to terminate or prevent an infringement.

PART III

Neighbouring Rights (Performer's Rights and Folklore)

Performer's Right

38 (1) A performer shall have the exclusive right to control, in relation to his performance, the following acts, that is –

(a) fixation of his unfixed performance;

(b) reproduction of a fixation of his performance, in any manner or form –
(i) if the original fixation, other than a fixation excluded by section 12 from the necessity for obtaining the consent of the performer, was itself made without his consent; or

(ii) if the reproduction is made for purposes other than those in respect of which such performer gave his consent to the making of the original fixation or of a reproduction thereof; or

(iii) if the original fixation was made in accordance with the provisions of *section 12*, and the reproduction is made for purposes not covered by those provisions.
(c) distribution to the public by sale or other transfer of ownership, of a fixation of his performance, or copies thereof, that have not already been subject to a distribution authorised by the performer;

(d) broadcast or communicate to the public a performance of such performer, unless the performance used in the broadcast or the public communication is itself already a broadcast performance or is made from a fixation of the performance or from a reproduction of such a fixation; or

(e) rental to the public or public lending of a fixation or copies of the fixation of his performance irrespective of the ownership of the copy rented or lent;

(f) making available to the public of his fixed performance, by wire, wireless or online means, in such a way that members of the public may access them from a place or at a time individually chosen by them;

(2) In this Part, "performance" includes –

(a) a dramatic performance (which includes dance and mime);

(b) a musical performance; and

(c) a reading or recitation of literary act or any similar presentation which is or so far as it is, a live performance given by one or more individuals.

(3) In this part, "performer" includes actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore irrespective of whether the work was fixed or only fixed during performance.

Protected performances

39. The rights granted to a performer under this Act shall apply in respect of-

(a) any performance that takes place, or is broadcast without fixation or is first fixed in Nigeria;

(b) any performance that takes place, or is broadcast without fixation or is first fixed in a country which by its law grants in its territory similar rights to performers in respect of performances in Nigeria.

Presumption of consent

40 In the absence of an agreement to the contrary, a performer's consent to the broadcasting of his performance shall be deemed to include his consent to the rebroadcasting of his performance, the fixation of his performance for broadcasting purposes, and the reproduction for broadcasting purposes of such fixation.

Moral rights of performers

41 (1)A performer shall have the right-
(a) to be identified as the performer in connection with any use of his performance or the fixation thereof; and

(b) to object to, and prevent any distortion, mutilation or other modification of his performance or the fixation thereof, and any other derogatory action in relation thereto where such action would be or is prejudicial to his honour or reputation.

(2) The rights referred to in subsection (1) of this section shall not be transmissible during the life of the performer, but upon his death, shall be transmissible by testamentary disposition or by operation of law.

(3) The rights conferred by this section shall subsist for the duration of the performer's right

Collective performances

42. Where several performers as a group take part in the same performance, it shall suffice if the consent required under is given by any person in charge of the group and any payment for the use of the performance may, unless otherwise stipulated, be made to such person.

Exceptions to performer's rights

43 (1) If a performer consents to the incorporation of his performance in a visual or audio-visual fixation, *section 62* shall cease to apply in respect of the performance so fixed.

(2) A performance, a fixation of a performance or a reproduction of such a fixation may be used without the consent required

(a) if it is for the purpose of judicial, legislative or administrative proceedings; or

(b) if it is for the demonstration of recording, amplifying or similar apparatus, provided that the demonstration is made by a licensed dealer on his premises to a specific client.

(c) reproduction of short extracts from an object of performer's rights in reports on current events, to the extent justified by that purpose;

(d) use for the purpose of research or private study of an object of performer's rights kept in publicly accessible libraries, educational establishments, museums or archives, on the premises of the said institutions;

(e) making of an ephemeral recording of an object of performer's rights by broadcasting organizations by means of their own facilities and for their own broadcasts. Such recordings may be preserved for a period not exceeding thirty days and must be erased after their use for broadcasting. The recordings of an exceptional documentary character may be transferred to designated archives for preservation;

(f) reproduction for the benefit of people with a disability, which is directly related to the disability and of a non-commercial nature, to the extent required by the disability;

(g) use for the sole purpose of illustration for teaching or scientific research, criticism or review, as long as the source, including the author's name, is indicated, unless this

turns out to be impossible and to the extent justified by the non-commercial purpose to be achieved;

(h) incidental inclusion of an object of performer's rights in other material;

(4) Except as specifically provided for under this section, the exceptions from copyright protection provided in Schedule II of this Act, shall apply mutatis mutandis in respect of performances.

Transfer of performer's rights

44 (1) The provisions of *section 11* of this Act shall apply mutatis mutandis to performer's rights.

(2) A performer who has authorized the fixation of his performance shall, in the absence of any agreement to the contrary, be deemed to have granted to the person by whom the arrangements for such fixation is made, the exclusive right to receive remuneration in respect of any broadcast, transmission or communication to the public of such fixed performance: provided that the performer is entitled to share in any payment received by the person who arranges for the fixation, or his successor in title.

(3) In the absence of any agreement between the performer and the person by whom arrangement for the fixation is made, on or relating to how the remuneration referred to in subsection (1) may be shared, either of the parties may refer the matter to the Commission to determine the proportion of remuneration due to each party.

Terms of performer's right

45. The right conferred by section 40 of this Act shall subsist in relation to the performance until the end of the period of fifty years from the end of the year in which the performance first took place.

Infringement of performer's right

46. Performer's right is infringed by a person who, without the performer's consent or authorisation, does any of the following, that is-

(a) makes a recording of the whole or substantial part of a live performance;

(b) communicates to the public, broadcasts live, or includes live in a cable programme, the whole or a substantial part of the live performance;

(c) performs in public the whole or a substantial part of the performance;

(d) shows or plays in public the whole or a substantial part of the performance for commercial purposes;

(e) broadcasts, or includes in a cable programme, a substantial part of the performance by means of recording which is, and which that person knows or has reason to believe was made without the performer's consent;

(f) imports into the country otherwise than for his private or domestic use, a recording of a performer's work which is an infringing recording; or

(g) in the course of trade or business, sells or lets for hire, offers, distributes or displays for sale or hire a recording of a performer's work which is an infringing recording.

Action for Infringement of performer's right

47 (1) An infringement of a right protected shall be actionable by the person entitled to the right as a breach of statutory duty and the performer shall be entitled to damages, injunction, account of profits or conversion.

(2) Where a person has in his possession, custody or control, in the course of trade or business or otherwise than for a private or domestic use, an unauthorized recording of a performance, a person having the performer's right or recording rights in relation to the performance under this section shall be entitled to an order of the court that the recording be forfeited and delivered up to him.

Criminal liability in respect of infringement of performer's right

48 (1) A person who does any of the acts set out in section 38 shall, unless he proves to the satisfaction of the court that he did not know that his conduct was an infringement of the performer's right, be guilty of an offence and liable on conviction–

(a) in the case of an individual, to a fine of not less than N1,000,00.00 or to imprisonment for a term of not less than 12 months or to both such fine and imprisonment; and

(b) in the case of a body corporate, to a fine of not less than N5,000,000.00

(2) A court before which an offence under this section is tried may order that the recording or any other part thereof be delivered to the performer.

49. Protection of expressions of folklore

(1) Expressions of folklore are protected against—

(a) reproduction;

(b) communication to the public by performance, broadcasting, distribution by cable or other means;

(c) adaptations, translations and other transformations,
when such expressions are made either for commercial purposes or outside their traditional or customary context.

(2) The right conferred in subsection (1) of this section shall not include the right to control—

(a) the doing of any of the acts by way of fair dealing for private and domestic use, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its source;

(b) the utilisation for purposes of education;

(c) utilisation by way of illustration in an original work of an author:

Provided that, the extent of such utilisation is compatible with fair practice;

(d) the borrowing of expressions of folklore for creating an original work of an author:

Provided that, the extent of such utilisation is compatible with fair practice;

(e) the incidental utilisation of expressions of folklore.

(3) In all printed publications and in connection with any communications to the public, of any identifiable expression of folklore, its source shall be indicated in an appropriable manner, and in conformity with fair practice, by mentioning the community or place from where the expression utilised has been derived.

(4) The right to authorise acts referred to in subsection (1) of this section shall vest in the Nigerian Copyright Commission.

(5) For the purpose of this section, "folklore" means a group-oriented and tradition-based creation of groups or individuals reflecting the expectation of the community as an

(b) in the case of a body corporate, to a fine of N500,000.

(3) A court before which an offence under this section is tried may order that the infringing or offending article be delivered to the Commission.

PART IV
Administration of Copyright

52. Establishment of the Nigerian Copyright Commission

(1) There is hereby established a body to be known as the Nigerian Copyright Commission (in this Act referred to as "the Commission").

(2) The Commission shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(3) The Commission shall—

(a) be responsible for all matters affecting copyright in Nigeria as provided for in this Act;

(b) monitor and supervise Nigeria's position in relation to international conventions and advise Government thereon;

(c) advise and regulate conditions for the conclusion of bilateral and multilateral agreements between Nigeria and any other country;

(d) enlighten and inform the public on matters relating to copyright;

(e) maintain an effective data bank on authors and their works;

(f) be responsible for such other matters as relate to copyright in Nigeria as the Minister may, from time to time, direct.

53. Establishment, Membership and Functions of the Governing Board

(1) The Commission shall have a Governing Board (in this Act referred to as "the Board") which shall consist of the following members—

(a) a Chairman to be a person knowledgeable in copyright matters, to be appointed by the President on the recommendation of the Minister;

(4) Without prejudice to the generality of subsection (1) of this section, the Commission shall have power—

(a) to appoint such other staff as it may determine;

(b) to pay its staff such remuneration and allowances as it may, from time to time, determine;

(c) as regards any staff in whose case it decides so to do, to pay to or in respect of such staff such pensions and gratuities as are payable to persons of equivalent grade in the public service of the Federation.

(5) It is hereby declared that service in the Commission shall be approved service for the purposes of the Pensions Act, and accordingly, officers and other persons employed in the Council shall be entitled to pensions, gratuities and other retirement benefits as are prescribed thereunder, so however that nothing in this section shall prevent the appointment of a person to any office on terms which preclude the grant of a pension and gratuity or any other retirement benefit in respect of that office.

(6) For the purpose of the application of the provisions of the Pensions Act, any powers exercisable thereunder by a Minister or other authority are hereby vested in and exercisable by the Commission.

Establishment of dispute resolution panel

55. (1) The Commission may constitute a dispute resolution panel (hereinafter referred to as "the Panel") to resolve any dispute in respect of payment of royalties or terms of a licence; or determine any matter in respect of which a determination by the Commission is required under this Act.

(2) The Panel shall comprise of three persons knowledgeable in copyright matters, one of whom shall be designated as chairman.

(3) A person shall not be appointed as a member of the Panel if he has any interest in any matter which is required to be determined by the Panel.

(4) Where proceedings before the Panel has been commenced and a member of the Panel is unable to continue, the Panel shall remain duly constituted for the purpose of those proceedings so long as two members remain.

(5) The Commission shall make regulations providing for the procedure of the Panel.

(6) Any person dissatisfied with a decision of the Panel may apply to the court for a review of the decision.

56. Copyright Inspectors

(1) The Commission may appoint copyright inspectors as it may deem fit.

(2) A copyright inspector shall for the purposes of this Act have the power–

(a) to enter, inspect and examine at any reasonable time any building or premises which he reasonably suspects is being used for any activity which is an infringement of copyright under this Act;

(b) to arrest any person who he reasonably believes to have committed an offence under this Act;

(c) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Act are complied with;

(d) to require the production of the record required to be kept under this Act and to inspect, examine or copy it;

(e) to demand information and access any database relating to copyright;

(f) to require any person who, he finds in such building or premises to give such information as it is in his power to give in relation to any purposes specified in this Act and seize, confiscate, take into custody any infringing copy, contrivance, material, equipment used in committing an offence under this Act.;

(g) seal up premises and carry out such examination, test or analysis within or outside the premises as is required to give effect to any provision of this act and to take instant photographs where such examination, test, analysis or photograph is carried out within the premises and such examination, test, analysis or photograph shall be required to be endorsed by the occupier of the premises or his agent but a refusal by an occupier to endorse any document containing the result of an examination, test, analysis or photograph shall not invalidate the result or finding of the examination, test, analysis or photograph; and

(h) to exercise such other powers as the Commission may delegate to it to give effect to the provisions of this Act;

(3) A copyright inspector may prosecute, conduct or defend before a court any charge, information, complaint or other proceedings arising under this Act.

(4) Any person who obstructs a copyright inspector in the performance of his duties shall be guilty of an offence and liable on conviction to a fine of not less thanN100,000.00 or to imprisonment for a term of not less than 12 months or to both such fine and imprisonment.

(5) A Copyright Inspector shall have all the powers, rights and privileges of a police officer as defined under the Police Act and under any other relevant enactment pertaining to the investigation, prosecution or defence of a civil or criminal matter under this Act.

Database of works

57 (1) The Commission shall establish and maintain a Register of works as a database, Provided Always that a work shall not be ineligible for copyright protection by virtue of the fact that it is not registered by the Commission.

(2) Without prejudice to the sections conferring copyright under this Act, all works eligible for copyright protection may be registered in the Register upon an application made in the prescribed form by or on behalf of the author, owner, assignee or exclusive licensee of the work provided that the registration of work does not confer copyright.

(3) The Register shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entries therein or extract there from certified by the Commission shall be admissible in evidence in all proceedings without further proof or production of the original.

(4) The Commission shall have power to reproduce and store all or any part of the registered works in an electronic or any other format.

(5) The Commission may, with the approval of the Minister, make regulations for the purpose of this section.

(6) Any person who makes or causes to be made a false entry in the Register shall be guilty of an offence under this section and be liable on conviction to a fine of not less thanN200,000. 00 or to imprisonment for a term of not less than 2 years or to both such fine and imprisonment.

Collective management organizations

58(1) A collective management organization (in this section referred to as "a CMO") may be formed in respect of any one or more rights of copyright owners for the benefit of such

owners, and the CMO may apply to the Commission for approval to operate as a collective management organization for the purpose of this Act.

(2) The Commission may approve a CMO if it is satisfied that –

(a) it is incorporated as a company limited by guarantee;

(b) its objects are to carry out the general duty of negotiating and granting copyright licenses and collecting royalties on behalf of copyright owners and distributing same to them;

(c) it represents a substantial number of owners of copyright in any category of works protected by this Act;

(d) it complies with the terms and conditions prescribed by regulations made by the Commission under this section.

(3) The Commission shall not approve another CMO in respect of any class of copyright owners if it is satisfied that an existing approved CMO adequately protects the interests of that class of copyright owners.

(4) It shall be unlawful for any group of persons, howsoever described, to purport to perform the duties of a CMO without the approval of the Commission as required under this section.

(5) Any person who contravenes the provisions of subsection (4) of this section shall be guilty of an offence and liable on conviction to a fine of not less than N1,000,000.00 or to imprisonment for a term of not less than3 years or to both such fine and imprisonment.

(6) Where the contravention is by a body corporate, it shall be guilty of an offence and liable on conviction to a fine of not less thanN5,000,000.00

(7) The Commission shall have power to make regulations specifying the conditions necessary to give effect to the purposes of this section of this Act.

(8) For the purposes of this section –

"collective management organization" means an organisation representing copyright owners, which has as its principal objectives the negotiating and granting of licenses, collecting and distributing of royalties in respect of copyright works;

"group of persons" includes "a body corporate".

"owners of copyright" includes owners of performer's rights;

(9) The Commission may, where it finds it expedient, assist in establishing a collective management organization for any class of copyright owners.

(10) Notwithstanding the provisions of this Act or any other law, a CMO may issue licences permitting the use of works of owners of copyright who are not members of the CMO:
Provided that:
(a) such works are of the same category as works for which it is approved to issue licences;

(b) the owner of copyright in such works are not otherwise represented by any other CMO;

(c) the owner of copyright in such works have not by written notice to the CMO, opted out of collective management of their rights; and

(d) the CMO does not discriminate against such owner in terms of the tariffs for the use of their works and the royalties paid to such owner.

Compensation for private copying

59 (1) There shall be paid compensation on every material capable of being used to reproduce a work;

(2) The compensation payable under this section and any exemptions therefrom shall be as may be prescribed by the Minister by Order published in the Gazette, and different rates of compensation may be prescribed for different categories of materials.

(3) The compensation payable under this section shall, subject to deductions, be disbursed to approved Collective Management Organisations in accordance with the regulation made by the Commission.

(4) In this section, "material" includes any object, equipment, machine, contrivances or any other device used or capable of being used to reproduce a work.

PART V
Miscellaneous

60. Levy on copyright material

(1) There shall be paid a levy on any material used or capable of being used to infringe copyright in a work.

(2) The levy payable under subsection (1) of this section shall be as may be determined by the Minister, from time to time, by order published in the Gazette and different levies may be imposed on different categories of material.

(3) The levy shall be paid into the Fund of the Commission and the Commission shall have power to disburse the funds amongst approved societies in accordance with the regulations made by the Commission.

(4) The Minister shall have power to exempt any class of materials from the repayment of any levy.

(5) In this section, "material" includes any object, equipment, machine, contrivances or any other device used or capable of being used to infringe copyright in a work.

61. Reciprocal extension of protection

Where any country is a party to a treaty or other international agreement to which Nigeria is also a party and the Minister is satisfied that the country in question provides for protection of copyright in works which are protected under this Act, the Minister may by order in the Federal Gazette extend the application of this Act in respect of any or all of the works referred to in subsection (1) of section 1 of this Act to—

(a) individuals who are citizens of or domiciled in that country;

(b) bodies corporate established by or under the law of that country;

(c) works, other than sound recordings and broadcasts, first published in that country; and

(d) broadcast and sound recordings made in that country.

62. Admission of affidavit evidence

(1) An affidavit made before a Commissioner for Oaths, Notary Public or other person competent to administer an oath in terms of the law of the country where the oath is made which—

(a) purports to have been made by or on behalf of the owner of the copyright in a work; and

(b) states that—

(i) at the time specified therein, copyright subsists in the work;

(ii) the person named therein is the owner of the copyright in the work;

(iii) a copy of the work exhibited to the affidavit is a true copy of the work;

(iv) the author of the work is a citizen of or domiciled in a country named in the affidavit;

(v) the author of the work is a body corporate established;

(vi) incorporated by or under the laws of the country named in the affidavit;

(vii) the work was first made or published in the country named in the affidavit; or

(viii) the certificate attached to the affidavit is a true copy of the certificate or registration of that incorporation, shall be admitted as evidence of the facts stated therein without further proof in any proceedings under this Act.

(2) The court before which an affidavit is produced under subsection (1) of this section shall presume, until the contrary is proved, that the statements made therein are true.

63. Presumptions

In any action for an infringement of copyright in a work, the following shall be presumed, in the absence of any evidence to the contrary—

(a) that copyright subsists in a work which is the subject matter of an alleged infringement;

(b) that the plaintiff is the owner of copyright in the work;

(c) that the name appearing on a work purporting to be the name of the author, is the name of such author;

(d) that the name appearing on a work purporting to be that of the publisher or producer of a work is the name of such publisher or producer;

(e) where the author is dead, that the work is an original work;

(f) that it was published or produced at the place and on the date appearing on the work.

64. Restriction on importation of infringing copies

(1) The owner of the copyright in any published literary, artistic or musical work, sound recording, or audiovisual work may give notice in writing to the Nigerian Customs Service—

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

(b) that he requests the Nigerian Customs Service during the period specified in the notice, to treat as prohibited goods, copies of the work to which this section applies:

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

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

(3) Where a notice has been given under this section in respect of a work and has not been withdrawn, the importation into Nigeria, at a time before the end of the period specified in the notice, of any copy of the work to which this section applies shall, subject to the following provisions of this section, be prohibited:

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

(4) Where a notice is given under subsection (1) of this section in respect of any work, neither the Nigerian Customs Service nor any member, officer, servant or agent of the Nigerian Customs Service shall be liable to the owner of the work or to any other person for any act or omission by the Nigerian Customs Service or its servants or agents in relation to the notice:

Provided that, where the owner has suffered loss as a result of any such act or omission and a fee has been paid or is payable to the Nigerian Customs Service in respect of the notice, an amount equal to the loss or to the amount of the fee for one year, whichever is less, shall be repaid by the Nigerian Customs Service to the owner or, if the fee has not been paid, shall be waived.

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

(6) Without prejudice to the generality of subsection (5) of this section, regulations made under that subsection may include provision for requiring a person who has given a notice purporting to be a notice under this section to pay such fees in respect of the notice as may be prescribed by the regulations.

(7) For the purposes of the Customs and Excise Management Act, any fees paid in pursuance of any regulations made under this section shall be treated as money collected on account of the Nigerian Customs Service.

[Cap. C45.]

(8) Notwithstanding anything in the Customs and Excise Management Act, a person shall not be liable to any penalty under that Act (other than forfeiture of the goods) by reason that any goods are treated as prohibited goods by virtue of this section.

[Cap. C45.]

(9) This section shall have effect as if it formed part of the Customs and Excise Management Act.

65. Regulations

(1) Where no other provision is made in that behalf, the Minister may make regulations prescribing anything required to be prescribed for the purposes of this Act.

(2) Regulations may be made—

(a) in the case of works, the copyright in which is vested in the Government, by the Minister with the prior consent of the President; and

(b) in the case of works, the copyright in which is vested in a State authority, by the State authority or a person designated by the State authority, prescribing the public officer or other authority by whom licences may be granted for the reproduction of the works in question and a scale of fees to be charged in respect of any such licence.

(3) Regulations made under subsection (2) of this section shall be additional to and not in derogation of any enactment or other law regulating the custody of the National Archives of Nigeria or the public records of a State.

(4) The Commission shall, with the consent of the Minister, have power to make regulations specifying the conditions necessary for the operation of a business involving the production, public exhibition, hiring or rental of any work in which copyright subsists under this Act.

66. Jurisdiction

The Federal High Court shall have exclusive jurisdiction for the trial of offences or disputes under this Act.

67. Limitation on suit against the Commission, etc.

(1) Notwithstanding anything in any other enactment, no suit against the Commission, a member or any staff of the Commission, for an act done—

(a) in pursuance or execution of his duties under this Act or any other enactment or law; or

(b) in respect of any alleged neglect or default in the execution of this Act or any other enactment, shall lie or be instituted in any court unless, the suit is commenced within twelve months next after the act, neglect or default complained of or where the damage or injury continues within twelve months next after the damage or injury cases.

(2) No suit shall be commenced against the Commission or any member of staff of the Commission before the expiration of a period of three months after written notice of intention to commence the suit is served upon the Commission by the intending plaintiff or his agent.

(3) The notice referred to in subsection (2) of this section shall clearly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims.

68. Service of documents

A notice, summons, or other document required or authorised to be served upon the Commission under the provisions of this Act or any other enactment or law, may be

served by delivering the same to the Director-General of the Commission or by sending it by registered post addressed to the Director-General at the office of the Commission.

69. Restriction on execution against the property of the Commission

(1) In any action or suit against the Commission, no execution or attachment or process in the nature thereof shall be issued against the Commission.

(2) Any sum of money which is by judgment of a court awarded against the Commission shall, subject to any direction given by the court where notice of appeal has been given by the Commission in respect of the judgment, be paid by the Commission from its general fund.

70. Power of the Minister to give directives

The Minister may give to the Commission directives of a general or special character with respect to any of the functions of the Commission under this Act and it shall be the duty of the Commission to comply with such directives.

71. Interpretation

(1) In this Act, unless the context otherwise requires—

"adaptation" means the modification of pre-existing work from one genre of work to another and consists in altering work within the same genre to make it suitable for different conditions of exploitation, and may also involve altering the composition of the work;

"artistic work" includes, irrespective of artistic quality, any of the following works or works similar thereto—

(a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;

(b) maps, plans and diagrams;

(c) works of sculpture;

(d) photographs not comprised in a audiovisual works;

(e) works of architecture in the form of buildings models; and

(f) works of artistic craftsmanship and also (subject to subsection (3) of section 1 of this Act) pictorial woven tissues and articles of applied handicraft and industrial art;

"audiovisual works" includes:

(a) the first fixation of a sequence of visual images capable of being shown as a moving picture and of being the subject of reproduction, and includes the recording of a sound track associated with the audiovisual works and

(b) the aggregate of a series of related visual images with or without sound, which is capable of being shown as a moving picture by means of a mechanical, electronic or other device and irrespective of the nature of the material on which the visual images and sounds are carried and includes the sound track, but does not include a broadcast;

"author" in the case of audiovisual works, means the person by whom the arrangements for the making of the film were made, unless the parties to the making of the film provide otherwise by contract between themselves;

"author" in the case of literary, artistic or musical works, means the creator of the work;

"author" in the case of a photographic work, means the person who took the photograph;

"author" in the case of a broadcast transmitted from within any country, means the person by whom the arrangements for the making or the transmission from within that country were undertaken;

"author" in the case of a sound recording, means the person by whom the arrangements for the making of the sound recording were made, except that in the case of a sound recording of a musical work, "author" means the artist in whose name the recording was made, unless in either case the parties to the making of the sound recording, provide otherwise by contract;

"broadcast" means sound or television broadcast by wireless telegraph or wire or both, or by satellite or cable programmes and includes re-broadcast;

"broadcasting authority" means any legal person established under any law in Nigeria or elsewhere providing broadcasting services for public reception;

"building" includes any structure;

"cable programmes" means visual images, sounds or other information sent by means of a telecommunication system otherwise than by wireless telegraph for reception—

(a) at two or more places (whether for simultaneous reception or at different times) in response to request by different users; or

(b) for presentation to members of the public;

"choreographic work" means a composition of movements for dancing or any other patterned succession of gestures mostly created to accompanying music;

"communication to the public" includes, in addition to any live performance or delivery, any mode of visual or acoustic presentation, but does not include a broadcast or re-broadcast;

"computer programme" means a set of statements or instructions to be used directly or indirectly in a computer in order to bring about a certain result;

"copy" means a reproduction in any form including a transient or digital copy;

"copyright" means copyright under this Act;

"court" means the Federal High Court;

"exclusive licence" means a licence signed by or on behalf of a copyright owner, authorising the licencee to the exclusion of all other persons (including the person granting the licence), to exercise any right which would otherwise be exercisable exclusively by the copyright owner;

"licence" means a lawfully granted licence permitting the doing of an act controlled by this Act;

"literary work" includes, irrespective of literary quality, any of the following works or works similar thereto—

(a) novels, stories and poetical works;

(b) plays, stage directions, film scenarios and broadcasting scripts;

(c) choreographic works;

(d) computer programmes;

(e) text-books, treatises, histories, biographies, essays and articles;

(f) encyclopaedias, dictionaries, directories and anthologies;

(g) letters, reports and memoranda;

(h) lectures, addresses and sermons;

(i) law reports, excluding decisions of courts;

(j) written tables or compilations;

"Minister" means the Minister of Justice;

"musical work" means any musical composition, irrespective of musical quality and includes works composed for musical accompaniment;

"re-broadcast" means a simultaneous or subsequent broadcast by one broadcasting authority of the broadcast of another broadcasting authority;

"reproduction" means the making of one or more copies of a literary, musical or artistic work, audiovisual works or sound recording;

"sound recording" means the first fixation of a sequence of sound capable of being perceived aurally and of being reproduced, but does not include a soundtrack associated with a audiovisual works;

"State authority" in relation to a State, means the Governor or other governmental authority of a State;

"work" includes translations, adaptation, new versions or arrangements of pre-existing works, and anthologies or collection of works which, by reason of the selection and arrangement of their content, present an original character;

"work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of each author is inseparable from the contribution of the other author or authors;

"year" means—

(a) in section 64 of this Act, a period of twelve months; and

(b) elsewhere in this Act, a calendar year, that is to say, a period of twelve months beginning on 1 January and ending on 31 December.

(2) The following provisions shall apply with respect to publication, that is to say—

(a) a work shall be deemed to have been published if copies of it have been made available in a manner sufficient to render the work accessible to the public;

(b) where in the first instance, a part only of a work is published, that part shall be treated for the purposes of this Act as a separate work;

(c) a publication in any country shall not be treated as being other than the first publication by reason only of an earlier publication elsewhere if the two publications took place within a period of not more than 30 days.

72. Repeals and Transitional, etc., Provisions

(1) The Copyright Act, Cap C28 2004 is hereby repealed.

(2) Sections 491, 492 and 493 of the First Schedule to the Criminal Code Act and sections 426 and 427 of the Penal Code are hereby repealed.

[Cap. C38.]

(3) The Transitional and Savings Provisions in the Fifth Schedule to this Act shall have effect notwithstanding subsection (1) of this section or any other provisions of this Act.

[Fifth Schedule.]

73. Short title

This Bill may be cited as the Copyright Act repeal and re-enactment Bill, 2021

Schedules

First Schedule

TERMS OF COPYRIGHT
[Section 2.]

Type of work:	Date of expiration of copyright
1. Literary, musical or artistic works other than photographs	Seventy years after the end of the year in which the author dies; in the case of a government or a body corporate, seventy years after the end of the year in which the work was first published.
2. Audiovisual works and photographs	Fifty years after the end of the year in which the work was first published.
3. Sound recordings	Fifty years after the end of the year in which the recording was first published.
4. Broadcasts	Fifty years after the end of the year in which the broadcast first took place.

Second Schedule

EXCEPTIONS FROM COPYRIGHT CONTROL
[Sections 6, 7 and 8.]

1. The exclusive right conferred in respect of a work by this Act does not include the right to control—

(a) the doing of any of the acts mentioned in the said section 6 by way of fair dealing for purposes of research, private use, criticism or review or the reporting of current events, subject to the condition that, if the use is public, it shall be accompanied by an acknowledgement of the title of the work and its authorship except where the work is incidentally included in a broadcast;

(b) the doing of any of the aforesaid acts by way of parody, pastiche, or caricature;

(c) the inclusion in a film or a broadcast of an artistic work situated in a place where it can be viewed by the public;

(d) the reproduction and distribution of copies of any artistic work permanently situated in a place where it can be viewed by the public;

(e) the incidental inclusion of an artistic work in a film or broadcast;

(f) the inclusion in a collection of literary or musical work which includes not more than two excerpts from the work, if the collection bears a statement that it is designed for educational use and includes an acknowledgement of the title and authorship of the work;

(g) any use made of a work in an approved educational institution for the educational purposes of that institution, subject to the condition that, if a reproduction is made for any such purpose it shall be destroyed before the end of the prescribed period, or if there is no prescribed period, before the end of the period of 12 months after it was made;

(h) subject to the Third Schedule to this Act, the making of a sound recording of a literary or musical work, and the reproduction of such a sound recording by the maker or under licence from him, where the copies thereof are intended for retail sale in Nigeria and the work has already been previously recorded under licence from the owner of the relevant part of the copyright, whether in Nigeria or abroad, subject to such conditions and to the payment of such compensation as may be prescribed;

(i) the reading or recitation in public or in a broadcast by any person of any reasonable extract from a published literary work if accompanied by a sufficient acknowledgment;

(j) any use made of a work by or under the direction or control of the Government, or by such public libraries, non-commercial documentation centers and scientific or other institutions as may be prescribed, where the use is in the public interest, no revenue is derived therefrom and no admission fee is charged for the communication, if any, to the public of the work so used;

(k) news of the day publicly broadcast or publicly communicated by any other means;

(l) the communication to the public of a work, in a place where no admission fee is charged in respect of the communication, by any club whose aim is not profit making;

(m) any use made of a work for the purpose of judicial proceeding or of any report of any such proceeding;

(n) the making of not more than three copies of a book (including a pamphlet, sheet music, map, chart or plan) by or under the direction of the person in charge of a public library for the use of the library if such a book is not available for sale in Nigeria;

(o) the reproduction, by or under the direction of the person in charge of a public library for the users of the library for the purpose of research or private study of an unpublished literary or musical work kept in a library, museum or other institutions to which the public has access;

(p) reproduction of published work in braille for the exclusive use of the blind, and sound recordings made by institutions or other establishments approved by the Government for the promotion of the welfare of other disabled persons for the exclusive use of such blind or disabled person.

2(1) Without prejudice to any provision of this Act, it shall be permitted for an authorized entity, without the authorization of the author or owner of copyright, to make an accessible format copy of a work or subject matter, or otherwise procure an accessible format copy, and supply those copies to beneficiary persons by any means, including by non- commercial lending or by electronic communication by wire or wireless means, and undertake any intermediate steps to achieve those objectives, subject to the following conditions:

(a) the authorized entity wishing to undertake the said activity has lawful access to that work or subject matter, or a copy of that work or subject matter;

(b) the work or subject matter is converted to an accessible format copy;

(c) such accessible format copies are supplied exclusively to be used by beneficiary persons; and

(d) the activity is undertaken on a non-profit basis.

2(2) For the purpose of the requirements of subsection (1) (c) of this section, an authorized entity shall establish and follow its own practices:

(a) to establish that the persons it serves are beneficiary persons;

(b) to limit to beneficiary persons and/or authorized entities its distribution and making available of accessible format copies;

(c) to discourage the reproduction, distribution and making available of unauthorized copies; and

(d) to maintain due care in, and records of, its handling of copies of works or other subject matter while respecting the privacy of beneficiary persons.

2(3) A beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, is permitted to make an accessible format copy of a work or other subject matter for the personal use of the beneficiary person or otherwise may assist the beneficiary person to make and use accessible format copies where the beneficiary person has lawful access to that work or subject matter or a copy of that work or subject matter.

2(4) An authorized entity is permitted, without the authorization of the author or owner of copyright,

(a) to distribute or make available for the exclusive use of beneficiary persons accessible format copies to an authorized entity in another country; and

(b) to distribute or make available accessible format copies to a beneficiary person in another country;

provided that prior to the distribution or making available, the said authorized entity did not know or have reasonable grounds to know that the accessible format copy would be used other than for the beneficiary persons.

2(5) An authorized entity, a beneficiary person, or someone acting on his or her behalf including a primary caretaker or caregiver, is permitted, without the authorization of the author or owner of copyright, to import an accessible format copy, including by electronic communication by wire or wireless means.

2(6) For the purposes of this Section:

(a) "works" include literary and artistic works in the form of text, notation and/or related illustrations, whether published or otherwise made publicly available in any media, including such works in audio form;

(b) "accessible format copy" means a copy of a work in an alternative manner or form which gives a beneficiary person access to the work, including to permit the person to navigate and have access as feasibly and comfortably as a person without visual impairment or other print disability, and which respects the integrity of the original work, taking due consideration of the changes needed to make the work accessible in the alternative format and of the accessibility needs of the beneficiary persons;

(c) "authorized entity" means

(i) an entity that is authorized or recognized by the government, or receives financial support from the government, to provide education, instructional training, adaptive reading or information access to beneficiary persons on a non- profit basis, or

(ii) a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations.

(d) A "beneficiary person" means a person who:

(i) is blind;

(ii) has a visual impairment or a perceptual or reading disability which cannot be improved to give visual function substantially equivalent to that of a person who has no such impairment or disability and so is unable to read printed works to substantially the same degree as a person without an impairment or disability; or

(iii) is otherwise unable, through physical disability, to hold or manipulate a book or to focus or move the eyes to the extent that would be normally acceptable for reading; regardless of any other disabilities.

Third Schedule

SPECIAL EXCEPTIONS IN RESPECT OF A SOUND RECORDING OF A MUSICAL WORK

[Section 6 (4).]

1. The copyright in a musical work is not infringed by a person (in this Schedule referred to as "the record producer") who makes a recording of the work or of an adaptation thereof in Nigeria, if—

(a) records of the work, or as the case may be, of a similar adaptation of the work, have previously been made in, or imported into Nigeria 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 recording, the record producer gave to the owner of the copyright the prescribed notice of his intention to make it;

(c) the record producer intends to sell the record by retail, or to supply if for the purpose of its being sold by retail by another person, or intends to use it for making other records which are to be sold or supplied; and

(d) in the case of a record which is sold by retail, the record producer pays the owner of the copyright in the prescribed manner and at the prescribed time, a royalty of an amount ascertained in accordance with the provisions of this Schedule.

2. Subject to the following provisions of this Schedule, the royalty mentioned in sub-paragraph (d) of paragraph 1 of this Schedule shall be of an amount equal to a percentage of the ordinary retail selling price of the record calculated in the prescribed manner.

3. If, at any time after the end of the period of one year beginning with the coming into operation of a prescribed rate of royalty it appears to the Commission that the ordinary rate of royalty, or the minimum amount thereof, as prescribed has ceased to be equitable, either generally or in relation to any class of records, the Commission may hold a public inquiry, in the prescribed manner, and if, in consequence of such an inquiry, the Commission is satisfied of the need to do so, he may make an order prescribing such different rate or amount, either generally or in relation to any one or more classes of records, as he may consider just:

Provided that, where no order comprising a class of records (either a general order or an order relating specifically to that class, or to that class together with one or more other classes of records), has been made under this paragraph, no further order comprising that

class of records shall be made thereunder less than five years after the date on which the previous order comprising that class (or, if more than one, the last previous order comprising that class) was made thereunder.

4. In the case of a record which comprises (with or without other material, and either in their original form or in the form of adaptations) two or more musical works in which copyright subsist, if the owners of the copyright in the works are different persons, the royalty shall be apportioned among them in such manner as they may agree or as, in default of agreement, may be determined by arbitration.

5. Where a record comprises (with or without other material) a performance or a musical work, or of an adaptation of musical work, in which works are sung, or are spoken incidentally to or in association with the music, and either no copyright subsists in that work or, if such copyright subsists, the conditions specified in paragraph 1 of this Schedule are fulfilled in relation to that copyright, then if—

(a) the works consist or form part of a literary or dramatic work in which copyright subsist; and

(b) such previous records as are referred to in sub-paragraph (a) of paragraph 1 of this Schedule were made or imported by, or with the licence of the owner of the copyright in that literary of dramatic work; and

(c) the conditions specified in sub-paragraphs (b) and (d) of paragraph 1 of this Schedule are fulfilled in relation to the owner of that copyright, the making of the record shall constitute an infringement of the copyright in the literary or dramatic work:

Provided that, this paragraph shall not be construed as requiring more than one royalty to be paid in respect of a record; and if copyright subsists both in the musical work and in the literary or dramatic work, and their owners are different persons, the royalty shall be apportioned among them (or among them and any other person entitled to a share thereof in accordance with the last preceding sub-paragraph) as they may agree or as, in default of agreement, may be determined by arbitration.

6. For the purpose of this Schedule, an adaptation of a work shall be taken to be similar to an adaptation thereof contained in previous records if the two adaptations do not substantially differ in their treatment of the work, either in respect of style or (apart from any difference in number) in respect of the performances required for performing them.

7. Where, for the purposes of sub-paragraph (a) of paragraph 1 of this Schedule, the record producer requires to know whether such previous records as are mentioned in that sub-paragraph were made or imported as therein mentioned, the record producers

may make the prescribed inquiries; and if the owner of the copyright fails to reply to those inquiries within the prescribed period, the previous record shall be taken to have been made or imported, as the case may be, with the licence of the owner of the copyright.

8. The provisions of paragraph 7 of this Schedule shall apply in relation to records of part of a work or adaptation as they apply in relation to records of the whole of it:

Provided that paragraph 1 of this Schedule—

(a) shall not apply to a record of the whole of a work or adaptation unless the previous records referred to in sub-paragraph (a) of that paragraph were records of the whole of the work or of a similar adaptation; and

(b) shall not apply to a record of part of a work or adaptation unless those previous records were records of, or comprising, that part of the work of a similar adaptation.

9. Nothing in this Schedule shall be construed as authorising the importation of records which could not lawfully be imported apart from this Schedule; and accordingly, for the purposes of any provision of this Act relating to imported articles, where the question arises whether the making of a record outside Nigeria would have constituted an infringement of copyright if the record had been made in Nigeria, that question shall be determined as if paragraph 1 of this Schedule had not been enacted.

10. In this Schedule, "prescribed" means prescribed by regulations made under this Schedule by the Minister and any such regulations made for the purposes of sub-paragraph (d) of paragraph 1 of this Schedule may provide that the taking of such steps as the Minister considers most convenient for ensuring the receipt of the royalties (by the owner of the copyright) shall be treated as constituting payment of the royalties in accordance with that paragraph.

Fourth Schedule

COMPULSORY LICENCE FOR TRANSLATION AND REPRODUCTION OF CERTAIN WORKS

1. Interpretation

In this Schedule—

"qualified person" means—

(a) a citizen of Nigeria or an individual domiciled in Nigeria; or

(b) a body corporate incorporated under any written law in Nigeria;

"research" shall not include industrial research, or research carried out by bodies corporate (not being bodies corporate owned or controlled by the Government), companies, associations or bodies of persons carrying on any business;

"purposes of teaching, research or scholarship" includes—

(a) purposes of instruction activity at all levels in educational institutions; and
(b) purposes of all types of organised educational activity.

2. Licence to produce and publish translations

(1) Any qualified person may apply to the Commission for a licence to produce and publish a translation of a literary or dramatic work which has been published in analogous forms of reproduction for the purposes of teaching, scholarship or research.

(2) An application under this paragraph shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.

(3) Every applicant for a licence under this paragraph shall, along with his application, deposit with the Commission such fee as may be prescribed.

(4) Where an application is made to the Commission under this paragraph it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive licence, to produce and publish a translation of the work in the language mentioned in the application subject to the condition—

(a) that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Commission may, in the circumstances of each case, determine in the prescribed manner, except that the royalties shall be consistent with the standards normally operating in the case of licences freely negotiated between persons in Nigeria and owners of translation rights in the country of the owner of the right of translation; and

(b) that the licence shall not extend to the export of copies of the translation of the work outside Nigeria and every copy of such translation shall contain a notice in the language of such translation that the copy is available for distribution only in Nigeria.

(5) Sub-paragraph (4) of this paragraph shall not apply to the export by the Government or any authority under the Government of copies of such translation in a language other than English to any country if—

(a) such copies are sent to citizens of Nigeria residing outside Nigeria or to any association of such citizens outside Nigeria; or

(b) such copies are meant to be used for purposes of teaching, scholarship or research and not for any commercial purpose,

and in either case, the government of the country to which the copies are exported has agreed to the receipt or distribution, or both, of the copies exported to that country.

(6) No licence shall be granted by the Commission under this paragraph until the expiration of whichever of the following periods is applicable—

(a) one year from the date of first publication of the work where the application is for a licence for translation into any language spoken in Nigeria other than English;

(b) three years from the date of first publication of the work where the application is for a licence for translation into English.

(7) No licence shall be granted by the Commission unless—

(a) the Commission is satisfied that no translation of the work into the language in question has been published in printed or analogous forms of reproduction, by or with the authorisation of the owner of the right of translation, or that all previous editions in that language are out of print;

(b) the applicant has proved to the satisfaction of the Commission that he had requested and had been denied authorisation by the owner of the copyright to produce and publish such translation, or that he was, after due diligence on his part, unable to find such owner;

(c) where the applicant was, after due diligence on his part, unable to find the owner of the copyright, he had sent a copy of his request for such authorisation by registered air-mail post to the publisher whose name appears from the work, not less than two months before the application for the licence;

(d) the applicant had at the time he submitted an application under this paragraph 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;

(e) the Commission is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this Act;

(f) a period of six months in the case of an application for a licence for translation into English or nine months in the case of an application for a licence for translation into any language spoken in Nigeria other than sub-paragraph (7) (b) of this paragraph or where a copy of the request has been sent under sub-paragraph (7) (c) of the said paragraph, from the date of sending of such copy, and the translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months or nine months, as the case may be;

(g) the name of the author and the title of the particular edition of the work proposed to be translated are printed on all the copies of the translation;

(h) if the work is composed mainly of illustrations, the provisions of section 3 of this Act are complied with;

(i) the author has not withdrawn from circulation copies of the work; and

(j) an opportunity of being heard is given, wherever practicable, to the owner of the copyright in the work.

3. Licence to reproduce and publish works for certain purposes

(1) Where, after the expiration of the relevant period from the date of the first publication of an edition of a literary or artistic work—

(a) the copies of such edition are not made available in Nigeria; or

(b) such copies have not been put on sale in Nigeria for a period of six months, by the owner of the right of reproduction or by any person authorised by him in that behalf to the general public, or in connection with systematic instructional activities at a price reasonably related to that normally charged in Nigeria for comparable works, any qualified person may apply to the Commission for a licence to reproduce and publish such work in printed or analogous forms of reproduction at the price at which such edition is sold or at a lower price for the purposes of systematic instructional activities.

(2) Every such application shall be made in such forms as may be prescribed and shall state the proposed retail price of a copy of the work to be produced.

(3) Every applicant for a licence under this paragraph shall, along with his application, deposit with the Commission such fee as may be prescribed.

(4) Where an application is made to the Commission under this paragraph it may, after holding such inquiry as may be prescribed, grant to the applicant a licence, not being an exclusive license, to produce and publish a reproduction of the work mentioned in the application subject to the conditions that—

(a) the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the reproduction of the work sold to the public, calculated at such rate as the Commission may, in the circumstances of each case, determine in the prescribed manner, except that the royalties shall be consistent with the standards normally operating in the case of licences freely negotiated between persons in Nigeria and owners of reproduction rights in the country of the owner of the reproduction right;

(b) a licence granted under this paragraph shall not extend to the export of copies of the reproduction of the work outside Nigeria and every copy of such reproduction shall contain a notice that the copy is available for distribution only in Nigeria.

(5) No licence shall be granted to an applicant under this paragraph unless—

(a) the applicant has proved to the satisfaction of the Commission that he had requested and been denied authorisation by the owner of the copyright in the work to reproduce and publish such work or that he was, after due diligence on his part, unable to find such owner;

(b) where the applicant was unable to find the owner of the copyright, a copy of his request for such authorisation by registered air-mail post to the publisher whose name appears on the work not less than three months before the application for the licence;

(c) the applicant had informed any national or international 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) the Commission is satisfied that the applicant is competent to reproduce and publish an accurate reproduction of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under this paragraph;

(e) the applicant undertakes to reproduce and publish the work at such price as may be fixed by the Commission, being a price reasonably related to the price normally charged in Nigeria for works of the same standard on the same or similar subjects;

(f) a period of six months in the case of an application for the reproduction and publication of any work of natural science, physical science, mathematics or technology, or a period of three months in the case of an application for the reproduction and publication of any other work, has lapsed from the date of making the request under sub-paragraph (5) (a) of this paragraph, or where a copy of the request has been sent under sub-paragraph (5) (b) of the said paragraph, from the date of sending of a copy, and a reproduction of the work has not been published by the owner of the copyright in the work or any person authorised by him within the said period of six months, as the case may be;

(g) the name of the author and the title of the particular edition of the work proposed to be reproduced are printed on all the copies of the reproduction;

(h) the author has not withdrawn circulation copies of the work; and

(i) an opportunity of being heard given, wherever practicable, to the owner of the copyright in the work.

(6) No licence to reproduce and publish the translation of a work shall be granted under this paragraph unless such translation has been published by the owner of the right of translation in a language spoken in Nigeria.

(7) The provisions of this paragraph shall also apply to the reproduction and publication, or translation into a language spoken in Nigeria, of any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities.

(8) For the purposes of this paragraph—

"relevant period", in relation to any work, means a period of—

(a) seven years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to fiction, poetry, drama, music or art;

(b) three years from the date of the first publication of that work, where the application is for the reproduction and publication of any work of, or relating to natural science, physical science, mathematics or technology.

4. Licence for domestic broadcasting organisation

(1) Any broadcasting organisation in Nigeria or any qualified person who is the holder of a licence for a television or broadcasting station may apply to the Commission for a licence to produce and publish the translation of—

(a) a work referred to in paragraph 2 of this Schedule and published in printed or analogous forms of reproduction; or

(b) any text incorporated in audio-visual fixations prepared and published solely for the purpose of systematic instructional activities, or broadcasting such translation for the purpose of teaching or for the dissemination of the results of specialised, technical or scientific research to the experts in any particular field.

Fifth Schedule

TRANSITIONAL AND SAVINGS PROVISIONS

[Section 72(3).]

1. Subject to this Schedule, this Bill applies in relation to works made before the commencement of this Bill as it applies in relation to works made after the commencement of this Bill.

2. (1) Subject to this paragraph, proceedings under this Bill for infringement of copyright may be taken notwithstanding that the alleged infringement occurred before the commencement of this Bill.

(2) Where an act done before the commencement of this Bill was then an infringement of copyright but is not an infringement of copyright under this Bill, proceedings in respect of the act may be taken as if this Bill had not been made.

3. (1) Subject to sub-paragraph (2) of this paragraph, contracts for the licensing of any act in respect of copyright which were effective immediately before the commencement of this Bill, shall continue in force as if they related to the corresponding copyright under this Bill.

(2) A notice given under any repealed Copyright Act in Nigeria and not withdrawn before the commencement of this Bill, shall continue in force as if it had been given under this Bill.

(3) Any subsidiary legislation made under the repealed Act which was in force immediately before the commencement of this Bill, shall remain in force, subject to any necessary modifications, as if it had been made under this Bill, and may be added to, amended, revoked or varied accordingly.

EXPLANATORY MEMORANDUM

The Bill seeks to repeal the Copyright Act Cap C28 2004 and re-enact the Copyright Act 2021 for a holistic review of the policy and legal framework for copyright protection in Nigeria.