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Copyright Act, 1912

Act 36 of 1912

Legislation as at 1 December 1998

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Copyright Act, 1912

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Copyright Act, 1912

Act 36 of 1912

Commenced on 1 July 1912

[This is the version of this document at 1 December 1998.]

An Act to make provision for the registration of copyright.

Part I – Commonwealth copyright

1. Short title

This Act may be cited as the Copyright Act, 1912.

2. Interpretation

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

“**architectural work of art**” means any building or structure having an artistic character or design, in respect of such character or design, or any model for such building or structure, provided that the protection afforded by this Act shall be confined to the artistic character and design, and shall not extend to processes or methods of construction;

“**artistic work**” includes works of painting, drawing, sculpture and artistic craftsmanship, and architectural works of art and engravings and photographs;

“**cinematograph**” includes any work produced by any process analogous to cinematography;

“**collective work**” means—

- (a) an encyclopaedia, dictionary, year-book, or similar work;
- (b) a newspaper, review, magazine, or similar periodical; and
- (c) any work written in distinct parts by different authors, or in which works or parts of works of different authors are incorporated;

“**delivery**”, in relation to a lecture, includes delivery by means of any mechanical instrument;

“**dramatic work**” includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise, and any cinematograph production where the arrangement or acting form or the combination of incidents represented give the work an original character;

“**engravings**” include etchings, lithographs, woodcuts, prints, and other similar works, not being photographs;

“**infringing**” when applied to a copy of a work in which copyright subsists, means any copy, including any colourable imitation, made, or imported in contravention of this Act;

“**lecture**” includes address, speech, and sermon;

“**literary work**” includes maps, charts, plans, tables, and compilation;

“**National Library**” or “National Library Service” *[Added K.O-I-C.3/1978; deleted A.4/2002]*

“**Minister**” means the Prime Minister;

“**performance**” means any acoustic representation of a work and any visual representation of any dramatic action in a work, including such a representation made by means of any mechanical instrument;

“**photograph**” includes photo-lithograph and any work produced by any process analogous to photography;

“**plate**” includes any stereotype or other plate, stone, block, mould, matrix, transfer, or negative used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliances by which records, perforated rolls or other contrivances for the acoustic representation of the work are or are intended to be made;

“**work of sculpture**” includes casts and models.

- (2) For the purposes of this Act (other than those relating to infringements of copyright), a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public, or delivered in public, without the consent or acquiescence of the author, his executors, administrators or assigns.
- (3) For the purpose of this Act, a work shall be deemed to be first published within the parts of the British Commonwealth to which the Copyright Act, 1911, of the United Kingdom extends, notwithstanding that it has been published simultaneously in some other place, unless the publication in such parts of the British Commonwealth as aforesaid is colourable only and is not intended to satisfy the reasonable requirements of the public, and a work shall be deemed to be published simultaneously in two places if the time between the publication in one such place and the publication in the other place does not exceed fourteen days, or such longer period as may, for the time being, be fixed by Order-in-Council or notice under this Act.
- (4) Where, in the case of an unpublished work, the making of a work has extended over a considerable period, the conditions of this Act conferring copyright shall be deemed to have been complied with, if the author was, during any substantial part of that period, a British subject or a resident within the parts of the British Commonwealth to which the Copyright Act, 1911, of the United Kingdom, extends.
- (5) For the purposes of the provisions of this Act as to residence, an author of a work shall be deemed to be a resident in the parts of the British Commonwealth to which that Act extends if he is domiciled within any such part.

3. Rights

- (1) Subject to the provisions of this Act, copyright shall subsist throughout Swaziland for the term hereinafter mentioned in every original literary, dramatic, musical and artistic work, if—
 - (a) in the case of a published work, the work was first published within a part of the British Commonwealth to which the Copyright Act, 1911 of the United Kingdom (1 and 2 Geo. 5 ch. 46) applies; and
 - (b) in the case of an unpublished work, the author was at the date of the making of the work a British subject or resident within any such part of the British Commonwealth as aforesaid;but in no other works, except so far as the protection conferred by that Act was prior to the 24th April, 1967, extended by Orders-in-Council thereunder relating to self-governing dominions to which that Act did not extend and to foreign countries.
- (2) For the purposes of this Act, “copyright” means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatsoever, to perform, or in the case of a lecture to deliver, the work or any substantial part thereof in public; if the work is unpublished to publish the work or any substantial part thereof; and shall include the sole right—
 - (a) to produce, reproduce, perform, or publish any translation of the work;

- (b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work;
- (c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise;
- (d) in the case of a literary, dramatic, or musical work, to make any record, perforated roll, cinematograph film, or other contrivance by means of which the work may be mechanically performed or delivered;

and to authorise any such acts as aforesaid.

- (3) For the purposes of this Act, publication, in relation to any work, means the issue of copies of the work to the public, and does not include the performance in public of a dramatic or musical work; the delivery in public of a lecture, the exhibition in public of an artistic work, or the construction of an architectural work of art, but, for the purposes of this provision, the issue of photographs and engravings of works of sculpture and architectural works of art shall not be deemed to be publication of such work.

4. Infringement of copyright

- (1) Copyright in a work shall be deemed to be infringed by any person who, without the consent of the owner of the copyright, does anything the sole right to do which is by this Act conferred on the owner of the copyright:

Provided that the following acts shall not constitute an infringement of copyright:

- (a) any fair dealing with any work for the purposes of private study, research, criticism, review, or newspaper summary;
- (b) where the author of an artistic work is not the owner of the copyright therein, the use by the author of any mould, cast, sketch, plan, model, or study made by him for the purpose of the work, provided that he does not thereby repeat or imitate the main design of that work;
- (c) the making or publishing of paintings, drawings, engravings, or photographs of a work of sculpture or artistic craftsmanship, if permanently situate in a public place or building, or the making or publishing of paintings, drawings, engravings, or photographs (which are not in the nature of architectural drawings or plans) of any architectural work of art;
- (d) the publication in a collection, mainly composed of non-copyright matter, *bona fide* intended for the use of schools, and so described in the title and in any advertisements issued by the publisher, of short passages from published literary works not themselves published for the use of schools in which copyright subsists:

Provided that no more than two of such passages from works by the same author are published by the same publisher within five years, and that the source from which such passages are taken is acknowledged;

- (e) the publication in a newspaper of a report of a lecture delivered in public, unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given, and, except whilst the building is being used for public worship, in a position near the lecture; but nothing in this paragraph shall affect the provisions in paragraph (a) as to newspaper summaries;
 - (f) the reading or recitation in public by one person of any reasonable extract from any published work.
- (2) Copyright in a work shall also be deemed to be infringed by any person who—
 - (a) sells or lets for hire, or by way of trade exposes or offers for sale or hire; or

- (b) distributes either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
 - (c) by way of trade exhibits in public; or
 - (d) imports for sale or hire into any part of the British Commonwealth to which this Act extends; any work which to his knowledge infringes copyright or would infringe copyright if it had been made within the part of the British Commonwealth in or into which the sale or hiring, exposure, offering for sale, or hire distribution, exhibition, or importation took place.
- (3) Copyright in a work shall also be deemed to be infringed by any person who for his private profit permits a theatre or other place of entertainment to be used for the performance in public of the work without the consent of the owner of the copyright, unless he was not aware, and had no reasonable ground for suspecting, that the performance would be an infringement of copyright.

5. Term of copyright

The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author and a period of fifty years after his death:

Provided that at any time after the expiry of twenty-five years, or in the case of a work in which copyright subsists at the commencement of this Act thirty years, from the death of the author of a published work, copyright in the work shall not be deemed to be infringed by the reproduction of the work for sale if the person reproducing the work proves that he has given the prescribed notice in writing of his intention to reproduce the work, and that he has paid in the prescribed manner to, or for the benefit of, the owner of the copyright royalties in respect of all copies of the work sold by him calculated at the rate of ten per cent on the price at which he publishes the work; and, for the purposes of this proviso, the Minister may make regulations prescribing the mode in which notices are to be given, and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, including (if they think fit) regulations requiring payment in advance or otherwise securing the payment of royalties.

6. Compulsory licence

If at any time after the death of the author of a literary, dramatic, or musical work which has been published or performed in public a complaint is made to the High Court that the owner of the copyright in the work has refused to republish or to allow the republication of the work or has refused to allow the performance in public of the work, and that by reason of such refusal the work is withheld from the public, the owner of the copyright may be ordered to grant a licence to reproduce the work or perform the work in public, as the case may be, on such terms and subject to such conditions as the High Court may think fit.

7. Ownership of copyright, etc.

- (1) Subject to the provisions of this Act, the author of a work shall be the first owner of the copyright therein:
- Provided that—
- (a) where, in the case of an engraving, photograph, or portrait, the plate or other original was ordered by some other person and was made for valuable consideration in pursuance of that order, then, in the absence of any agreement to the contrary, the person by whom such plate or other original was ordered shall be the first owner of the copyright; and
 - (b) where the author was in the employment of some other person under a contract of service or apprenticeship and the work was made in the course of his employment by that person, the person by whom the author was employed shall, in the absence of any agreement to the contrary, be the first owner of the copyright, but where the work is an article or other contribution to a newspaper, magazine, or similar periodical, there shall, in the absence of any agreement to the contrary, be deemed to be reserved to the author a right to restrain

the publication of the work, otherwise than as part of a newspaper, magazine, or similar periodical.

- (2) The owner of the copyright in any work may assign the right either wholly or partially, and either generally or subject to limitations to Swaziland or any part of the British Commonwealth to which the Copyright Act, 1911, of the United Kingdom extends and either for the whole term of the copyright or for any part thereof, and may grant any interest in the right by licence, but no such assignment or grant shall be valid unless it is in writing signed by the owner of the right in respect of which the assignment or grant is made, or by his duly authorised agent:

Provided that, where the author of a work is the first owner of the copyright therein, no assignment of the copyright, and no grant of any interest therein, made by him (otherwise than by will) after the passing of this Act, shall be operative to vest in the assignee or grantee any rights with respect to the copyright in the work beyond the expiry of twenty-five years from the death of the author, and the reversionary interest in the copyright expectant on the termination of that period shall, on the death of the author, notwithstanding any agreement to the contrary, devolve on his executor as part of his estate, and any agreement entered into by him as to the disposition of such reversionary interest shall be null and void, but nothing in this proviso shall be construed as applying to the assignment of the copyright in a collective work or a licence to publish a work or part of a work as part of a collective work.

- (3) Where, under any partial assignment of copyright, the assignee becomes entitled to any right comprised in copyright, the assignee as respects the right so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Act as the owner of the copyright, and the provisions of this Act shall have effect accordingly.

8. Civil remedies

- (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Act, be entitled to all such remedies by way of interdict, damages, accounts, and otherwise, as are or may be conferred by law for the infringement of a right.
- (2) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the absolute discretion of the court.
- (3) In any action for infringement of copyright in any work, the work shall be presumed to be a work in which copyright subsists and the plaintiff shall be presumed to be the owner of the copyright, unless the defendant puts in issue the existence of the copyright, or, as the case may be, the title of the plaintiff, and where any such question is in issue, then—
 - (a) if a name purporting to be that of the author of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the author of the work;
 - (b) if no name is so printed or indicated, or if the name so printed or indicated is not the author's true name or the name by which he is commonly known, and a name purporting to be that of the publisher or proprietor of the work is printed or otherwise indicated thereon in the usual manner, the person whose name is so printed or indicated shall, unless the contrary is proved, be presumed to be the owner of the copyright in the work for the purposes of proceedings in respect of the infringement of copyright therein.

9. Rights of owner against persons possessing or dealing with infringing copies

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

10. Exemption of innocent infringer from liability to pay damages, etc.

Where proceedings are taken in respect of the infringement of the copyright in any work and the defendant in his defence alleges that he was not aware of the existence of the copyright in the work, the plaintiff shall not be entitled to any remedy other than an interdict in respect of the infringement if the defendant proves that at the date of the infringement he was not aware and had no reasonable ground for suspecting that copyright subsisted in the work.

11. Restriction on remedies in the case of architecture

- (1) Where the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an interdict to restrain the construction of such building or structure or to order its demolition.
- (2) The other provisions of this Act which provide that an infringing copy of a work shall be deemed to be the property of the owner of the copyright, or impose summary penalties, shall not apply in any case to which this section applies.

12. Limitation of actions

An action in respect of infringement of copyright shall not be commenced after the expiry of three years next after the infringement.

13. Offences

- (1) If any person knowingly—
 - (a) makes for sale or hire any infringing copy of a work in which copyright subsists; or
 - (b) sells or lets for hire, or by way of trade exposes or offers for sale or hire any infringing copy of any such work; or
 - (c) distributes infringing copies of any such work either for the purposes of trade or to such an extent as to affect prejudicially the owner of the copyright; or
 - (d) by way of trade exhibits in public any infringing copy of any such work;
 - (e) imports for sale or hire any infringing copy of any such work;

he shall be guilty of an offence and liable on conviction to a fine not exceeding four emalangeni for every copy dealt with in contravention of this section, but not exceeding one hundred emalangeni in respect of the same transaction; or, in the case of a second or subsequent offence, either to such fine or to imprisonment for a term not exceeding two months.

- (2) If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred emalangeni or, in the case of a second or subsequent offence, either to such fine or to imprisonment for a term not exceeding two months.
- (3) The court before which any such proceedings are taken may, whether the alleged offender is convicted or not, order that all copies of the work or all plates in the possession of the alleged offender, which appear to it to be infringing copies or plates for the purpose of making infringing copies, be destroyed or delivered up to the owner of the copyright or otherwise dealt with as the court may think fit.

14. Appeal to High Court

Any person aggrieved by a summary conviction of an offence under the foregoing provisions of this Act may appeal to the High Court.

15. Application of section 14 of Customs Act, 1911 of United Kingdom

Section 14 of the Customs Act, 1911 of the United Kingdom shall, with the necessary modifications, apply to the importation into Swaziland or copies of works made outside Swaziland.

16. Work of joint authors

- (1) In the case of a work of joint authorship, copyright shall subsist during the life of the author who first dies and for a term of fifty years after his death, or during the life of the author who dies last, whichever period is the longer, and references in this Act to the period after the expiry of any specified number of years from the death of the author shall be construed as references to the period after the expiry of the like number of years from the death of the author who dies first or after the death of the author who dies last, whichever period may be the shorter, and in the provisions of this Act with respect to the grant of compulsory licences a reference to the date of the death of the author who dies last shall be substituted for the reference to the date of the death of the author.
- (2) Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Act, the work shall be treated for the purposes of this Act, as if the other author or authors had been the sole authors or author thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions as aforesaid.
- (3) For the purposes of this Act, “a work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.
- (4) Where a married woman and her husband are joint authors of a work the interest of such married woman therein shall be her separate property.

17. Posthumous works

- (1) In the case of a literary, dramatic or musical work or, an engraving, in which copyright subsists at the date of the death of the author or, in the case of a work of joint authorship, at or immediately before the date of the death of the author who dies last, but which has not been published, nor, in the case of a dramatic or musical work, been performed in public, nor in the case of a lecture, been delivered in public before that date, copyright shall subsist till publication, or performance or delivery in public, whichever may first happen, and for a term of fifty years thereafter, and the proviso to [section 3](#) of this Act shall, in the case of such a work, apply as if the author had died at the date of such publication or performance or delivery in public as aforesaid.
- (2) The ownership of an author’s manuscript after his death, where such ownership has been acquired under a testamentary disposition made by the author and the manuscript is of a work which has not been published nor performed in public nor delivered in public, shall be *prima facie* proof of the copyright being with the owner of the manuscript.

18. Provision as to Government publications

Without prejudice to any rights or privileges of the Government where any work has, whether before or after the commencement of this Act, been prepared or published by or under the directions or control of the Government or any Government department, the copyright in the work shall, subject to any agreement

with the author, belong to the Government, and in such case shall continue for a period of fifty years from the date of the first publication of the work.

19. Provisions as to mechanical instruments

(1) Copyright shall subsist in records, perforated rolls, and other contrivances by means of which sounds may be mechanically reproduced, in like manner as if such contrivances were musical works but the term of copyright shall be fifty years from the making of the original plate from which the contrivance was directly or indirectly derived, and the person who was the owner of such original plate at the time when such plate was made shall be deemed to be the author of the work, and, where such owner is a body corporate the body corporate shall be deemed for the purposes of this Act to reside within the parts of the British Commonwealth to which the Custom Act, 1911 of the United Kingdom extends if it has established a place of business within such parts.

(2) It shall not be deemed to be an infringement of copyright in any musical work for any reason to make within the parts of the British Commonwealth to which that Act extends records, perforated rolls, or other contrivances by means of which the work may be mechanically performed, if such person proves—

(a) that such contrivances have previously been made by, or with the consent or acquiescence of, the owner of the copyright in the work; and

(b) that he has given the prescribed notice of his intention to make the contrivances, and has paid in the prescribed manner to, or for the benefit of, the owner of the copyright in the work royalties in respect of all such contrivances sold by him, calculated at the rate hereinafter mentioned:

Provided that—

(i) nothing herein shall authorise any alterations in, or omissions from the work reproduced, unless contrivances reproducing the work subject to similar alterations and omissions have been previously made by, or with the consent or acquiescence of, the owner of the copyright, or unless such alterations or omissions are reasonably necessary for the adaptation of the work to the contrivances in question; and

(ii) for the purposes hereof, a musical work shall be deemed to include any words so closely associated therewith as to form part of the same work, but shall not be deemed to include a contrivance by means of which sounds may be mechanically reproduced.

(3) The rate at which such royalties as aforesaid are to be calculated shall—

(a) in the case of contrivances sold within two years after the commencement of this Act by the person making the same, be two and one-half per cent; and

(b) in the case of contrivances sold as aforesaid after the expiry of that period, five per cent;

on the ordinary retail selling price of the contrivance calculated in the prescribed manner, so however, that the royalty payable in respect of a contrivance shall, in no case, be less than half a cent for each separate musical work in which copyright subsists reproduced thereon, and, where the royalty calculated as aforesaid includes a fraction of a quarter cent, such fraction shall be reckoned as a quarter of a cent:

Provided that, if at any time after the expiry of seven years from the commencement of this Act, it appears to the Minister that such rate as aforesaid is no longer equitable, he may, after holding a public enquiry, make an order either decreasing or increasing that rate, to such extent as under the circumstances may seem just, but any order so made shall be provisional only and shall not have any effect unless and until confirmed by Parliament; but, where an order revising the rate has been so made and confirmed, no further revision shall be made before the expiration of fourteen years from the date of the last revision.

(4) If any such contrivance is made reproducing two or more different works in which copyright subsists and the owners of the copyright therein are different persons, the sums payable by way of

royalties under this section shall be apportioned amongst the several owners of the copyright in such proportions as, failing agreement, may be determined by arbitration.

- (5) When any such contrivances by means of which a musical work may be mechanically performed have been made, then, for the purposes of this section, the owner of the copyright in the work shall, in relation to any person who makes the prescribed enquiries, be deemed to have given his consent to the making of such contrivances if he fails to reply to such enquiries within the prescribed time.
- (6) For the purposes of this section, the Minister may make regulations prescribing anything which under this section is to be prescribed, and prescribing the mode in which notices are to be given and the particulars to be given in such notices, and the mode, time, and frequency of the payment of royalties, and any such regulations may, if he thinks fit, include regulations requiring payment in advance or otherwise securing the payment of royalties.
- (7) In the case of musical works published before the commencement of this Act, the foregoing provisions shall have effect, subject to the following modifications and additions:
 - (a) the conditions as to the previous making by, or with the consent or acquiescence of, the owner of the copyright in the work, and the restrictions as to alterations in or omissions from the work, shall not apply;
 - (b) the rate of two and one-half per cent shall be substituted for the rate of five per cent as the rate at which royalties are to be calculated, but no royalties shall be payable in respect of contrivances sold before the first day of July, 1913, if contrivances reproducing the same work had been lawfully made, or placed on sale, within the parts of the British Commonwealth to which the Copyright Act, 1911 of the United Kingdom extends before the first day of July, 1910;
 - (c) notwithstanding any assignment made before the passing of this Act of the copyright in a musical work, any rights conferred by this Act in respect of the making, or authorising the making, of contrivances by means of which the work may be mechanically performed shall belong to the author or his executor and not to the assignee, and the royalties aforesaid shall be payable to, and for the benefit of, the author of the work or his executor;
 - (d) the saving contained in this Act of the rights and interests arising from, or in connection with, action before the commencement of this Act shall not be construed as authorising any person who has made contrivances by means of which the work may be mechanically performed to sell any such contrivances, whether made before or after the passing of this Act, except on the terms and subject to the conditions laid down in this section;
 - (e) where the work is a work on which copyright is conferred by an Order-in-Council relating to a foreign country, the copyright so conferred shall not, except to such extent as may be provided by the Order, include any rights with respect to the making of records, perforated rolls, or other contrivances by means of which the work may be mechanically performed.
- (8) Notwithstanding anything in this Act, where a record, perforated roll, or other contrivance by means of which sounds may be mechanically reproduced has been made before the commencement of this Act, copyright shall, as from the commencement of this Act, subsist therein in like manner and for the like term as if this Act had been in force at the date of the making of the original plate from which the contrivance was directly or indirectly derived:

Provided that—

 - (i) the person who, at the commencement of this Act, is the owner of such original plate shall be the first owner of such copyright; and
 - (ii) nothing in this provision shall be construed as conferring copyright in any such contrivance if the making thereof would have infringed copyright in some other such contrivance, if this provision had been in force at the time of the making of the first-mentioned contrivance.

20. Provisions as to political speeches

Notwithstanding anything in this Act, it shall not be an infringement of copyright in an address of a political nature delivered at a public meeting to publish a report thereof in a newspaper.

21. Provisions as to photographs

The term for which copyright shall subsist in photographs shall be fifty years from the making of the original negative from which the photograph was directly or indirectly derived, and the person who was owner of such negative at the time when such negative was made shall be deemed to be the author of the work, and, where such owner is a body corporate, the body corporate shall be deemed for the purposes of this Act to reside within the parts of the British Commonwealth to which the Copyright Act, 1911 of the United Kingdom extends if it has established a place of business within such parts.

22. Provisions as to designs registrable under the Patent and Designs Act, 1907 of the United Kingdom

- (1) This Act shall not apply to designs capable of being registered under the Patents and Designs Act, 1907 of the United Kingdom, except designs which, though capable of being so registered, are not used or intended to be used as models or patterns to be multiplied by any industrial process.
- (2) General rules made under section 86 of the said Patents and Designs Act, 1907 before the 24th April, 1967, for determining the conditions under which a design shall be deemed to be used for such purpose as aforesaid shall be applicable.

23. Works of foreign authors first published in parts of the British Commonwealth

If it appears to the Minister that a foreign country does not give, or has not undertaken to give, adequate protection to the works of Swaziland authors, the Minister may, by notice in the *Gazette*, direct that such of the provisions of this Act as confer copyright on works first published within the parts of the British Commonwealth to which the Copyright Act, 1911 of the United Kingdom extends, shall not apply in Swaziland to works published after the date specified in such notice, the authors whereof are subjects or citizens of such foreign country, and are not resident in the British Commonwealth, and thereupon those provisions shall not apply to such works.

24. Existing works (Schedule)

- (1) Where any person is immediately before the commencement of this Act entitled to any such right in any work as is specified in the first column of the Schedule, or to any interest in such a right, he shall, as from that date, be entitled to the substituted right set forth in the second column of the Schedule, or to the same interest in such a substituted right, and to no other right or interest, and such substituted right shall subsist for the term for which it would have subsisted if this Act had been in force at the date when the work was made and the work had been one entitled to copyright thereunder:

Provided that—

- (a) if the author of any work in which any such right as is specified in the first column of the Schedule subsists at the commencement of this Act has, before that date, assigned the right or granted any interest therein for the whole term of the right, then at the date when, but for the passing of this Act, the right would have expired the substituted right conferred by this section shall, in the absence of express agreement, pass to the author of the work, and any interest therein created before the commencement of this Act and then subsisting shall

determine; but the person who immediately before the date at which the right would so have expired was the owner of the right or interest shall be entitled at his option either

- (i) on giving such notice as hereinafter mentioned, to an assignment of the right or the grant of a similar interest therein for the remainder of the term of the right for such consideration as, failing agreement, may be determined by arbitration; or
- (ii) without such assignment or grant, to continue to reproduce or perform the work in like manner as theretofore subject to the payment, if demanded by the author within three years after the date at which the right would have so expired, of such royalties to the author as, failing agreement, may be determined by arbitration, or, where the work is incorporated in a collective work and the owner of the right or interest is the proprietor of that collective work, without any such payment;

the notice above referred to must be given not more than one year nor less than six months before the date at which the right would have so expired, and must be sent by registered post to the author, or, if he cannot with reasonable diligence be found, advertised in the *Gazette* and in two newspapers circulating in Swaziland;

- (b) where any person has, before the twenty-sixth day of July, 1910, taken any action whereby he has incurred any expenditure or liability in connection with the reproduction or performance of any work in a manner which at the time was lawful, or for the purpose of or with a view to the reproduction or performance of a work at a time when such reproduction or performance would, but for the passing of this Act, have been lawful, nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such action which are subsisting and valuable at the said date, unless the person who by virtue of this section becomes entitled to restrain such reproduction or performance agrees to pay such compensation as, failing agreement, may be determined by arbitration.
- (2) For the purpose of this section, the expression "author" includes the executor of a deceased author.
 - (3) Subject to the provisions of [section 18\(7\)](#) and (8) and of [section 27](#), copyright shall not subsist in any work made before the commencement of this Act, otherwise than under, and in accordance with, the provisions of this section.

Part II – International copyright

25.

- (1) The Minister may, by notice in the *Gazette*, direct that this Act (except such Parts, if any, thereof as may be specified in the notice) shall apply:
 - (a) to works first published in a foreign country to which the notice relates, in like manner as if they were first published within the parts of the British Commonwealth to which the Copyright Act, 1911 of the United Kingdom extends;
 - (b) to literary, dramatic, musical, and artistic works, or any class thereof, the authors whereof were at the time of the making of the work subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were British subjects;
 - (c) in respect of residence in a foreign country to which the notice relates in like manner as if such residence were residence in the parts of the British Commonwealth to which that Act extends;

and thereupon, subject to the provisions of this Part of this Act and of the notice, this Act shall apply accordingly:

Provided that—

- (i) before making a notice under this section in respect of any foreign country (other than a country with which the Government has entered into a convention relating to copyright), the

Minister shall be satisfied that that foreign country has made, or has undertaken to make, such provisions, if any, as it appears to him expedient to require for the protection of works entitled to copyright under the provisions of Part I of this Act;

- (ii) the notice may provide that the term of copyright within such parts of the British Commonwealth as aforesaid shall not exceed that conferred by the law of the country to which the notice relates;
 - (iii) the provisions of this Act as to the delivery of copies of books shall not apply to works first published in such country, except so far as is provided by the notice;
 - (iv) the notice may provide that the enjoyment of the rights conferred by this Act shall be subject to the accomplishment of such conditions and formalities (if any) as may be prescribed therein;
 - (v) in applying this Act as to ownership of copyright, the notice may make such modifications as appear necessary having regard to the law of the foreign country;
 - (vi) in applying this Act as to existing works, the notice may make such modifications as appear necessary, and may provide that nothing in those provisions as so applied shall be construed as reviving any right of preventing the production or importation of any translation in any case where the right has ceased by virtue of section 5 of the International Copyright Act, 1886 of the United Kingdom.
- (2) A notice under this section may extend to all the several countries named or described therein.
- (3) An Order-in-Council made under section 29 of the Copyright Act, 1911 of the United Kingdom and in force on the 24th April, 1967, shall have the same force and effect as a notice under this section.

Part III – Supplementary provisions

26. Abrogation of common-law rights

No person shall be entitled to copyright or any similar right in any literary, dramatic, musical, or artistic work, whether published or unpublished, otherwise than under and in accordance with the provisions of this Act, or of any other statutory enactment for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

26bis.***

[Amended K.O-I-C. 3/1978; repealed A 4/2002]

27. Power of the Minister

- (1) The Minister may publish notices altering, revoking, or varying any Order-in-Council or notice made under this Act, or under any enactments repealed by this Act, in so far as the same are applicable in Swaziland, but any notice published under this section shall not affect prejudicially any rights or interests acquired or accrued at the date when the notice comes into operation, and shall provide for the protection of such rights and interests.
- (2) Every notice made under this Act shall be published in the *Gazette* and shall be laid before both Houses of Parliament as soon as may be after it is made, and shall have effect as if enacted in this Act.

28. Saving of university copyrights

Nothing in this Act shall deprive any of the universities and colleges mentioned in the Copyright Act, 1975 of the United Kingdom, of any copyright they already possess under that Act, but the remedies and penalties for infringement of any such copyright shall be under this Act and not under that Act.

Schedule

Existing rights

Existing right	Substituted right
(a) In the case of works other than dramatic and musical works:	
Copyright.	Copyright as defined by this Act.*
(b) In the case of musical and dramatic works:	
Both copyright and performing right.	Copyright as defined by this Act.*
Copyright, but no performing right.	Copyright as defined by this Act, except the sole right to perform the work or any substantial part thereof in public.
Performing right, but not copyright.	The sole right to perform the work in public, but none of the other rights comprised in copyright as defined by this Act.

For the purposes of this Schedule the following expressions, where used in the first column thereof, have the following meanings:

“copyright”, in the case of a work which according to the law in force immediately before the commencement of this Act has not been published before that date and statutory copyright wherein depends on publication, includes the right at common law (if any) to restrain publication or other dealing with the work;

“performing right”, in the case of a work which has not been performed in public before the commencement of this Act, includes the right at common law (if any) to restrain the performance thereof in public.

In the case of an essay, article, or portion forming part of and first published in a review magazine, or other periodical or work of a like nature, the right shall be subject to any right of publishing the essay, article, or portion in a separate form to which the author is entitled at the commencement of this Act, or would, if this Act had not been passed, have become entitled under section 18 of the Copyright Act, 1842 of the United Kingdom.