

**COPYRIGHT AND NEIGHBOURING RIGHTS
(AMENDMENT) ACT, 2005**

No. 6



of 2006

ARRANGEMENT OF SECTIONS

SECTION

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An Act to amend the Copyright and Neighbouring Rights Act

Date of Assent: 4th January, 2006

Date of Commencement: 1st October, 2006

ENACTED by the Parliament of Botswana.

1. This Act may be cited as the Copyright and Neighbouring Rights (Amendment) Act, 2005.

Short title

2. The Copyright and Neighbouring Rights Act (referred to in this Act as 'the Act') is amended in section 2 thereof by inserting, in their correct alphabetical order, the following new definitions —

Amendment
of section 2
of Cap. 68:02

“Copyright Arbitration Panel” means the Copyright Arbitration Panel established under section 33A of the Act;’ and

“Copyright Society” means the Copyright Society of Botswana established under section 36A of the Act;”.

3. The Act is amended by inserting, immediately after PART III thereof the following new part —

Insertion of
PART IIIA

“PART IIIA — Establishment of Copyright Office

Establishment
of Copyright
Office

22A. (1) There is hereby established an office to be known as the Copyright Office, which shall be situated in Gaborone and shall have branches in such other places as the Minister may, by Order published in the Gazette, designate.

(2) The Copyright Office shall be headed by the Copyright Administrator who shall be a public officer and who shall, subject to the direction of the Minister, be responsible for the administration of this Act, and who shall perform such functions and exercise such powers as may be conferred on him or her by this Act or any other enactment.

(3) The Copyright Office shall also have —

- (a) A Deputy Copyright Administrator; and
- (b) such other officers as may be necessary for the proper performance of its functions, and carrying out of its duties.

(4) The Copyright Administrator and other officers of the Copyright Office shall be appointed in accordance with the provisions of the Public Service Act.

Cap. 26:01

Functions of the
Copyright
Office

22B. The Copyright Office shall —

- (a) be responsible for all matters affecting copyright in Botswana;
- (b) supervise the activities of the Copyright Society as provided for under section 36A of the Act;
- (c) advise Government and its agencies on all matters pertaining to copyright;
- (d) monitor the position of Botswana in relation to international conventions, treaties or agreements relating to copyright, and advise Government thereon;
- (e) advise Government on the negotiation, conclusion and implementation of bilateral and multilateral agreements on copyright between Botswana and other countries;
- (f) organise out-reach and awareness creation programmes to inform, educate and sensitise the public on matters relating to copyright;
- (g) maintain an effective database on copyright matters and on authors and their works;
- (h) maintain a register of works published in Botswana;
- (i) issue a licence, prescribed by the Minister, for the operation of the Copyright Society;
- (j) administer the fund established under section 35G (2); and
- (k) be responsible for such matters related to copyright, as the Minister may, from time to time, direct for the better carrying out of the purposes and provisions of this Act.”

4. The Act is amended in section 30 (1) thereof by inserting, immediately after paragraph (b) thereof, the following new paragraphs —
“(c) order payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing party, that are attributable to the infringement; and
(d) award exemplary damages where it finds that the infringement is prejudicial to the honour or reputation of the person whose rights were infringed.”.

Amendment
of section 30
of the Act

5. The Act is amended by inserting, immediately after section 33 thereof, the following new section —

Insertion of
section 33A

“Copyright
Arbitration
Panel

33A. (1) Notwithstanding the other provisions of this Act, there shall be appointed, by the Minister, an arbitration panel which shall be known as the Copyright Arbitration Panel, for the settlement of disputes under this Act.

(2) The Panel shall be composed of not less than three but not more than five persons, one of whom shall be a person who is enrolled to practice as an attorney in the High Court of Botswana, and has been an attorney for not less than seven years, or a person who has held judicial office in Botswana.

(3) The person referred to under subsection (2) shall be the chairperson of the Panel.

(4) The other members of the Panel shall be persons who are knowledgeable in the field of copyright.

(5) No person shall be appointed as a member of the Panel, nor shall any person so appointed sit in any hearing or proceeding of the Panel where he or she, his or her spouse or business partner, or his or her employer or any person closely associated with him or her, has a pecuniary interest in any matter which comes before the Panel for determination.”.

6. The Act is amended by inserting, immediately after section 35 thereof, the following new sections —

Insertion of
sections 35A,
35B, 35C, 35D,
35E, 35F and
35G

“Security
devices

35A. (1) Every sound and audio–visual recording made available to the public by sale, rental, lending or distribution in any other manner to the public for commercial purposes in Botswana shall have affixed, to it, such security device as may be prescribed.

(2) The security device shall be issued by the Copyright Office, upon payment of the price, to a person who makes available to the public, or intends to make available to the public, a sound or audio–visual recording by any method specified in subsection (1).

(3) The security device shall be issued by the Copyright Office upon proof, by the person referred to in this section, that he or she has been authorised by the owner of the copyright in the work to so sell, rent, lend or otherwise distribute the work.

(4) The security device shall be evidence that the work to which it is affixed is not a pirated work.

(5) Any person who contravenes sub-section (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or to both.

(6) Any person who, without the permission of the Copyright Office —

(a) is in possession of, or reproduces, a security device; or

(b) is in possession of any machine, instrument or contrivance intended to be used to produce or reproduce a security device,

shall be guilty of an offence and shall be liable upon conviction, to a fine not exceeding P50 000 or to imprisonment for a term not exceeding 5 years, or to both.

Affixation of security device

35B. (1) The security device shall be affixed —

(a) in the case of a sound or audio – visual recording produced or manufactured in Botswana, at the Copyright Office or such other place as the Copyright Office may, from time to time, designate by notice published in the Gazette; and

(b) in the case of a sound or audio – visual recording which is imported, but is not imported exclusively for personal use, at the relevant office of the Department of Customs and Excise before it is released for commercial use.

(2) The security device shall be affixed to every cassette, disc or other medium in which a sound recording or audio – visual recording is embodied in such a manner as to make the device visible to prospective purchasers.

Price of security device

35C. The price of a security device shall be as fixed from time to time by the Copyright Office after consultation with the Copyright Society.

Accreditation of producers

35D. (1) Every person engaged in the reproduction of sound and audio – visual recordings shall, for the purpose of affixing the security device, apply, in such form as may be prescribed, to the Copyright Office for accreditation as a producer.

(2) No person shall be accredited unless he or she —

(a) proves, to the satisfaction of the Copyright Office, that he or she has been authorised by the owner of the copyright in the work to reproduce the work referred to in subsection (1); and

(b) has paid the application fee prescribed.

(3) Upon being accredited, the applicant shall be issued with a certificate of accreditation, in such form as may be prescribed, by the Copyright Office, and such accreditation shall be renewed annually.

Accreditation
of importers

35E. (1) Any person who imports or intends to import, into Botswana, any sound or audio-visual recording for the purpose of sale, rental, lending or distribution in any other manner to the public for commercial purposes shall apply in such form as may be prescribed to the Copyright Office for accreditation as an importer authorised to use a security device in connection with such works.

(2) Upon being accredited, the applicant shall be issued with a certificate of accreditation, in such form as may be prescribed, by the Copyright Office.

(3) The Copyright Office shall issue a certificate of accreditation under this section only where the applicant produces valid authorisation from the owner of the copyright in the works permitting the importation of such works into Botswana.

(4) Any person who, without the accreditation of the Copyright Office, imports any work specified in subsection (1) shall be guilty of an offence and shall be liable, upon conviction, to a fine not exceeding P50 000 or to imprisonment for a term not exceeding 5 years, or to both.

Keeping of
books and
returns

35F. Every accredited person shall keep such books and make such returns as may be required, and in the manner prescribed by the Minister.

Levy on
technical
devices

35G. (1) There shall be imposed on all imported and locally manufactured blank sound and audio visual carriers, compact discs and equipment capable of being used to copy protected materials, a levy of such sum as may be prescribed by the Minister.

(2) The levy shall be collected by the Department of Customs and Excise and shall be deposited in a fund to be established by the Minister of Finance and Development Planning for the development of authors and publishers of works.”.

7. The Act is amended by inserting, immediately after section 36 thereof, the following new sections —

“Establishment
of Copyright
Society

36A. (1) There shall be established, for the various categories of works protected under this Act, a collective administration body to be known as the Copyright Society of Botswana.

(2) The Copyright Society shall be a non-profit making company limited by guarantee, and shall be responsible for —

- (a) the negotiation and granting of licences in written agreement with the owners of copyright for;
 - (i) the adaptation of works, performances and sound recordings,

Insertion of
sections 36A
and 36B

- (ii) the insertion of works, performances or sound recordings in other scopes,
 - (iii) the use of works for publicity purposes;
 - (b) setting rates for royalties in accordance with acceptable international standards; and
 - (c) the collection and distribution of royalties to appropriate owners of copyright.
- (3) The Copyright Society shall —
- (a) represent the owners of the copyright in the various categories of works protected under this Act; and
 - (b) put in place rules and regulations, approved by the Copyright Office, which contain such provisions as are necessary to ensure the protection of the interests of its members.

Duties of
Copyright
Society

36B. (1) The Copyright Society shall, as soon as reasonably practicable after the end of each financial year, submit, to the Copyright Office —

- (a) a report of its operations and performance during the year in question;
- (b) a copy of its audited financial statements in respect of that year; and
- (c) a copy of such other reports as may be requested by the Copyright Office.

(2) The Copyright Society shall distribute royalties on an equitable basis, approved by the Copyright Office, to its members.”.

Amendment
of section 37
of the Act

8. Section 37 of the Act is amended by deleting subsection (2) thereof.

PASSED by the National Assembly this 24th day of November, 2005.

A. MATLHAKU,
Clerk of the National Assembly.