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**NATIONAL ASSEMBLY
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**THE KENYA INTELLECTUAL PROPERTY BILL,
2026**

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FIRST SCHEDULE—Written Laws to be Administered by the Authority

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THE KENYA INTELLECTUAL PROPERTY BILL, 2026

A Bill for

AN ACT of Parliament to give effect to the provisions of Articles 11, 40 (5) and 69 of the Constitution; to provide for the establishment of the Kenya Intellectual Property Authority; to provide for patents, utility models and industrial design; to provide for copyrights and related rights; to regulate on anti-counterfeit measures and regulation of counterfeit goods ; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Kenya Intellectual Property Act, 2026.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Authority” means the Intellectual Property Authority established under the provisions of section 3;

“Board” means the Board of Directors appointed under the provisions of section 6 ;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to intellectual property;

“Director General” means the Director General of the Authority appointed under the provisions of section 11;

“intellectual property rights” include, patents, utility models, industrial designs, trade marks, copyright and related rights and geographical indications;

“Tribunal” means the Intellectual Property Tribunal established under the provisions of section 232.

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE AUTHORITY

3. (1) There is established an authority to be known as the Kenya Intellectual Property Authority.

Establishment of Kenya Intellectual Property Authority.

(2) The Authority shall be a body corporate with

perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of moveable and immovable property;
- (c) entering into contracts; and
- (d) undertaking or performing all other activities necessary for the proper performance of its functions under this Act that may lawfully be done or performed by a body corporate.

4. The Headquarters of the Authority shall be in Nairobi.

Headquarters of the Authority.

5. (1) The functions of the Authority shall be to—

Functions of the Authority.

- (a) consider applications for and grant or register intellectual property rights, including patents, utility models, industrial designs, trade marks, geographical indications, copyright and related rights and trade secrets;
- (b) regulate the importation and manufacture of goods through an intellectual property recordal system and collect levies on intellectual property goods, where applicable;
- (c) license and regulate the activities of collective management organizations and intellectual property agents;
- (d) establish and maintain relevant repositories, databases and registers on intellectual property information;
- (e) support, promote and enhance the protection of genetic resources, traditional knowledge and cultural expressions;
- (f) combat piracy, counterfeiting, trade and other dealings in counterfeit goods in Kenya in accordance with the law;
- (g) undertake public awareness, education and capacity building to promote creativity,

inventiveness, innovativeness and respect for intellectual property;

- (h) direct, co-ordinate and oversee the implementation of national, regional and international intellectual property laws to which Kenya is a party;
- (i) carry out research into matters relating to intellectual property rights, counterfeiting and piracy, to inform public policy and decision making;
- (j) promote valuation and utilization of intellectual property assets in businesses; and
- (k) promote and facilitate alternative dispute resolution with respect to intellectual property.

(2) In the performance of its functions under subsection (1), the Authority shall administer and enforce all provisions of the written laws set out in the First Schedule.

(3) The Cabinet Secretary may, by notice in the *Gazette* amend the First Schedule.

6. (1) There is established the Board of the Authority Board.

(2) The Board shall consist of—

- (a) a non-executive chairperson, appointed by the President;
- (b) the Principal Secretary responsible for intellectual property matters or a designated representative;
- (c) the Principal Secretary responsible for the National Treasury or a designated representative;
- (d) the Attorney-General or a designated representative;
- (e) five other members, not being public officers, to be appointed by the Cabinet Secretary and who shall be nominated by —
 - (i) manufacturers;
 - (ii) micro, small and medium enterprises;

- (iii) creative sectors;
 - (iv) intellectual property experts; and
 - (v) an expert in finance or management, and
- (f) the Director General of the Authority appointed under section 11 of this Act.
- (3) A person shall be qualified for appointment as chairperson to the Board if such a person—
- (a) holds a minimum of a bachelor's degree from a university recognized in Kenya;
 - (b) has knowledge and experience of at least ten years in matters relating to intellectual property; and
 - (c) satisfies the requirements of Chapter Six of the Constitution of Kenya, 2010.
- (4) A person shall be qualified for appointment under section 4(1) (e) if such a person—
- (a) holds a minimum of a bachelor's degree from a university recognized in Kenya;
 - (b) has knowledge and experience of at least five years in matters relating to intellectual property, law, applied sciences, information technology, finance, economics or creative arts; and
 - (c) satisfies the requirements of Chapter Six of the Constitution of Kenya, 2010.
- (5) A person shall not be appointed to the Board if the person—
- (a) has been convicted of a criminal offence and imprisoned for a term exceeding six months without the option of a fine;
 - (b) is a member of a governing body of a political party;
 - (c) has previously been removed from public office for contravention of the provisions of the Constitution of Kenya, 2010, or any other written law;
 - (d) is an un discharged bankrupt; and

(e) violates the Constitution of Kenya, 2010, or any other written law.

(6) The appointment of the chairperson and the members appointed under subsection (1) (e) shall be by name and by notice in the Gazette.

(7) In appointing the members under subsection (1) (a) and (e) the appointing authorities shall—

- (a) ensure that not more than two-thirds of the members are of the same gender;
- (b) observe the principle of regional and ethnic balance;
- (c) ensure that the members retire on a rotational basis; and
- (d) have due regard to the principle of fair representation for youth and persons with disabilities.

(8) The Chairperson and members of the Board shall be appointed at different times so that the respective expiry dates of their terms office shall fall at different times.

(9) A member of the Board shall not trade directly or indirectly with the Authority.

(10) The Chairperson or member of the Board may be removed from office on account of any of the following—

- (a) violation of the Constitution of Kenya, 2010 or any other law;
- (b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- (c) physical or mental incapacity to perform the functions of the Authority;
- (d) being absent from three consecutive meetings of the Board, as the case may be, without reasonable cause;
- (e) failure to disclose to the Board any interest in any contract or matter before the Board;
- (f) being convicted of a criminal offence and

sentenced to prison for a period exceeding six months ;

(g) incompetence; or

(h) bankruptcy.

7. The Board shall have all the powers necessary for the proper performance of the functions of the Authority under this Act and, in particular, the Board shall have power to—

Powers of the Board.

(a) control, supervise and administer the assets of the Authority in such manner as best promotes the purpose for which the Authority is established,

(b) determine the provisions to be made for capital and recurrent expenditure and for reserves of the Authority;

(c) receive any grants, gifts, donations or endowments on behalf of the Authority and make legitimate disbursements therefrom;

(d) enter into association with other bodies or organizations within or outside Kenya as the Board may consider desirable or appropriate and in furtherance of the purpose for which the Authority is established; and

(e) open a banking account or banking accounts for the funds of the Authority.

8. (1) The conduct and regulation of the business and affairs of the Board shall be as provided in the Schedule.

Conduct of business and affairs of the Board.

(2) Except as provided in the Schedule, the Board may regulate its own procedure.

9. The Board members of the Board shall pay be paid such remuneration, fees, or allowances for expenses as may be determined after consultation with the Cabinet Secretary for the time being responsible for Finance and the Salaries and Remuneration Commission.

Remuneration of the Board.

10. The Board may, by resolution either generally or in any particular case, delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of the powers or the

Delegation by the Board.

performance of any of the functions or duties of the Board under this Act or under any other written law.

11. (1) There shall be a Director General of the Authority who shall be competitively recruited and appointed by the Board and whose terms and conditions of service shall be determined by the Board in the instrument of appointment. Director General.

(2) A person shall be qualified for appointment as the Director General of the Authority if the person—

- (a) is a citizen of Kenya;
- (b) satisfies the requirements of Chapter Six of the Constitution of Kenya, 2010;
- (c) holds a bachelor's degree from a university recognized in Kenya or its equivalent in the fields of intellectual property, law, science, social sciences, economics, business, information and communication technology;
- (d) holds a master's degree from a university recognized in Kenya or its equivalent in the fields of intellectual property, law, science, economics, business, information and communication technology; and
- (e) has at least fifteen years of professional experience in the relevant field, five of which should be in senior management.

(3) The Director General shall hold office for a term of five years, and be eligible for re-appointment for a further one term of five years.

(4) The Director General shall, subject to the direction of the Board—

- (a) be an *ex-officio* member of the Board but shall have no right to vote at any meeting of the Board;
- (b) be responsible for the day-to-day management of the Authority; and
- (c) be responsible for the direction of the affairs and transactions of the Authority and the exercise, discharge and performance of its objectives, functions and duties.

12. (1) The Director-General may, in writing, delegate Delegation by the

the performance of any function or exercise of a power conferred on him or her by this Act or any other written law to an officer in the Authority.

Director-General.

(2) A delegation under this section—

- (a) shall be subject to any conditions the Director-General may impose;
- (b) shall not relieve the Director-General of responsibility concerning the exercise of the delegated function or performance of the delegated power; and
- (c) may be withdrawn or varied by the Director-General at any time.

13. (1) The Director General, may be removed from office by the appointing authority in accordance with the terms and conditions of service only for—

Removal from office of the Director General.

- (a) inability to perform the functions of the Authority arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty;
- (d) violation of the Constitution or any other law;
- (e) bankruptcy; or
- (f) any other ground that would justify removal from office under the terms and conditions of service.

(2) Before the Director General, is removed under subparagraph (1), he or she shall be given—

- (a) sufficient notice of the allegations made against him or her; and
- (b) an opportunity to present his or her defence against the allegations.

14. The Board may appoint such officers and other staff of the Authority as are necessary upon such terms and conditions of service as the Board may determine.

Staff.

15. (1) The common seal of the Authority shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

Common seal.

(2) The common seal of the Authority when affixed to

a document and duly authenticated shall be judicially and officially noticed and unless and until the contrary is proved, any necessary order or authorisation by the Board under this section shall be presumed to have been duly given.

16. No matter or thing done by a member of the Board or any officer, employee or agent of the Authority shall, if the matter or thing is done *bona fide* for executing the functions, powers or duties of the Authority, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.

Protection from personal liability.

17. The provisions of section 16 shall not relieve the Authority of the liability to pay compensation or damages to any person for an injury to him, his property or any of his interests caused by the exercise of the powers conferred on the Board by this Act or by any other written law or by the failure, whether wholly or partially, of any works.

Liability of the Board for damages

PART III— PATENTS, UTILITY MODELS AND INDUSTRIAL DESIGNS

18. In this part, unless the context otherwise requires—

Interpretation.

“AI-Assisted Invention” means an invention in which artificial intelligence contributes to the research, design, or development process, but a natural person provides the essential inventive concept by defining the problem, overseeing AI operations, or interpreting AI-generated results and the human inventor must make a meaningful intellectual contribution for the invention to qualify for patent protection.

“AI-Generated Invention” means an invention where artificial intelligence autonomously generates a novel concept, process, or product without direct human involvement in the inventive act;

“application” means an application under this Act for the grant of—

- (a) a patent;
- (b) a certificate of utility model or technovation, or
- (c) registration of an industrial design;

"ARIPO" means the African Regional Industrial Property Organisation, established under the Lusaka Agreement of 1976.

"Authority" means the Kenya Intellectual Property Authority established under section 6 ;

"Board" means the Board of Directors of the Kenya Intellectual Property Authority constituted under section 6 ;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to intellectual property;

"Court" means the High Court of Kenya;

"Harare Protocol" means the Protocol on Patents and Industrial Designs adopted at Harare on 10th December 1982;

"industrial design" has the meaning assigned to it in section 83;

"Intellectual Property Journal" means a journal published by the Authority mainly for the purpose of advertising intellectual property applications and for publishing other matters required to be published under this Act;

"innovation" means utility models, technovation models, and industrial designs and any other non-patentable creations or improvements that may be deemed as deserving specified intellectual property rights;

"International Bureau" means the International Bureau of the World Intellectual Property Organisation established by the convention signed at Stockholm on 14th July, 1967;

"International Classification" as regards industrial designs, means classification in accordance with the Locarno Agreement of October, 1968, establishing an international Classification For Industrial Designs;

"International Classification" as regards patents and utility models, means classification in accordance with the International Patent Classification as established by the Strasbourg agreement of 1971 establishing an international classification of patents and utility models.

"international-type search" means a search similar to

an international search provided under Article 15 of the Patent Cooperation Treaty;

“invention” means a new and useful art (whether producing a physical effect or not), process, machine, manufacture or composition of matter which is not obvious, or any new and useful improvement thereof which is not obvious, capable of being used or applied in trade or industry and includes an alleged invention;

“inventor” means the person who actually devises the invention as defined in section 19 of this Act;

“licence contract” means a contract or agreement by which a person grants permission to use his industrial property rights;

“licenCe” means a licensee under a contract registered or deemed to have been registered under this Act;

“licensor” means a party to the licence contract who grants the permission;

“Paris Convention” means the Paris Convention for the Protection of Industrial Property, of 20th March, 1883, as last revised;

“Patent Cooperation Treaty” means the treaty of that name signed at Washington on the 19th June, 1970;

“priority date” means the date of the first application that serves as the basis for claiming the right of priority provided for in the Paris Convention;

“Regulations” means Regulations made under this Act;

“self-replicable matter” means any matter possessing the genetic material necessary to direct its own replication by way of a host organism or in any other indirect way;

“technical character” means the invention must relate to a technical field, address a technical problem and technical features that can be defined in the claim essentially involving a technical teaching or instructions to solve a problem using technical means;

“Tribunal” means the Intellectual Property Tribunal established under section 232 of the Act; and

“utility model” means any form, configuration or

disposition of element of some appliance, utensil, tool, electrical and electronic circuitry, instrument, handicraft mechanism or other object or any part of the same allowing a better or different functioning, use, or manufacture of the subject matter or that gives some utility, advantage, environmental benefit, saving or technical effect not available in Kenya before and includes micro-organisms or other self-replicable material, products of genetic resources, herbal as well as nutritional formulations which give new effects.

A. Patent: Patentability

19. (1) For the purposes of this section, "invention" means a solution to a specific problem in the field of technology.

Meaning of an invention.

(2) Subject to subsection (3), an invention may be, or may relate to, a product or a process.

(3) The following shall not be regarded as inventions and shall be excluded from patent protection—

- (a) discoveries, scientific theories and mathematical method;
- (b) schemes, rules or methods for doing business, performing purely mental acts or playing games;
- (c) Artificial Intelligence generated inventions;
- (d) Artificial Intelligence algorithms and software per se, that do not have a technical character;
- (e) methods for treatment of the human or animal body by surgery or therapy, as well as diagnostic methods practised in relation thereto, except products for use in any such methods;
- (f) mere presentation of information; and
- (g) public health related methods of use or uses of any molecule or other substance whatsoever used for the prevention or treatment of any disease which the Cabinet Secretary responsible for matters relating to Health may designate as a serious health hazard or as a life threatening disease.

20. An invention is patentable if it is new, involves an inventive step and is industrially applicable.

Patentable inventions.

21. (1) An invention is new if it is not anticipated by

Novelty.

prior art.

(2) For the purposes of this Act, everything made available to the public anywhere in the world by means of written disclosure (including drawings and other illustrations) or, by oral disclosure, use, exhibition or other non-written means shall be considered prior art.

Provided that such disclosure occurred before the date of filing of the application or, if priority is claimed, before the earliest priority date validly claimed in respect thereof.

(3) For the purpose of the evaluation of novelty, an application for the grant of a patent or a utility model certificate in Kenya shall be considered to have been comprised in the prior art as from the filing date of the application, or if priority is claimed, as from the date of its validly claimed priority, to the extent to which its content is available, or is later made available, to the public in accordance with this Act or in accordance with the Patent Cooperation Treaty.

(4) For the purposes of subsection (2), a disclosure of the invention shall not be taken into consideration if it occurred not earlier than twelve months before the filing date or, where applicable, the priority date of the application and if it was by reason or in consequence of—

- (a) acts committed by the applicant or his predecessor in title; or
- (b) an evident abuse committed by a third party in relation to the applicant or his predecessor in title.

22. An invention shall be considered as involving an inventive step if, having regard to the prior art relevant to the application claiming the invention, it would not have been obvious to a person skilled in the art to which the invention pertains on the date of the filing of the application or, if priority is claimed, on the priority date validly claimed in respect thereof.

Inventive step.

23. An invention shall be considered industrially applicable if, according to its nature, it can be made or used in any kind of industry, including agriculture, medicine, fishery and other services.

Industrial application.

24. The following shall not be patentable—

- (a) plant varieties as provided for in the Seeds and Plant Varieties Act, but not parts thereof or products of biotechnological processes; and
- (b) inventions contrary to public order, morality, public health and safety, principles of humanity and environmental conservation.

Non-patentable
inventions.
(Cap. 326)

25. (1) Where an application for a patent is filed with the Authority under this Act or under any international convention to which Kenya is a party, and it appears to the Director General that the application contains information of a description notified to him by the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary as being information the publication of which might be prejudicial to the defence of Kenya, the Director General may give directions prohibiting or restricting the publication of that information or its communication to any specified person or persons.

Information
prejudicial to
defence of Kenya
or safety of public.

(2) If it appears to the Director General that any application so filed contains information the publication of which might be prejudicial to the safety of the public, he may give directions prohibiting or restricting the publication of that information or its communication to any specified person or persons until the end of a period not exceeding three months from the end of the period prescribed for the purposes of section 42.

(3) Where directions under this section are in force with respect to any application—

(a) if the application is made under this Act, it may be processed to the stage where it is in order for the grant of a patent, but shall not be published and any information relating thereto shall not be communicated and no patent shall be granted in pursuance of the application;

(b) if it is an application for an ARIPO patent, it shall not be sent to ARIPO; and

(c) if it is an international application for a patent, a copy thereof shall not be sent to the International Bureau or to any international searching authority appointed under the Patent Cooperation Treaty.

(4) Where the Director General gives instructions under this section with respect to any application, he shall give notice of the application and of the directions to the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary and the following provisions shall then have effect—

- (a) the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary shall, on receipt of the notice, consider whether the publication of the application or the publication or communication of the information in question would be prejudicial to the defence of Kenya or the safety of the public;
- (b) if the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary determines that the publication of the application or the publication or communication of the information would be prejudicial to the safety of the public, he shall notify the Director General, who shall continue his directions under subsection (2) until they are revoked under paragraph (e);
- (c) if the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary determines that the publication of the application, or the publication or communication of the information would be prejudicial to the Defence of Kenya or the safety of the public, he shall (unless a notice under paragraph (d) has previously been given by the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary to the Director General) reconsider that question during the period of nine months from the date of filing the application and at least once in every subsequent period of twelve months;
- (d) if on the consideration of an application at any time it appears to the Cabinet Secretary responsible for defence or the concerned Cabinet Secretary that the publication of the application, or the publication or communication of the information, contained in it would not, or would no longer, be prejudicial to the defence of Kenya

or the safety of the public, he shall give notice to the Director General to that effect; and

- (e) on receipt of a notice under paragraph (d), the Director General shall revoke the directions and may, subject to such conditions as he may deem fit, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application, whether or not that time had previously expired.

(5) The Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary may, in determining a question under paragraph (c) of subsection (4)—

- (a) at any time after, or, with the consent of the applicant, before the expiry of the period prescribed for the purposes of section 43, consider the application and any documents submitted in relation thereto; or
- (b) where the application contains information relating to the production or use of atomic energy or research into matters connected with such production or use, authorise the National Council for Science and Technology to study the application and any documents sent to the Director General in connection therewith and report to him as soon as reasonably practicable on the utility or otherwise of the patent applied for.

(6) Where directions have been given under this section in respect of an application for a patent for an invention and the period prescribed in relation thereto expires, and while such directions are still in force, an application is brought for the grant of a patent, then—

- (a) if while the directions are in force, the invention is used by or with the written authorization of or on the order of a Government Ministry, Department or agency or agency, the provisions of section 79 shall apply as if—
 - (i) the use was made pursuant to the provisions of that section,
 - (ii) the application had been published at the end of that period, and

(iii) a patent had been granted for the invention at the time the application is brought for the grant of a patent (taking the terms of the patent to be those of the application as at the time it was so brought), and

(b) if it appears to the Cabinet Secretary responsible for Defence or the concerned Cabinet Secretary that the applicant for the patent has suffered hardship by reason of the continuation in force of the directions, he may, with the consent of the Ministry responsible for Finance, make such payment by way of compensation to the applicant, as appears to be reasonable having regard to the inventive merit and utility of the invention, the purpose for which it is designed and any other relevant circumstances.

(7) If the applicant is dissatisfied with the amount of compensation paid to him or her under subsection (6)(b), he or she may appeal to the Tribunal.

(8) Where a patent is granted in pursuance of an application in respect of which directions have been given under this section, no renewal fees shall be payable in respect of any period during which those directions remain in force.

(9) A person who fails to comply with any direction under this section shall be liable, on conviction, to imprisonment for a term not exceeding two years, or to a fine not exceeding twenty thousand shillings, or to both.

26. (1) Subject to the provisions of this section, no person resident in Kenya shall, without written authority granted by the Director General, file or cause to be filed outside Kenya, an application for a patent for invention, unless—

Restrictions on applications abroad by Kenya residents.

- (a) an application for a patent for the same invention has been filed with the Authority not less than six weeks before the filing of the application in Kenya; and
- (b) either no directions have been given under section 25 in relation to the application in Kenya or any such directions have been revoked.

(2) Subsection (1) shall not apply to an application for a patent for an invention in respect of which an application for a patent has first been filed in a country outside Kenya by a person resident outside Kenya.

(3) A person who files or causes to be filed an application for the grant of a patent in contravention of this section shall be liable on conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding two years, or to both.

27. (1) If an invention concerns a micro-biological process or the product thereof and involves the use of a micro-organism which is not available to the public and which cannot be described in the patent application in such a manner as to enable the invention to be carried out by a person skilled in the art, the invention shall only be regarded as being disclosed if a culture of the micro-organism has been deposited with a depository institution as prescribed by the Regulations.

Patents relating to
living matter.

(2) The information referred to in subsection (1) may be submitted within a period of sixteen months after the date of filing of the application or, if priority is claimed, after the priority date.

(3) The deposited culture shall be made available upon request of any person having the right to inspect the files.

(4) If a deposited microorganism ceases to be available from the institution with which it was deposited because—

(a) the micro-organism is no longer viable; or

(b) for any other reason the depository institution is unable to supply samples, and if the micro-organism has not been transferred to another depository institution from which it continues to be available, an interruption in availability shall not be deemed to have occurred if a new deposit of the micro-organism originally deposited is made within a period of three months from the date on which the depositor was notified of the interruption by the depository institution and a

copy of the receipt of the deposit issued by the institution is forwarded to the Authority within four months from the date of the new deposit stating the number of the application or of the patent.

(5) A new deposit shall be accompanied by a statement signed by the depositor indicating that the newly deposited micro-organism is the same as originally deposited.

28. (1) For purposes of this section—

“prior informed consent” means the consent of a party to an activity that is given after receiving full disclosure regarding the reasons for the activity, the specific procedures that activity would entail, the potential risks involved and the full implications that can realistically be foreseen or the giving by a collector of complete and accurate information, and, based on that information, the prior acceptance of that collector by the government and the concerned local community or communities to collect biological resources, or indigenous knowledge, or technologies;

Disclosure of origin of biological resources and traditional knowledge.

Cap. 387.

“traditional knowledge” means a body of knowledge held by individuals, indigenous and local communities and which is vital to the communities; and

“biological resource” has the meaning assigned to the term under the Environmental Management and is to provide for disclosure of genetic material and traditional knowledge in patent applications in accordance with the Environmental Management and Co-ordination Act.

(2) Where the subject matter of a patent application is derived from or developed with biological resources or associated traditional knowledge, the applicant shall be required to furnish proof of prior informed consent in the prescribed manner.

(3) Where the applicant fails to comply with the provisions of sub section (1) above, the application shall be deemed as abandoned.

B. Right to inventions and naming of inventor

29. (1) Subject to this section, the right to a patent shall belong to the inventor.

Right to a patent.

(2) If two or more persons have jointly made an invention the right to the patent shall belong to them jointly.

(3) If and to the extent to which two or more persons have made the same invention independently of each other, the person whose application has the earliest filing date, or if priority is claimed, the earliest validly claimed priority date that leads to the grant of a patent shall have the right to the patent.

(4) The right to a patent may be assigned or may be transferred by succession.

(5) Sections 81 to 95 shall apply with the necessary modifications to contracts assigning the right to a patent.

30. Where the applicant has obtained the essential elements of the invention which is the subject of his application from the invention of another person, he or she shall, unless authorized by the person who has the right to the patent or who owns the patent, be obliged to assign to such person the application or, where the patent has already been granted, the patent.

Unauthorized application based on an invention of another person.

31. (1) Notwithstanding section 29 and in the absence of contractual provisions to the contrary, the right to a patent for an invention made in execution of a commission or of an employment contract shall belong to the person having commissioned the work or to the employer.

Inventions made in execution of commission or by employee.

Provided that where the invention is of exceptional importance the employee shall have a right to equitable remuneration taking into consideration his salary and the benefit derived by the employer from the said invention.

(2) The provisions of subsection (1) shall apply where an employment contract does not require the employee to exercise any inventive activity but when the employee has made the invention by using data or means available to him during his employment.

(3) In the circumstances provided for in subsection (2), the employee shall have a right to equitable remuneration taking into account his or her salary, the importance of the invention and any benefit derived from the invention by the employer.

(4) In the absence of agreement between the parties, the remuneration shall be fixed by the Tribunal.

(5) Inventions made without any relation to an employment or service contract and without the use of the employer's resources, data, means, materials, installations or equipment shall belong solely to the employee or the person commissioned.

(6) This section shall, where relevant, apply directly or indirectly to governmental and other relevant organizations.

32. The inventor shall be named as such in the application for patent and in the patent unless in a special written declaration addressed to the Director General he indicates that he wishes not to be named and any promise or undertaking by the inventor made to any person to the effect that he will make such declaration shall be without legal effect.

Naming of inventor.

C. Application, grant and refusal of grant of a patent

33. (1) An application for a patent shall be filed with the Director General and shall contain—

Application.

- (a) a request,
- (b) a description;
- (c) one or more claims;
- (d) one or more drawings, where necessary;
- (e) sequence listing in the prescribed format , where necessary) and,
- (f) an abstract.

(2) Where the applicant's ordinary residence or principal place of business is outside Kenya, he or she shall be represented by an agent who shall be a citizen of Kenya admitted to practice before the Authority.

(3) The request shall state the name of, and prescribed data concerning the applicant, the inventor and the agent, if any, and the title of the invention, and where the applicant is not the inventor the request shall be accompanied by a statement justifying the applicant's right to the patent.

(4) The appointment of an agent shall be indicated by furnishing a power of attorney signed by the applicant.

(5) The description shall disclose the invention and the best mode for carrying out the invention, in full, clear, concise and exact terms as to enable a person skilled in the art to make, use or evaluate the invention and that description shall include any drawing, sequence listings and relevant deposits as in the case of microorganisms and self-replicable material which are essential for the understanding of the invention.

(6) The claim or claims shall define the matter for which protection is sought and shall be clear and concise and fully supported by the description.

(7) The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the scope of the protection sought.

(8) The details of the requirements with which the application must comply shall be prescribed by the Regulations made under this Act.

34. (1) An application shall relate to one invention or to a group of inventions so linked as to form a single general inventive concept.

Unity of inventions.

(2) The Regulations shall prescribe rules for determining compliance with the requirement of unity of invention under subsection (1).

(3) Non-compliance with the requirement of unity of invention under subsection (1) shall not constitute a ground for the invalidation or revocation of a patent.

35. (1) An applicant may amend the application under section 33, provided that the amendment shall not go beyond the disclosure in the initial application.

Amendment of an application.

(2) An amendment made after an application has been recommended for grant but before payment of the grant fees shall be accompanied by—

- (a) request for amendment, and
- (b) a request for substantive examination.

(3) Where an applicant is invited to amend an application after substantive examination, the applicant may amend the application not more than three times, after which the Director General shall make a final decision to grant or reject the application.

(4) The Cabinet Secretary may make Regulations for the better carrying out of the provisions of this section.

36. (1) An applicant may divide an application into two or more divisional applications, if each divisional application does not extend beyond the disclosure in the application as originally filed.

Division of an application.

(2) A divisional application shall retain the filing date and, where applicable, the priority date of the earlier application from which it is divided.

(3) The Cabinet Secretary may make Regulations for the better carrying out of the provisions of this section.

37. (1) The application may contain a declaration claiming the priority as provided for in the Paris Convention of one or more earlier national, regional or international applications filed by the applicant or his or her predecessor in title in or of any state party to the Paris Convention.

Right of priority.

(2) The Director General may, at any time after the expiration of three months from the filing of an application containing the declaration, require that—

- (a) the applicant furnish a copy of the earlier application, certified as correct by the Authority with which it was filed; or
- (b) where the earlier application is an international application filed under the Patent Cooperation Treaty, by the International Bureau.

38. (1) The Director General may request an applicant to furnish him or her with the filing date and application number of any application for a patent or other title of protection filed by the applicant with a national or regional industrial property office in another country relating to the same invention claimed in the application filed under this Act.

Information concerning corresponding foreign applications and grants.

(2) An applicant shall, at the request of the Director General, furnish him or her with the following documents relating to a foreign applications—

- (a) copies of any communication received by the applicant concerning the results of any search or examination carried out in respect of the foreign application;
- (b) a copy of the patent or other title of protection granted on the foreign application; and
- (c) a copy of any final decision rejecting the foreign application or refusing the grant requested in the foreign application.

(3) The applicant shall, at the request of the Director General, furnish him with a copy of any decision revoking or invalidating the patent or any other title of protection granted by the applicant on the basis of the foreign application.

(4) The applicant shall, at the request of the Director General, furnish him with copies of any communication received by the applicant concerning the results of any search or examination carried out in respect of any foreign application other than the one referred to in subsection (2).

(5) The documents furnished under this section shall merely serve the purpose of facilitating the evaluation of novelty claimed in the application filed with the Director General or in the patent granted on the basis of that application.

(6) The applicant shall have the right to submit comments on the documents furnished under this section.

(7) The details of the requirements under this section shall be prescribed by the Regulations.

39. (1) An application in this part shall be subject to the payment of the prescribed fees.

Payment of fees.

(2) The Board may waive whole or part of the fees in the manner and in the circumstances as may be prescribed.

40. An applicant may withdraw an application at any time before the grant of a patent or the notification of rejection of the application or of refusal to grant a patent.

Withdrawal of application.

41. (1) The Director General shall accord as the filing date the date of receipt of the application, provided at the time of receipt, the documents filed contain—

Filing date and examination of application as to form.

- (a) the name and address of the applicant;
- (b) a part which on the face of it appears to be a description; and
- (c) a part which on the face of it appears to be a claim or claims.

(2) If the Director General finds that the application did not, at the time of receipt, fulfil the requirements under subsection(1) , he or she shall invite the applicant in writing, to file the required correction.

(3) If, the applicant complies with the invitation referred to in subsection (2), the Director General shall accord as filing date the date of receipt of the required correction; otherwise he shall treat the application as if it had not been filed.

(4) Where the application refers to drawings which are not included in the application, the Director General shall invite the applicant in writing to furnish the missing drawings, and, if the applicant complies with the invitation, the Director General shall accord as the filing date the date of receipt of the missing drawings; otherwise he shall accord as the filing date the date of receipt of the application and shall treat any reference to the drawings as non-existent.

(5) Where no invitation under subsections (2) and (4) was sent to the applicant and the applicant nevertheless files a correction, pertaining to any of the requirements under subsection (1), to his or her application, the Director General shall accord as filing date the date of receipt of the correction, provided that the correction was received within thirty days from the date of application.

(6) The Director General shall cause an examination to be carried out as to whether there are any of the following defects with respect to the application—

- (a) the request does not comply with the requirements of section 33(3) and the rules pertaining thereto;

- (b) the description, the claims and, where applicable, the drawings and sequence listing do not comply with the physical requirements prescribed by the Regulations;
- (c) the application does not contain an abstract;
- (d) the fees referred to in section 39 have not been paid as provided for in the Regulations or the payment of such fees has been waived under that section.

(7) If the Director General finds any of the defects referred to under subsection (6), he shall invite the applicant to remedy such defects provided that any corrections made to the application shall not be such that they would require a change of the filing date and if the applicant does not comply with the invitation, the application shall be rejected by the Director General.

(8) The details of the requirements and the procedure under this section shall be prescribed by the Regulations.

42. (1) The Director General shall publish the application as soon as possible after the expiration of eighteen months from the filing date or, where priority is claimed, the date of priority:

Publication of application.

Provided that the Director General may at the request of the applicant, publish the application before the expiry of eighteen months.

(2) For the purposes of subsection (1), in the case of applications claiming priority, the term of eighteen months shall be construed from the original filing date and in the case of applications with two or more priority claims, the period shall be construed from the earliest priority dates.

(3) The publication of the patent application shall be effected by publishing the particulars set out in the Regulations, in the Intellectual Property Journal.

(4) The Cabinet Secretary may make Regulations for the carrying out of the provisions of this section.

43. (1) The Director General may instruct that any application found in order as to form be the subject of an international-type search.

International-type search.

(2) When a direction under subsection (1) is made, the Director General shall invite the applicant to pay the prescribed fee; and if the applicant does not comply with the invitation, the application shall be rejected.

(3) Upon receipt of the report on the international-type search, the Director General may request the applicant to furnish him with a copy of any document cited in the report and if without lawful reason, any copy is not furnished within the prescribed time limit, the application shall be rejected.

(4) If it is apparent from the report on the international-type search or from the declaration on the non-establishment of the report, that the subject of the application or of any claim or claims is not an invention, the Director General shall reject the defective application or consider the defective claim or claims to be withdrawn, as the case may be, unless the applicant satisfies him or her that the subject of the application or claims constitutes an invention.

(5) If it is apparent from the report on the international-type search or from the declaration on the non-establishment of the report, that—

- (a) the description, the claims or, where applicable, the drawings do not comply, in whole or in part, with the prescribed requirements to such an extent that no meaningful search could be carried out,
- (b) the application does not comply, in whole or in part, with the requirements of unity of invention prescribed by section 18 of this Act and the rules pertaining thereto; or
- (c) the invention claimed in the application does not fulfil the requirements of novelty; the Director General shall reject the application unless the applicant either satisfies him that the requirements have been fulfilled or amends or divides the application so as to comply with the requirements.

(6) The details of the requirements and the procedures under this section shall be prescribed by the Regulations.

44.(1) Where an application for a patent satisfies the requirements specified in section 41 (7), the Director

Examination as to
substance

General shall notify the applicant, in writing, who shall, within five years from the filing

date of the application, submit a request in the prescribed form for the examination of the application pursuant to the provisions of subsection (2):

Provided that where no request is made within the prescribed period, the application shall be deemed to be abandoned.

(2) Where a request is filed under subsection (1), the Director General shall cause an examination of the application to be made as to whether—

- (a) the invention in respect of which the application is made is patentable within the meaning of this Act;
- (b) the application complies with the requirements of subsections (5) and (6) of section 33; and
- (c) the application complies with the requirements of unity of invention prescribed in section 34.

(3) Where the Director General is of the opinion that any of the conditions referred to in subsection (2) are not fulfilled, he or she shall notify the applicant accordingly and invite him or her to make his or her observations, and where applicable, to amend his or her application.

Grant, registration
and publication of
a patent.

(4) Where the Director General determines that an application does not satisfy any of the conditions referred to in subsection (2), despite any observations or amendments submitted by the applicant, the Director General shall refuse to grant the patent and shall notify the applicant accordingly.

(5) The details of the requirements and the procedure to be followed under this section shall be prescribed by the Regulations.

45. (1) Unless an application has been rejected under or a patent has been refused under section 41 or 44, a patent shall be granted and issued to the applicant in the prescribed form.

(2) Every patent granted under subsection (1) shall be registered, and shall, as soon as reasonably practicable, be published by the Director General in the manner prescribed in the Regulations.

46. (1) The Director General shall maintain a register in which all patents granted under this Act shall be recorded and numbered in the order of grant, and, in respect of each patent, where appropriate, its lapse for non-payment of annual fees and all transactions to be recorded by virtue of this Act.

Register of patents.

(2) Any person may, during working hours, inspect the register maintained under subsection (1) and may, subject to the payment of the prescribed fee and any regulations made under this section, obtain extracts therefrom.

(3) The details concerning the register shall be prescribed by the Regulations.

47. The applicant may appeal to the Tribunal against any decision by which the Director General accords a filing date, rejects the application, treats the application as if it had not been filed, considers any of the claims to be withdrawn or refuses to grant a patent.

Appeals

D. International applications

48. For the purposes of this Part—

Interpretation of Part III

“international application” means an international application filed in accordance with the Patent Cooperation Treaty and the Regulations prescribed thereunder;

“designated Office” has the meaning assigned to it under the Patent Cooperation Treaty;

“elected Office” has the meaning assigned to it under the Patent Cooperation Treaty;

“international preliminary examination report” has the meaning assigned to it under the Patent Cooperation Treaty;

“international publication” has the meaning assigned to it under the Patent Cooperation Treaty;

“international search report” has the meaning assigned to it under the Patent Cooperation Treaty;

“Receiving Office” has the meaning assigned to it under the Patent Cooperation Treaty;

“to designate” has the meaning assigned to it under the Patent Cooperation Treaty; and

“to elect” has the meaning assigned to it under the Patent Cooperation Treaty.

49. (1) The Authority shall act as a receiving Office where an international application is filed with it by a national or a resident of Kenya.

Further functions
of the Authority

(2) The Authority shall act as a designated Office or an elected Office in the case of any international application in which Kenya is designated or elected for a national patent.

(3) The functions of the Authority under this Part shall be performed in accordance with the provisions of the Patent Co-operation Treaty and this Act;

(4) In the event of a conflict between this Act and the Patent Cooperation Treaty, the Regulations or the administrative instructions issued under the Treaty, the Patent Cooperation Treaty, the Regulations and the administrative instructions shall prevail.

50. (1) Where an international search report is not established, or relates only to one or some of the claims in an international application, the Director General shall reject the international application or treat as withdrawn any claim not covered by the report, unless the applicant satisfies the Director General that the failure to establish the report, in whole or in part, was unjustified.

Unsearched or
unexamined
international
applications

(2) Where the international search report relates to only one or some of the claims due to the applicant's refusal to pay additional fees, those parts of the international application which consequently have not been searched shall be considered withdrawn unless the applicant divides out from the application as provided for in section 36 the parts concerned or satisfies the Director General that the invitation to pay the additional fees was not justified.

(3) Where an international preliminary examination report with respect to an international application has been communicated to the Director General the following paragraphs shall apply—

- (a) where, in the case of lack of compliance with the requirements of unity of invention, the international preliminary examination report indicates that the international preliminary examination was carried out on restricted claims, or was carried out on the main invention only, those parts of the international application indicated as not having been the subject of international preliminary examination shall be considered withdrawn unless the applicant divides out from the application as provided for in section 36 the parts concerned or satisfies the Director General that the invitation of the international preliminary examining authority was not justified; and
- (b) where the international preliminary examination report states, with respect to the entire international application or one or some of its claims only, the opinion that a defect under Article 17(4)(a) of the Patent Co-operation Treaty exists under the international application or the claim or claims, as the case may be, shall be considered withdrawn unless the applicant satisfies the Director General that the defects do not exist.

(4) The Director General may refuse to grant a patent upon the application if it is apparent from an international search report or an international preliminary examination report that an invention claimed in an international application does not fulfil the requirements of novelty, unless the applicant either satisfies him that the requirements have been fulfilled or amends the claims in such a way that fulfils the requirements.

51.(1) An applicant may seek relief against infringement in respect of acts committed before the grant of the patent but after the date of international publication under the Patent Co-operation Treaty, where the said international publication was effected in English.

(2) Where the international publication is made in a language other than English, subsection (1) applies only if the applicant transmits an English translation of the international publication to the infringer and only in respect

Provisional
protection of
published
international
applications.

of acts committed after the infringer receives the translation.

52. The publication of an international application under Article 21 of the Patent Cooperation Treaty, in which Kenya is designated for a national patent, shall be deemed to be publication under section 26.

Publication of international application.

E. Rights and obligations of the applicant or the owner of the invention

53. (1) An applicant or the owner of the invention shall have the following rights—

Rights and obligations.

- (a) to be granted the patent, where the relevant requirements under this Act are fulfilled;
- (b) after the grant of the patent and within the limits defined in section 38 to preclude any person from exploiting the patented invention in the manner referred to in section 38; and
- (c) to conclude licence contracts as provided for in Part III of this Act, and subject to the obligations referred to in subsection (2).

(2) The applicant or the owner of the invention shall have the following obligations—

- (a) to disclose the invention in accordance with this Act;
- (b) to give information concerning corresponding foreign applications and grants; and
- (c) to pay fees to the Director General, as prescribed in this Act and the Regulations, subject to the sanctions provided for therein.

54. (1) The owner of the patent shall have the right to preclude any person from exploiting the protected invention by any of the following acts—

Rights of a patent owner.

- (a) Where the patent has been granted in respect of a product—
 - (i) making, importing, offering for sale, selling and using the product; or
 - (ii) stocking such a product for the purposes of offering it for sale, selling or using the product;

(b) where the patent has been granted in respect of a process—

- (i) using the process, or
- (ii) doing any of the acts referred to in paragraph (a), in respect of a product obtained directly by means of the process.

(2) The rights conferred on the owner of the patent under this section shall not apply to acts by third parties necessary to obtain approval or registration of a product from a relevant authority, for the purpose of commercialising the product after expiry of the patent.

55. The owner of a patent shall have the right—

Enforcement of a right.

- (a) to obtain an injunction to restrain the performance or the likely performance, by any person without his authorization, of any of the acts referred to in section 55;
- (b) to claim damages from any person who, having knowledge of the patent, performed any of the acts referred to in section 55, without the owner's authorization;
- (c) to claim compensation from any person who, without his or her authorization, performed any of the inventions, claimed in the published application, as if a patent had been granted for that invention.

Provided that the person, at the time of the performance of the act, had—

- (i) actual knowledge that the invention that he or she was using was the subject matter of a published application; or
- (ii) received written notice that the invention that he or she was using was the subject matter of a published application, such application being identified in the said notice by its serial number.

56. (1) Notwithstanding the provisions of section 38, a prior user patent shall have no effect against any person who, in good faith, for the purposes of his or her

Right of a prior user.

enterprise or business, before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted, and within the territory where the patent produces its effect, was using the invention or was making effective and serious preparations for such use, any such person shall have the right, for the purposes of his or her enterprise or business, to continue such use or to use the invention as envisaged in such preparations.

(2) The right of his or her enterprise or business, or with that part of his or her enterprise or business in which the use or preparations the prior user may only be transferred or devolved together with for use have been made.

57. The scope of the protection shall be determined by the terms of the claims but the description, including sequence listings, where necessary) and the drawings included in the patent may be used to interpret the claims.

Scope of protection.

58. (1) The rights under the patent shall extend only to acts done for industrial or commercial purposes and in particular not to acts done for scientific research.

Limitation of rights.

(2) The rights conferred by a patent shall not extend to the extemporaneous preparation by a pharmacy, for individual cases, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

(3) The rights under the patent shall not extend to acts in respect of articles which have been put on the market in Kenya or in any other country or imported into Kenya by the owner of the patent or with his or her express consent.

(4) The rights under the patent shall not extend to the use of articles on aircraft, land vehicles or vessels of other countries which temporarily or accidentally enter the airspace, territory or waters of Kenya respectively.

(5) The rights under the patent shall be limited by the provisions of the terms of the patent.

(6) A patent shall be subject to—

- (a) the provisions relating to compulsory licences issued on grounds of public interest or interdependence of patents; and

(b) the provisions relating to State exploitation of patented inventions under the Act.

(7) The rights of the patent shall not extend to variants or mutants of living forms or replicable living matter that is distinctively different from the original for which patents were obtained where such mutants or variants are deserving of separate patents.

59. (1) For the purposes of this section—

"designate" has the meaning assigned to it by the Harare Protocol;

"designated office" has the meaning assigned to it by the Harare Protocol;

"receiving office" has the meaning assigned to it by the Harare Protocol;

"regional application" means an application for a patent, utility model or industrial design filed in accordance with the Harare Protocol and the Regulations made thereunder.

(2) The Authority shall act as a receiving office where Kenya is designated in a regional application.

(3) The Authority shall act as a designated office where Kenya is designated in a regional application.

(4) The functions of the Authority under this section shall be performed in accordance with the provisions of this Act and the Harare Protocol.

(5) In the event of a conflict between this Act and the Harare Protocol, the provisions of this Act shall prevail.

(6) A patent, utility model or industrial design granted or registered under the Harare Protocol and in which Kenya is designated shall be treated as if it were granted or under this Act.

(7) For purposes of subsection (6)—

(a) the owner of a patent, utility model or industrial design shall have the same rights and remedies and be subject to the same conditions as the owner of a patent, utility model or industrial design granted or registered under this Act, and

Regional applications, grants and registrations under the Harare Protocol.

(b) the provisions of this Act relating to surrender, revocation, infringement and rectification of registers shall apply, with necessary modification to the patent, utility model or industrial design granted.

(8) The requirements and procedures under this section shall be prescribed in the Regulations.

F. Term of patent and annual fees

60. A patent shall expire at the end of twenty years from the filing date of the application.

Term of a patent.

61. (1) In order to maintain the application or the patent, an annual fee shall be payable on or before each anniversary of the date of filing of the application or the patent, and shall be paid in the manner prescribed.

Annual fees.

(2) A grace period of six months shall be granted for the payment of the annual fee upon payment of such surcharge as may be prescribed in the Regulations.

(3) If an annual fee is not paid in accordance with this section, the application shall be deemed to have been withdrawn or the patent shall lapse and the respective invention shall cease to be protected.

(4) The Director General shall publish the lapse of any patent under subsection (3).

(5) Within six months from the expiration of the grace period referred to in subsection (2), any interested person may, upon payment of the prescribed fee, request the Authority to restore an application that is deemed to have been withdrawn, or a patent that has lapsed, by virtue of subsection (3).

(6) Upon a request under subsection (5), the Director General shall, if satisfied that the failure to pay the annual fee was not intended, and subject to the payment of the annual fee, make an order restoring the application or the patent, as the case may be.

(7) Where a patent is restored, no proceedings shall be brought in respect of the patent—

(a) with respect to any acts performed after the lapse of the patent and before the date of the order for restoration; or

- (b) with respect to any acts performed after the date of the order of restoration in relation to articles imported into or manufactured in Kenya, after the lapse of the patent and before the date of the order for restoration.

G. Change in the ownership and joint ownership of applications and patent

62. (1) All contracts assigning applications or patents shall be in writing and shall be signed by the parties to the contract.

Change in ownership of applications

(2) Any change in the ownership of an application or a patent shall be recorded in the patent register in accordance with, and on payment of a fee fixed by the Regulations and until the change has been recorded, any document evidencing the change in ownership shall not be admitted in any proceedings as evidence of the title of any person to an application or a patent, unless the Tribunal otherwise directs.

63. (1) In the absence of an agreement to the contrary between the parties, joint owners of an application or patent may separately—

Joint ownership of applications and patents.

- (a) transfer their rights in the application or patent;
- (b) exploit the patented invention; and
- (c) prevent any person from exploiting the patented invention.

(2) The joint owners may grant permission to a third party to undertake any act referred to in section 38 only jointly.

H. Contractual licences

64. (1) In the absence of any provision to the contrary, in the licence contract, the licensee shall be entitled to do any of the acts referred to in section 54 in respect of the invention, without limitation as to time, in the whole of Kenya and in any field of use of the invention, utility model or industrial design.

Rights of a licensee.

(2) In the absence of any provision to the contrary in the licence contract, the licensee may not grant to any third person to do any of the acts referred to in section 54.

65. (1) In the absence of any provision to the contrary in the licence contract, the licensor may grant permission to any third person to do, or may himself do, any of the acts which constitute exercising the rights of ownership.

Rights of licensor to grant further licences and use of the invention.

(2) If the licence contract provides that such contract or the permission granted by it is exclusive, the licensor may neither grant permission to any third person to do any of the acts referred to in section 54 and covered by the licence contract, nor himself do any of those acts, and the licensee shall be considered an exclusive licensee for the purposes of this Act.

66. (1) Where, before the expiration of the licence contract any of the following events occurs with respect to any application or patent referred to in that contract—

Effects of patent not being granted, revoked or being invalidated

- (a) the application is withdrawn;
- (b) the application is finally rejected; or
- (c) the patent is finally revoked or declared invalid.

(2) the Tribunal may make any order it deems reasonable under the circumstances for the repayment of the royalties, or the return of any consideration paid or given under the contract, directly relating to any such application or patent.

67. All licence contracts shall be in writing and shall be signed by the parties thereto.

Form of licence contracts.

68. (1) All licence contracts, including modifications thereof, shall be submitted to the Authority for registration in the patent register.

Petition for registration.

(2) A petition for registration under subsection (1) may be made by any party to the contract, and shall be accompanied by such documents and fees as may be prescribed.

(3) The Director General shall issue to the applicant a receipt, which shall be proof of the fact of filing the petition and of the date on which it was filed and if no receipt is issued within fourteen days from the date of the petition, the petitioner may rely on other evidence to prove the fact and date.

(4) Where section 85 or subsections (2) to (4) of this section, and the rules relating thereto, have not been complied with the Director General shall refuse to register the licence contract, stating the reasons for such refusal.

(5) Before refusing to register the licence contract, the Director General shall notify the petitioner and allow the parties—

- (a) to submit the observations, if any;
- (b) to correct any defect in the petition; or

(c) to amend any term, or to correct any defect, in the licence contract that has been declared by the Director General to be a term or defect precluding registration, within forty-five days from the date of the notification.

(6) A licence contract shall be void if the registration has been refused by the Director General in accordance with the provisions of this Act.

69. (1) Where the Director General finds that the contract may be registered, he shall register the contract and issue a certificate of registration to the petitioner.

Registration of the contract and issue of certificate.

(2) If the Director General fails—

- (a) to notify the petitioner of defects in the petition or of terms or defects precluding registration of the licence contract, within ninety days of the date of the petition; or
- (b) to notify the petitioner of his decision to refuse to register the licence contract, within ninety days of the date of notification referred to in paragraph (a), the licence contract shall be deemed to have been registered and the Director General shall issue a certificate of registration to the petitioner.

(3) The registration shall take effect—

- (a) if the petition was made within sixty days from the conclusion of the contract, on the date of the conclusion of the contract; and
- (b) in all other cases, on the date of the petition.

(4) When the petition is corrected or the licence contract is amended under section 51(5), the petition shall

be deemed to have been received on the date when the correction or amendment was made.

(5) The registration and the certificate shall state—

- (a) the name of the parties to the contract and of the licensee if he is not a party;
 - (b) the date of the petition;
 - (c) the date of the registration; and
 - (d) the registration number.
- (e) all of which shall be published in the Kenya Gazette or in the Industrial Property Journal.

(6) The contents of the contract shall be confidential, unless both parties to the contract agree to permit access thereto by third parties and such access shall only be to the extent of the permission so granted.

70. An appeal against the decision of the Director General may be made to the Tribunal by the petitioner within two months of his refusal provided that the grounds of such an appeal shall be limited to the following—

Remedies.

- (a) that the decision of refusal contains no statement of the reasons for refusal,
- (b) that none of the reasons specified in the decision is a valid reason under this Act or that such reason was wrongly applied to the petitioner or to the licence contract; or
- (c) that the procedure applied by the Director General was irregular and prejudicial to the rights of the petitioner.

71. (1) At any time after four years from the filing date of an application or three years from the grant of a patent, whichever period last expires, any person may apply to the Tribunal for a licence to exploit the patented invention on the grounds that a market for the patented invention is not being supplied on reasonable terms in Kenya.

Compulsory licences for non-working and similar reasons.

(2) Notwithstanding subsection (1), a non-voluntary licence shall not be granted if the owner of the patent satisfies the Tribunal that circumstances exist which justify

the fact that the market for the patented invention is not being supplied, or is not being supplied on reasonable terms, in Kenya.

72. (1) Where a patented invention cannot be worked without infringing the rights derived from an earlier patent, the owner of the latter patent may request the Tribunal at any time for the grant of a compulsory licence with respect to the earlier patent to the extent necessary for the working of his invention, if the invention constitutes an important technical advance of considerable economic significance in relation to the invention claimed in the earlier patent.

Compulsory licences based upon interdependence of patents.

(2) The owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent.

(3) The use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

(4) In this section, "earlier patent" or "first patent" means a patent granted on an earlier application or benefiting from an earlier validly claimed priority date, and "latter patent" or "second patent" shall be construed accordingly.

73. (1) A compulsory licence shall not be granted unless for grant of the person requesting the licence—

Preconditions for grant of compulsory licences.

- (a) satisfies the Tribunal that he has asked the owner of the patent for a contractual licence but has been unable to obtain the licence on reasonable commercial terms and within a reasonable time; and
- (b) offers guarantees satisfactory to the Tribunal to work the relevant invention sufficiently to remedy the deficiencies or to satisfy the requirements which gave rise to his request.

(2) The requirement under subsection (1)(a) shall be waived in the case of a national emergency or other circumstances of extreme urgency, provided the owner of the patent shall be notified as soon as is reasonably practicable.

74. (1) In considering a request for a compulsory licence, the Tribunal shall decide whether a compulsory

Grants and terms of compulsory

licence may be granted and shall then, if it decides in favour of the grant taking into account any terms agreed by the parties, proceed to fix the terms which shall be deemed to constitute a valid contract between the parties and shall be governed by the provisions of contractual licences.

licences.

(2) In fixing the terms under subsection (1), the Tribunal shall ensure that the compulsory licence—

- (a) is limited, in scope and duration, to the purpose for which it was authorised, and in the case of semiconductor technology, shall only be for public non-commercial use or to remedy a practice determined after a judicial or administrative process to be anti-competitive;
- (b) is limited predominantly for the supply of the domestic market;
- (c) does not entitle the licensee to grant further licences, without the consent of the owner of the patent;
- (d) is non-exclusive; and
- (e) provides for the payment to the owner of the patent of remuneration which is equitable with due regard to all the circumstances of the case, including the economic value of the licence.

(3) A representative of the Authority and of the Government shall have the right to appear and be heard at the hearing of an application for a compulsory licence, before the Tribunal.

75. A compulsory licence may be transferred only with that part of the industrial undertaking or its goodwill, in which the relevant invention is used and no such transfer shall be valid until the consent of the Tribunal has been obtained.

Transfer of compulsory licence.

76. (1) On the application of any interested party, the Tribunal may cancel a compulsory licence if—

Cancellation of a compulsory licence.

- (a) the licensee fails to comply with the terms of the licence; or
- (b) the conditions which justified the grant of the licence have ceased to exist and are unlikely to

recur, provided that the legitimate interests of the licensee are adequately protected.

(2) On the application of the Cabinet Secretary, or on the application of the owner of the patent, the Tribunal may, cancel the compulsory licence if, within two years from the grant of the licence, the licensee has not taken the necessary steps to work the relevant invention sufficiently so as to remedy the deficiencies or to satisfy the requirements which gave rise to his application for the said licence.

(3) On the application of the owner of the patent or the licensee, the Tribunal may vary the terms of a compulsory licence if new facts justify the variation and in particular if the patentee has granted contractual licence on more favourable terms.

77. Where the Tribunal grants, cancels or varies the terms of a compulsory licence, the Tribunal shall instruct the Director General, to record the grant, cancellation or variation in the register without payment of any fee.

Registration of grants, cancellation or variation.

78. (1) The owner of a patent may request the Director General to make an entry in the register to the effect that licences under the patent are to be available as of right.

A licence as of right.

(2) The request shall be notified by the Director General to the licensees under the patent.

(3) Any licensee may, within the prescribed time limit, object to the entry requested, on the ground that the owner of the patent is, by the relevant licence contract, precluded from granting further licences.

(4) Where the Director General receives no objection under subsection (3) or considers all objections made to be unfounded, he shall make the requested entry in the register and shall publish the entry.

(5) Where a patent is the subject of an entry under this section, any person may require the owner of the patent to grant him a non-exclusive licence under the patent on terms which, in the absence of an agreement between the parties, shall be fixed by the Tribunal.

(6) The amount of the annual fees with respect to a patent which is subject of an entry under this section,

falling due after the date of the entry, shall be reduced by half.

(7) The owner of the patent may at any time request the Director General to cancel an entry under this section and the Director General shall cancel the entry after payment of the balance of all annual fees which would have been payable if no entry had been made and the Director General shall publish the cancellation of any entries under this section.

(8) Section 78(3) shall apply, *mutatis mutandis*, where the terms of licence granted under subsection (5) have been fixed by the Tribunal.

1. exploitation of patented inventions by the Government or by a third person authorized by the Government.

79. (1) Subject to this section, where—

- (a) the public interest, in particular, national security, nutrition, health, environmental conservation, or the development of other vital sector of the national economy so requires; or
- (b) the Director General determines that the manner of exploitation of an invention by the owner of the patent or his licensee is not competitive, the Cabinet Secretary may, upon application to him in the prescribed form and after consultation with the Authority and the owner of the patent, order that the protected invention shall be exploited by a Government Ministry, Department, agency or other person as the Cabinet Secretary may designate in the order subject to the payment of adequate compensation to the owner of the patent in accordance with this section.

Exploitation of the patented inventions by the Government or by third persons authorized by the Government.

(2) Upon exercising the powers conferred upon him under subsection (1), the Cabinet Secretary may, notwithstanding any of the measures set out in this section, authorise by written order the importation, manufacture or supply, or authorize the utilisation of any molecule or substance whatsoever by any individual, corporation or society as named or described by any individual, corporation or society as named or described in the order

without notice to the patent holder or any other notifiable party, and such order shall remain in force until revoked by the Cabinet Secretary in writing, after giving six months' prior notice of his intention of such revocation to the party named or described in the order.

(3) An order made under the subsection (2) shall not require the payment of compensation to the owner of the patent or licence holder or any other party so interested.

(4) The Cabinet Secretary shall, notwithstanding any of the measures set out in this section, authorise the utilisation of any process for the manufacture, sale or supply of any molecule or substance whatsoever by any individual, corporation or society as named or described in the order, and such order shall remain in force until revoked by the Cabinet Secretary in writing, giving six months prior notice of intention of such revocation to the party named or described in the order.

(5) No application shall be made under subsection (1) unless the applicant has unsuccessfully sought a contractual licence from the owner of the patent:

Provided that the provisions of this subsection shall not apply in cases of national emergency or other extreme urgency in which case the Cabinet Secretary shall cause the contents of the order to be communicated to the owner of the patent as soon as reasonably practicable.

- (a) if satisfied that the circumstances necessitating the order have ceased and are unlikely to recur; or
- (b) where the Government Ministry, Department, agency or other person designated for the purposes of the order is in breach of any condition imposed under subsection (3).

(6) An order under this section shall be subject to such conditions as the Cabinet Secretary may deem necessary

(7) Where an order under this section is made, the Director General shall fix the amount of the compensation to be paid to the owner of the patent, such compensation being equitable with due regard to all the circumstances of the case and in particular, the economic value of the patent.

(7) An order under this section shall not preclude the owner of the patent from concluding a licence contract or

from exercising the powers conferred by section 54 of this Act.

(8) The Cabinet Secretary may, upon the request of the owner of the patent or the Government Ministry, Department, agency or other person designated by the Cabinet Secretary for the purposes of any order under this section and after hearing all interested parties, vary the terms of the order to the extent that changed circumstances justify such variation.

(9) The Cabinet Secretary may, upon the request of the owner of a patent and after hearing all interested parties, revoke an order under this section—

- (a) if satisfied that the circumstances necessitating the order have ceased and are unlikely to recur; or
- (b) where the Government Ministry, Department, agency or other person designated for the purposes of the order is in breach of any condition imposed under subsection (3).

(10) The authorization of any person in an order under this subsection shall not be transferable except to a business or enterprise owned or operated by that person.

(11) The exploitation of the invention pursuant to an order under this section shall be primarily for the supply of the market in Kenya.

(12) An order relating to the exploitation of an invention in the field of semi-conductor technology shall only be made where the Tribunal has determined that the manner of exploitation of the patented invention, by the owner of the patent or his licensee, is not competitive and the Cabinet Secretary is satisfied that the issuance of such order would remedy such practice.

(13) Any person aggrieved by any decision of the Cabinet Secretary under this section may appeal to the Tribunal.

J. Utility models

80. (1) Subject to section 82, the provisions of Parts III, shall apply with the necessary modifications, to utility model certificates or applications therefor, as the case may be.

Applicability of provisions relating to a patent.

(2) Where the right to a patent conflicts with the right to a utility model certificate in the case referred to in section 29(3), the said provision shall apply as if the word “patent” were replaced by the words “utility model certificate”.

81. (1) An invention qualifies for a utility model certificate if it is new and industrially applicable.

Special provisions relating to utility model certificates.

(2) The application shall be examined for compliance with the following—

- (a) filing date;
- (b) formality requirement;
- (c) section 20 (3) and 25 of this Act; and
- (d) all other requirements of the Act.

(3) Section 29, 31, 32, 43, 44 and 60 shall not apply in the case of applications for utility model certificates.

(4) A utility model application shall not be examined as to substance as per requirements of section 44 of the Act.

(5) An application for a utility model certificate shall be published in the utility model Journal upon compliance with the requirements of section 41 of this Act.

(6) A registration certificate for a utility model shall expire at the end of the tenth year after the date of filing of the application in respect thereof, and shall not be renewable.

82. (1) At any time before the grant or refusal of a patent an applicant for a patent may, upon filing the prescribed form and payment of the prescribed fee, convert his application into an application for a utility model certificate, which shall be accorded the filing date of initial application.

Conversion of patent applications to applications for

(2) At any time before the grant or refusal of a utility model certificate, an applicant for a utility model certificate may, upon filing the prescribed form and payment of the prescribed fee, convert his application into a patent application, which shall be accorded the filing date of the initial application.

(3) An application may not be converted under subsection (1) more than once.

K. Industrial designs

83. (1) For the purposes of this Part—

Definition of an industrial design.

"industrial design" means the overall appearance of a product resulting from one or more visual features of the shape, configuration, pattern or ornamentation of a product; and

"product" means anything that is made by hand, tool or machine.

(2) The protection under this Act shall not extend to anything in an industrial design which serves solely to obtain a technical result or to methods or principles of manufacture or construction.

84. (1) Subject to the provisions of any other written law, the creator of an industrial design or his successors in title shall have the exclusive rights to sell or cause to be sold for commercial or industrial purposes the goods in which the design is incorporated, subject to the conditions of this Act.

Right to industrial design; naming of creator.

(2) Sections 29, 31 and 32 shall apply *mutatis mutandis* to the rights of the creator of an industrial design.

85. (1) An industrial design is registrable if it is new.

Registrable industrial design.

(2) An industrial design is new unless it is identical or substantially similar in overall impression to an industrial design that has been disclosed to the public anywhere in the world by publication or use prior to the filing date or, where applicable, the priority date of the application for registration.

(3) Section 41(4) shall apply, with necessary modifications, with respect to industrial designs.

(4) The following shall not be registered as industrial designs—

- (a) industrial designs that are contrary to public order and morality; and
- (b) works of sculpture, architecture, painting, photography and any other creations that are purely of artistic nature.

(4) The details of the requirements and the procedure under this section shall be prescribed in Regulations.

86. (1) Any person wishing to register an industrial design shall send to the Authority—

Application,
examination,
opposition and
registration.

- (a) an application in the prescribed form;
- (b) a power of attorney, where the applicant is represented by an agent,
- (c) graphical representations (drawings or photographs) of the article embodying the industrial design and an indication of the kind of products for which the industrial design is to be used; and
- (d) the prescribed application fee.

(2) Where the applicant is not the creator, the request shall be accompanied by a statement justifying the applicant's right to the registration of the industrial design.

(3) Section 36 and 37 shall apply, with necessary modifications, in respect of amendment and division of applications for registration of industrial designs.

(4) The applicant may at any time withdraw an application lodged under this section.

(5) The Director General shall accord as the filing date the date of receipt of the application.

Provided that, at the time of receipt, the application fee is paid and the application contains the name of the applicant and a graphic representation of the article embodying the industrial design.

(6) Section 38 and 42(2) and (3) shall apply *mutatis mutandis* in respect of priority dates and filing of corrections to the application.

(7) The Director General shall, if satisfied that an application meets the requirements of this section and of sections 67 and 69, accept the application and publish it in the prescribed manner.

(8) Any interested person may, within the prescribed time and in the prescribed manner, give notice of opposition to the Director General.

(9) Where the Director General establishes that a design application does not meet the requirements for registration, the Director General shall send the applicant a report setting out the objections to registration and if the applicant does not reply to the objections within the prescribed period, the application shall be deemed abandoned.

(10) Where an application for registration of an industrial design is accepted and published in error, the Director General may publish in the journal an indication to that effect and direct that the application be reexamined.

(11) The details of the requirements and procedure under this section shall be prescribed in the Regulations.

(12) The Director General shall, if satisfied that an application meets the requirements of this Act, register the industrial design and issue a certificate of registration to the applicant.

87. (1) Subject to subsection (2), the duration of the registration of an industrial design shall expire at the end of the fifth year following the date of the application for registration.

*Duration and
renewal of
registration of an
industrial design*

(2) The registration of a design may be renewed for two further consecutive periods of five years upon payment of a prescribed fee.

(3) The fee for the renewal of registration of an industrial design shall be paid within twelve months preceding expiration of the period of registration but a grace period of six months shall be allowed for the late payment of the renewal fee on payment of the surcharge, as may be prescribed.

88. (1) Where the protection granted to an industrial design has not been renewed due to circumstances beyond the control of the owner of the design, the latter or any other persons entitled may apply designs for its restoration on the payment of the prescribed renewal fee, as well as of the surcharge, within a period of one year from the date upon which renewal fee was due.

*Restoration of
registration of an
industrial design.*

(2) An application for restoration of registration of an industrial design, together with documents proving

payment of the fees and surcharge mentioned in subsection (1), shall be sent to the Director General and shall contain a statement of the grounds on which the owner or the persons entitled consider the restoration justified.

(3) The Director General shall examine the reasons referred to above and shall either restore the design or reject the application if he does not consider the grounds valid.

(4) Restoration shall not entail prolongation of maximum duration of the industrial design.

(5) Restored designs shall be published by the Director General in the prescribed form.

89. (1) An application for registration of an industrial design together with any drawing, photograph or graphic representation shall be kept confidential until the application is published in accordance with section 69.

Graphic representation.

(2) Drawings, photographs or other graphic representations of industrial designs shall be kept by the Authority for a period of eight years after the expiry of the registration and may be examined by any interested person on payment of the prescribed fee.

(3) After publication, any person may obtain the official copy of the application.

(4) An applicant for registration of an industrial design seeking to avail himself outside Kenya of the priority of his registration before registration of the industrial design may obtain an official copy of his application.

90. The Director General shall, in relation to each industrial design registered under section 87, publish the details prescribed in the Regulations.

Publication of reference to registration of industrial designs

91. Section 46 shall apply, with necessary modifications, with respect to the maintaining of the register of industrial designs.

Register of Industrial Designs.

92. (1) Registration of an industrial design shall confer upon its registered owner the right to preclude third parties from performing any of the following registration acts in Kenya—

Rights conferred by registration of industrial designs

- (a) reproducing the industrial design in the manufacture of a product;
- (b) importing, offering for sale and selling a product reproducing the protected industrial design; or
- (c) stocking of such a product for the purposes of offering it for sale or selling it.

2) The rights conferred by the registration of an industrial design shall extend only to acts done for industrial or commercial purposes and shall not extend to acts in respect of a product embodying the protected industrial design after the product has been lawfully imported or sold in Kenya.

(3) The registered owner of an industrial design shall, in addition to any other rights, remedies or actions available to him, have the right to Authority court proceedings against any person who infringes the industrial design by performing, without his consent, any of the acts referred to in subsection (1) or who performs acts which make it likely that infringement will occur.

(4) Section 59 shall apply, with necessary modifications, with respect to industrial design applications or industrial designs registered under the Harare Protocol.

93. (1) Rights subsisting in an industrial design may be transferred in whole or in part.

Transfer and assignment of an industrial design.

(2) The provisions of sections 62, 63, 64, 65, 66, 67, 68, 69 and 70 of this Act shall apply, with necessary modifications, to this Part.

L. Technovations

94. For the purpose of this Part—

Definitions.

“technovation” means a solution to a specific problem in the field of technology, proposed by an employee of an enterprise in Kenya for use by that enterprise, and which relates to the activities of the enterprise but which, on the date of the proposal, has not been used or actively considered for use by that enterprise;

“employee” and “enterprise” mean the employee and the enterprise referred to in paragraph (a), and where several enterprises are owned or operated by one person,

all such enterprises shall be considered as one enterprise;

“date of the proposal” means the date on which the employee makes a request in accordance with section 79;

“technovation certificate” means the document issued by the enterprise in accordance with section 78, and

“technovator” means an employee to whom the enterprise has issued a technovation certificate.

95. (1) Subject to subsection (2), any employee of the enterprise on the date of the proposal shall be entitled to a technovation certificate as provided for in this Part.

Right to
technovation
certificate.

(2) Where the duties of an employee comprise the making and proposing of technovations, he shall not be entitled to a technovation certificate for any technovation which pertains to the field of activities for which he is employed, unless the degree of the creative contribution inherent in the technovation exceeds that which is normally required of an employee having the said duties.

(3) Where employees severally request a technovation certificate for the same technovation, the employee who is the first to make the request shall be entitled to such certificate.

(4) Where a request for technovation certificate is made jointly by two or more employees, the certificate shall be issued in their joint names.

96. A request for a technovation certificate signed by the employee shall be filed in writing with the enterprise and the enterprise shall assist the employee in filing the request and shall issue a receipt to him acknowledging that a request has been filed and indicating the date on which it has been filed.

Request.

97. (1) Where the requirements of this Part are satisfied, the enterprise shall, within a period of three months from the date of the proposal, issue a technovation certificate to the employee.

Issuance or refusal
of technovation
certificate.

(2) The enterprise may refuse to issue the certificate if it is of the opinion that the requirements of this Part have not been satisfied and shall notify the employee of the reasons therefore within the time limit prescribed in subsection (1).

98. (1) Where the enterprise issues a technovation certificate, it shall, at the same time, notify the technovator, in writing, whether or not it intends to use the technovation.

Use of
technovation.

(2) Where the decision to make use of the technovation depends on testing the technovation in practice, the enterprise shall inform the technovator accordingly and may postpone the notification of its intention to use or not to use the technovation by not more than a year from the date of the proposal.

(3) The technovator shall be obliged to assist the enterprise, to the best of his ability, in any testing, development or use of the technovation.

(4) The enterprise shall be obliged to give adequate opportunity to the technovator to furnish the assistance referred to in subsection (3).

(5) Once the technovation certificate has been issued, the technovator shall not communicate his technovation to anyone other than the enterprise and shall not use it.

(6) Where the enterprise declares that it does not intend to use the technovation or where the enterprise, having declared its intention to use the technovation, does not in fact start using it within six months from the issuance of the technovation certificate or the expiration of the time limit referred to in subsection (2), the technovator shall be exempted from the obligations referred to in subsections (3) and (4).

Provided that the technovator shall have the right to communicate his technovation to others only to the extent that such communication does not entail the communication of any know-how or other knowledge that has acquired as an employee.

99. Where the enterprise uses the technovation or communicates it to a third person, the technovator shall be entitled to a remuneration the amount and method of payment of which shall, in the absence of an applicable collective bargaining agreement, be fixed by mutual agreement between the technovator and the enterprise.

Remuneration of
the technovator

100. Any contractual provision which is less favourable to the employees or technovators than the provisions of this part shall be null and void.

Derogation by contract.

101. (1) Any dispute concerning the application of this part shall be submitted by any interested party to an arbitration board consisting of three members—

Disputes.

(a) one member appointed by the employee or technovator;

(b) one member appointed by the enterprise; and

(c) a chairman appointed by the two members.

(2) The arbitration board shall hear interested parties and thereafter deliver its ruling.

(3) Where the parties fail to agree on the appointment of the chairman, he shall be appointed by the Resident Magistrate Court having jurisdiction in the place where the enterprise is located.

(4) An aggrieved party may appeal against the decision of the arbitration board to the Tribunal.

M. Common provisions: surrender, revocation and invalidation

102. (1) A patent, utility model or industrial design registration certificate may be surrendered by the registered owner to the Authority.

Surrender.

(2) The surrender may be limited to one or more claims of the patent or utility model or, in the case of industrial designs, one kind of product or class of products.

(3) The surrender shall promptly be recorded in the register and published by the Director General and the surrender shall be effective only after it has been published.

(4) If a licence has been recorded in the register, surrender shall only be registered upon the submission of a declaration by which the licensee consents to the surrender, unless the latter has expressly waived this right in the licence contract.

103. (1) Any interested person may in proceedings Authority by him against the owner of a patent, or a registered utility model or industrial design or in

Revocation or invalidation.

proceedings Authority against him by the owner, request the Tribunal to revoke or invalidate the patent, utility model or industrial design registration.

(2) The Tribunal shall revoke or invalidate the registration of the patent or the utility model or industrial design on any of the following grounds—

- (a) that the owner of the patent is not entitled under section 29, 31 or 32 of the Act to apply for the grant of a patent;
- (b) that the owner of the patent is in infringement of the rights of the person filing an application for revocation of the patent or of any persons under or through whom he claims;
- (c) that the invention does not relate to an art (whether producing a physical effect or not), process, use, machine, manufacture or composition of matter which is capable of being applied in trade or industry;
- (d) that the invention is obvious in that it involves no inventive step having regard to what was common knowledge in the art at the effective date of the application;
- (e) that the invention, in so far as it is claimed in any claim of the application is not useful;
- (f) that the patent does not fully describe and ascertain the invention and the manner in which it is to be performed;
- (g) that the patent does not disclose the best method of performing the invention known to the owner of the patent at the time when the specification was lodged at the Authority;
- (h) that at the time the application for the grant of the patent was filed, the application form or any other documents filed in pursuance of the application contained a material misrepresentation, or
- (i) that the invention is not new in terms of section 5 of the Act.

(3) An application for revocation or invalidation of a patent shall—

- (a) state the grounds on which the applicant intends to rely on in his application for revocation or invalidation of the patent; and
- (b) be accompanied by—
 - (i) a statement setting out particulars of the facts alleged in support of the said grounds; and
 - (ii) proof of service on the owner of the patent of notice of filing of the application under subsection (1) and (2) and such statement shall be furnished to the Tribunal.

(4) If the owner of the patent wishes to contest the application he shall, within such time as is prescribed or such further time as the Tribunal may allow, lodge with him a counter statement setting out particulars of the grounds upon which the application is to be contested.

(5) A copy of any counter-statement in terms of subsection (5) lodged with the Tribunal shall be served by the owner of the patent concerned.

(6) Particulars delivered in terms of this section may from time to time, with the leave of the Tribunal, be amended.

(7) No evidence shall be admitted in proof of any ground on which particulars have not been delivered in terms of this section, except by leave of the Tribunal.

(8) After receiving an application under subsection (1) and compliance with any other provisions of this section which are applicable, the Tribunal shall arrange for the matter to be heard in the manner prescribed and may make such order therein as it deems fit.

(9) The Tribunal shall publish the application for revocation or invalidation of the patent in the Kenya Gazette or in the Industrial Property Journal.

(10) An aggrieved party may appeal against the decision of the Tribunal to the High Court.

(11) Where the provisions of subsection (2) apply only to some of the claims or some parts of a claim, or some parts of a registered industrial design only those claims or parts may be revoked or invalidated by the Tribunal.

(12) The Tribunal may require the owner of the patent, the utility model or the industrial design registration certificate to submit to it for the purposes of examination, the registration certificate, publications and other documents showing the prior art which have been referred to either in connection with an application for a title to the patent, the utility model or the industrial design filed, for the same or essentially the same invention or design by the owner with any other national or regional industrial property office, or in connection with any proceedings relating to the registration of the patent, utility model or the industrial design or other title or protection granted upon such application.

(13) The notice of the application referred to in subsection (1) shall be served on any licensee under the patent, the utility model or the industrial design who is entitled to join in the proceedings in the absence of any provision to the contrary in the licence contract.

(14) Where, before or during the proceedings, it is alleged or it appears to the Tribunal that the right to the patent, the utility model or the industrial design belongs to a person who is not a party to the proceedings, notice of the application referred to in subsection (1) shall be served on that person and such person who shall be entitled to join in the proceedings.

104. (1) Any revoked or invalidated patent, utility model or industrial design or claim or part of a claim of a registered industrial design shall be regarded as null and void from the date of the grant of the patent or certificate of registration for the utility model or the industrial design

*Effect of
revocation or
invalidation.*

(2) As soon as the decision of the Tribunal is no longer subject to appeal, the Chairman of the Tribunal shall inform the Director General who shall register and publish it as soon as possible in the Kenya Gazette or in the Industrial Property Journal.

N. INFRINGEMENT

105. Subject to sections 58, 61(7), 71, 72, 61(4) and 68, any act specified in section 55 or 93 and performed by a person other than the owner of the patent or of the registered utility model or industrial design without the

*Acts constituting
infringement.*

owner's authorization, in relation to a product or a process falling within the scope of a validly granted patent or certificate of registration shall constitute an infringement.

106. On the request of the owner of the patent or the registered utility model or industrial design, the Tribunal shall grant the following relief—

Relief.

- (a) an injunction to prevent infringement where infringement is imminent or to prohibit the continuation of the infringement, once infringement has started;
- (b) damages; or
- (c) any other remedy provided for in law.

107. (1) Subject to subsection (3), a person who demonstrates a legitimate interest may apply to the Tribunal for a declaration that the performance of a specified act does not infringe a patent, utility model or registered industrial design.

Declaration of non-infringement

(2) The owner and any licensee of the patent, utility model or registered industrial design shall be entitled to be joined as defendants in the proceedings.

(3) a declaration under subsection (2) shall not be made—

- (a) if the acts to which the request relates are the subject of infringement proceedings; or
- (b) if the person making the request is unable to prove that he or she has previously demanded from the owner a written acknowledgement of the lawfulness of the acts referred to and that the owner has refused such demand or has failed to reply within fourteen days of the request.

108. (1) A person threatened with infringement proceedings may apply to the Tribunal for an injunction prohibiting the threats and for damages for any financial loss resulting from the threats.

Threat of infringement proceedings.

(2) A person making an application under subsection (1) shall prove that the acts performed or proposed to be performed do not constitute infringement of the patent, utility model or registered industrial design.

(3) The mere notification of the existence of the patent, or the registered utility model or industrial design registration shall not constitute a threat of infringement.

109. (1) A person who intentionally infringes a patent, utility model or registered industrial design commits an offence under this Act.

Criminal proceedings.

(2) A person who commits an offence under subsection (1) is liable on conviction to fine not exceeding fifty thousand shillings, or to imprisonment to a term not exceeding five years, or to both.

110. For the purposes of proceedings, other than criminal proceedings, in respect of the infringement of the rights of the owner of the patent, where the subject matter of the patent is a process for obtaining a product, the burden of establishing that an identical product was not made by the patented process shall be on the alleged infringer, if either of the following conditions is fulfilled—

Presumption of use of a patented process.

(a) the product is new; or

(b) a substantial likelihood exists that the identical product was made by the process and the owner of the patent has been unable, through reasonable efforts, to determine the process actually used.

111. (1) Any exclusive licensee within the meaning of section 65(2) may by registered letter request the owner of the patent or the registered utility model or industrial design to Authority legal proceedings for a specific relief with respect to any infringement specified by the licensee.

Legal proceedings by a licensee.

(2) The licensee may, if the owner refuses or fails to Authority the legal proceedings within three months from the request, after giving notice to the owner Authority such proceedings in his own name and; the owner may join in the proceedings.

(3) Even before the end of the three-month period referred to in subsection (2), the Tribunal may, on the request of the licensee, grant an appropriate injunction to prevent infringement or to prohibit its continuation, where the licensee shows that immediate action is necessary to avoid substantial damage.

PART IV- COPYRIGHT AND RELATED RIGHTS

112. In this Part, unless the context otherwise requires— Interpretation.

“accessible format copy” means a copy of a work in an alternative manner or form which gives a beneficiary access to the work, including permitting the beneficiary access as feasibly and comfortably as a person without visual impairment or other print disability;

“art market professional” includes an auctioneer, owner or operator of a gallery, museum, an art dealer or any other person involved in the business of dealing in artworks;

“artwork” means an original work of visual art created by an artist or produced under their authority;

“artistic work” means any work that falls under the following categories, irrespective of artistic quality, or works analogous thereto—

- (a) paintings, drawings, etchings, lithographs, woodcuts, engravings and prints;
- (b) maps, plans and diagrams;
- (c) works of sculpture;
- (d) photographs not comprised in audio-visual works;
- (e) works of architecture in the form of buildings or models; and
- (f) works of artistic craftsmanship, pictorial woven tissues and articles of applied handicraft and industrial art;

“assignment” means the transfer of rights, in part or in whole, in a copyright held by the owner of the copyright excluding moral rights;

“audio-visual work” means a fixation in any physical medium of images, either synchronized with or without sound, from which a moving picture may be reproduced by any means but does not include a broadcast;

“Authority” means the Authority referred to in section 6, and whose functions may be delegated or performed by any other relevant entity or authority as may be designated by any other Act of Parliament;

“author” means a natural person who has created the works and includes a composer, writer, producer, writer, and photographer;

“authorized entity” means an entity that is authorized or recognized by the government to provide education, instructional training, adaptive reading, or information access to beneficiary persons on a non-profit basis and also includes a government institution or non-profit organization that provides the same services to beneficiary persons as one of its primary activities or institutional obligations;

“beneficiary person” means a person with a disability that causes the person difficulty in reading, viewing, hearing, or comprehending copyright material in a particular form;

“broadcasting” means the transmission of sounds, images, or both, or their representations, intended for public reception, carried out via wireless techniques like radio waves, satellite, or digital formats, including the transmission of encrypted signals where the decryption means are provided to the public by the broadcasting organization or with its consent;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to copyright and related rights;

“collective management organization” means an organization that is approved and authorized to negotiate, collect, and distribute royalties, and grant licenses in respect of the use of works protected by copyright or related rights;

“commissioned work” means a work created in pursuance of a contract between an author and an individual or a legal entity commissioning a specified work from the author against an agreed author’s fee;

“commercial resale” means the subsequent transfer of ownership in artwork from one person to another for monetary consideration with the involvement of an art market professional;

“communication to the public” means—

- (a) a live performance presented to an audience; or
- (b) a transmission to the public, other than a broadcast, of the images or sounds or both, of a work, performance or sound recording;

“computer program” means a set of instructions expressed in words, codes, schemes or in any other form, which is capable, when incorporated in a medium that the computer can read, or causing a computer to perform or achieve a particular task or result;

“copy” means a reproduction of work in any manner or form and includes any sound, audio or visual recording of a work and any permanent or transient storage of a work in any medium, by computer technology or any other electronic means;

“copyright” means the exclusive property rights granted to the creator of an original work;

“copyright work” means a work of any description in which copyright subsists;

“educational establishment” means any institution established or recognized under any law relating to providing education or training;

“fair dealing” means the lawful use of copyright-protected work for specific purposes, as permitted in this Act, without the necessity of obtaining permission from the rights holder, subject to the specified conditions;

“fixation” means embodiment of a work or of the representation thereof from which it can be perceived, reproduced, or communicated through a device;

“license” means a written agreement, signed by or on behalf of an owner or prospective owner of copyright or related rights, which authorizes the licensee to exercise a right that, under this Act, would otherwise be exercisable by the owner of the copyright or related rights;

“literary work” means, irrespective of literary quality, any of the following, or works similar thereto and includes—

- (a) novels, stories, and poetic works;
- (b) plays, stage directions, film sceneries and broadcasting scripts,
- (c) textbooks, treatises, histories, biographies, essays, and articles;
- (d) encyclopedias and dictionaries;
- (e) letters, reports and memoranda;
- (f) lectures, addresses and sermons;
- (g) charts, graphs and tables;
- (h) computer programs and software;
- (i) tables and compilations of data;
- (j) electronic literature, including works created in digital formats; or
- (k) databases;

"musical work" means a work consisting of music, including any melody, harmony, rhythm, and lyrics, irrespective of musical quality, and includes graphical notations and works specifically composed for musical accompaniment, but does not include any sound recording or performance of the work

"owner of the copyright" means the first owner, an assignee or an exclusive licensee of the copyright;

"performance" means the representation of a work or expressions of folklore by such action as dancing, playing, reciting, singing, declaiming or projecting to listeners by any means whatsoever;

"performer" means an actor, singer, declaimer, musician or other person who performs a literary, musical work or a work of folklore and includes the conductor of the performance of any such work and dancers and instrumentalists;

"public display" means the showing of original or a copy of a work—

- (a) directly;
- (b) by means of a film, slide, television image or otherwise on screen;

- (c) through any other device or process;
- (d) in the case of an audio-visual work, showing of individual images consequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present irrespective of whether they are or can be present at the same place and time or at different places or times, where the work can be displayed without communication to the public;

“publication” means the distribution of copies of a work to the public;

“Public performance” means—

- (a) for a work other than an audio-visual work, the recitation, playing, dancing, acting or otherwise performing the work, either directly or by means of any device or process;
- (b) for audio-visual work, the display of images in sequence and the making of accompanying sounds audible, either separately or in combination;
- (c) for a sound recording, making the sounds or their representations fixed in a phonogram audible to the public;
- (d) for works of folklore, the performance to the public through dance, plays, recitals, songs, declaiming or projection to an audience live or by any other means;

“re-broadcasting” means the simultaneous or deferred broadcasting in part or in whole by one broadcasting organisation of the broadcasts of another broadcasting organisation;

“related rights” means the rights adjacent to copyright that protect the legal interests of certain contributors to the creation and dissemination of works, including—

- (a) the rights of performers in their performances;
- (b) the rights of producers of sound recordings in their phonograms; and
- (c) the rights of broadcasting organizations in their broadcasts;

“reproduction” means the making of one or more copies of a work in any material form and includes any permanent or temporary storage of such work in electronic or any other form;

“re-transmission” means the simultaneous or deferred transmission for the reception by the public by any means of a broadcast by a third party other than the original broadcaster organisation;

“rights holder” means a person who engages in the creation of a performance, and includes a singer, musician, declaimer, and any other person whose performance is embodied in a format such as a ring back tune;

“sound recording” means any exclusively aural fixation of the sounds of a performance or of other sounds, or of a representation of sounds, regardless of the method by which the sounds are fixed or the medium in which the sounds are embodied but does not include a fixation of sounds and images, such as the sound track of an audio-visual work;

“technological protection measure” means any device, product or component incorporated into a work that effectively prevents or inhibits the infringement of any copyright or related rights;

“Tribunal” means the Copyright Tribunal established under the Kenya Industrial Property Authority Act; and

“work” means literary, musical, artistic, dramatic work, audio visual work and sound recordings;

Provided that the visually impaired persons work shall be limited to literary and artistic work whether published or made available in any media.

113. The objects of this Part is to—

Objects of Part.

- (a) provide strong and effective protection for copyright works to stimulate creativity and innovation;
- (b) ensure compliance with international copyright treaties and conventions to which Kenya is a signatory;
- (c) establish clear rights and responsibilities for copyright owners, users, and intermediaries;

- (d) promote transparency and accountability in the exercise and management of copyright, and
- (e) balance the interests of copyright owners with the public's right to access, use, and enjoy copyright works.

A. Subsistence, ownership and duration of copyright

114. (1) Copyright shall be a property right which subsists in accordance with this Act in original works of the following descriptions—

Works eligible for copyright.

- (a) literary, musical, artistic works, dramatic works,
- (b) audio-visual works, sound recordings, and broadcasts; or
- (c) the typographical arrangement of published editions

(2) Copyright shall not subsist in any work unless it has been independently created by the author and possesses a minimum amount of creativity.

(3) A work is not original if—

- (a) it is, or to the extent that it is, a copy of another work, or
- (b) it infringes the copyright in, or to the extent that it infringes the copyright in, another work.

(4) The absence of registration or other formalities shall not preclude the author from asserting their claim to copyright.

115. (1) Copyright shall not subsist in a literary or dramatic or musical work unless and until the work is recorded or in writing.

Recording necessary for some works.

(2) For the purposes of subsection (1), it shall be immaterial whether the work is recorded by or with the consent of the author.

(3) Where a work is not recorded by the author, the question whether copyright exists in the record, as distinct from the work recorded, is not affected by anything in subsection (1).

(4) The protection accorded by copyright shall be granted automatically to the author upon the recording of the copyright work in a material form.

116. (1) The owner of the copyright in a work has the exclusive right to do the following acts in Kenya—

Exclusive rights in works.

- (a) the reproduction in any material form of the original work;
- (b) the translation or adaptation of the work;
- (c) the distribution to the public of the work by way of sale, rental or lease;
- (d) hire, loan, importation or similar arrangement;
- (e) the communication to the public of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original;
- (f) the making available of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original; and
- (g) the broadcasting of the whole work or a substantial part thereof, either in its original form or in any form recognizably derived from the original.

(2) In relation to an architectural work, copyright includes the exclusive right to control the construction of any building which replicates the whole or a substantial part of the original work or any recognizably derived form.

(3) Despite subsection (2), the copyright shall not extend to control over the reconstruction of a building in the original style of the copyrighted architectural work.

(4) The exclusive rights conferred by this section are subject to limitations as provided in this Act.

117. Copyright shall not subsist in a work unless the following qualification under this Act are satisfied as regards to—

Qualification for copyright.

- (a) the author;
- (b) the country in which the work was first published; and

- (c) in the case of a broadcast, the country from which the broadcast was made.

118. (1) A work shall qualify for copyright protection if the author was at the material time—

Qualification by reference to author.

- (a) a Kenyan citizen;
- (b) an individual domiciled or resident in Kenya;
- (c) a body incorporated under the laws of Kenya;
- (d) a citizen or subject of a prescribed foreign country, or
- (e) a body incorporated under the law of a prescribed foreign country.

(2) Where a work of joint authorship qualifies for copyright under this section alone, only those authors who satisfy the requirements of subsection (1) shall be taken into account for the purposes of the application to that work of the provisions of this Act which relates to—

- (a) the first ownership of copyright;
- (b) the duration of copyright in literary, dramatic, musical, or artistic works; and
- (c) acts permitted on assumptions as to expiry of copyright or death of the author in relation to anonymous or pseudonymous works.

119. (1) Every eligible work, excluding broadcasts, shall be conferred with copyright under the following conditions—

Qualification by reference to country of first publication.

- (a) in the case of literary, musical, dramatic, artistic, or audio-visual works, if the work is first published in Kenya or a country that is a signatory to a treaty offering copyright and related rights protection to which Kenya is also a party;
- (b) in the case of sound recordings, if the recording is made or first published in Kenya or a country that is a signatory to a treaty offering copyright and related rights protection to which Kenya is also a party; or
- (c) in the case of broadcasts, if the transmission is made from transmitters located within Kenya.

(2) If the work is first published in a Berne Convention country and is not simultaneously published elsewhere, the country of origin shall be such Berne Convention country.

(3) If the work is first published simultaneously in two or more countries only one of which is a Berne Convention country, the country of origin shall be the Berne Convention country.

(4) If the work is first published simultaneously in two or more countries of which the two or more countries are Berne Convention countries, then—

- (a) if Kenya is one of those countries, the country of origin is Kenya; and
- (b) if Kenya is not one of those countries, the country of origin is the Berne Convention country which grants the shorter or shortest period of copyright protection.

120. (1) The author of a work shall be the first owner of any copyright in the work, subject to this section.

First ownership of
copyright.

(2) Where a work is made by an employee in the course of their employment, their employer shall be the first owner of any copyright in the work subject to any agreement to the contrary.

(3) If without such commission, a work is created during the course of the employment of the author under a contract of service, the copyright shall be deemed to be transferred to the person who commissioned the work or the employer of the author, unless an agreement between the parties exists that limits or excludes this transfer.

121. (1) The duration of copyright for works eligible for copyright protection shall be as follows—

Duration of
copyright.

- (a) for literary, musical, dramatic, or artistic works, excluding photographs, copyright shall subsist for fifty years following the end of the calendar year in which the author dies;
- (b) for audio-visual works and photographs, copyright shall subsist for fifty years from the end of the calendar year in which the work was created, first made available to the public, or first published, whichever is the latest;

- (c) for sound recordings, copyright shall subsist for fifty years following the end of the calendar year in which the recording was made;
- (d) for broadcasts, copyright shall subsist for fifty years following the end of the calendar year in which the broadcast took place; and
- (e) for anonymous or pseudonymous literary, musical, dramatic, or artistic works, copyright shall subsist for fifty years from the end of the calendar year in which the work was first published.

(2) If the identity of the author becomes known within this period, the duration of copyright shall be calculated under subsection (1)(a).

(3) In the case of a work of joint authorship, references in this section to the death of the author shall be construed as references to the death of the last surviving author, and the term of copyright protection shall be calculated according to subsection (1)(a) based on the year in which the last of the authors dies.

122. (1) Where the country of origin of the work is not Kenya and the author of the work is not a Kenyan national, the duration of copyright is that to which the work is entitled in the country of origin, provided that does not exceed the period which would apply under subsections (2) to (4).

Duration for foreign works.

(2) If a work is computer-generated, subsection (1) shall not apply and copyright shall expire at the end of the period of fifty years from the end of the calendar year in which the work was made.

(3) The provisions of this section shall be adapted as follows in relation to a work of joint authorship or a work of co-authorship, the reference to the death of the author shall be construed—

- (a) if the identity of all the authors is known, as a reference to the death of the last of them to die; and
- (b) if the identity of one or more of the authors is known and the identity of one or more others is not known, as a reference to the death of the last author whose identity is known.

123. (1) Where a work is made by a person employed or engaged by the Government under a contract of service, a contract of apprenticeship or a contract for services—

Copyright in Government works.

- (a) the work qualifies for copyright; and
- (b) the Government shall be the first owner of any copyright in the work.

(2) Government copyright shall expire —

- (a) in the case of a typographical arrangement of a published edition, at the end of the period of twenty-five years from the end of the calendar year in which the work is made; or
- (b) in the case of any other work, at the end of the period of 50 years from the end of the calendar year in which the work is made.

(3) In the case of a work of joint authorship where one or more, but not all, of the authors are persons employed or engaged by the Government under a contract of service, a contract of apprenticeship or a contract for services, this section shall apply only in relation to those authors and the copyright existing by virtue of their contribution to the work.

(4) Subsection (1) shall apply subject to any agreement to the contrary.

124. (1) Where an original literary, dramatic, musical or artistic work—

Copyright vesting in certain international organisations.

- (a) is made by an officer or employee of, or is published by, an international organization to which this section applies; and
- (b) does not qualify for copyright protection under qualification by reference to author or qualification by reference to country of first publication,

copyright shall subsist in the work by virtue of this section and the organization shall be the first owner of that copyright.

(2) Copyright of which an international organisation is first owner by virtue of this section shall continue to

subsist until the end of the period of fifty years from the end of the calendar year in which the work was made or such longer period as may be for the purpose of complying with the international obligations of Kenya.

125. The following shall not be eligible for copyright protection—

Works not eligible for copyright.

- (a) an idea, procedure, system, method of operation, concept, principle, discovery or mere data or things of similar nature;
- (b) an enactment including an Act, statutory instruments or other law made by a legislature or other authorised body;
- (c) a decree, order or other decision by a court or any organ for the administration of justice;
- (d) a report made by a committee or commission appointed by Government or any agency of Government;
- (e) news of the day namely reports of fresh events or current information by the media whether published in a written form, broadcast, internet or communicated to the public by any other means;
- (f) political speeches; and
- (g) the National Anthem, emblems, flags and symbols, national symbols and emblems of Kenya and other sovereign countries.

126. (1) The following works shall belong to the public domain—

Works in public domain.

- (a) works whose terms of protection have expired;
- (b) works in respect of which authors have renounced their rights; and
- (c) foreign works which do not enjoy protection in Kenya.

(2) For the purposes of subsection (1)(b), renunciation by an author or their successor in title of their rights shall be in writing and made public but any such renunciation shall not be contrary to any previous contractual obligation relating to the work.

(3) A work which has fallen into the public domain may be used without any restriction.

127. (1) The Authority shall establish and maintain the National Rights Registry of works protected under this Act.

Register of
copyright works.

(2) A work eligible for copyright may be entered in the register upon application by the author, owner, assignee, or licensee of the work.

(3) The National Rights Registry shall fulfil the following purposes—

- (a) record and register the right holders and their works;
- (b) authenticate ownership of copyright and related rights;
- (c) make available data of registered copyright works;
- (d) serve as a basis for determining eligibility for statutory damages provided under this Act; and
- (e) fulfil any other purpose as determined by the Authority.

(4) Where a copyright work is used as security, the interest may be registered in the Registry for the duration of the undischarged security.

B. Acts permitted in relation to copyright works

128. (1) The provisions of this Part specify acts which may be done in relation to copyright works despite the subsistence of copyright.

Introductory
provisions.

(2) These acts relate only to the question of infringement of copyright and do not affect any other right or obligation restricting the doing of any of the specified acts.

(3) Where it is provided by this Part that an act does not infringe copyright, or may be done without infringing copyright, and no particular description of copyright work is mentioned, the act in question does not infringe the copyright in a work of any description.

(4) To the extent that a term of a contract purports to prevent or restrict the doing of any act which, by virtue of this section, would not infringe copyright, that term shall

be unenforceable.

129. The exclusive rights conferred by copyright shall not extend to control over uses such as indicated below, provided the author is acknowledged—

Permitted acts in general.

- (a) fair dealing for purposes including research, private use, criticism, review, commentary, education, teaching, scholarship, facilitating access to works for persons with disabilities or the reporting of current events;
- (b) the use of the work in creating parody, pastiche or caricature;
- (c) quotations from the work, provided that the extent of quotation is compatible with fair practice;
- (d) use of work in judicial proceedings or the reporting of such proceedings;
- (e) reproduction and distribution of copies or the inclusion in an audio-visual work or broadcast, of an artistic work situated in a place where it can be viewed by the public;
- (f) incidental inclusion of a copyright work in an artistic work, sound recording, audio visual work or broadcast; and
- (g) public reading or recitation or broadcast by one person of any reasonable extract from a published literary work.

130. Copyright in a work, other than a computer program or a database, shall not be infringed by the making of a temporary copy which is transient or incidental, which is an integral and essential part of a technological process and the sole purpose of which is to enable—

Making of temporary copies.

- (a) a transmission of the work in a network between third parties by an intermediary; or
- (b) a lawful use of the work and which has no independent economic significance.

131. (1) The making of a copy of a work, other than a computer program, by an individual does not infringe copyright in the work provided that the copy is—

Copies for private and personal use.

- (a) a copy of the individual's own copy of the work, or a personal copy of the work made by the

individual;

- (b) made for the individual's private use; and
- (c) made for ends which are neither directly nor indirectly commercial.

(2) In this section "the individual's own copy" is a copy which—

- (a) has been lawfully acquired by the individual on a permanent basis;
- (b) is not an infringing copy; and
- (c) has not been made under any provision of this Part which permits the making of a copy without infringing copyright.

(3) In subsection (1)(b) "private use" includes private use facilitated by the making of a copy—

- (a) as a backup copy;
- (b) for the purposes of format-shifting; or
- (c) for the purposes of storage, including in an electronic storage area accessed by means of the internet or similar means which is accessible only by the individual and the person responsible for the storage area.

(4) To the extent that a term of a contract purports to prevent or restrict the making of a copy which, by virtue of this section, would not infringe copyright, that term is unenforceable.

132. (1) Fair dealing with a work for the purposes of private study shall not infringe any copyright in the work.

Research and private study.

(2) Fair dealing with a work for the purposes of research for a non-commercial purpose shall not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(3) No acknowledgement shall be required in connection with fair dealing for the purposes mentioned in subsection (2) where this would be impossible for reasons of practicality or otherwise.

(4) Copying by a person other than the researcher or

student himself is not fair dealing if—

- (a) in the case of a librarian, or a person acting on behalf of a librarian, that person makes more than one copy of any single published work; or
- (b) in any other case, the person doing the copying knows or has reason to believe that it will result in copies of substantially the same material being provided to more than one person at substantially the same time and for substantially the same purpose.

133. (1) The making of a copy of a work by a person who has lawful access to the work does not infringe copyright in the work provided that—

Copies for text and data analysis for non-commercial research.

- (a) the copy is made in order that a person who has lawful access to the work may carry out a computational analysis of anything recorded in the work for the sole purpose of research for a non-commercial purpose; and
- (b) the copy is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

(2) Where a copy of a work has been made under this section, copyright in the work is infringed if the copy is used for any purpose other than that mentioned in subsection (1) (a), except where the use is authorised by the copyright owner.

(3) If a copy made under this section is subsequently dealt with—

- (a) it is to be treated as an infringing copy for the purposes of that dealing; and
- (b) if that dealing infringes copyright, it is to be treated as an infringing copy for all subsequent purposes.

134. (1) Fair dealing with a work for the purpose of criticism or review, of that or another work or of a performance of a work, shall not infringe any copyright in the work provided that—

Criticism, review quotation and news reporting.

(a) it is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise; and

(b) the work has been made available to the public.

(2) Copyright in a work is not infringed by the use of a quotation from the work, whether for criticism or review or otherwise, provided that—

(a) the work has been made available to the public;

(b) the use of the quotation is fair dealing with the work;

(c) the extent of the quotation is no more than is required by the specific purpose for which it is used; and

(d) the quotation is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

(3) For the purposes of this section, a work is available to the public if it has been made available by any means, including—

(a) the issue of copies to the public;

(b) making the work available by means of an electronic retrieval system;

(c) the rental or lending of copies of the work to the public;

(d) the performance, exhibition, playing or showing of the work in public; or

(e) the communication to the public of the work, but in determining generally for the purposes of those subsections whether a work has been made available to the public no account shall be taken of any unauthorised act.

(4) Fair dealing with a work, other than a photograph, for the purpose of reporting current events shall not infringe any copyright in the work provided that it is accompanied by a sufficient acknowledgement.

(5) No acknowledgement shall be required in connection with the reporting of current events by means of a sound recording, film or broadcast where this would be

impossible for reasons of practicality or otherwise.

135. (1) Copyright in a work shall not be infringed by—

Incidental inclusion of copyright material.

- (a) its incidental inclusion in an artistic work, sound recording, film or broadcast; or
- (b) the issue to the public of copies, or the playing, showing or communication to the public, of anything whose making was, by virtue of subsection (1), not an infringement of the copyright.

(2) A musical work, words spoken or sung with music, or so much of a sound recording or broadcast as includes a musical work or such words, shall not be regarded as incidentally included in another work if it is deliberately included.

136. (1) Copyright in a work of any description shall not be infringed by the following acts by a library in relation to a book—

Lending of copies libraries and archives.

- (a) lending the book; or
- (b) in relation to an audio-book or e-book, copying or issuing a copy of the book as an act incidental to lending it.

(2) Copyright in a work shall not be infringed by a library, an archive, a museum or an educational establishment communicating the work to the public or making it available to the public by means of a dedicated terminal on its premises, if the conditions in subsection (3) are met.

(3) For purposes of subsection (2), the work or a copy of the work must be—

- (a) lawfully acquired by the institution; and
- (b) communicated or made available to individual members of the public for the purposes of research or private study.

(4) The institutions under subsection (2) shall be permitted to undertake the following acts, provided that the acts are in the public interest and no revenue is derived therefrom—

- (a) reproduce a work;
- (b) make copies of a book, which includes pamphlets, sheet music, maps, charts, or plans, under the direction of
 - (i) person in charge of a public library, for the use of the library; or
 - (ii) archives, for purposes of archiving and preservation when such works are not available in Kenya;
- (c) replace a copy of a work in the collection of a public library or archives, by making a copy if the original is damaged, deteriorating, lost, stolen, fragile, or in an obsolete storage format and a replacement copy cannot be obtained in Kenya at a reasonable price;
- (d) make copies of the works in the collections of a library or archives as reasonably necessary for preservation and security.

137. (1) The inclusion of a short passage from a published literary or dramatic work in a collection which is intended for use in educational establishments and the inclusion is accompanied by a sufficient acknowledgement.

Anthologies for educational use.

(2) References in this section to the use of a work in an educational establishment are to any use for the educational purposes of such an establishment.

(3) The performance of a literary, dramatic or musical work before an audience consisting of teachers and pupils at an educational establishment and other persons directly connected with the activities of the establishment—

- (a) by a teacher or pupil in the course of the activities of the establishment; or
- (b) at the establishment by any person for the purposes of instruction, is not a public performance for the purposes of infringement of copyright.

(4) The playing or showing of a sound recording, film or broadcast before such an audience at an educational establishment for the purposes of instruction is not a playing or showing of the work in public for the purposes

of infringement of copyright, provided that—

- (a) the educational purposes are non-commercial; and
- (b) the recording or copy is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

138. (1) The exclusive rights conferred by copyright shall not extend to the following activities conducted by educational institutions —

General exclusion for educational institutions.

- (a) the inclusion in a collection of literary or musical works from the work in question if the collection is designed for use in an educational institution and includes an acknowledgement of the work's title and authorship;
- (b) the reproduction of published articles, other short works, or short extracts of works for teaching purposes in educational institutions that do not serve direct or indirect commercial gain;
- (c) communication, broadcasting, or making a work available to a defined community of learners or researchers, intended for research or systematic instructional activities;
- (d) the reproduction of a broadcast and the use of that reproduction in an educational institution for the systematic instructional activities;
- (e) the making available of copyright works for instruction and educational purposes for online learning in computer networks, with access to the works limited to enrolled students and their teachers.

(2) Despite the provisions in subsection (1), if a licensed collective management organization for reprographic rights exists, a reprographic license must be obtained for any use beyond the uses authorized by this section.

139. (1) The copying of extracts of a relevant work by or on behalf of an educational establishment does not infringe copyright in the work, provided that—

Copying and use of extracts of works by educational establishments.

- (a) the copy is made for the purposes of instruction

for a non-commercial purpose; and

- (b) the copy is accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

(2) Copyright is not infringed where a copy of an extract made under subsection (1) is communicated by or on behalf of the educational establishment to its pupils or staff for the purposes of instruction for a non-commercial purpose.

(3) Subsection (2) only applies to a communication received outside the premises of the establishment if that communication is made by means of a secure electronic network accessible only by the establishment's pupils and staff.

(4) Acts which would otherwise be permitted by this section are not permitted if, or to the extent that, licenses are available authorising the acts in question and the educational establishment responsible for those acts knew or ought to have been aware of that fact.

(5) The terms of a license granted to an educational establishment authorizing acts permitted by this section are of no effect so far as they purport to restrict the proportion of a work which may be copied, whether on payment or free of charge, to less than that which would be permitted by this section.

(6) If a copy made under this section is subsequently dealt with—

- (a) it shall be treated as an infringing copy for the purposes of that dealing, and
- (b) if that dealing infringes copyright, it shall be treated as an infringing copy for all subsequent purposes.

140. (1) Fair dealing with a work for the sole purpose of illustration for instruction does not infringe copyright in the work provided that the dealing is—

- (a) for a non-commercial purpose;
- (b) by a person giving or receiving instruction or

Illustration for instruction.

preparing for giving or receiving instruction; and

- (c) accompanied by a sufficient acknowledgement, unless this would be impossible for reasons of practicality or otherwise.

(2) For the purposes of subsection (1), “giving or receiving instruction” includes setting examination questions, communicating the questions to pupils and answering the questions.

141. (1) It is not an infringement of copyright for a lawful user of a copy of a computer program to —

Back up and decompilation for computer programme.

- (a) make any back up copy of it which it is necessary for him to have for the purposes of them lawful use;
- (b) copies of the program to the extent necessary to correct errors;
- (c) make a back-up copy for safeguarding the program;
- (d) test the program to assess its suitability for the use, or
- (e) for any other purpose not prohibited under any license or agreement permitting the use the program.

(2) The right holder’s authorization is not required for decompiling the program or converting it into a different programming language, code, or notation for the purpose of obtaining information necessary for interoperability with other programs.

(3) Any copies made under this section shall be used only for the purpose for which it was made and must be destroyed when the person’s possession of the computer program ceases to be lawful.

(4) It is not an infringement of copyright for a lawful user of a copy of a computer program to observe, study or test the functioning of the program in order to determine the ideas and principles which underlie any element of the program if he does so while performing any of the acts of loading, displaying, running, transmitting or storing the program which he is entitled to do.

142. Notwithstanding the exclusive rights conferred by copyright, such rights shall not include the right to

Exceptions and limitations for

control— broadcasting.

- (a) the reproduction of a work by a broadcasting station or under its direction or control, where—
 - (i) such reproduction or copies thereof are intended solely for broadcast by the said broadcasting station;
 - (ii) the broadcasting station has obtained authorization from the copyright owner of the work;
 - (iii) the reproduction or copies are destroyed within a period of six calendar months following the making of the reproduction or such longer period as may be mutually agreed upon between the broadcasting authority and the copyright owner, and
 - (iv) despite subparagraph (iii), a reproduction which is of an exceptional documentary character may be preserved in the archives of the broadcasting station, but shall not be used for broadcasting or for any other purpose without the consent of the copyright owner.
- (b) the broadcasting of literary, musical, or artistic works or audio-visual works, which are already lawfully accessible to the public, provided that—
 - (i) no licensing body is involved, and
 - (ii) the owner of the broadcasting right receives fair compensation, which shall be determined by the Tribunal in the absence of an agreement between the parties.

143. (1) It shall not constitute an infringement of copyright for a beneficiary person, an authorized entity, or any person acting on behalf of a beneficiary person to—

- (a) make, import, distribute, or share accessible format copies, or
- (b) circumvent any technological protection measures:

Provided that such actions are undertaken in accordance with the terms and conditions prescribed under the

Exceptions and limitations for visually impaired persons.

Regulations.

(2) Copies or sound recordings to which this section applies shall—

- (a) be distributed to beneficiary persons or authorized entities;
- (b) bear a notice that any further distribution shall be limited to beneficiary persons or authorized entities; and
- (c) include a copyright notice identifying the copyright owner and the date of the original publication.

144. (1) Where a record of spoken words is made, in writing or otherwise, for the purpose of—

Use of notes or recordings of spoken words in certain cases.

- (a) reporting current events; or
- (b) communicating to the public, the whole or part of the work, it is not an infringement of any copyright in the words as a literary work to use the record or material taken from it (or to copy the record, or any such material, and use the copy) for that purpose, provided the following conditions are met.

(2) The conditions are that—

- (a) the record is a direct record of the spoken words and is not taken from a previous record or from a broadcast;
- (b) the making of the record was not prohibited by the speaker and, where copyright already subsisted in the work, did not infringe copyright;
- (c) the use made of the record or material taken from it is not of a kind prohibited by or on behalf of the speaker or copyright owner before the record was made; and
- (d) the use is by or with the authority of a person who is lawfully in possession of the record.

145. (1) Where material is open to public inspection pursuant to a statutory requirement, or is on a statutory register, any copyright in the material as a literary work is

Material open to public inspection or on official register.

not infringed by the copying of so much of the material as contains factual information of any description, by or with the authority of the appropriate person, for a purpose which does not involve the issuing of copies to the public.

(2) Where material is open to public inspection pursuant to a statutory requirement, copyright in the material is not infringed by an act to which subsection (4) applies provided that—

- (a) the act is done by or with the authority of the appropriate person
- (b) the purpose of the act is—
 - (i) to enable the material to be inspected at a more convenient time or place; or
 - (ii) to otherwise facilitate the exercise of any right for the purpose of which the statutory requirement is imposed; and
- (c) in the case of the act specified in subsection 4) (c), the material is not commercially available to the public by or with the authority of the copyright owner.

(3) Where material which contains information about matters of general scientific, technical, commercial or economic interest is on a statutory register or is open to public inspection pursuant to a statutory requirement, copyright in the material is not infringed by an act to which subsection (4) applies provided that—

- (a) the act is done by or with the authority of the appropriate person,
- (b) the purpose of the act is to disseminate that information, and
- (c) in the case of the act specified in subsection (4)(c), the material is not commercially available to the public by or with the authority of the copyright owner.

(4) This subsection applies to any of the following acts—

- (a) copying the material;

- (b) issuing copies of the material to the public; and
- (c) making the material or a copy of the material available to the public by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

146. (1) Where the doing of a particular act is specifically authorised by an Act of Parliament, the doing of that act does not infringe copyright.

Acts done under statutory authority.

(2) Subsection (1) applies in relation to an enactment contained in legislation as it applies in relation to an Act of Parliament.

(3) Nothing in this section shall be construed as excluding any defence of statutory authority otherwise available under or by virtue of any enactment.

C. *Related rights*

147. (1) Where the owner of the copyright in any literary, musical, dramatic or artistic work authorizes a person to incorporate the work in audio-visual works, and a broadcasting authority broadcasts such audio-visual works, unless there is express agreement to the contrary, such broadcast shall be deemed as authorized by the copyright owner.

Broadcasting of works incorporated in audio-visual works.

(2) Despite subsection (1), where a broadcasting authority broadcasts audio-visual works incorporating musical work, the owner of the right to broadcast the musical work shall, subject to the provisions of this Act, be entitled to receive fair compensation from the broadcasting authority.

148. (1) The copyright in sound recordings shall confer upon the owner the exclusive right to control within Kenya the following acts in respect of the sound recording the—

Nature of copyright in sound recordings.

- (a) the direct or indirect reproduction in any manner or form;
- (b) the distribution to the public of copies by way of sale, rental, lease, hire, loan or any similar arrangements;
- (c) the making available of the sound recording in whole or in part either in its original form or in

any form recognizably derived from the original,

- (d) the importation into Kenya of copies of the sound recording; or
- (e) the communication to the public or the broadcasting of the sound recording, in whole or in part, whether in its original form or in any form recognizably derived from the original.

(2) Notwithstanding subsection (1), the rights of an owner of copyright in a sound recording shall not be infringed by the making of a single copy of the recording for personal and private use, subject to the right of the owner to receive fair compensation.

(3) The compensation payable shall be by way of a royalty levied on audio recording equipment and media suitable for recording, payable at the point of first manufacture or entry into Kenya by the manufacturer or importer thereof.

(4) Any person who, with commercial intent, makes available any audio recording equipment for the purpose of enabling another person to make single copies of a sound recording for personal or private use, without the payment of the royalty referred to in this section, commits an offence and shall be liable, upon conviction, to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.

149. (1) Copyright in a broadcast shall confer upon the owner the exclusive right within Kenya to control the following acts in relation to the broadcast—

Nature of
copyright in
broadcasts.

- (a) the fixation of the whole or a substantial part of the broadcast;
- (b) the rebroadcasting of the whole or a substantial part of the broadcast;
- (c) the communication to the public of the whole or a substantial part of a television broadcast, whether in its original form or in any form recognizably derived from the original;
- (d) the retransmission of the broadcast over any

network;

- (e) the decryption in any way or form any encrypted broadcast; or
- (f) any adaptation or modification of the broadcast, including addition of commentaries, or any unauthorized use of the broadcast or pre-broadcast signal intended for reception by another broadcaster.

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

(3) The acts controlled under subsection (1) shall be subject to the general exceptions on the provisions regarding educational institutions outlined in this Act.

150. (1) A performer shall have the exclusive right to carry out any of the following acts —

Rights of performers.

- (a) publicly perform their work;
- (b) broadcast his performance, unless the broadcast is made from an authorised fixation of the performance;
- (c) communicate their performance to the public, unless the communication is made from an authorized fixation or broadcast of the performance;
- (d) fix an unfixed performance;
- (e) reproduce a fixation of the performance in cases where the initial fixation was made without the performer's authorization or the reproduction is made for purposes different from those originally authorized by the performer;
- (f) rent the original and copies of their fixed performances to the public for commercial purposes;
- (g) distribute to the public a fixation of their performance or copies thereof; and
- (h) make their fixed performance available to the public, by wire or wireless means, in a way that allows individual public access from a chosen

place or time.

(2) Unless there is a contractual agreement stating otherwise, the following principles apply—

- (a) the authorization to broadcast does not imply an authorization to license other organizations to broadcast the performance;
- (b) the authorization to broadcast does not imply an authorization to fix the performance; and
- (c) the authorization to both broadcast and fix the performance does not imply an authorization to reproduce the fixation.

(3) A performer or a duly appointed representative can provide binding authorization under this section in writing.

(4) Any authorization provided by a performer claiming to retain relevant rights, or by someone claiming to be a duly appointed representative, is considered valid.

(5) The rights of the performer under this section shall last for fifty years after the end of the year in which the performance was fixed.

(6) The performer shall, during their lifetime, in relation to live performances or performances fixed in phonograms, have the right, independently of their economic rights, to—

- (a) be acknowledged as the performer of their performance and to object to any distortion, mutilation, or modification of the performance that is detrimental to their reputation; and
- (b) prevent or seek relief from any distortion, mutilation, or other modification, or any other derogatory action related to their work, that could or does harm their honor or reputation.

(7) The rights of an owner of a copyright in a fixation of their performance are not infringed by the making of a single copy of the performance for the personal and private use of the person making the copy.

(8) In respect of such use, the owner of a related right in the performance shall have the right to receive fair compensation in form of a royalty levied on audio-visual recording equipment or audio-visual blank media suitable

for recording and other media intended for recording.

(9) The compensation shall be payable at the point of first manufacture or entry in Kenya by the manufacturer or importer of such equipment or media.

151. (1) A performer shall have the un-waivable and untransferable rights to receive equitable remuneration or royalties in respect of any broadcast, communication to the public, rental or making available to the public of their performance fixed in an audio-visual fixation.

Single equitable remuneration for Performers.

(2) Despite subsection (1), a performer may authorize a collective management organisation to collect and enforce on their behalf.

(3) The right is, however, transmissible by testamentary disposition or by operation of law as personal or moveable property and it may be assigned or further transmitted by any person into whose hands it passes.

(4) The amount payable by way of equitable remuneration is as agreed by or on behalf of the persons by and to whom it is payable.

(5) In default of agreement as to the amount payable by way of equitable remuneration, the person by or to whom it is payable may apply to the Tribunal to determine the amount payable.

(6) A person to or by whom equitable remuneration is payable may also apply to the Tribunal—

- (a) to vary any agreement as to the amount payable; or
- (b) to vary any previous determination of the Tribunal as to that matter.

(7) Except with the special leave of the Tribunal, no such application may be made within twelve months from the date of a previous determination.

(8) The right to an equitable remuneration under this Section shall subsist from the date of publication of the audiovisual performance until the end of the fiftieth calendar year following the year of publication, provided that the audiovisual work or performance is still protected under the Act.

(9) The remuneration shall be managed through the

relevant collective management organization.

152. (1) The following provisions have effect with respect to the duration of the rights conferred by this part.

Duration of related rights.

(2) The rights conferred by in relation to a performance expire—

- (a) at the end of the period of fifty years from the end of the calendar year in which the performance takes place; or
- (b) if during that period a recording of the performance, other than a sound recording, is released, fifty years from the end of the calendar year in which it is released; or
- (c) if during that period a sound recording of the performance is released, fifty years from the end of the calendar year in which it is released, subject as follows.

(3) For the purposes of subsection (2) a recording is “released” when it is first published, played or shown in public or communicated to the public; but in determining whether a recording has been released no account shall be taken of any unauthorized act.

(4) Where a performer is not a national of Kenya the duration of the rights conferred by this Chapter in relation to his performance is that to which the performance is entitled in the country of which he is a national, provided that does not exceed the period which would apply under subsections (2) and (3).

153. (1) The rights of an owner of the copyright or related rights’ holders are not infringed by the making of a single copy of the work or recording for the personal and private use of the person making the copy.

Private Copying Remuneration.

(2) In respect of such use, the owner of copyright and related rights shall have the right to receive fair compensation consisting of levies on devices and media suitable or intended for copying, payable at the point of first sale in Kenya by the manufacturer or importer of such equipment or media.

(3) The private copying remuneration levy shall be determined by the Authority through a notice in the

Gazette.

(4) The Authority shall designate an entity to be responsible for collecting the levies.

(5) The Authority shall determine and publish the appropriate share of the private copying remuneration applicable to the respective rights holders and the Authority

(6) All owners of copyright and related rights shall be eligible to a share of the proceeds of Private Copying Remuneration.

(7) The Authority shall utilize the proceeds received under subsection (5) to support—

- (a) building capacity of rights holders, raising public awareness, advocacy, and enforcement; and
- (b) right holders in the relevant sector with grants to enable them to create and commercialize their works

(8) The authority shall release funds due to the right holders from the account set up under Section 56(4) only upon receiving a list of intended beneficiaries from the Collective Management Organization.

D. Moral rights

154. Irrespective of the author's economic rights and despite the transfer of such rights, the author shall have the inalienable right to—

Moral rights of an author and performer.

- (a) claim the authorship of the work;
- (b) object to any distortion, mutilation or other modification of or other derogatory action in relation to the work that would be detrimental to their honor or reputation; and
- (c) elect to use a pseudonym or remain anonymous.

155. (1) A person does not infringe the right conferred by right to be identified as author or director by doing any of the acts mentioned in that section unless the right has been asserted in accordance with the following provisions so as to bind him in relation to that act.

Requirement that right be asserted.

- (2) The right may be asserted generally, or in relation

to any specified act or description of acts—

(a) on an assignment of copyright in the work, by including in the instrument effecting the assignment a statement that the author or director asserts in relation to that work his right to be identified; or

(b) by instrument in writing signed by the author or director.

(3) The right may also be asserted in relation to the public exhibition of an artistic work—

(a) by securing that when the author or other first owner of copyright parts with possession of the original, or of a copy made by him or under his direction or control, the author is identified on the original or copy, or on a frame, mount or other thing to which it is attached; or

(b) by including in a license by which the author or other first owner of copyright authorises the making of copies of the work a statement signed by or on behalf of the person granting the license that the author asserts his right to be identified in the event of the public exhibition of a copy made in pursuance of the license.

(4) The persons bound by an assertion of the right under subsection (2) or (3) are—

(a) in the case of an assertion under subsection (2)(a), the assignee and anyone claiming through him, whether or not he has notice of the assertion;

(b) in the case of an assertion under subsection (2)(b), anyone to whose notice the assertion is brought;

(c) in the case of an assertion under subsection (3)(a), anyone into whose hands that original or copy comes, whether or not the identification is still present or visible;

(d) in the case of an assertion under subsection (3)(b), the licensee and anyone into whose hands a copy made in pursuance of the license comes, whether or not he has notice of the assertion.

156. (1) The author of a copyright work has the right in the circumstances mentioned in this section not to have

Right to object to derogatory treatment of work.

his work subjected to derogatory treatment.

(2) For the purposes of this section—

(a) “treatment” of a work means any addition to, deletion from or alteration to or adaptation of the work, other than—

(i) a translation of a literary or dramatic work; or

(ii) an arrangement or transcription of a musical work involving no more than a change of key or register;

(b) the treatment of a work is derogatory if it amounts to distortion or mutilation of the work or is otherwise prejudicial to the honour or reputation of the author or director; and

(c) in the following provisions of this section references to a derogatory treatment of a work shall be construed accordingly.

(3) In the case of a literary, dramatic or musical work the right is infringed by a person who—

(a) publishes commercially, performs in public or communicates to the public a derogatory treatment of the work; or

(b) issues to the public copies of a film or sound recording of, or including, a derogatory treatment of the work.

(4) In the case of an artistic work the right is infringed by a person who—

(a) publishes commercially or exhibits in public a derogatory treatment of the work, or communicates to the public a visual image of a derogatory treatment of the work;

(b) shows in public a film including a visual image of a derogatory treatment of the work or issues to the public copies of such a film, or

(c) in the case of—

(i) a work of architecture in the form of a model for a building;

(ii) a sculpture; or

(iii) a work of artistic craftsmanship, issues to the

public copies of a graphic work representing, or of a photograph of, a derogatory treatment of the work.

(5) Subsection (4) does not apply to a work of architecture in the form of a building; but where the author of such a work is identified on the building and it is the subject of derogatory treatment, he has the right to require the identification to be removed.

(6) In the case of a film, the right is infringed by a person who—

- (a) shows in public or communicates to the public a derogatory treatment of the film; or
- (b) issues to the public copies of a derogatory treatment of the film.

(7) The right conferred by this section extends to the treatment of parts of a work resulting from a previous treatment by a person other than the author, if those parts are attributed to, or are likely to be regarded as the work of, the author or director.

157. (1) It is not an infringement of any of the rights conferred by this Part to do any act to which the person entitled to the right has consented.

*Consent and
waiver of rights.*

(2) Any of the moral rights may be waived by instrument in writing signed by the person giving up the right.

(3) A waiver—

- (a) may relate to a specific work, to works of a specified description or to works generally, and may relate to existing or future works, and
- (b) may be conditional or unconditional and may be expressed to be subject to revocation, and
- (c) if made in favour of the owner or prospective owner of the copyright in the work or works to which it relates, it shall be presumed to extend to his licensees and successors in title unless a contrary intention is expressed.

(4) Nothing in this Part shall be construed as excluding the operation of the general law of contract or

estoppel in relation to an informal waiver or other transaction in relation to any of the rights mentioned in subsection (1).

158. (1) The right to be identified as author or director is, in the case of a work of joint authorship, a right of each joint author to be identified as a joint author and must be asserted by each joint author in relation to himself.

Application of provisions to joint works.

(2) The right conferred by the right to object to derogatory treatment of work is, in the case of a work of joint authorship, a right of each joint author and his right is satisfied if he consents to the treatment in question.

(3) A waiver under the rights by one joint author does not affect the rights of the other joint authors.

(4) The provisions of this section shall, with the necessary modifications, apply in relation to a film which was, or is alleged to have been, jointly directed, as they apply to a work which is, or is alleged to be, a work of joint authorship.

159. The moral rights conferred by this part are not assignable.

Moral rights not assignable.

160. (1) On the death of a person entitled to the right conferred by right to identification of author or director, right to object to derogatory treatment of work or right to privacy of certain photographs and films—

Transmission of moral rights on death.

- (a) the right passes to such person as he may by testamentary disposition specifically direct
- (b) if there is no such direction but the copyright in the work in question forms part of his estate, the right passes to the person to whom the copyright passes; and
- (c) if or to the extent that the right does not pass under paragraph (a) or (b) it is exercisable by his personal representatives.

(2) Where copyright forming part of a person's estate passes in part to one person and in part to another, as for example where a bequest is limited so as to apply—

- (a) to one or more, but not all, of the things the copyright owner has the exclusive right to do or

authorize, or

(b) to part, but not the whole, of the period for which the copyright is to subsist, any right which passes with the copyright by virtue of subsection (1) is correspondingly divided.

(3) Whereby virtue of subsection (1)(a) or (b) a right becomes exercisable by more than one person—

(a) it may, in the case of the right conferred by the right to identification of author, be asserted by any of them;

(b) it is, in the case of the right to object to derogatory treatment of work a right exercisable by each of them and is satisfied in relation to any of them if he consents to the treatment or act in question; and

(c) any waiver of the right in accordance with section 169 by one of them does not affect the rights of the others.

(4) A consent or waiver previously given or made binds any person to whom a right passed by virtue of subsection (1).

(5) Any damages recovered by personal representatives by virtue of this section in respect of an infringement after a person's death shall devolve as part of his estate as if the right of action had subsisted and been vested in him immediately before his death.

E. Dealing with rights in copyright works

161. (1) Regardless of any assignment of the original work, authors of an original work of art shall retain the right to a share of the proceeds from any subsequent sale through a public auction or dealer, at a rate determined by the Cabinet Secretary.

Artist's resale right.

(2) The artist's resale right shall remain valid for the duration of the copyright in the original work of art.

(3) The artist's resale right is inalienable and shall not be waived under any circumstances.

(4) Visual artists may establish a collective management organization to administer the right under this section.

(5) In the absence of a registered collective management organization under subsection (4), the Cabinet Secretary shall designate any registered collective management organization for the purpose.

(6) The resale royalty payable shall be at the rate of five percent of the net sale price on the commercial resale of an artwork, with the seller, the art market professional, the seller's agent and the buyer being jointly and severally liable for the payment.

(7) If an artwork bears a mark or name purporting to identify a person as the artist, it shall be presumed, in the absence of contrary evidence, that the person is the artist.

(8) No resale royalty shall be payable on commercial resale of an artwork if—

- (a) the sale price is less than twenty thousand shillings;
- (b) it concerns the resale of a building, or a drawing, plan or model of a building;
- (c) it is an auction for charitable purposes;
- (d) the works of fine art produced are of identical copies, or
- (e) it involves a manuscript of a literary, dramatic or musical work.

(9) For the purpose of this section, the term works of art and visual art shall be construed widely.

(10) Any dispute regarding the entitlement, collection, or distribution of resale royalties shall be referred to a dispute resolution mechanism established by the Authority.

162. (1) Subject to this section, copyright may be transferable by assignment, license, testamentary disposition, or by operation of law as personal or movable property.

Assignment and
licences.

(2) An assignment, license or testamentary disposition of copyright may be limited so as to apply only to 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) An assignment of copyright or an exclusive license to perform an act controlled by copyright must be in

writing and signed by or on behalf of the assignor or licensor.

(4) A non-exclusive license to do an act the doing of which is controlled by copyright may be written or oral, or may be inferred from conduct and such a license may be revoked at any time, unless granted by contract.

(5) An assignment, license, 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 prospective copyright in any such work shall be transferable by operation of law as movable property.

163. (1) Where an agreement for the license of copyright does not specify the period of license, the license shall terminate after three years.

*Terms of
Licensing.*

(2) In the case of agreements regarding future works which are not specified in detail, either party may, on giving not less than one month's notice, terminate the agreement not earlier than three years after it was signed or such shorter period as may be agreed.

(3) A license granted in respect of any copyright by the person who, in relation to the matters to which the license relates, is the owner of the copyright, shall be binding upon every successor in title to their interest in the copyright, except a purchaser in good faith and without notice, actual or constructive, of the license, or a person deriving title from such purchaser.

(4) Where the doing of anything is authorised by the grantee of a license or a person deriving title from the grantee, and it is within the terms, including any implied terms of the license for them to authorise it, it shall for the purpose of this Act be deemed to be done with the license of the grantor and of every person, if any, upon whom the license is binding.

164. (1) An exclusive licensee and an exclusive sub-licensee shall have concurrent rights of action and remedies as the owner of the copyright, as though the license or sub-license were an assignment, in respect to the rights granted under the license or sub-license.

*Rights and
remedies of
exclusive licensee
and sub-licensee.*

(2) Prior to instituting any proceedings under

subsection (1), an exclusive licensee or sub-licensee must—

- (a) provide written notice to the owner of the copyright of their intention to institute proceedings; and
- (b) allow the owner of the copyright the option to join the proceedings at their own expense.

(3) In the event the owner of the copyright joins the proceedings as per subsection (2)(b), they shall be entitled to—

- (a) recover any damages they may have suffered due to the infringement; or
- (b) claim a reasonable royalty to which they may be entitled.

165. (1) If a licensee fails to exercise an exclusive right granted by the copyright owner, and such non-exercise is detrimental to the legitimate interests of the copyright owner, the copyright owner may revoke the granted right.

Reversion of rights by exclusive licensor.

(2) The right of revocation may only be exercised—

- (a) after the expiration of the delay stipulated in the contract for the commencement of the exercise of the granted right;
- (b) not earlier than two years after the conferral of the same; or
- (c) if the work to be used was delivered subsequently, from the date of its delivery.

(3) In each case, the copyright owner must notify the licensee of the proposed revocation and grant a reasonable additional period suitable for adequate exercise of the transferred right, unless the exercise of the right by the licensee has become impossible or the licensee has refused it.

(4) The right of revocation may not be waived in advance.

166. (1) In the event that a licensee becomes insolvent, is declared bankrupt, or is placed under receivership, the license shall be deemed terminated by

Reversion of rights in the case of insolvency.

operation of law.

(2) In such cases, the licensor or copyright owner shall have the right to retrieve control and further distribution of the copyrighted material previously licensed.

(3) In the event that the copyrighted material or any derived products are part of the assets to be liquidated, the copyright owner shall be entitled to claim proceeds proportional to the rights involved, pursuant to the priorities established under insolvency law.

167. (1) Revenue generated from the sale of ring back tunes, net of taxes, shall be distributed among the relevant parties as follows—

Ring back tunes.

- (a) content service provider at eight and a half percent (8.5%);
- (b) telecommunication operator at thirty-nine and half percent (39.5%);
- (c) the owner of the copyright shall receive fifty two percent (52%).

(2) Despite subsection (1), all contracts between content service providers to the owner of the copyright existing before the commencement of this Act shall apply until their expiry.

(3) A telecommunication operator shall be responsible for direct remittance of the allocated net revenue from ring back tune sales to the owner of copyright in accordance with the distribution outlined in subsection (1).

F. Infringement of copyright and related rights

168. (1) Copyright or related rights shall be infringed by a person who, without the license of the owner of the copyright or related rights—

Acts restricted by copyright in a work.

- (a) does, or causes to be done, an act the doing of which is controlled by the copyright or related rights owner; or
- (b) imports, or causes to be imported, otherwise than for his private and domestic use, an article which he knows to be an infringing copy.

(2) References in this Part to the doing of an act restricted by the copyright in a work are to the doing of

it—

- (a) in relation to the work as a whole or any substantial part of it; and
- (b) either directly or indirectly.

(3) This Chapter has effect subject to the provisions on—

- (a) acts permitted in relation to copyright works; and
- (b) provisions with respect to copyright licensing.

169. (1) The rights of a performer shall be infringed by a person who without the consent of the performer—

Infringements on right of performers.

- (a) does, or causes to be done, any act specified in section 181; or
- (b) imports or causes to be imported, otherwise than for his own private or domestic use, an article which he knows would have been made contrary to section 38 had it been made in Kenya by the importer.

(2) The rights of a producer of sound recordings shall be infringed by a person who without the consent of the producer—

- (a) does or causes to be done, any act specified in section 180; or
- (b) imports or causes to be imported, otherwise than for his private use, an article which he knows would have been made contrary to section 147(1) had it been made in Kenya by the importer.

170. (1) The copying of the work is an act restricted by the copyright in every description of copyright work; and references in this Part to copying and copies shall be construed as follows.

Infringement of copyright by copying.

(2) Copying in relation to a literary, dramatic, musical or artistic work means reproducing the work in any material form. This includes storing the work in any medium by electronic means.

(3) In relation to an artistic work “copying” includes the making of a copy in three dimensions of a two-dimensional work and the making of a copy in two

dimensions of a three-dimensional work.

(4) Copying in relation to a film or broadcast includes making a photograph of the whole or any substantial part of any image forming part of the film or broadcast.

(5) Copying in relation to the typographical arrangement of a published edition means making a facsimile copy of the arrangement.

(6) Copying in relation to any description of work includes the making of copies which are transient or are incidental to some other use of the work.

171. (1) The rental or lending of copies of the work to the public is an act restricted by the copyright in—

Infringement by rental or lending of work to the public.

- (a) a literary, dramatic or musical work;
- (b) an artistic work, other than—
 - (i) a work of architecture in the form of a building or a model for a building; or
 - (ii) a work of applied art; or
- (c) a film or a sound recording.

(3) The expressions “rental” and “lending” do not include—

- (a) making available for the purpose of public performance, playing or showing in public or communication to the public;
- (b) making available for the purpose of exhibition in public; or
- (c) making available for on-the-spot reference use.

(4) Where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage for the purposes of this section.

172. (1) The performance of the work in public is an act restricted by the copyright in a literary, dramatic or musical work.

Infringement by performance, showing or playing of work in public.

(2) In this Part “performance”, in relation to a

work—

- (a) includes delivery in the case of lectures, addresses, speeches and sermons; and
- (b) in general, includes any mode of visual or acoustic presentation, including presentation by means of a sound recording, film [or broadcast] of the work.

(3) The playing or showing of the work in public is an act restricted by the copyright in a sound recording, film or broadcast.

(4) Where copyright in a work is infringed by its being performed, played or shown in public by means of apparatus for receiving visual images or sounds conveyed by electronic means, the person by whom the visual images or sounds are sent, and in the case of a performance the performers, shall not be regarded as responsible for the infringement.

173. (1) The communication to the public of the work is an act restricted by the copyright in—

Infringement by communication to the public

- (a) a literary, dramatic, musical or artistic work;
- (b) a sound recording or film; or
- (c) a broadcast.

(2) References in this Part to communication to the public are to communication to the public by electronic transmission, and in relation to a work include—

- (a) the broadcasting of the work;
- (b) the making available to the public of the work by electronic transmission in such a way that members of the public may access it from a place and at a time individually chosen by them.

174. (1) The making of an adaptation of the work is an act restricted by the copyright in a literary, dramatic or musical work.

Infringement by making adaptation or act done in relation to adaptation

(2) For this purpose, an adaptation is made when it is recorded, in writing or otherwise.

(3) The doing of any of the acts specified in sections 180 to 185, or subsection (1) above, in relation to an adaptation of the work is also an act restricted by the

copyright in a literary, dramatic or musical work.

(4) For this purpose, it is immaterial whether the adaptation has been recorded, in writing or otherwise, at the time the act is done.

175. (1) The copyright in a work is infringed by a person who, without the license of the copyright owner—

*Secondary
infringement of
copyright.*

- (a) possesses in the course of a business;
- (b) sells or lets for hire, or offers or exposes for sale or hire;
- (c) in the course of a business exhibits in public or distributes, or
- (d) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, an article which is, and which he knows or has reason to believe is, an infringing copy of the work;
- (e) imports into Kenya, otherwise than for his private and domestic use, an article which is, and which he knows or has reason to believe is, an infringing copy of the work.

(2) Copyright in a work is infringed by a person who without the license of the copyright owner transmits the work by means of a telecommunications system, otherwise than by communication to the public, knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in the Kenya or elsewhere.

(3) Where the copyright in a literary, dramatic or musical work is infringed by a performance at a place of public entertainment, any person who gave permission for that place to be used for the performance is also liable for the infringement unless when he gave permission, he believed on reasonable grounds that the performance would not infringe copyright.

(4) In this section "place of public entertainment" includes premises which are occupied mainly for other purposes but are from time to time made available for hire for the purposes of public entertainment.

176. (1) Where copyright in a work is infringed by a public performance of the work, or by the playing or showing of the work in public, by means of apparatus for—

Secondary infringement: provision of apparatus for infringing performance.

- (a) playing sound recordings;
- (b) showing films; or
- (c) receiving visual images or sounds conveyed by electronic means, the following persons are also liable for the infringement.

(2) A person who supplied the apparatus, or any substantial part of it, is liable for the infringement if when he supplied the apparatus or part—

- (a) he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright; or
- (b) in the case of apparatus whose normal use involves a public performance, playing or showing, he did not believe on reasonable grounds that it would not be so used as to infringe copyright.

(3) An occupier of premises who gave permission for the apparatus to be brought onto the premises is liable for the infringement if when he gave permission he knew or had reason to believe that the apparatus was likely to be so used as to infringe copyright.

(4) A person who supplied a copy of a sound recording or film used to infringe copyright is liable for the infringement if when he supplied it he knew or had reason to believe that what he supplied, or a copy made directly or indirectly from it, was likely to be so used as to infringe copyright.

177. (1) Copyright is presumed to subsist in the work if not contested.

Presumptions and Limitations in Infringement Actions.

(2) If the subsistence of copyright is presumed, the plaintiff is presumed to be the owner.

(3) If an author's name appears on copies of a work, that person is presumed to be the author.

(4) In the case of anonymous or pseudonymous works, the publisher is presumed to represent the author

unless the author's identity is revealed or evident.

(5) Posthumous works are presumed eligible for copyright.

(6) Labels or marks stating the maker or first publisher of sound recordings are presumed to be true.

(7) If infringement is committed unknowingly, the plaintiff is entitled only to statutory damages.

(8) The court may award additional damages in cases of flagrant infringement.

178. (1) Infringement of any right protected under this Act shall be actionable at the suit of the owner of the right.

Relief and Remedies for Infringement.

(2) The following reliefs shall be available to the plaintiff—

- (a) the relief by way of damages, including statutory damages, injunction, accounts or otherwise that is available in any corresponding proceedings in respect of infringement of other proprietary rights;
- (b) delivery up to the plaintiff of any article in the possession of the defendant which appears to the court to be an infringing copy, or any article used or intended to be used for making infringing copies;
- (c) in lieu of damages, the plaintiff at his option, be awarded an amount calculated on the basis of reasonable royalty which would have been payable by a licensee in respect of the work or type of work concerned;
- (d) in lieu of damages, the plaintiff at his option, be awarded statutory damages;
- (e) for the purpose of determining the amount of damages or a reasonable royalty to be awarded under this section, the court may direct an enquiry to be held and may prescribe such procedures for conducting such enquiries as the court considers necessary; and
- (f) before the owner of the right institutes proceedings under this section, he shall give notice in writing to the exclusive licensee or sublicensee of the copyright concerned of the intention to do

so, and the exclusive licensee or sub-licensee may intervene in such proceedings and recover any damages he may have suffered as a result of the infringement concerned or a reasonable royalty to which he may be entitled.

179. (1) The following acts shall be considered unlawful, and an infringement of the exclusive rights accorded to owners of works under this Act—

Removal or Alteration of Technological Protection measures.

- (a) the removal or alteration of any electronic rights management information from a copy of a protected work or other protected subject matter without authority; and
- (b) the distribution or import for distribution to the public, broadcasting, or other communication to the public, or public performance of protected works or other protected subject matter, by a person knowing or having reason to know that electronic rights management information has been removed or altered without authority of the right owner.

(2) In this section, “electronic rights management information” means any information by rights holders which identifies the work or the recording.

180. Where an effective technological protection measure is used by, or with the consent of, an owner of copyright or any related right, it shall be considered unlawful and an infringement of such rights—

Penalty against technological protection measures.

- (a) to manufacture, import for distribution to the public, distribute or offer to the public for sale or possess for commercial purposes any device, product, component or means that
 - (i) is promoted, advertised or marketed for the purpose of circumventing any device or means intended to prevent or restrict reproduction, communication or performance of a work, an expression of folklore, a performance, a sound recording, a broadcast or a typographical arrangement, or to impair the quality of copies made of any such work or subject matter,
 - (ii) has only a limited commercially significant purpose other than that mentioned in

- subparagraph (i); or
- (iii) is primarily designed, produced or adapted to circumvent the device as mentioned in subparagraph (i) or susceptible to enable or assist the reception of an encrypted programme which is broadcast or otherwise communicated to the public, by those who are not entitled to receive the programme;
- (b) to offer to the public or provide services which have any such effect as set out in paragraph (a); or
- (c) to circumvent any such technological protection measure for the purpose of committing an act which according to this Act is subject to the consent of the owner of the right, except if the circumvention is made for the sole purpose of achieving interoperability of a computer programme with another independently created computer programme, by a person having lawful access to the computer programme, or on his behalf by a person authorized to do so, but then only to the extent of facilitating interoperability,
- (i) identifying and analysing the specific elements of the computer programme that are not readily available to the person carrying out the circumvention, and that are necessary to achieve such interoperability;
 - (ii) developing and employing technological means necessary to carry out the activities specified in subparagraph (i); or
 - (iii) making the information resulting from the activities in subparagraph (i), or the means specified in subparagraph (ii) available to others for the sole purpose of enabling interoperability as described in this subsection.

G. Liability for online intermediaries

181. (1) For the purposes of this Part, an “online intermediary” includes internet service providers, backbone internet providers, social media platforms, online marketplaces, search engines, video sharing platforms, and any other online platform that hosts copyright works and any other online platforms facilitating the hosting,

Protection of
online
intermediaries.

transmitting, or caching of copyright works.

(2) An online intermediary may not be held liable for copyright infringement when providing access to, transmitting, routing, or storing material in the ordinary course of its business, provided it—

- (a) does not initiate the transmission;
- (b) does not select the recipients of the material;
- (c) carries out these actions automatically, without choosing or altering the content;
- (d) does not modify the transmitted material;
- (e) does not promote the content being transmitted; or
- (f) carries out an action in compliance with an order of the Authority.

(3) The exemption under subsection (2) includes the automatic, intermediate, and transient storage of material meant for onward transmission.

(4) An online intermediary may not be held liable for copyright infringement when storing material temporarily to enhance onward transmission to other service users, provided it—

- (a) does not modify the material;
- (b) adheres to access conditions for the material;
- (c) complies with cache updating rules, aligning with accepted industry standards;
- (d) does not disrupt lawful use of technology for gathering data on material use; or
- (e) removes or restricts access once a takedown notice is received, or when ordered by the Authority or after becoming aware of the unlawful nature of the material.

(5) An online intermediary will not be liable for incurring damages arising from storing material at the service recipient's request, provided it—

- (a) lacks actual knowledge of the content or associated activity infringing third-party rights;

(b) is not aware of facts or circumstances making the infringing nature of the material apparent;

(c) upon receiving a takedown notice, removes or disables access to the allegedly infringing material as specified under section 85.

(6) This exemption does not apply if the service recipient is operating under the authority or control of the online intermediary.

(7) An online intermediary will not be liable for referring or linking users to a webpage containing infringing material or facilitating infringing activity, using information location tools such as directories, indexes, references, pointers, or hyperlinks, provided it—

(a) lacks actual knowledge of the material infringing any person's rights;

(b) is not aware of facts or circumstances that make the infringing nature of the material apparent;

(c) upon receiving a takedown notice, removes or disables access to the allegedly infringing material as specified under section 85 within forty-eight hours.

182. (1) A person whose rights have been infringed by content to which access is being offered by an online intermediary may request, by way of a takedown notice, that online intermediary removes the infringing content.

Takedown notice.

(2) A takedown notice issued under subsection (1) shall—

(a) be in writing and addressed by the complainant or their agent to the online intermediary or their designated agent;

(b) contain the full names, telephone, physical and email address of the complainant;

(c) be signed by the complainant or their authorized agent;

(d) describe in specific detail the copyright work subject to the alleged infringement or sought to be removed;

(e) identify the rights being infringed;

- (f) set out the content sought to be removed with details of where the content is contained;
- (g) attest to claim of ownership, validity of the rights, good faith and setting out any efforts to have entities responsible for making the content available to remove the content,
- (h) be copied to the Authority and the Communication Authority of Kenya.

(3) A takedown notice shall be deemed delivered on the next business day following physical delivery at its registered offices or forty-eight hours following the day it is sent by registered post or immediately it is sent by electronic communication to a designated address of the online intermediary or its designated agent.

(4) An online intermediary shall, upon receipt of a valid takedown notice, notify the person responsible for making available the alleged infringing content and provide them with a copy of the notice.

183. (1) Where the nature of the material requires expeditious action to prevent manifest prejudice, the rights holder or the Authority may apply to the Tribunal for an order to block access to online locations providing access to the infringing content.

Site Blocking and Live Events.

(2) Notwithstanding the takedown procedure set out in this Part, in the case of a live event, the rights holder may apply to the Tribunal for a preemptive injunction to block any probable unauthorized access to the event.

(3) A person seeking an order under this section shall submit a request to the Tribunal, accompanied by the details required for the purpose of a takedown.

184. (1) An online intermediary shall disable access to the material within Forty-Eight hours unless it receives a counter notice.

Counter notice.

(2) The counter notice shall meet the formal conditions set out for a takedown notice to sufficiently respond to the claims contained in a takedown notice including information disputing the contents of the takedown notice.

(3) Where the counter notice is issued, the party that

issued the takedown notice shall be required to file a complaint with the Authority.

(4) Upon receipt of the complaint under subsection (3), the Authority shall determine the matter of the claim within seven days and may issue interim orders including blocking orders as may be necessary.

(5) An online intermediary which fails to take down or disable access when it receives a takedown notice shall be fully liable for any loss or damages resulting from non-compliance.

(6) Where an online intermediary which fails to take down or disable access, the Communications Authority shall takedown and disable access to infringing content as per the takedown notice.

185. (1) Any person who falsely lodges a takedown notice commits an offence and shall, upon conviction, be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding five years, or to both.

Liability for
Failure to Comply.

(2) A person responsible for misrepresentation under a takedown notice shall, in addition to the penalty provided under this section, be liable for any damages resulting from such false misrepresentation.

(3) An online intermediary shall not be liable for wrongful takedown in response to a valid takedown notice.

186. (1) An online intermediary may be required to—

Role of Online
intermediary.

(a) provide, on orders of the Authority upon application by the copyright owner whose rights have been subject to a takedown notice, information regarding the identity of their service subscribers suspected of content infringement to investigative agencies;

(b) designate an agent or an address for receiving takedown notices, a detail to be clearly stated under its terms and conditions of service.

(2) In cases where the online intermediary has designated an agent according to subsection (1)(b), the provider shall—

- (a) make the following information publicly accessible through its services, including its website, and provide this information to the Authority:
 - (i) name, address, phone number, and electronic mail address of the agent;
 - (ii) other contact information the Authority may deem appropriate;
 - (b) ensure that it maintains a current directory of agents available for public inspection, including through its website.
- (3) Despite subsection (1), the online intermediary has no general obligation to—
- (a) monitor the material it transmits, stores, or links via its services; and
 - (b) actively seek facts or circumstances indicative of infringing activity within its services.

H Remedies for infringement

187. (1) An infringement of copyright is actionable by the copyright owner.

Infringement actionable by copyright owner.

(2) In proceedings relating to copyright infringement, the plaintiff shall be entitled to all remedies, including damages, injunctions, accounts of profits, or any other relief, consistent with those available for the infringement of other types of property rights.

188. (1) In an action for copyright infringement, if it can be demonstrated that the defendant was unaware, and had no reasonable grounds to suspect, that copyright existed in the related work at the time of the infringement, the plaintiff is not entitled to damages against the defendant, but this does not prejudice the pursuit of other remedies.

Provisions as to damages in infringement action.

(2) The court, in a copyright infringement case, may consider all the circumstances, specifically—

- (a) the flagrant nature of the infringement; and
- (b) any benefits the defendant gained due to the

infringement, and may award additional damages as deemed necessary for justice in the case

189. (1) A person may apply to the Court for the grant of interim relief where the person has reasonable grounds to believe that their copyright is being or may be infringed by a person situated in or outside Kenya.

Injunctions against
Online
Intermediaries.

(2) The Court may, upon application under subsection (1), grant an order requiring—

- (a) a person enabling or facilitating the infringement of copyright, or whose service is used by another person to infringe copyright, to cease such enabling or facilitating activity or disable that person's access to its service for the infringing purpose;
- (b) a person hosting or making available an online location, service or facility situated in or outside Kenya which is used to infringe copyright, or which enables or circumvents or facilitates the infringement of copyright, to disable access to such online location, service or facility as replaced, amended, or moved from time to time, and
- (c) a service provider to prevent or impede the use of its service to access an online location, service or facility situated in or outside the Republic of Kenya that is used to infringe copyright as replaced, amended or moved from time to time.

(3) The Court may issue permanent injunction after considering documentary evidence of repeated infraction by the online location, service or facility and nature of the content alleged to be infringed.

190. (1) This section applies where a claimant in an infringement action elects for statutory damages.

Statutory
Damages.

(2) The range of amount of statutory damages shall be determined as follows—

- (a) not less than shillings two hundred thousand and not more than one million shillings for each work or performance that is the subject of the action;
- (b) not less than eight hundred thousand and not more

than one million, five hundred thousand for all the works that are the subject of the action; and

- (c) not less than eight hundred thousand and not more one million, five hundred thousand for all the performances that are the subject of the action.

(3) Subsection (2)(b) and (c) will not apply if the claimant provides evidence that their actual loss for all the works or performances involved in the action surpasses one million, five hundred thousand.

(4) If separate and independent works or protected performance recordings are assembled into a singular entity, they shall be treated as one work for the purposes of subsection (2).

(5) In determining the amount of statutory damages to award, the Court shall consider all relevant factors, including —

- (a) the nature and purpose of the act constituting the rights infringement, including whether the act is of a commercial nature or otherwise;
- (b) the flagrancy of the infringement;
- (c) whether the defendant acted in bad faith;
- (d) any loss that the claimant has suffered or is likely to suffer because of the infringement;
- (e) any benefit gained by the defendant because of the infringement;
- (f) the conduct of the parties before and during the proceedings; and
- (g) the need to deter similar infringements.

191. (1) If a person has provided evidence that their rights have been infringed by another person and demonstrates to the satisfaction of the court or Copyright Tribunal that—

- (a) they have a valid cause of action against another person, which they intend to pursue;
- (b) the other party is in possession of documents, infringing copies, or other materials, which are of substantial importance as evidence for the cause of action; and

Grant of Anton Piller order.

- (c) there exists a real and substantial risk that these documents, infringing copies, or other materials may be concealed, destroyed, or rendered inaccessible before their discovery through conventional methods.

(2) On such demonstration, the court or Tribunal may issue any order it deems necessary or appropriate to ensure the preservation of the documents, copies, or materials as evidence.

(3) An order made under subsection (1) may be granted *ex parte*.

192. (1) An exclusive licensee, apart from the copyright owner, possesses the same rights and remedies concerning matters post-license issuance as if the license were an assignment.

Exclusive licensee
rights and
remedies.

(2) The rights and remedies of the exclusive licensee coincide with those of the copyright owner, and hence, all relevant provisions in this Part relating to the copyright owner shall apply to the licensee.

(3) In an action initiated by an exclusive licensee under this section, a defendant may use any defense that would have been accessible if the lawsuit had been brought by the copyright owner.

193. (1) A non-exclusive licensee may bring an action for infringement of copyright if—

Actionable
infringements by a
non-exclusive
licensee.

- (a) the infringement is directly associated with a previously licensed act of the licensee; and
- (b) the license—
- (i) is written and signed by or on behalf of the copyright owner; and
 - (ii) explicitly grants the non-exclusive licensee the right to take action under this section.

(2) In a lawsuit filed under this section, the non-exclusive licensee is entitled to the same rights and remedies that the copyright owner would have had if the action had been initiated by them.

(3) The rights granted under this section are concurrent with those of the copyright owner, and all

related provisions in this Part referring to the copyright owner are interpreted accordingly.

(4) In a lawsuit initiated by a non-exclusive licensee under this section, a defendant may employ any defense that would have been available if the lawsuit had been initiated by the copyright owner.

(5) Subsections (1) to (4) apply to a non-exclusive licensee who has a right to take action under this section, just as it applies to an exclusive licensee.

(6) In this section, a non-exclusive licensee refers to a license holder who is authorized to exercise a right that the copyright owner can still exercise.

194. (1) If a copyright infringement lawsuit filed by the copyright owner or an exclusive licensee pertains (entirely or partially) to an infringement for which they have concurrent rights, the copyright owner or exclusive licensee may not proceed with the action without the court's permission, unless the other party is either joined as a co-plaintiff or added as a defendant.

Exercise of concurrent rights.

(2) A copyright owner or exclusive licensee who is added as a defendant under subsection (1) is not responsible for any legal costs in the action unless they participate in the proceedings.

(3) This section does not impede the granting of interlocutory relief on an application made by a copyright owner or exclusive licensee alone.

(4) Where an action for infringement of copyright is brought which relates (wholly or partly) to an infringement in respect of which the copyright owner and an exclusive licensee have or had concurrent rights of action—

- (a) in assessing damages, take into account—
 - (i) the terms of the license agreement; and
 - (ii) any pecuniary remedy already awarded or available to either of them with respect to the infringement;
- (b) refrain from directing an account of profits if an award of damages has been made, or an account of profits has been directed, in favour of the other party with respect to the infringement;
- (c) in the case where an account of profits is directed,

apportion the profits between them as it sees fit, subject to any existing agreement between them.

(4) These provisions shall apply whether or not the copyright owner and the exclusive licensee are both parties to the action.

(5) The copyright owner is required to notify any exclusive licensee possessing concurrent rights prior to applying for an order for delivery up or exercising the right of seizure.

(6) The court may, on the licensee's application, issue an order taking into consideration the terms of the license agreement.

195. (1) An infringement of a right conferred by moral rights is actionable as a breach of statutory duty owed to the person entitled to the right.

Remedies for infringement of moral rights.

(2) In proceedings for infringement of the right to object to derogatory treatment of work the court may, if it deems it is an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made, in such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work.

196. (1) A person commits an offence, if at a time when copyright or the right of a performer or producer subsists in a work, the person knowingly—

Offences and penalties for infringement.

- (a) makes for sale or rent infringing copies;
- (b) sells or lets for hire or, by way of trade, exposes or offers for sale infringing copies;
- (c) distributes infringing copies;
- (d) possesses otherwise than for his private and domestic use, infringing copies;
- (e) imports into Kenya otherwise than for his or her private and domestic use infringing copies;
- (f) makes or has in his or her possession a contrivance used or intended to be used for the purpose of making infringing copies;
- (g) causes a broadcast to be rebroadcast or transmitted in a diffusion service, knowing that copyright subsists in the broadcast and that such rebroadcast

or transmission constitutes an infringement of the copyright;

- (h) causes a program carrying signals to be distributed by a distributor for whom they were not intended, knowing that copyright subsists in the signals and that such distribution constitutes an infringement of the copyright;
- (i) circumvents a technological protection measure or manufactures or distributes devices designed for circumventing technological protection measures; or
- (j) removes or alters rights management information or imports or distributes, or makes available to the public a copy of a work from which electronic rights management information has been removed or altered.

(2) Any person who causes a literary or musical work, an audio-visual work or a sound recording to be performed in public at a time when copyright subsists in such work or sound recording and where such performance is an infringement of that copyright shall be guilty of an offence.

(3) For the purposes of paragraphs (a) to (f) of subsection (1), any person who has in his possession, custody or control two or more infringing copies of a work in the same form, shall, unless the contrary is proved, be presumed to be in possession of or to have imported such copies otherwise than for private and domestic use.

(4) A person convicted of an offence under subsection (1) (a), (b), (c), (d) or (e) shall be liable to—

- (a) for a first conviction, a fine of five times the market value of the legitimate work or one thousand shillings for each infringing copy whichever is higher or to imprisonment for a term not exceeding ten years, or to both, and
- (b) for subsequent convictions, a fine of ten times the market value of the legitimate work or two thousand shillings for each infringing copy, whichever is higher or imprisonment for a term not exceeding twenty years, or to both.

(5) A person convicted of an offence under subsection (1) (f), (g), (h), (i) or (j) shall be liable to a fine not exceeding one million shillings or to imprisonment for a term not exceeding five years or to both.

(6) A person convicted of an offence under subsection (2) shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding four years, or to both.

(7) The court shall order the destruction or delivery of any article in a person's possession that appears to be an infringing copy or an article used for making infringing copies, regardless of conviction.

(8) Half of all fines imposed and collected shall be paid into the revenues of the Board, with the remaining half being paid into the general revenues of Kenya.

(9) Any complaint alleging a breach of this section may be lodged by a licensed collective management organization where such rights are managed collectively.

197. (1) Where a body corporate is convicted of an offence under this Act, 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 its business and affairs is also deemed to have committed the offence and shall be liable to prosecution.

Offence by body corporate.

(2) Where it is proven that a body corporate committed an offence under this Act with the consent, connivance or willful lack of due diligence by a person in charge of or responsible to the body corporate for the conduct of its business and affairs, the person shall be guilty of the offence.

(3) For the purposes of this section—

- (a) "body corporate" includes a firm or other association of persons; and
- (b) "director" in relation to a firm includes the partner in the firm.

L. Enforcement mechanisms

198. (1) The Authority shall, for the purposes of enforcing the provisions of this Act, appoint such number

inspectors.

of inspectors as the Board considers appropriate.

(2) In addition to inspectors appointed under subsection (1), any staff of Customs department or a police officer may perform the functions of an inspector under this Act.

(3) A person appointed as an inspector shall hold office subject to such conditions as the Board may determine with approval of the Cabinet Secretary.

199. An inspector may, at any reasonable time and on production of suitable identification, enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been any contravention of this Act.

Entry into premises.

200. (1) For the purpose of ascertaining whether there is or has been a contravention of this Act, an inspector may inspect—

Mode of inspection.

- (a) any substance or article appearing to be a work;
- (b) any container or package used or intended to be used to contain any work; or
- (c) any plant or equipment appearing to him to be used or intended to be used in connection with the production, reproduction or otherwise manufacture of a work.

(2) An inspector may seize and detain any substance or article which they have reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which they have reasonable cause to believe that—

- (a) an offence under this Act has been or is being committed; and
- (b) any document which may be required in proceedings under this Act.

(3) Where an inspector seizes any work, they shall in writing, notify the person from whom it is seized the fact of that seizure and shall in that notification specify any item seized.

(4) Any person who—

- (a) willfully obstructs an inspector in the discharge of

the inspector's duties, or

- (b) willfully fails to comply with any requirement properly made to him by an inspector,

shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months or to both.

201. A police officer may arrest, without a warrant, any person suspected, upon reasonable grounds, of having committed an offence under this Act.

Authority to arrest.

202. (1) Any officer of the Authority who at the time has valid identification and authorized, may arrest, without warrant, any person, who, in their presence, commits any such offence, and may detain such person until that person can be delivered into the custody of a police officer.

Power of arrest.

(2) A person shall not be arrested or detained without warrant unless reasonable grounds exist for believing that, except by such arrest, the person may not be found or made answerable to justice without unreasonable delay, trouble or expense.

(3) A police officer who is notified of an offence suspected to have been committed under subsection (1) may, upon obtaining a warrant of arrest, effect an arrest and may thereupon confiscate any offending material.

203. (1) The Director of Public Prosecutions may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for the purposes of cases arising under this Act.

Conduct of prosecution.

Cap. 75.

(2) The Authority shall, for the purposes of section 171(4) of the Criminal Procedure Code, be deemed to be a public authority.

204. (1) A rights owner or licensee, suspects that pirated goods may be imported, may in writing request with the Commissioner of Customs to suspend the release into free circulation of such goods.

Measures at the Border.

(2) Any rights owner or licensee makes the request shall provide adequate evidence to satisfy the Commissioner of Customs that—

- (a) the copyright has likely been infringed,

(b) they have ownership or license; and

(c) they can describe the goods in sufficient detail to make them easily recognizable.

(3) The suspension shall, unless revoked by the complainant, be in place for a reasonable time required for sampling, verification, and inspection of the goods.

(4) The suspension shall remain valid unless the goods are determined to be non-infringing on inspection in the presence of the complainant.

(5) Despite this section, a customs officer may seize goods that the officer reasonably suspects to be infringing and notify any person whom the customs officer considers to be probable right owner and the person importing or exporting the goods.

(6) This section applies, with necessary changes, to goods destined for export.

(7) This provision shall not apply to goods in transit.

J. Collective management of rights

205. (1) Rights holders in the creative sector for which rights are collectively managed may form a collective management organization representative of their respective sector.

Formation of
Collective
Management
Organizations.

(2) Under this Section, the audiovisual, music, visual art, and book publishing sectors may form one collective management organization for their respective sector.

(3) The Authority shall not license another collective management organization if there exists another licensed collective management organization that functions to the satisfaction of its members.

(4) The collective management organization shall only operate bank accounts authorized by the Authority.

206. (1) A person seeking to engage in the business of collective management shall apply with the Authority for an operating license.

Licensing of
Collective
Management
Organizations.

(2) An application for license as collective management organizations shall be submitted to the Authority in a manner prescribed.

(3) The Authority may approve a collective management organization based on criteria established in the regulations, including the organization's legal status, purpose, and member protection measures.

(4) The license term of a collective management organization shall be a period of three years.

(5) The Authority may revoke the license of a collective management organization if it fails to meet the criteria established in the regulations, which include compliance with its procedures and adherence to this Act.

(6) Failure to comply with the license conditions and copyright regulations shall attract administrative penalties as may be prescribed in the Regulations.

(7) In case a license of a collective management organization is revoked, the Authority shall ensure continued collection and remittance of royalties to rights holders.

(8) A collective management organization shall submit to the Authority information on its total collection and distribution of royalties annually.

207. (1) No collective management organization shall—

Imposition and
distribution of
royalties.

(a) impose or collect royalties based on a tariff that has not been approved and published in the Gazette by the Authority; or

(b) levy royalties on users exempted by the Authority through a notice in the *Gazette*.

(2) A licensed collective management organization shall utilize a digital system established by the Authority for the purpose of the collection and distribution of royalties.

208. (1) The Authority may authorize a qualified independent auditor to inspect the books of accounts and records of a collective management organization under certain circumstances outlined by the regulations.

Inspection and
Supervision of
Collective
Management
Organizations.

(2) The collective management organization shall produce and make available all the necessary books, accounts, records, and other documents to the auditor during the inspection.

(3) Failure to produce the required materials within the required time frame constitutes a breach of which the Authority may impose an administrative penalty as may be prescribed.

(4) Following the inspection, the auditor shall report to the Authority on any breaches or non-observances of this Act or regulations, irregularities in business conduct, mismanagement, or any other issues requiring remedial action.

(5) The Authority shall, after giving the collective management organization reasonable opportunity to respond, issue directions to the organization based on the findings from the inspection report.

209. If the Authority determines, based on an audit or inspection report, that a collective management organization is conducting its business contrary to this Act, its regulations, or any other applicable law, or in a manner that is not in the best interest of its members, the Authority may—

Directions and
Orders of the
Authority.

- (a) issue directions to improve the organization's management or compliance with legal requirements;
- (b) recommend the reconstitution of the organization's board of directors;
- (c) direct the organization to take any necessary actions to rectify deficiencies;
- (d) order elections to be held under its supervision; and
- (e) revoke the collective management organization's license.

210. (1) A collective management organization is required to maintain and update minutes of all resolutions and proceedings from their meetings.

Record Keeping.

(2) As soon as possible after the end of each financial year, a collective management organization shall submit to the Authority—

- (a) a report detailing its operations during that year; and

- (b) a copy of its audited accounts for that year.

PART V—ANTI-COUNTERFEIT

211. For the purposes of this Part—

*Interpretation of
this part.*

"Commissioner" shall have the meaning assigned to it under the Kenya Revenue Authority Act.

"complainant" means a person, institution, government authority or state corporation entitled to lay a complaint under section 223 (1), or who has laid such a complaint;

"consumer" includes any member of the public or person who purchases or likely to purchase goods as an end user other than the owner of intellectual property right;

"counterfeiting" means taking the following actions without the authority of the owner of intellectual property right subsisting in Kenya or outside Kenya in respect of protected goods—

(a) the manufacture, production, packaging, re-packaging, labelling or making, whether in Kenya, of any goods whereby those protected goods are imitated in such manner and to such a degree that those other goods are identical or substantially similar copies of the protected goods;

(b) the manufacture, production or making, whether in Kenya, the subject matter of that intellectual property, or a colourable imitation thereof so that the other goods are calculated to be confused with or to be taken as being the protected goods of the said owner or any goods manufactured, produced or made under his licence;

the manufacturing, producing or making of copies, in Kenya, in violation of an author's rights or related rights;

(c) in relation to medicine, the deliberate and fraudulent mislabelling of medicine with respect to identity or source, whether or not such products have correct ingredients, wrong ingredients, have sufficient active ingredients or have fake packaging.

Provided that nothing in this paragraph shall derogate from the existing provisions under the Industrial Property

Act;

"counterfeit goods" means goods that are the result of counterfeiting any item that bears an intellectual property right, and includes any means used for purposes of counterfeiting;

"counterfeit goods depot" means a place designated as such under section 219;

"counterfeit mark" means a spurious mark—

- (a) that is used in connection with any goods, labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, hand tags, documentation or packaging of any type or nature;
- (b) that is identical with, or substantially indistinguishable from, a mark registered in the trade mark register and in use, whether or not a person knows such a mark was registered;
- (c) that is applied to or used in connection with the goods for which the mark is registered, or is applied to or consists of a label, patch, sticker, wrapper, badges, emblems, medallion, charms, boxes, containers, cans, hand tags, documentation or packaging of any type or nature, that is designed, marked or otherwise intended to be used on or in connection with the goods for which the mark is registered; and
- (d) the use of which is likely to cause confusion, to cause mistake, or to deceive;

"document" includes a tape recording, a photograph and any electronic, magnetic or other medium on, in, or by means or by way of which, images, sound, data or information may be stored.

"exporter" includes any person who, at the relevant time—

- (a) is the owner or is in control or possession of any goods exported or to be exported from Kenya;
- (b) carries the risk for any goods so exported or to be so exported;
- (c) represents that, or acts as if, he is the exporter or owner of any goods so exported or to be so

exported;

- (d) actually takes, or attempts to take, any goods from Kenya;
- (e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so exported or to be so exported; or
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e), and, in relation to imported goods destined for exportation from Kenya, includes the manufacturer, producer, maker, supplier or shipper of those goods or any person inside or outside Kenya representing or acting on behalf of such a manufacturer, producer, maker, supplier or shipper;

"importer" includes any person who, at the relevant time—

- (a) is the owner or is in control or in possession of any goods imported or to be imported into Kenya;
- (b) carries the risk for any goods so imported or to be so imported;
- (c) represents that, or acts as if, he is the importer or owner of any goods so imported;
- (d) actually brings, or attempts to bring, any goods into Kenya;
- (e) has a beneficial interest, in any manner or of any nature whatsoever, in any goods so imported or to be so imported;
- (f) acts on behalf of any person referred to in paragraph (a), (b), (c), (d) or (e);

"inspector" means a person appointed as such under section 212.

"intellectual property right" includes—

- (a) any plant breeders' right granted under the Seeds and Plant Varieties Act; and
- (b) any right protected under the Trade Marks Act; and

"owner" in relation to an intellectual property right, includes a person who has the capacity in law to enforce

the intellectual property right in his own name;

"package" means any container, wrapping or outer cover and the contents thereof, or any bundle or single piece in the case of unpacked goods;

"prescribed" means prescribed by regulations made under section 239;

"protected goods" means—

- (a) goods featuring, bearing, embodying or incorporating the subject matter of an intellectual property right with the authority of the owner of that intellectual property right, or goods to which that subject matter has been applied by that owner or with his authority; and
- (b) any particular class or kind of goods which, in law, may feature, bear, embody or incorporate the subject matter of an intellectual property right only with the authority of the owner of that intellectual property right, or to which that subject matter may in law be applied, only by that owner or with his authority, but which has not yet been manufactured, produced or made, or to which that subject matter has not yet been applied, with the authority of or by that owner, whichever is applicable;

"tools" include machinery and equipment;

"trade" includes business and profession; and

"vehicle" includes any motorcar, van, truck, trailer, caravan, cart, barrow, train, aircraft, ship, boat or other vessels, and any other vehicle, craft or means of conveyance of any kind whatsoever, whether self-propelled or not, as well as any pack animal.

A. Inspection

212. (1) The Board shall, for purposes of enforcing the provisions of this Act, appoint such number of inspectors as the Board may consider appropriate and shall issue to them, in writing or in such form as may be prescribed, certificates of authority to act as inspectors.

Appointment of inspectors.

(2) A person appointed as an inspector under

subsection (1) shall—

- (a) hold office subject to such terms and conditions as the Board may determine;
- (b) have full police powers in the exercise of their duties under this Act.

(3) In addition to inspectors appointed under subsection (1), any member of the Board, police officer, authorised customs officer, trade development officer, industrial development officer, trade mark and patent examiner, seed and plant inspector, public health inspector, and inspectors appointed under the Standards Act, the Weights and Measures Act, the Food, Drugs and Chemical Substances Act, the Pharmacy and Poisons Act and the Pest Control Products Act are hereby designated as inspectors for purposes of this Act.

Cap. 496
Cap. 513
Cap. 254
Cap. 244
Cap. 346

(4) The Board may designate other public officers to be inspectors for purposes of this Act.

(5) The Board may amend or withdraw appointment of inspectors or designated inspectors under this section.

(6) Appointment of inspectors under this section shall be by notice in the *Gazette*.

213. (1) An inspector may at any reasonable time—

Powers of
inspectors.

- (a) enter upon and inspect any place, premises or vehicle at, on or in which goods that are reasonably suspected of being counterfeit goods are to be found, or on reasonable grounds are suspected to be manufactured, produced or made, and search such place, premises or vehicle and any person found in such place, premises or vehicle, for such goods and for any other evidence of the alleged or suspected act of dealing in counterfeit goods, and for purposes of entering, inspecting and searching such a vehicle, an inspector may stop the vehicle, wherever found, including on any public road or at any other public place.
- (b) take the steps that may be reasonably necessary to terminate the manufacturing, production or making of counterfeit goods, or any other act of

dealing in counterfeit goods being performed, at, on or in such place, premises or vehicle, and to prevent the recurrence of any such act in future:

Provided that those steps shall not include the destruction or alienation of the relevant goods unless authorized by an order issued by a court of competent jurisdiction,

- (c) seize detain, and, where applicable, remove for detention, all the goods in question found at, on or in such place, premises or vehicle;
- (d) seize detain, and, where applicable, remove for detention, any tools which may be used in the manufacturing, production, making or packaging of those goods or applying a trade mark or that exclusive mark on such goods;
- (e) if he reasonably suspects that a person at, on or in such place, premises or vehicle may furnish any information with reference to any act of dealing in counterfeit goods—
 - (i) question that person and take down a statement from him;
 - (ii) demand and procure from that person any book, document, article, item or object which in any way may be relevant to nature, quantity, location, source or destination of the goods in question, or the identity and address of anyone involved or appears to be involved as a supplier, manufacturer, producer, maker, distributor, wholesaler, retailer, importer, exporter or clearing and forwarding agent of, or other dealer in, the goods in question; and
- (f) seal or seal off any place, premises or vehicle at, on or in which—
 - (i) the goods in question are found, or are manufactured, produced or made, either wholly or in part;
 - (ii) any trade mark, any exclusive mark or any work which is the subject matter of copyright, is applied to those goods;

(iii) the packaging for those goods is prepared; or

(iv) the packaging of those goods is undertaken.

(2) Nothing in this section shall be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

(3) An inspector may arrest, without a warrant, any person whom he suspects upon reasonable grounds of having committed any offence under this Act and may search and detain such a person:

Provided that no person shall be arrested under this section unless he obstructs or hinders the inspector or refuses to give his name and address to the inspector or to produce to him satisfactory evidence of his identity, or gives a name and address which the inspector has reason to believe to be false or it appears to the inspector that such a person may not be found or made answerable to justice without unreasonable delay, trouble or expense.

(4) An inspector shall have the power to investigate any offence related or connected to counterfeiting notwithstanding that such an offence is not expressed as such under the provisions of this Act.

(5) An inspector shall have the same powers as are exercised by a customs officer with regard to importation of counterfeit goods under the East African Community Customs Management Act.

(6) If a magistrate, on sworn information in writing—

(a) is satisfied that there is reasonable ground to believe either—

(i) that any goods, books or documents which an inspector has power under this section to inspect are on any premises and that their inspection is likely to disclose evidence of commission of an offence under this Act; or

(ii) that any offence under this Act has been, is being, or is about to be committed on any premises; and

(b) is also satisfied either—

(i) that admission to the premises has been or is

likely to be refused and that notice of intention to apply for a warrant under this section has been given to the occupier, or

- (ii) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied, or that the occupier is temporarily absent and it might defeat the object of the entry to await his return,

the magistrate may by warrant under his hand, which shall continue in force for a period of one month, authorize an inspector to enter the premises, if need be by force.

(7) An inspector entering any premises by virtue of this section may take with him such other persons and such equipment as may appear to him to be necessary; and on leaving any premises which he has so entered by virtue of a warrant he shall, if the premises are unoccupied or the occupier is temporarily absent, leave them as effectively secured against trespassers as he found them.

214. (1) A person who—

- (a) wilfully obstructs an inspector in the discharge of his duties;
- (b) wilfully fails to comply with any requirement properly made to him by an inspector;
- (c) without reasonable cause, fails to give to an inspector any assistance or information which the inspector may reasonably require of that person for the purpose of the performance of his duties under this Act; or
- (d) in giving any such information as is mentioned in paragraph (c), makes any statement which he knows to be false or does not believe to be true,

commits an offence.

(2) A person who, without authority—

- (a) breaks, damages or tampers with a seal applied by an inspector under this Act; or
- (b) removes any goods, documents, articles, items, objects or things sealed or sealed-off by an inspector or detained or stored at a counterfeit goods depot under this Act,

Obstruction and
breaking of seal.

commits an offence.

215. (1) An inspector who has seized any suspected counterfeit goods in accordance with section 213 shall—

Duty of inspector upon seizure of goods.

- (a) forthwith seal, clearly identify and categorize the goods and prepare, in quadruplicate, an inventory of such goods in the prescribed form and cause the person from whom the goods are seized to check the inventory for correctness, and, if correct, cause that person to make a certificate under his signature on each copy of the inventory and if the seized goods are removed under paragraph (c), the inspector shall endorse that fact under his signature on every copy of the inventory, in which case the inventory shall also serve as a receipt,
- (b) furnish one copy of the inventory to the person from whom the goods are seized and another to the complainant, if any, within five working days after the seizure,
- (c) as soon as possible, remove the goods, if transportable, to a counterfeit goods depot for safe storage, or, if not capable of being removed or transported, declare the goods to have been seized in situ, and seal off or seal and lock up the goods or place them under guard at the place where they were found, and thereupon that place shall be deemed to be a counterfeit goods depot, and
- (d) by written notice, inform the following persons of the action taken by the inspector under section 213 (1) and of the address of the counterfeit goods depot where the seized goods are kept—
 - (i) the person from whom those goods are seized;
 - (ii) either the complainant, where the inspector exercised his powers pursuant to a complaint laid in accordance with section 223(1); or
 - (iii) the person who, in relation to those

goods, qualifies under section 223(1) to be a complainant, but who had not yet so laid a complaint at the time when the inspector exercised those powers on his own initiative in accordance with section 223(4).

(2) An inspector may require a complainant to disclose any additional information, which may be relevant to the action that has been taken.

(3) Any person aggrieved by a seizure of goods under section 213 may, at any time, apply to a court of competent jurisdiction for a determination that the seized goods are not counterfeit goods and for an order that they be returned to him.

(4) The court may grant or refuse the relief applied for under subsection (3) and make such order as it deems fit in the circumstances, including an order as to the payment of damages and costs.

216. (1) Copies of any statement taken down or other documentary evidence procured by an inspector in the course of exercising his powers under this Act, may be made available to a complainant upon an application in the prescribed manner.

Evidence and presumptions.

(2) In any civil proceedings concerning an act of dealing in counterfeit goods by any person, it shall be permissible to present evidence about that person's conviction or convictions on account of an offence or offences founded on acts of dealing in counterfeit goods.

(3) A statement made by an inspector to the effect that the goods specified in the inventory attached to that statement are goods seized by him from a specified person at a specified place and on a specified date shall be *prima facie* evidence of the facts stated therein concerning the counterfeit goods or any act of dealing therein.

(4) Where the subsistence of an intellectual property right in respect of protected goods or any person's title to or interest in such intellectual property right is in issue in any civil or criminal proceedings concerning counterfeit goods, the substance of, title to or interest in such intellectual property right, where it is alleged to encompass the rights in respect of industrial property as contemplated in the definition of "intellectual property right" in this Act, may be proved in accordance with the provisions of the various industrial property legislation.

(5) Where the subsistence of intellectual property right in respect of suspected counterfeit goods or the title or interest in intellectual property right is in issue, the complainant shall be presumed to be the owner of the copyright or the related right or, as the case maybe, the exclusive licensee of any such right, until the contrary is proved.

(6) Where a name or mark purporting to be that of the author of a work or the owner of copyright or related rights is either associated with copies of a work or other protected subject matter, or its related packaging, or appears in connection with a work or other protected subject matter, this shall be admissible as evidence of the fact indicated and such evidence shall be presumed to be correct, until the contrary is proved.

(7) Subsections (4), (5) and (6) shall not be construed so as to detract from the power of a court, in relation to any such matter or any aspect thereof—

(a) to require oral evidence to be given; and

(b) to order that the evidence of a person who resides or is for the time being outside the area of jurisdiction of the court, be taken by means of interrogatories.

(8) Where any person who trades in protected goods featuring, bearing, incorporating or embodying the subject matter of particular intellectual property right is proved to have been found in possession of suspected counterfeit goods to which the subject matter of the same intellectual property right has been applied, it shall, in any civil or criminal proceedings concerning an act of dealing in counterfeit goods found in his possession, be presumed, until the contrary is proved, that such person was in possession of the goods for the purpose of trade if the quantity of those goods is more than that which, in the circumstances, reasonably may be required for his private and domestic use.

(9) In any criminal or civil proceedings concerning an act of dealing in counterfeit goods, the evidence of any person in the employment of the intellectual property rights holder or its agent with demonstrable training offered by such intellectual property rights holder or experience in the identification of the intellectual property rights holder's products shall be admissible as expert evidence.

217. (1) Goods that have been seized under section 213(1) shall be stored and kept in safe custody at a counterfeit goods depot until the person in charge of the depot—

Storage and access to seized goods.

(a) is ordered by a court to return, release, destroy or otherwise dispose of those goods as specified in the order.

Provided that in the case of counterfeit goods, such goods shall be destroyed at the expense of the local manufacturer or importer, as the case may be, based on the environmental considerations and the capacity of the country to destroy the goods, or shall be reshipped.

(b) is directed by an inspector under section 218 to release the goods to the person from whom they were seized.

(2) Upon an application in the prescribed manner, goods seized under section 213(1) shall, within five working days, be made available for inspection by the complainant or prospective complainant, if any, the suspect or any other interested person, at the counterfeit goods depot at any reasonable time.

(3) Upon an application in the prescribed manner, the Director General may make a sample of the seized goods available within a period of five working days to the applicant for testing or analysis.

(4) An inspector may take, in the prescribed manner, samples of goods in reasonable quantities for testing or analysis.

218. (1) Where any goods are seized and detained under section 213, they shall be returned, less any portion thereof which has been reasonably utilized for the purpose of any test or analysis, to the person from whom they were seized within a period of three months after the date of seizure unless, within such period, some person is charged with an offence under this Act and it is alleged that such offence was committed in relation to or in connection with such goods.

Release of seized goods.

(2) Where a prosecution for an offence under this Act is commenced within the period mentioned in subsection (1), and any person is convicted of that offence, the court which made the conviction may order that any goods seized and detained in relation to or in connection with which such offence was committed shall be forfeited to the Government for destruction at the expense of the person so convicted.

(3) The court before which a person is charged with an offence under this Act shall, whether such person is convicted of the offence or not, order that any goods in his possession which appear to the court to be counterfeit goods or to be tools used or intended to be used for making counterfeit goods, be destroyed or otherwise dealt with as the court may deem appropriate.

(4) Where a person charged with an offence under this Act absconds and does not appear in court or where counterfeit goods are seized but are not claimed, an inspector may apply to have the counterfeit goods forfeited to the State for destruction.

219. (1) The Board may, by notice in the *Gazette*, designate any place to be a counterfeit goods depot for the purposes of this Act.

Counterfeit goods depot.

(2) The Board shall appoint a fit and proper person to be in charge of a counterfeit goods depot.

220. (1) The Director of Public Prosecutions may, pursuant to the provisions of the Criminal Procedure Code, appoint public prosecutors for purposes of cases arising under this Act.

Conduct of prosecutions.
Cap. 75.

(2) The Board shall, for purposes of section 171(4) of the Criminal Procedure Code, be deemed to be a public authority.

221. (1) If any person discloses to any other person—

Disclosure of information and impersonation.

- (a) any information with respect to any manufacturing process or trade secret obtained by him in premises which he has entered by virtue of powers of entry conferred on him under this Act; or
- (b) any information obtained by him in the performance of functions under this Act,
- (c) such person commits an offence unless the disclosure was made in, or for the purpose of, the performance by him or any other person of the functions under this Act.

(2) If any person who is not an inspector purports to act as such, such person commits an offence.

B. Counterfeit Goods

222. It shall be an offence for any person to—

Offences.

- (a) have in his possession or control in the course of

trade, any counterfeit goods;

- (b) manufacture, produce or make in the course of trade, any counterfeit goods;
- (c) sell, hire out, barter or exchange, or offer or expose for sale, hiring out, barter or exchange any counterfeit goods;
- (d) expose or exhibit for the purposes of trade any counterfeit goods;
- (e) distribute counterfeit goods for purposes of trade or any other purpose;
- (f) import into, transit through, transship within or export from Kenya, except for private and domestic use of the importer or exporter as the case may be, any counterfeit goods;
- (g) in any other manner, dispose of any counterfeit goods in the course of trade;
- (h) have in his possession or control in the course of trade any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentations, or packaging of any type or nature, with a counterfeit mark applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive;
- (i) aids or abets or conspires in the commission of any offence under this Act;
- (j) import into Kenya, any goods or items bearing a trade mark, trade name or copyright that has not been recorded with the Authority;
- (k) import into Kenya, in the course of trade, any goods or items except raw materials that is unbranded;
- (l) fail to declare the quantity or the intellectual property right subsisting in any goods being imported into the Kenya;
- (m) falsely declare the quantity or the intellectual property rights subsisting in any goods being

imported into Kenya, or

- (n) import into or transit through Kenya any labels, patches, stickers, wrappers, badges, emblems, medallions, charms, boxes, containers, cans, cases, hand tags, documentations, or packaging of any type or nature, with a counterfeit mark applied thereto, the use of which is likely to cause confusion, to cause mistake, or to deceive.

223. (1) Any holder of an intellectual property right, his successor in title, licensee or agent may, in respect of any protected goods, where he has reasonable cause to suspect that an offence under section 222 has been or is being committed, or is likely to be committed, by any person, lay a complaint with the Director General.

Laying a
complaint.

(2) The complainant shall furnish, to the satisfaction of the Director General, such information and particulars, as may be prescribed, to the effect that the goods with reference to which that offence has allegedly been, or is being, or is likely to be, committed, *prima facie* are counterfeit goods.

(3) Where the Director General is reasonably satisfied—

(a) that the complainant is a person entitled to lay a complaint under subsection (1); and

(b) that—

(i) the goods claimed to be protected goods, *prima facie* are protected goods;(c)

(ii) the intellectual property right, the subject matter of which is alleged to have been applied to the offending goods, *prima facie* subsists; and

(c) that the suspicion on which the complaint is based appears to be reasonable in the circumstances,

the Director General shall cause appropriate steps to be taken in accordance with section 213(1).

(4) The preceding provisions of this section shall not preclude an inspector from taking any appropriate steps on his own initiative including receiving and acting on consumer complaints in relation to any act or conduct

believed or suspected to be an act of dealing in counterfeit goods, provided the provisions of this Act are complied with.

(5) Nothing in this section shall preclude the Director General from causing appropriate steps to be taken in accordance with section 213(1) in the event of an infringement of an intellectual property right for which no complaint has been lodged by the holder thereof in accordance with subsection (1) of this section.

(6) Notwithstanding the provision of subsections (1) and (2) of this section, a consumer or purchaser of goods may, where he has reasonable cause to suspect that an offence under this Act has been committed, is being committed or is likely to be committed by any person, lay a complaint with the Director General who shall cause appropriate steps to be taken in accordance with the provisions of this Act.

224. (1) The owner of an intellectual property right, who has valid grounds for suspecting that the importation of counterfeit goods may take place, may apply to the Commissioner or Director General in the prescribed manner to seize and detain all suspected counterfeit goods which are—

Powers of the
Commissioner or
Director General.

- (a) goods featuring, bearing, embodying or incorporating the subject matter of that intellectual property right or to which the subject matter of that right has been applied; and
- (b) imported into or enter Kenya during the period specified in the application.

Provided that the period may not extend beyond the last day of the period for which that intellectual property right subsists.

(2) For purposes of subsection (1), the applicant may furnish to the Commissioner or Director General—

- (a) a specimen of the goods to which the subject matter of his relevant intellectual property right relates;
- (b) sufficient information and particulars as to—
 - (i) the subsistence and extent of that intellectual property right; and

(ii) his title to that right.

(3) The Commissioner or Director General shall consider and deal with an application under sub-section (1) within three working days and may grant the application if satisfied on reasonable grounds that—

- (a) the goods claimed to be protected are *prima facie* protected goods;
- (b) the intellectual property right, the subject matter of which relates to the protected goods, *prima facie* subsists; and
- (c) the applicant *prima facie* is the owner of that intellectual property right.

(4) When an application made under subsection (1) has been granted and notice thereof given under subsection (5), the counterfeit goods of the type with reference to which that application was made (hereafter called the stipulated goods), or suspected on reasonable grounds to be stipulated goods, and imported into or entering Kenya from time to time during the period determined by the Commissioner or Director General, which may be shorter than the period applied for, may be seized and detained by the customs authorities in accordance with the East African Community Customs Management Act, 2004 subject to subsections (6) and (7).

(5) The Commissioner or Director General shall, by notice in writing, inform the applicant whether the application has been granted or not, and—

- (a) if granted, state the period during which any stipulated goods being imported into or entering Kenya will be made subject to seizure and become subject to detention under subsection (4);
- (b) if not granted, state the reasons for refusal to be granted.

(6) For purposes of acting under subsection (4) in relation to goods that are stipulated goods or suspected on reasonable grounds to be stipulated goods—

- (a) an authorized customs officer or Inspector shall seize the counterfeit goods or alleged or suspected counterfeit goods, in accordance with subsection

(1) or (4);

(b) the following provisions will apply *mutatis mutandis* in relation to an authorized customs officer or Inspector—

- (i) the provisions in accordance with or subject to which the powers contemplated in section 223(4) may be exercised by an inspector so acting on his own initiative;
- (ii) the provisions by which any other power or any right, function, duty, obligation, exemption, indemnity or liability is conferred or imposed on an inspector so acting.

Provided that the Cabinet Secretary, at the request of the Cabinet Secretary for the time being responsible for finance acting on the recommendation of the Commissioner or Director General, may, by notice in the *Gazette*, exempt an authorized customs officer from any of the provisions made applicable by this paragraph if satisfied that there are suitable and appropriate alternative arrangements made by or under the Customs Management Act that cover the purpose of the provision from which exemption is sought.

(7) Any person who suffers damage or loss caused by wrongful seizure, removal or detention of goods alleged to be counterfeit goods pursuant to an application made to the Commissioner or Executive Director shall be entitled to claim compensation for the damage or loss suffered by him against the applicant.

Provided that compensation shall only be paid where the application for seizure and detention was false or negligent or made in bad faith.

(8) The provisions of this Act or the Authority shall not be construed so as to render the customs authority or any of its staff or agents liable for—

- (a) any failure to detect or seize stipulated goods;
- (b) the inadvertent release of any such goods, or
- (c) any action taken in good faith in respect of such goods.

(9) For purposes of this section, "customs authority" means the Kenya Revenue Authority established under the

Kenya Revenue Authority Act or the Authority.

225(1) Subject to subsection (2), the Director General may, where satisfied that any person has committed an offence under this Act in respect of which a fine is provided for or in respect of which anything is liable to forfeiture, order such person to pay a sum of money, not exceeding the amount of the fine to which the person would have been liable if he or she had been prosecuted and convicted for the offence, as he may deem fit, and the Director General may order anything liable to forfeiture in connection with the offence to be forfeited.

Compounding of offences.

(2) The Director General shall not exercise the powers conferred under subsection (1) unless the person admits in the prescribed form that he or she has committed the offence and requests the Director General to deal with such offence under this section.

(3) Where the Director General makes any order under this section—

- (a) the order shall be in writing and shall have attached to it the request of the person to the Director General to deal with the matter;
- (b) the order shall specify the offence which the person committed and the penalty imposed by the Director General;
- (c) a copy of the order shall be given to the person if the person so requests;
- (d) the person against whom an order is issued under this section shall not be liable to any further prosecution in respect of the offence, and where any prosecution is subsequently brought in respect thereof, it shall be a defence for the person to prove that the offence which he or she is charged with has been compounded under this section; and
- (e) the order shall be final, and may be enforced in the same manner as a decree or order of the High Court.

226(1) Trademarks relating to goods to be imported into Kenya, irrespective of the place of registration, shall be recorded with the Authority, in the prescribed manner if the

Trademark.

registration is current.

(2) Applicants for recordation of trademarks shall be notified of the approval or denial of an application filed under this section in a prescribed manner by notice in the Anti-Counterfeit newsletter published by the Authority.

(3) An application to record one or more trademarks shall be in writing in the prescribed manner and addressed to the Authority and shall include the following information—

- (a) the name, complete business address, and citizenship of the trademark owner or owners (if a partnership, the citizenship of each partner; if an association or corporation the State, country, or other political jurisdiction within which it was organized, incorporated, or created);
- (b) the places of manufacture of goods bearing the recorded trademark;
- (c) sample of the trademarked goods or a sufficient digital photographic representation of the trademarked goods with appropriate details for identification and differentiation from any counterfeits;
- (d) the name and principal business address of each foreign person or business entity authorized or licensed to use the trademark and a statement as to the use authorized; and
- (e) the identity of any parent or subsidiary company or other foreign company under common ownership or control which uses the trademark abroad.

(4) The application shall be accompanied by—

- (a) a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name of the Applicant;
- (b) the application shall be accompanied by a prescribed fee;

Provided that if the trademark is registered for more than one class of goods, the fee for recordation shall be for each class.

(5) The recordation of the trademark and protection thereunder shall be effective on the date an application for recordation is approved.

(6) The recordation of a trademark shall remain in force for a period of one year from the date of approval of the application for recordation or the current registration period of the trademark, whichever is shorter.

(7) Recordation of a trademark shall be cancelled if the trademark registration is finally cancelled or revoked.

(8) If there is change in ownership of a recorded trademark and the new owner wishes to continue the recordation with the Authority, the new owner shall apply immediately by—

- (a) complying with subsection (4) hereinabove,
- (b) describing any time limit on the rights of ownership transferred,
- (c) submitting a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name of the new owner, and
- (d) paying a prescribed fee.

(9) If there is a change in the name of the owner of a recorded trademark, but no change in ownership, written notice thereof shall be given to the Authority accompanied by—

- (a) a status copy of the certificate of registration certified by the registering authority showing title to be presently in the name as changed, and
- (b) a prescribed fee.

(10) The owner of a recorded trademark shall submit a written application in the prescribed manner to the Authority not later than thirty days to the expiration of the current recordation.

(11) An application for renewal of recordation shall be accompanied by—

- (a) a status copy of the certificate of registration certified by the registering authority showing the

title to be in the name of the applicant, and

- (b) a statement describing any change of ownership or in the name of the owner and any change of addresses of the owners and places of manufacture,
- (c) a prescribed fee.

(12) The provisions of this section shall apply to the recordation of copyrights, trade names or any other form of intellectual property rights *mutatis mutandis*.

(13) The Authority shall after satisfying itself that imported goods have complied with the provisions of this section issue to the importer of goods a certification mark in the form of an anti-counterfeit security device at a prescribed fee.

(14) The Authority shall have the power to seize and destroy any goods originally imported into Kenya but found within Kenya that do not bear the anti-counterfeit security device.

PART VI- FINANCIAL PROVISIONS

227. (1) The funds of the Authority shall consist of—

Funds of the Authority.

- (a) such monies as may be granted to the Authority by the Cabinet Secretary pursuant to subsection (2);
- (b) such monies or assets as may accrue to or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or under any other written law; or
- (c) all monies from any other source provided for or donated or lent to the Authority.

(2) There shall be made to the Authority, out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Authority in the exercise of its powers or the performance of its functions under this Act.

228. The Financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Financial year.

229. (1) At least three months before the commencement of each financial year, the Board shall

Annual estimates.

cause to be prepared estimates of the revenue and expenditure of the Authority for that year.

(2) The annual estimates shall make provision for all estimated expenditure of the for the financial year and in particular, the estimates shall provide for—

- (a) the payment of the salaries, allowances and other charges in respect of the staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;
- (c) the proper maintenance of the buildings and grounds of the Authority;
- (d) the maintenance, repair and replacement of the equipment and other property of the Authority; and
- (e) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Board may deem appropriate.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary responsible for finance for approval.

(4) No expenditure shall be incurred for the purposes of the Authority except in accordance with the annual estimates under subsection (3), or except with the authorization of the Board given with prior written approval of the Cabinet Secretary.

230. (1) The Board shall cause to be kept all proper books, and records of accounts of the income, expenditure and assets of the Authority.

Accounts and
audit.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Authority together with—

- (a) a statement of the the income and expenditure of the Authority during that year; and
- (b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the Constitution, the Public Audit Act and any other relevant legislation.

231. (1) The Board may invest any of the funds of the Authority in securities in which trustees may by law invest trust funds, or in any other securities which the National Treasury may, from time to time, approve for that purpose.

Investment of Funds.

(2) The Board may, subject to the approval of the Treasury, place on deposit with such bank or banks as it may determine, any monies not immediately required for the purposes of the Authority.

PART VII—THE INTELLECTUAL PROPERTY TRIBUNAL

232. There is established the Intellectual Property Tribunal, hereinafter referred to as the Tribunal for the purpose of hearing and determining intellectual property disputes and appeals in accordance with the provisions of the Geographical Indications Act, 2026, the Trade Marks Act and any other written law.

Establishment of the Intellectual Property Tribunal.

Cap. 506.

233. (1) The Tribunal shall comprise —

Members of the Tribunal.

- (a) a chairperson who shall be appointed by the President from among persons qualified to be judges of the High Court and who has at least five years' experience in intellectual property matters;
- (b) six other persons who shall be appointed by the Cabinet Secretary and who are not public officers.

(2) A person shall be qualified for appointment under subsection (1) if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree in law, science, intellectual property or a relevant area from a university recognized in Kenya;
- (c) is a member in good standing of the relevant professional association; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

(3) The Chairperson and the members of the Tribunal shall be appointed at different times so that the respective

expiry dates of their terms office shall fall at different times.

(4) The members of the Tribunal shall hold office for a period of three years, but shall be eligible for reappointment for one further term.

234. (1) The Cabinet Secretary shall appoint the secretary to the Tribunal.

Secretary and other staff of the Tribunal.

(2) A person shall be qualified to be appointed to hold office as secretary to the Tribunal under subsection (1) if such a person is an advocate of the High Court of Kenya of not less than seven years standing.

(3) The Secretary shall be responsible for the day to day management of the Tribunal.

(4) The Tribunal may appoint such other staff as may be necessary for the proper discharge of the functions of the Tribunal under this Act.

235. (1) The Tribunal may seek technical advice from persons whose specialized knowledge or experience may assist the Tribunal in its proceedings.

Technical advice.

(2) The persons referred to in subsection (1) persons shall disclose any interest they may have in the matter before the Tribunal or any subsequent interest acquired relating to the matter in question.

236. (1) The Tribunal may, on its own motion or upon application by an aggrieved party, review its judgments and orders.

Power of review and appeals from Tribunal.

(2) Judgments and orders of the Tribunal shall be executed and enforced in the same manner as judgments and orders of a court of law.

(3) Any person aggrieved by a decision of the Tribunal may, within sixty days from the date of the decision or order, appeal to the High Court.

(4) The law applicable to applications for review to the High Court in civil matters shall, with the necessary modifications or other adjustments as the Chief Justice may direct, apply to applications for review from the Tribunal to the High Court.

237. (1) The Tribunal shall meet as and when there is

Rules and procedure at the

need to exercise its jurisdiction under this Act.

Tribunal.

(2) Unless a unanimous decision is reached, a decision on any matter before the Tribunal shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(3) The Tribunal shall conduct its proceedings without procedural formality but shall observe the rules of natural justice and rules of evidence of a similar nature.

(4) Except as prescribed in this Act, the Tribunal shall regulate its own procedure.

238. A matter or thing or act done by a member of the Tribunal or any officer, employee or agent of the Tribunal shall not, if the matter or thing is done bona fide for executing the functions, powers or duties of the Tribunal, render the member, officer, employee, agent or any other person acting on those directions personally liable to any action, claim or demand whatsoever.

Tribunal members' protection from personal liability.

PART VIII— PROVISIONS ON DELEGATED POWERS

239. (1) The Cabinet Secretary may, in consultation with the Authority, make Regulations for better carrying into effect the provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), the Regulations made under this section may prescribe—

- (a) the form and manner of filing applications under this Act;
- (b) the requirements relating to patent applications, utility model applications, technovation applications and applications for registration of industrial designs;
- (c) the form and content of descriptions, claims, abstracts, drawings and sequence listings;
- (d) the procedure for amendment, division, withdrawal and examination of applications;
- (e) the requirements relating to unity of invention;
- (f) the procedure for claiming priority and furnishing

- priority documents;
- (g) the furnishing of information relating to corresponding foreign applications and grants;
- (h) the payment, waiver, reduction and refund of fees payable under this Act;
- (i) the form and maintenance of registers under this Act;
- (j) the publication of applications, patents, utility models, technovations and industrial designs in the Intellectual Property Journal;
- (k) the conduct of international-type searches and substantive examination;
- (l) the procedure relating to international applications under the Patent Cooperation Treaty;
- (m) the deposit and handling of microorganisms and other self-replicable material;
- (n) the disclosure of biological resources and traditional knowledge and proof of prior informed consent;
- (o) the registration and regulation of licence contracts;
- (p) the procedure for applications for compulsory licences and licences as of right;
- (q) the procedure relating to exploitation of patented inventions by the Government or by persons authorised by the Government;
- (r) the registration, renewal, restoration, assignment and licensing of industrial designs;
- (s) the procedure relating to utility models and technovations;
- (t) the qualifications, registration and regulation of patent agents;
- (u) the forms to be used for the purposes of this Act;
- (v) the imposition of administrative fees and charges;
- (w) any inventory to be prepared or made under this Act ;

- (x) any matter necessary or expedient for the proper and effective control, management and administration of a counterfeit goods depot and the proper care of the goods detained therein;
- (y) the manner and procedures for proper disposal of counterfeit goods; and
- (z) any other matter required or permitted under this Act to be prescribed by the Regulations.

PART IX—MISCELLANEOUS PROVISIONS

240. (1) A person convicted of an offence under section 222, shall be liable—

Penalties.

- (a) in the case of a first conviction, to imprisonment for a term not exceeding five years, or to a fine, in respect of each article or item involved in the particular act of dealing in counterfeit goods to which the offence relates, not less than three times the value of the prevailing retail price of the goods, or both;
- (b) in the case of a second or any subsequent conviction, to imprisonment for a term not exceeding fifteen years, or to a fine, not less than five times the value of the prevailing retail price of the goods, or both.

(2) A person convicted of an offence under section 214 or 221, shall be liable to imprisonment for a term not exceeding three years, or a fine not exceeding two million shillings, or both.

(3) A court that has convicted a person of an offence under section 222—

- (a) shall, when considering which penalty to impose, take into account, *inter alia*, any risk to human or animal life, health or safety or danger to property, whether movable or immovable, that may arise from the presence or use of the counterfeit goods in question;
- (b) may take into account, in mitigation of sentence, any evidence to the effect that such person had fully, truthfully and to the best of his ability disclosed to an inspector who investigated that offence, all information and particulars available to that person in relation to any or all of the

following—

- (i) the source from which the counterfeit goods involved in the commission of the offence, were obtained,
- (ii) the identity of the persons involved in the importation, exportation, manufacture, production or making of those counterfeit goods,
- (iii) the identity and, if reasonably demanded, the addresses or whereabouts of the persons involved in the distribution of those goods; and
- (iv) the channels for the distribution of those goods.

(4) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent and connivance of, or to be attributable to, any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate commits an offence.

(5) Where a Court has concluded the hearing of a matter in any criminal proceedings whether the suspect is convicted or acquitted and the goods in the opinion of Court are counterfeit and it appears that the suspect has benefited or obtained some monetary advantage from dealing in counterfeit goods the subject matter of the criminal proceedings, the Court shall on application of the prosecutor order the suspect to forfeit that benefit or monetary advantage to the Authority within a period of three months and in default the Authority may trace and recover that benefit or advantage from the suspect.

241. The Cabinet Secretary may make rules regulating the practice and procedure of the Tribunal.

Rules.

242. No duty shall be chargeable under the Stamp Duty Act (Cap. 480) in respect of any instrument executed by, or on behalf of, or in favour of the Authority which, but for this section, the Authority would be liable to pay.

Exemption from stamp duty.

243. (1) The Authority shall publish a journal to be

The Intellectual

referred to as the Intellectual Property Journal.

Property Journal,
Cap. 506.

(2) The Journal shall be published as part of the procedures prescribed under the Trade Marks Act, the Geographical Indications Act, 2026, or for purposes of publishing any other matter related to intellectual property.

Cap. 56B.

244. The Director General shall maintain a Register of Patent Agents as prescribed in the Regulations.

Patent agents.

245. (1) The Industrial Property Act is repealed.

Repeal.

(2) The Anti-Counterfeit Act is repealed.

(3) The Copyright Act is repealed.

(4) The transitional and saving provisions set out in the Schedule shall have effect upon the repeal of the Industrial Property Act, Anti-Counterfeit Act and the Copyright Act.

PART X—TRANSITIONAL AND SAVING PROVISIONS

246. (1) The Authority shall be the successor of the former institutions.

Former
institutions.

(2) For purposes of this part—

“former institutions” means—

(a) Kenya Industrial Property Institute;

(b) Kenya Copyright Board; and

(c) Anti-Counterfeit Authority.

“appointed day” means the day on which this Act comes into force.

247. The tenure of a Chairperson or member of a Tribunal established under the Industrial Property Act and the Copyright Act shall expire upon the commencement of this Act.

Tenure of
Chairpersons and
members of
Tribunals.

248. (1) Any person who, immediately before the commencement date was an officer or member of staff of the former institutions, not being then under notice of dismissal or resignation shall, on the commencement of this Act, become an officer or staff of the Authority in the same position and on their current or improved terms and conditions of service as the former institutions.

The staff of
former
institutions.

(2) Despite subsection (1), a member of staff or officer who was serving in a former institution as a substantive member of staff or officer, seconded member of staff or officer, deployed member of staff or officer, shall upon the commencement of this Act be deployed or redesignated within the Authority.

(3) A member of staff or officer of a former institution, who is not deployed or redesignated by the Authority as provided for in sub sections (1) and (2) shall be placed in a suitable and similar positions in the public service.

Provided that all the salaries and benefits of the member of staff or officer shall continue to be paid by the Authority, pending placement.

(4) Notwithstanding the generality of sub section (3), no member of staff or officer of a former institution shall be subject to any form of interview as a condition for placement.

249. (1) Where on the appointed day—

Disciplinary proceedings.

- (a) any disciplinary proceedings against any member of staff of a former institution are in the course of being heard or instituted, or have been heard or investigated by the former institution but no order or decision has been made thereon; or
- (b) any such member of staff is interdicted or suspended. The Authority shall—
 - (i) in the case of paragraph (a), carry on and complete the hearing or investigation and make an order or render a decision, as the case may be; and
 - (ii) in the case of paragraph (b), deal with such member of staff in such manner as it deems appropriate having regard to the offence committed by him or her, including the completion of disciplinary proceedings that have been commenced against that member of staff.

(2) Where on the appointed day, any penalty, other than dismissal, has been imposed on any member of staff of a former institution pursuant to disciplinary proceedings and the penalty has not been, or remains to be, served by

such member of staff, the member shall upon transfer to the Authority, serve or continue to serve such penalty to its full as if it had been imposed by the Authority or Tribunal, where applicable.

(3) Despite the generality of subsection (1) the provisions on discipline in the human resource instruments of the former institutions shall apply until conclusion of the disciplinary process.

250. The tenure of a Chairperson or member of a Board of a former institution shall expire upon the commencement of this Act.

Tenure of
Chairperson and
member of Board
of former
institutions.
Assets and
liabilities.

251. On the appointed day, all the funds, assets and other property, both movable and immovable, which immediately before that date were vested in a former institution shall vest in the Authority.

252. Upon Commencement of this Act, all rights, powers and liabilities which immediately before such day were vested in, imposed on or enforceable against the former institutions shall by virtue of this section, be vested in, imposed on or enforceable against the Authority.

Rights, powers
and liabilities.

253. Any proceedings pending immediately before the appointed day to which—

Preservation of
judgments,
rulings, orders and
pending
proceedings.

- (a) a former institution was a party;
- (b) before a former institution; or
- (c) before a court of competent jurisdiction;

shall be continued as if the proceedings were instituted under the provisions of this Act.

254. Every agreement, contract, deed, bond or other instrument to which a former institution was a party or which affected the former institution and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Authority were a party thereto or affected thereby instead of the former institution and as if for every reference, whether express or implied, therein to the former institution there were substituted in respect of anything to be done on or after the appointed day.

Agreements,
deeds, bonds or
other instruments.

255. The administrative decisions made by a former

Administrative
decisions.

institution, former or by the Cabinet Secretary which are in force immediately before the appointed day shall, on or after such day, have force as if they were decisions made by the Authority or the Cabinet Secretary under this Act.

256. (1) A member of staff of a former institution who becomes a member of staff of the Authority shall continue to be governed by the existing Government or any other statutory voluntary pension scheme.

Pension.

(2) Where any person whose services are transferred to the Authority is, on the appointed day, a member of any statutory voluntary pension scheme or provident fund, the person shall for the purpose of this Act, continue to be governed by the same regulations under those schemes or funds, as if the person had not been so transferred, and for purposes of the regulations governing those schemes or funds, service with the Authority shall be deemed to be service in the former institution.

257. (1) Any officer or member of staff of a former institution gazetted as a registrar, deputy registrar or inspector shall be deemed to be properly gazetted under this Act, for a period not exceeding one year, for purposes of the functions of this Act.

Registrars, Deputy Registrars and Inspectors.

(2) The Board shall appoint and gazette the Registrar, Deputy Registrars, Inspectors and Prosecutors as are necessary for the functions under this Act.

FIRST SCHEDULE (s.5)

WRITTEN LAWS TO BE ADMINISTERED BY THE AUTHORITY

1. The Geographical Indications Act, 2026
2. The Trade Marks Act, Cap.506

SECOND SCHEDULE (s.8)

PROVISIONS AS TO THE CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

Meetings

(2) Notwithstanding the provisions of subparagraph (1), the Chairman may, and upon requisition in writing by

at least five members shall, convene a special meeting of the Board at any time for the transaction of the business of the Board.

(3) Unless three-quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of every meeting of the Board shall be given to every member of the Board.

(4) The quorum for the conduct of the business of the Board shall be two-thirds of the members including the Chairman or the person presiding.

(5) The Chairman shall preside at every meeting of the Board at which he is present but, in his absence, the members present shall elect one of their numbers to preside, who shall, with respect to that meeting and the business transacted thereat, have all the powers of the Chairman.

(6) Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and voting and, in the case of an equality of votes, the Chairman or the person presiding shall have a casting vote.

(7) Subject to subparagraph (4), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, that member shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Provided that, if the majority of the members present are of the opinion that the experience or expertise of such member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose but such member shall not have the right to vote on the matter in question.

(2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it

Disclosure of
interest by Board
members.

is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board for that purpose.

Execution of instruments.

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes

MEMORANDUM OF OBJECTS AND REASONS

Statement of objects and reasons of the Bill

The principal object of this Bill is to establish the Kenya Intellectual Property Authority as a single institution to administer, in one place, all of Kenya's intellectual property law. The Bill merges three existing State Corporations, the Kenya Industrial Property Institute, the Kenya Copyright Board, and the Anti-Counterfeit Authority into the Authority, and consolidates into a single Act the substantive law on patents, utility models, industrial designs, copyright and related rights, and anti-counterfeiting, which is currently spread across three separate Acts of Parliament.

At present, Kenya's intellectual property law is fragmented. The Kenya Industrial Property Institute administers the Industrial Property Act, which governs patents, utility models, industrial designs, and technovations. The Kenya Copyright Board administers the Copyright Act, which governs copyright and related rights, including the rights of performers, producers, and broadcasters. The Anti-Counterfeit Authority administers the Anti-Counterfeit Act, which governs the detection and prosecution of trade in counterfeit goods. Each body operates independently with its own board, management, staff, budget, and tribunal for resolving disputes. This fragmentation has resulted in duplication of functions, inconsistent standards, and an unnecessarily complex and costly experience for inventors, creators, businesses, and the public.

The Cabinet, in its meeting of 21 January 2025, directed the merger of State Corporations with overlapping mandates. This Bill gives effect to that direction. The Bill also gives effect to the constitutional obligation under Article 40(5) of the Constitution of Kenya, 2010, which requires the State to support, promote, and protect the intellectual property rights of the people of Kenya, and to Article 11(2)(c), which requires the State to promote and protect the intellectual property rights of local communities. The Bill further gives effect to Article 69 of the Constitution, which relates to the protection of biological diversity and traditional knowledge.

Part I of the Bill contains the preliminary provisions, including the short title and definitions of key terms used in the Bill.

Part II of the Bill establishes the Kenya Intellectual Property Authority as a body corporate with perpetual succession and the capacity to sue and be sued, hold property, and enter into contracts. It sets out the functions of the Authority, which include registering and granting intellectual property rights; regulating the importation and manufacture of goods through an intellectual property recordal system; licensing and

regulating collective management organisations and intellectual property agents; maintaining databases and registers; protecting genetic resources, traditional knowledge, and cultural expressions; combating piracy and counterfeiting; and promoting public awareness of intellectual property rights. Part II also establishes the Board of the Authority as its governing body, sets out the qualifications, appointment, and removal of Board members, and provides for the competitive recruitment and appointment of the Director-General as the chief executive officer of the Authority. It further provides for the financial management of the Authority, including the sources of funds, the financial year, annual estimates, accounts, and audit by the Auditor-General.

Part III of the Bill provides for the conditions for patentability, including novelty, inventive step, and industrial application. It also addresses the treatment of artificial intelligence-assisted and AI-generated inventions, the rights of inventors, the application and grant process, international applications under the Patent Cooperation Treaty and the Harare Protocol, the rights and obligations of patent owners, compulsory licensing, the term of patents and annual fees, utility models, industrial designs, and technovations. It provides for infringement proceedings and criminal liability for intentional infringement.

Part IV of the Bill provides for the works eligible for copyright, the exclusive rights conferred by copyright, the duration of copyright, and the rights of performers, producers of sound recordings, and broadcasting organisations. It provides for permitted acts including fair dealing for research, education, criticism, and reporting of current events and for the rights of visually impaired persons to access copyright works. It addresses moral rights, the assignment and licensing of copyright, collective management organisations, and the liability of online intermediaries. It also provides for the resale, right of artists, ring back tune revenue distribution, and infringement offences and penalties.

Part V of the Bill provides for the appointment and powers of inspectors, the seizure and detention of counterfeit goods, the establishment of counterfeit goods depots, the laying of complaints by intellectual property rights holders, the powers of the Commissioner of Customs and the Director-General, offences relating to dealing in counterfeit goods, and the penalties applicable upon conviction.

Part VI of the Bill provides for the financial provisions of the Authority, covering the sources of funds, the financial year, annual estimates, accounts, and audit.

Part VII of the Bill establishes the Intellectual Property Tribunal to hear and determine all intellectual property disputes and appeals in Kenya. The Tribunal replaces the separate tribunals currently operating under the Industrial Property Act and the Copyright Act. A single tribunal will ensure consistency in the resolution of disputes and reduce delay. The Chairperson of the Tribunal shall be appointed by the President from among persons qualified to be judges of the High Court, and six other members shall be appointed by the Cabinet Secretary. Any person aggrieved by a decision of the Tribunal may appeal to the High Court within sixty days.

Part VIII of the Bill provides for the regulation-making powers of the Cabinet Secretary, including regulations on the form and manner of filing applications, the payment of fees, the maintenance of registers, and the administration of counterfeit goods depots.

Part IX of the Bill contains miscellaneous provisions including penalties, rules of procedure for the Tribunal, exemption from stamp duty, the publication of an Intellectual Property Journal, the maintenance of a register of patent agents, and the repeal of the Industrial Property Act, the Anti-Counterfeit Act, and the Copyright Act.

Part X of the Bill contains transitional and saving provisions to ensure the seamless transfer of staff, assets, liabilities, pending proceedings, contracts, administrative decisions, and pension arrangements from the Kenya Industrial Property Institute, the Kenya Copyright Board, and the Anti-Counterfeit Authority to the Authority. No member of staff of the former institutions shall be subjected to any further interview as a condition for placement, and all salaries and benefits shall continue uninterrupted during the transition.

The First Schedule sets out the written laws to be administered by the Authority being the Geographical Indications Act, 2026 and the Trade Marks Act (Cap. 506) The Second Schedule provides for the conduct of business and affairs of the Board.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill delegates legislative powers to the Cabinet Secretary responsible for intellectual property to make regulations for the better carrying out of the provisions of the Act, to make rules regulating the practice and procedure of the Tribunal, and to amend the First Schedule by Gazette notice. The Bill does not limit any fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill is not a Bill concerning county governments within the meaning of Article 110(1)(a) of the Constitution.

Statement as to whether the Bill is a money Bill within the meaning of Article 114 of the Constitution

The enactment of this Bill may occasion additional expenditure of public funds.

Dated the 14th May, 2026.

KIMANI ICHUNG'WAH
Leader of the Majority Party

As a result of the 2008 election, the Democrats have been able to pass a number of bills that will have a significant impact on the health care system. The passage of the Affordable Care Act (ACA) in 2010 is the most significant of these bills. The ACA will have a number of major provisions that will affect the health care system, including the creation of a new health insurance exchange, the expansion of Medicaid, and the implementation of a new set of rules for health insurance companies. The ACA will also have a significant impact on the financing of health care, as it will require states to pay a new tax on health insurance companies and will also require states to pay a new tax on health care providers.

The ACA will also have a significant impact on the delivery of health care, as it will require states to implement a new set of rules for health insurance companies and will also require states to implement a new set of rules for health care providers. The ACA will also have a significant impact on the financing of health care, as it will require states to pay a new tax on health insurance companies and will also require states to pay a new tax on health care providers.

Health Care Financing

The ACA will have a significant impact on the financing of health care, as it will require states to pay a new tax on health insurance companies and will also require states to pay a new tax on health care providers.