

Copyright Law

The Copyright Protection Act,
(1974 Act No. 49)

PART 1 PRELIMINARY PROVISIONS

1. This Act may be cited as "The Copyright Protection Act, 1974".

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

"Minister" means the Minister of Internal affairs;

"Department" means the Department of Culture:

"Registrar of Works" means any person appointed by the Minister to supervise over the works register and the execution of such duties as may be assigned to him in accordance with the provisions of this Act:

"Copyright" means all or any of the rights mentioned in section 6;

"Work" means any work whether literary, theatrical, musical, singing, any portrait or decoration, sculpture, design, drawing, engraving, picture or recorded tapes, or recorded song or cinema film which has not been published before and which has been registered in accordance with the provisions of this Act and shall in particular include the works mentioned in section 4;

"Publication" means communication of work directly or indirectly to the public whether by communicating the work itself or reproducing photographs or copies of such work or of any part thereof which can be read, heard, seen or performed;

"Creation" means any work wherein the elements of novelty are available on which is characterised by a special feature that has not been known before;

"Author" means any person in whose name the work has been published by any means known for the ascription of work to the authors thereof unless there is proof that such person has not made such work.

"Author's heirs" means the persons in whom the copyright may vest by succession or will or by any other method provided for in this Act;

"Official documents" means the official documents issued by the State or by any one of its organisations, corporations or units and which are by virtue of their specialisation issued for publication to the public and shall include provisions of laws, presidential or administrative orders, international agreements and judicial judgments and shall not include military documents secret agreements, the deliberations of secret sessions in Courts or legislative bodies;

"Show" includes open performance;

"Registration" means the registration of the work provided for in Part IV;

"Rules" means the copyright registration rules issued by the Minister in accordance with the provisions of this Act.

3. (1) Subject to the provisions of Part IV the protection prescribed by this Act shall apply to:

(a) works of Sudanese authors or of aliens domiciled in the Sudan which are published for the first time in the Democratic Republic of the Sudan;

(b) works of Sudanese authors which are published in a foreign country;

(c) unpublished works of Sudanese authors or aliens domiciled in the Sudan.

(2) The Director of the Department may by order, after consultation with the Works Registrar, extend the protection prescribed by this Act to such works of foreign authors which are published in a foreign country on the basis of reciprocal treatment.

(3) The protection prescribed by this Act shall apply to such works which are made or published after the date of commencement thereof, and such protection shall, without prejudice to the legality of any transaction or contract made before the commencement of this Act, also apply to such works which has been made or published within twenty five years preceding to commencement of this Act.

PART II COPYRIGHT PROTECTION AND SCOPE OF SUCH PROTECTION

4. Subject to the provisions of Part IV, the protection prescribed by this Act shall include:

(1) Any work which is an innovation in literature, arts or science whatever the manner of expression, importance or object of such work is and such protection shall in particular include:

(a) written works;

(b) works of fine arts whether drawing, photography, painting, engraving, sculpture, or decoration and works of like nature;

(c) songs and musical works;

(d) dramatic works which shall for the purposes of this Act, include plays and singing, musical and dancing shows and performances and similar shows which are performed by movements or steps;

(e) photographic works and cinema and television films;

- (f) all kinds of maps and manuscripts relating to geography, topography or science;
- (2) The title of the work if it has not been published before as a title of a similar work;
- (3) Any novel translation, abridgement, explanation or commentary of any work in an innovatory manner but without prejudice to the right of the author of the original work.
5. Protection prescribed by this Act shall not extend to:
- (a) works which have vested to public ownership;
- (b) official documents;
- (c) daily news or occurrences of like nature published in newspapers, magazines, periodicals, radio or television;
- (d) collections that contain parts or extracts of works formerly published unless such collection could be distinguished by a novel style of arrangement or any other personal effort which is worthy of protection provided that the title of the original work from which such extracts have been copied and the author thereof shall be mentioned in such collections.
6. The author alone shall have absolute right to do all or any of the following acts according to the works:
- (a) to ascribe his work to himself and to defend his right in such work against any infringement;
- (b) to publish, record, perform, transfer or translate his work and to determine the conditions and restrictions concerning any of the aforesaid;
- (c) to exploit his work financially in any legitimate manner;
- (d) to make any amendment or deletion in such work as he may think appropriate subject to the provisions of section 10 (2);
- (e) to withdraw such work from circulation subject to the provisions of section 10 (2);
- (f) to give absolute or conditional permission to any person to do all or any of the acts mentioned in this section.
7. (1) The author of any work shall be the owner of the copyright therein, provided that:
- (a) where the work has been made during the course of employment of the author or authors thereof and in accordance with the instruction of the employer and for the achievement of objects aimed at by the employer, the copyright shall be ascribed to such employer;

(b) where a mandate is issued to a person or persons for composing the work against money consideration, the copyright shall be ascribed to the person who issued the mandate, unless there is a written agreement to the contrary.

(2) In works which do not carry the name of the author or which are pseudonymous, the publisher shall be an author thereof or shall be deemed to have been authorised by the author to exercise the copyrights prescribed by this Act, unless it is proved otherwise.

(3) Where several persons participate in compiling any work and it becomes impossible to distinguish the role of any one of them in compiling such work, all such persons shall be considered equally joint owners of such work and no one of such persons shall separately exercise the copyright prescribed by this Act unless there is a written agreement to the contrary.

(4) Where several persons participate in compiling a work so that the role of each of them in such joint work is distinguishable, each of such persons shall have the right to exploit the part that concerns him provided that:

(a) he shall not be permitted to use such part in any other work similar to the joint work;

(b) the exploitation of such part shall not prejudice the exploitation of the joint work, and any one of such persons may exercise the copyright prescribed by this Act without prejudice to the rights of the other partner or partners in the profits, unless there is a written agreement to the contrary.

(5) Notwithstanding the provisions of sub-sections (3) and (4) where one of the participants refuses to complete his part in the joint work, it shall not follow from such refusal that the other participants are prevented from exploiting the part made by him without prejudice to the rights accruing to such partner consequent to his participation in such work.

8. (1) The protection of copyright in any work shall last during the author's life and twenty-five years after his death.

(2) The period of copyright protection shall last twenty-five years from the date of publication in relation to the following works:

(a) photographic pictures and cinema films;

(b) works made by corporate bodies;

(c) works which are published for the first time after the author's death;

(d) published pseudonymous or anonymous works, such period shall start to run from the date of the first publication of the work regardless of any re-publication unless substantial alterations have been made by the author to his work so that it may be regarded as a new work.

(3) In relation to joint works the period shall start to run from the date of the death of the last of the authors.



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(4) Where the work consists of several parts or volumes so that each part or volume is published separately or at a different date each part or volume shall be considered an independent work for the purposes of calculating the period of protection.

9. (1) Newspapers, magazines, periodicals, radio and television may:

(a) publish a quotation, summary or brief announcement from the work for the purposes of analysis, study, culture or information;

(b) reproduce essays or lectures or speeches concerning political, economic, scientific, religious or social discussions which were the focus of public opinion at the time such discussions took place;

(c) publish or convey any photographs taken on occasion of any events which took place openly or such photographs which concern official or famous characters, and in all such cases the title of work reproduced and the name of the author thereof shall be mentioned.

(2) Musical bands belonging to the People's Armed Forces, Police Forces, People's Local Government Councils, and the school theatre may play, act, perform or exhibit any work after the publication thereof provided that no money consideration shall be gained therefrom.

(3) It is permissible in connection with school textbooks or books prepared for education or books of history, literature or art:

(a) to copy short quotations from works already published.

(b) to reproduce any drawing, photograph, design, inscription or map provided that such reproduction shall be restricted to what is necessary for the purposes of illustrating what is written.

In such cases, the title of the work copied from and the name of the author thereof shall be mentioned.

(4) It is permissible without the consent of the author of a photographic work to take a new photograph of anything photographed even if the new photograph were taken from the same place and in the same circumstances in which the first photograph was taken.

(5) Radio and television may reproduce works performed or composed in any public place provided that it shall mention the name of the author and the title of the work and shall also pay the author and the owner of such public place a fair compensation unless there is a written agreement to the contrary.

PART III TRANSFER OF OWNERSHIP OF COPYRIGHT

10. (1) The author may, with his consent, transfer to any person all or any of his rights prescribed by this Act, provided that such consent shall not be valid unless it is written and signed by the owner of the copyright or his agent; and such consent shall contain expressly and with all the

necessary details the right transferred, period, manner and place of the exploitation thereof and such other conditions as may be necessary.

(2) The author shall refrain from doing any act which is likely to hinder the use of the right transferred; nevertheless the author may, with the consent of the person to whom the right has been transferred, stop his work from being circulated or make any alteration, deletion or addition therein and in the event of disagreement the author shall be obliged to pay such person a fair compensation as the Court may decide.

11. (1) On the death of the author all the rights prescribed by this Act shall vest in the heirs of such author provided that:

(a) where the author had entered into a written contract with a third party in relation to the use of his work such contract shall be executed in accordance with the provisions contained therein;

(b) where the deceased author according to his will prohibits publication or fixes a date therefore, such will shall be executed to that extent.

(2) In case of joint works, where one of the authors dies leaving no heirs his share shall vest in the joint partners unless there is a written agreement to the contrary.

12. (1) Where the heirs of the author fail to exercise the rights vesting in them under section 11 and the Minister is of the opinion that the public interest required the publication of the work he may request the heirs by registered letter to publish such work and if the heirs fail to publish such work within one year from the date of such request the Minister may order that such work be published provided that he shall pay a fair compensation to the heirs of the author.

(2) Without prejudice to the provisions of section 11 (2), where the author dies intestate or leaves no heirs the Minister may order that the work and the rights relating thereto be vested to the public property.

13. All acts done by a third party in relation to the copyright shall be null and void for lack of consent of the owner of such copyright and such acts shall have no legal effect against the owner of such copyright, except where it is expressly provided for in sections 9, 10, 11 and 12.

14. No. author shall benefit from the author's copyright protection as prescribed by this Act unless such author registers his work in accordance with the provisions of this Act.

15. (1) For the purposes of this Act there shall be established an office in the Department known as "The Works Registrar's Office" which shall be headed by the Works Registrar who shall be appointed by the Minister; and such office shall have a common seal.

(2) The powers and functions of the Works Registrar and the manner of administration of the Works Registrar's Office and the affairs thereof shall be specified by the rules.

(3) Any certificate of registration and all other official documents issued by the Works Registrar shall be authentic as regards the correctness of the contents thereof unless the contrary is proved by evidence before the Works Registrar.

16. Application for registration works shall be addressed to the Works Registrar at the head office of the Department and such application shall contain the following:

- (a) the registration application form according to the model specified by the rules;
- (b) the full name and address of applicant and where the applicant's address is outside the Sudan, the name and address of his agent in the Sudan;
- (c) a duplicate, or a photographic copy or a true copy of the work;
- (d) a statement ascribing the work to the applicant and such statement shall be according to the model specified by the rules;
- (e) the date of making such work and date of publication thereof;
- (f) any details or statements as may be specified by the rules.

(2) For the purposes of this Act, the Works Registrar shall establish a general register for the registration of works and such works shall be distinguished by numbers according to the order of registration and classification thereof and a separate file shall be kept for each work containing the registration application of such work and a duplicate, a photographic or a true copy thereof and the name and address of either the author or his agent in the Sudan; and the period of protection prescribed and the date on which such period starts to run and the date of expiry thereof (if possible) and any correspondence, contracts or judicial decision and any other information relating to such work.

(3) The Works Registrar shall, within two weeks from the date of submission of application and after payment of fees prescribed by the rules issue a certificate of registration of such work to the author thereof and such certificate shall be in accordance with the model prescribed by the rules.

17. (1) Any interested person may object to the registration of any work within a period of three years from the date of registration. Such work objection shall be submitted in a manner as may be prescribed by the rules.

(2) The Works Registrar shall send a notice and a copy of such objection to the person in whose name the work is registered and shall refer the dispute to a Board of arbitration whose members shall be experienced and versed in the subject of such work and such Board shall be appointed after consultation with the Director of the Department; and the constitution, meetings and remuneration of the members of such Board shall be prescribed by the rules.

(3) The Board of arbitration shall, after consideration of the written statements and hearing of the adverse parties, make its decision and the decision of such Board in relation to the subject of registration of such work shall be final and binding to the Works Registrar as if it were a decision made in accordance with the Civil Procedure Act, 1974, (1974 Act No.40).

(4) The provisions of Chapter IV of Part VI of the Civil Procedure Act, 1974 shall apply to the award of the arbitrators made in accordance with this Act, (The same Act).

18. The minister may make rules for the implementation of the provisions of this Part, and without prejudice to the generality of such power such rules shall provide for the matters mentioned in sections 15, 16 & 17.

**PART V
INFRINGEMENT OF COPYRIGHT AND LEGAL CONSEQUENCES THEREOF**

19. (1) Subject to the provisions of section 9, any person shall be deemed to have committed the offence of copyright infringement if such person knowingly and without the permission of the owner of such right:

(a) performs any of the acts mentioned in section 6;

(b) extracts, imitates, sells, hires, distributes, imports or exports any work in respect of which the copyright has been infringed.

(2) The infringement of copyright shall be deemed to be an offence punishable with a fine not exceeding Ls. 100 and the Court may in addition to fine, order:

(a) the confiscation or destruction of all copies of such work if the Court were of the opinion that such copies were the result of copyright infringement and also all materials devised for or used in the commission of such offence or order the delivery of such materials to the owner of such copyright or the disposal of such materials in any other way as the Court may think reasonable;

(b) the judgement of the Court shall be published in one or more daily newspapers at the expense of the defendant and a copy of such judgement shall be sent to the Works Registrar to be kept in the file of such work.

20. (1) An action for damages by reason of copyright infringement shall be instituted in the District Court on application of the copyright owner or the agent thereof.

(2) The copyright owner or his agent shall be entitled to claim in such action all the rights relating to financial compensation or an injunction to stop publication or performance of such work or the attachment of duplicates, photographic copies, extracted therefrom or the calculation of the revenue resulting from the publication or performance of such work and depositing such revenue in the treasury of the Court or any other injunction as such the owner may think necessary for the protection of his rights until the case is finally decided.

(3) Any person against whom an injunction has been issued in accordance with sub-section (2) may appeal against such injunction to the Province Judge within ten days from the date of the issuing of such injunction and the decision of the Province Judge, confirming, cancelling or altering such injunction shall be final.