

# **Guaranteeing Copyright**

Media Manager's Guide to Pakistani Broadcast Law

Media Manager's Companion Series  
Internews Pakistan

# **Guaranteeing Copyright**

**Media Manager's Guide to Pakistani Broadcast Law**

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## CONTENTS

### **Introduction**

<b>Chapter 1. Copyright definitions</b>	<b>1</b>
– What is copyright?	1
– Kinds of copyright works	2
– Literacy, dramatic or musical work	2
– Artistic work	4
– Cinematographic work	5
– Records	6
– Defining other copyright terms	7
– Author	7
– Work of joint authorship	8
– Counterfeit copy	8
– Copyright board	8
– Domicile of corporations	8
– Performing rights society	9
– Broadcasting	9
 <b>Chapter 2. Copyright registration procedure</b>	 <b>11</b>
– Steps to copyright registration	11
– Step-1: What form of work to be registered?	12
– Step-2: How to get an application form and the kinds of application forms	12
– Form-1: Copyright register	13
– Form-II: Copyright application	13
– Form-III: Application for changes in copyright	13
– Form IV: License for translation of literary work	14
– Form-V: Notice relinquishing copyright	14
– Form-VI: Prohibiting import/export of pirated work	15
– Form-VII: License for printing & publication	15
– Step-3: Filling up application form / providing information	15
– Step-4: Other documentary requirements	17
– Step-5: Foreign authors	20

---

– Step-6: Appeal against copyright certificate	21
<b>Chapter 3. Enforcing copyrights in broadcast industry</b>	23
– Nature of rights created through registration	23
– Right to copy, reproduction or rebroadcast	23
– Right to authorise the reproduction etc	23
– Right to assign the copyrights	23
– Right to grant licence for copying or broadcasting etc	24
– Right to restraint and claim damages	24
– Possible actions against the infringement of copyrights	24
– Notice to stop the infringement of copyright and its response	25
– Responding the notice	25
– Consulting and hiring of lawyer	26
– Application to Pakistan Electronic Media Regulatory Authority (PEMRA)	26
– Judicial/administrative forums to deal with cases of infringements	26
A) Civil suit in court	27
– Jurisdiction of court	27
– Filing of plaint	28
– Amount of damages claimed	28
– Court fee	28
– Registration of suit	28
– Parties to the suit	29
– Appearance of parties in the court and result of non-appearance	29
– Written statement	29
– Hiring/consulting a lawyer for litigation	30
– Examination of parties at first hearing:	30
– Issues	31
– Settlement (framing) of issues	31
– Onus of proof	31
– Summoning and attendance of witnesses	32
– Hearing of the suit	32
– Examination of witnesses	32
– Arguments	33
– Adjournments	34

---

– Judgement and decree	34
– Civil remedies for infringement of copyright	34
– Execution of decree	34
– Appeal	35
B) Petition to registrar/board of copyright as alternative as dispute resolution body	35
– Appeal against the decision of registrar and board	36
C) Criminal proceedings against the infringement of copyright	36
– Investigation of the case by police	37
– Collection of evidence	37
– Cognizance of offence by court	37
– Trial of the case	38
– Framing of charge	38
– Examination of witnesses	39
– Arguments and pronouncement of judgment	39
– Criminal penalties	40
– Imprisonment and fine	40
– Appeal and revision	40
<b>Chapter 4. Broadcasters' copyrights and their infringements</b>	41
– Assignment of copyrights	41
– Validity of assignment and amending its terms and conditions	42
– Licensing a copyright	42
– Mutual Agreement	43
– Non-registered right	43
– Expiry of copyright period	44
– What are the possible scenarios of copyright infringements?	44
<b>Chapter 5. Ensuring copyrights in broadcasting</b>	47
– Fair dealing	47
– Reproduction of work for legal purposes	47
– Legal modes to use or reproduce the work	48
– Assignment of right	48
– License to use	48
– Purchasing of copyrights	49

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– Relinquishment of copyright	49
– Charity and educational purposes	50
– Particulars of work to be mentioned	50
– Royalty	51

<b>Conclusion</b>	53
-------------------	----

#### **Annexure**

1. The copyright ordinance, 1962
  2. The Amending copyright ordinance 2000
  3. Agreement on trade-related aspects of intellectual property rights
  4. Application form
-



## **INTRODUCTION**

### **The concept**

Anyone having an idea or a creation to sell has the legal right of ownership to that idea or creation and he alone can sell, and benefit from the same, or legally empower others to do so in an agreed upon manner. Putting some one else's creation or idea to use for commercial gains, without obtaining prior permission from the original author of that work, is a crime. It is thus to encourage genuine thinking and creative activities while ensuring credit for the real owner, author or the creator.

### **The situation**

Copyright violations are widespread in Pakistan. Some reports suggest an annual Rs10 billion loss in revenue because of counterfeiting, trademark infringement, and copyright violations. A US report ranks Pakistan 4th in counterfeit and pirated goods due to wide spread piracy, especially of copyright materials.

The advent of private broadcast sector has further complicated the copyright situation. At the studios of newly emerging FM radio stations, copyright infringement is order of the day. Songs are played without singer's permission, pirated CDs and software are being used. The original creators lack awareness and will to ensure their copyrights. There is little recourse to judiciary for the same and this has led to lack of knowledge within the legal fraternity on the subject.

Government's copyright right organization faces huge back log as it takes over two years time to issue a certificate. This in fact signifies growing number of people applying for copyright registrations. To sum it up it seems as if copying is the *right* in Pakistan.

### **This guidebook**

This guidebook by Internews Pakistan is the third in the Media Manager Series. It focuses the country's copyright laws. One may recall that the first



guidebook established how to set up and run an FM station whereas the second guide explained defamation and contempt laws of Pakistan. These books make it practically easy for journalists and broadcasters to observe the laws of land and avoid unnecessary litigations. This is though not to push the idea of self-censorship. On the contrary, the idea is to raise critical awareness about these laws and encourage the media practitioners to keep updating their knowledge about these developments as they operate in the field.

These guidebooks also aim at building an open, diverse, and socially responsible broadcast media. This can only be achieved by keeping the journalists aware of their rights and responsibilities and enabling them to defend their works in the court of law.

This guidebook on copyrights has assumed crucial importance for the country's broadcasting industry because it ought to meet the international copyright standards before January 2005, as per country's commitments under the World Trade Organization (WTO) regime. Failure to implement the internationally agreed copyright standards will invite automatic restrictions on Pakistan's trade and investment and the broadcast industry is no exception. The government is quickly fine-tuning its legal regime on intellectual property rights. But there is no effective enforcement mechanism yet in this area. This is despite that Pakistani laws describe copyright violation as cognizable offence requiring non-bailable arrest of the people involved in it.

With aim to explain the copyright laws in a non-technical language, the present guidebook starts with focus on copyrights as part of the intellectual property rights issue. The chapter 1 of the guidebook explains the concept of copyright and various commodities and products that can be registered as copyrights.

The second chapter illustrates the procedure for registering copyrights. This is in spite of the fact that under the law registration of a creation is not compulsory for claiming copyrights, especially when it comes to international firms.

Chapter 3 of the guide deals with enforcement mechanism as per the law that can be activated to protect copyrights. This includes ways and means to

assign or license someone for particular use of the copyright protected material. This follows detailed court procedures involved in copyright enforcement.

Chapter 4 of the manual identifies various kinds of copyright infringements and the broadcasters copyrights.

Chapter 5 of the handbook educates the broadcasters and media outlets about the proper procedure to be followed for using a copyrighted material. This is particularly important for the FM broadcast stations that frequently use music CDs and albums of popular singers.

This guidebook on copyrights is to serve as a general guide to the broadcasters, media practitioners and artists and therefore must be read in conjunction with any change in the law that has occurred since its publication. Internews Pakistan will do its best to keep the handbooks updated to reflect the changes in the laws.

Internews Pakistan recognizes the efforts of the Government of Pakistan in opening up the broadcast media sector in particular. That is why Internews Network is implementing a media assistance program in Pakistan to support the fledgling broadcast radio stations and other media outlets by offering legal, technical, editorial, and management training. The overall goal of the Internews Pakistan program is to ensure that skilled, independent, and financially viable media outlets exist, especially in the broadcast sector, and are able to provide the citizens of Pakistan with quality news, social, educational, and entertainment programming.

This guidebook on copyrights is part of the effort to ensure fair competition among the broadcasters and encourage creativity and ingenuity of artistic pursuits.

## **Chapter 1**

### **Copyright definitions**

Copyright is one of the three main components of the intellectual property rights. The intellectual property rights envisage copyright, trademark and patent that are divided among three Pakistan ministries. The copyright department goes to the education ministry, the ministry of industries looks after the trademark matters and the commerce ministry deals with patent rights issues. To describe each of the three components briefly, copyright is about literary and artistic works, in case of literature and media; trademark is about product names, logos and slogans relevant to trade and commerce; and patent is about the design and specific mechanisms of inventions, which relates to manufacturing industry.

Although trademark and patents do become subject matter of media sector, considering names and titles of media organizations or media-specific products, it is the copyright aspect that dominates the media scene. It is in this context that the guidebook focuses copyright laws only that is the domain of Central Copyright Office in Karachi.

First introduced in 1962 and then in 1992 and 2000 the copyright laws have seen many definitional and structural changes owing to technological advancement, both in the process of creation and copyright violations. Such advancements give new meaning to the ownership of a creation and work, and the need for their protection. Right from the traditional literary works – such as novels, poems, plays and music, the ownership creation goes on to include computer programs such as software.

### **What is copyright?**

Copyright means the right to copy a work. But this right comes through a legal understanding. This process is based on legal permission from original author of the work for its use in a particular manner. Copyright is a private right to be agitated by citizens but its violation is cognizable and non-bailable offence in Pakistan. Registration of a copyrighted work with copyright office

is not compulsory. The copyrights of foreign authors are equally protected under the Pakistani law as per international conventions. The kinds of work covered by copyright include literary works such as novels, poems, plays, reference works, newspapers and computer programs, databases, films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical designs. Even ideas, outlines and themes of a literary work can get copyright protection provided they are registered in writing with the copyright office. Defining and identifying various products that constitute subject matter of copyright ownership is crucial in establishing a right in this regard. For instance the copyright products are not just visible things but even ideas and themes. While such ideas and themes may not be registered as copyright doing so would make it easier to claim the same in a court of law.

In a nutshell copyright is an area of law that protects the original work of authors to encourage development of industrial and cultural enterprises as well as technological businesses based on computer software.

### **Kinds of copyright works**

In Pakistan Central Copyright Office (CCO) in Karachi and Lahore is the repository of country's copyrights. Under the law CCO accepts copyright registration requests in four categories: (1) Literary dramatic or musical, (2) Artistic work, (3) Cinematic work, and (4) Records.

#### **I. Literary dramatic or musical work**

- Literary work deals with the subjects of humanity, religion, social and physical sciences. To be registered in written/script form with CCO literary work could be lyrics of songs, written script or theme of a story, a novel, a drama or a book.
- A song is recognized as a literary work when its lyrics are registered in written form. No other person can borrow the words or lyrics of original author for commercial gains without proper permission. FM radio stations must have proper permission to air the songs.

- Literary work also includes compilation of data or other material in any form, that is to say programme recorded on any disk, tape, perforated media or other information storage device. The copyright over compilation of data shall not extend to data itself but limited to the extent of compilation only.
- Dramatic work includes any piece for recitation, choreographic work or entertainment show. It is the scenic arrangement of action in writing or otherwise but does not include cinematic work.
- A musical work is combination of melody and harmony or either of them. For registering it as copyright it needs to be reduced to writing or otherwise graphically (music notes) produced or reproduced.
- Reproduction of a literary, dramatic or musical work in the form of a record or of a cinematographic work is illegal except when permitted by original author.
- Audio-visual work includes a work consisting a series of related images, which are intrinsically intended to be shown by the use of a machine or device. The machine or device includes projector, viewer or electronic equipment together with accompanying sound.
- The author of a literary work can exercise his copyright by doing anything with his work or authorizing another person to use his work in a particular manner. Therefore, copyright of a literary, dramatic or musical work would mean to do (for an author) or authorize to do (authorizing others):
  1. to reproduce the work in any material form
  2. to publish the work
  3. to perform the work in public
  4. to produce, reproduce, perform or publish any translation of the work; to use the work in a cinematographic work or make a record in respect of the work
  5. to broadcast the work, or to communicate the broadcast of the work to the public by a loud speaker or any other similar instrument
  6. to make any adaptation of the work

7. to do, in relation to a translation or an adaptation of the work, any of the acts specified in relation to the work in sub-clauses (i) to (vi)
8. to authorize the rental of the computer programs

Adaptation of a dramatic work means conversion of dramatic work into non-dramatic work. Adaptation of artistic work means conversion of literary work into a dramatic work by way of performance in public or otherwise. Similarly adaptation of literary or dramatic work would also mean describing visuals or picture in the form of text suitable for publication, like a film review.

## **II- Artistic work**

- Artistic work includes a painting, a sculpture, a drawing (including a diagram, map chart or plan), an engraving or a photograph. Work of a sculpture includes casts and models.
- Artistic work also includes portrait, photographs, insignia, images, logos or products labels. The logos are registered as trademark. However the artistic work of a logo can be protected under copyright. For example Quranic calligraphy by Taj Company and Gul Ji's Quranic calligraphy are both copyrighted.
- Artistic work also includes architectural work of an art or any other work of artistic craftsmanship. Architectural work of an art means any building or structure having an artistic character or design, or any model for such building or structure.
- An artistic work includes a version reproduced by converting a work into three-dimensional form or if it is in three dimensions, by converting it into a two-dimensional form and references to reproducing a work shall be construed accordingly.
- Even an artistic performance can be protected as a copyright. It includes any mode of visual or acoustic presentation, including any such presentation by the exhibition of a cinematographic work, or by means of a broadcast or by the use of a record, or by any other means and in relation to a lecture includes the delivery of such lecture.

- Music and composition is part of audiovisual work and video songs are protected, the performance of singer and his style too is copyright protected. For example Tariq Aziz had a style of hosting the PTV's Neelam Ghar show. Ideally copyright laws protect his style and performance in that show.
- Copyright for an artistic work would mean to do or authorize the doing of any of the following acts:
  1. to reproduce the work in any material form
  2. to publish the work
  3. to use the work in cinematographic production
  4. to show the work on television
  5. to make any adaptation of the work (refer to section above)
  6. to do an adaptation of the work any of the acts specified in relation to the work in sub clause (i) to (vi)

In case of a copyright dispute over an artistic work each of the claimants have to prove that his work was published prior to the work of the other claimant just as in the case of the literary work. In the same manner publication of literary, dramatic musical or artistic work would include the issue or distribution of the copy of the work in sufficient quantities. Any unauthorized publication, therefore, would constitute copyright infringement. For a musical work, adaptation would mean transcription of the work, which also needs proper authorization, for it to be used on commercial basis.

### **III- Cinematographic work**

- Cinematographic work means any sequence of visual images, including video films of every kind, recorded on material of any description (and quality). The work may be silent or accompanied by sound but when shown (played back, exhibited) it conveys the sensation of motion.
- Cinematographic works include videocassettes, VCDs, DVDs containing performance of artists.
- Just as audio-visual, cinematographic work comprises a series of related images, which are intrinsically intended to be shown by the

use of a machine or device. These include a projector, viewer or electronic equipment together with accompanying sound, if any, regardless of the nature of the material object, such as film or tape, in which the work is embodied.

- Title music, title video, exclusive interviews, and such other programmes are copyright protected.
- Employees of a broadcast organization have no copyright ownership of the programs they produce as part of their job. It's the organization that has the copyrights of that program.
- In case of a silver screen film there are over a thousand people working and who are named on the title but under the law only the film producer has the copyright. All persons involved in the production usually sell their right to the film producer.
- Similarly, a private production house or a private limited company producing a program will have copyrights accordingly.
- Doing or by authorizing to do the following acts one can exercise copyright of a cinematographic work:
  1. to make a copy of the work
  2. to cause the work in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public
  3. to make any record embodying the recording in any part of the sound track associated with the work by utilizing such sound track
  4. to broadcast the work
  5. to authorize the rental of cinematographic work

The publication of a cinematographic work means the sale or hire or offer for sale or hire of the work or copies thereof to the public. It is this definition of publication, which determines prior ownership of a work or a copyright violation.

#### **IV- Records**

- Record means any disc, tape, wire, perforated roll or other device on which sounds are saved. Such saved audio work can be reproduced or replayed from that machine. For the purpose of definition this record



is different from the sound track of a cinematographic work, like a movie.

- Recording means the process of sounds being saved on a material like audiocassettes and these sounds can be reproduced or replayed as and when required. This also means copyrights of a recording company.
- Recorded works is replayed through Gramophone/records/audio cassettes and CDs. A recording company can assert its copyright over a particular recorded program if it has the sole right to do so under an agreement with the author.

Copyright for records include doing of or authorizing to do the following acts:

1. to make any other record embodying the same
2. to use the record in the sound track of a cinematographic work
3. to cause the recording embodied in the record to be heard in public
4. to communicate the recording embodied in the record by broadcast

The act of publication of records means issuing records to public in sufficient quantity. This does not however include records containing literary, dramatic or musical work or issuance of any record containing such works. Similarly, records do not include the issuance of photographs and engraving of sculpture and architectural work.

Above are the three categories of the works that can be copyrighted if registered with CCO. There are however some other terms and definitions which are important to be understood.

## **Defining other copyright terms**

### **Author**

Author is the original writer or creator of the work being protected under copyright laws. For a literary or dramatic work there will be an author of the same. For the musical work the author will be a composer. For an artistic work other than a photograph the author will be an artist. For a photograph the author will be a photographer. For a cinematographic work, the author will be the owner of the work at the time of completion, like the producer of a movie.

For the purpose of the record category of the work, the author will be the owner of the original plate (the master copy) at the time of the making of the master copy or the plate. The plate includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, tape, wire, optical film, or other device. Such device may be used or intended to be used for printing or reproducing copies of any work.

### **Work of joint authorship**

It means a work jointly produced by two or more authors. In such a work it is difficult to distinguish between contributions of one author from another. If any one of the co-authors violated copyrights of some other author then he will have no copyright over that work.

### **Counterfeit copy**

Counterfeit copy means a copy, which is an imitation of another (original) work and it appears to be, but is not, genuine.

### **Copyright Board**

Copyright board comprises a chairman of Board to be appointed by federal government. Presently, a retired high court judge chairs the board. There are five representatives from civil society, literary field, writers and personalities from film and media, software experts, publishers and sellers. Copyright registrar is an ex-officio member of the board.

### **Domicile of corporations**

Under the law a body corporate, which is incorporated under any law in force in Pakistan or it has an established place of business in Pakistan then such a corporation will be deemed to be domiciled in Pakistan. In this way such foreign companies will have copyrights similar to those of Pakistani companies.

**Performing Rights Society**

A society, an association or any other body in private sector, incorporated or not, which is yet to be established under Pakistan's copyright laws. This society is to be formed on the pattern of similar societies in Europe which closely monitor the use of copyright protected work at commercial outlets like radio, TV, and even restaurants and then collect royalty fee under a formula to be distributed among the real authors of the work being used by these commercial outlets. In Pakistan these societies, when formed, will be issuing or granting licenses for performance of copyright protected works.

**Broadcasting**

For the purpose of defining broadcast violating copyrights, it has been described as communication to the public of sound or images by means of radio diffusion, including communication by telecast, or wire or by both, or any other means of communication. Radio diffusion has been defined as communication to the public by any means of wireless diffusion whether in form of sounds or visual images.

## **Chapter 2**

### **Copyright registration procedure**

The Central Copyright Office (CCO) in Pakistan's financial capital Karachi and its branch office in Lahore receive applications for registration of works in different categories (See chapter-1). Successive governments showed little interest in developing enforcement mechanism or creating public awareness on the subject because of which CCO faces lack of infrastructure and resources to meet international copyright standards. CCO is headed by a registrar whose decisions are overseen by a copyright board, which has so far decided on 200 appeals.

CCO has so far issued 13,000 copyright certificates since its establishment. The situation has however improved somewhat from the day when there were few people approaching CCO for registering copyrights. The CCO today receives about 500 applications a month. CCO used to receive about 16 copyright applications a year in mid-eighties. The number of applications has risen to about 3000 a year during the last couple of years. The process of issuing a certificate is just starting to gain momentum of any kind. CCO officials say that at present the office is taking over two years for a copyright certificate to be issued after the filing of application. Things get more complicated when the registrar's decision of issuance of certificate is challenged before the copyright board. The copyright board meets twice or thrice a year. Thus far it has decided on about 200 cases. The board meets for two or three days to hear up to 12 cases. About hundred cases are currently pending before it and these cases too are from the period of August 2001.

#### **Steps to copyright registration**

Following are the steps to copyright registration to be followed at CCO. The process also requires payment of a specified fee as per rules and procedure.

### **Step-1: What form of work to be registered?**

The author must decide as to what form and at what stage of his work copyright has to be registered and acquired. For instance a play writer or a program producer may decide to register just the theme of the play or the program. The theme can be put down in a few lines or a paragraph on a piece of paper and taken to the CCO to be registered as a complete work. The author must ensure that the theme is not a copy of some one else's work and it is unique enough to be registered for fear of it being stolen and taken undue commercial advantage of before it is materialized into a complete work.

As explained in previous chapter the author must determine the category under which his work is to be registered at CCO. The copyright office registers such works in four categories-(1) Literary, dramatic, and musical, (2) Artistic, (3) Cinematographic and (4) Records. (See chapter-1 for explanation and also the application form annexed)

### **Step-2: How to get an application form and the kinds of application forms**

The Application form is available free of cost. It can be submitted in person at CCO in Karachi, Ground Floor, Liaquat Memorial Library Building, Stadium Road, Karachi. These forms can also be photocopied or downloaded from the website of Small and Medium-size Enterprise Development Authority (SMEDA) [www.smeda.org.pk](http://www.smeda.org.pk), or acquired by e-mailing at [imtiazaali2004@hotmail.com](mailto:imtiazaali2004@hotmail.com) or [ccogop@hotmail.com](mailto:ccogop@hotmail.com) or a request to be faxed at Fax: 021-9230140. However applications are NOT received on fax. For information copyright office at Karachi can be contacted on telephone at 021-9230140-41. The application can be submitted at Karachi or CCO's branch office at Lahore through post as well.

All the prescribed fees for every application shall be paid to registrar by a bank draft, pay order, or by deposit into the state bank of Pakistan under the head of account "1390-1391-other citizenship, naturalization, passport and copyright fees."

There are various kinds of forms starting from Form-I to Form-VII (See Annexure).

### **Form-1: Copyright register**

Form-1 is part of the copyright register being maintained at the copyright office by the copyright officials. This is in fact a page of the copyright register to be filled by the copyright officials with particulars of the work being provided by the applicant. The register enters in the register the names and titles of work and names and addresses of the author, publisher and owners of copyright. This register is open to public inspection and any person can get copies of the record in the register on payment of Rs50 (Fifty) per page as official fee.

### **Form-II: Copyright application**

It is the Form-II, which forms basis of the first request for copyright registration of a work (See Annex). This form comprises an application (three copies) addressed to the registrar and a statement of particulars about the work being registered. The application is accompanied by a “statement of particulars” about the work and another “statement of further particulars”, both to be sent in triplicate. The statement of further particulars is to be filled for registration of literary, dramatic, musical and artistic works only. The application fee for copyright registration of a work is Rs500 (Five Hundred) for each work. A work being submitted with CCO for copyright registration, if on one audio or videocassette will be considered as one work, otherwise number of works will be determined by the number of cassettes being submitted for registration. Therefore for each work/cassette being submitted separate application (in triplicate) will be filed with Rs500 for each work/cassette.

### **Form-III: Application for changes in copyright**

Form-III is filled when some changes are requested in a copyright certificate issued earlier. This is an application in triplicate addressed to registrar accompanied by a statement of particulars of the work, with

information about exact changes in the copyright conditions and the reason for so doing. Where the changes are a result of some rights being licensed or assigned to new parties then copies of the deeds of the license or assignment are required to be enclosed with the form. The official fee for a change in one work is Rs1500 (Fifteen Hundred). In other words a work recorded on three cassettes and registered as three works (as required) any change in all the three cassettes will cost Rs4,500 (Four thousand Five Hundred).

#### **Form IV: License for translation of literary work**

Form-IV is an application addressed to registrar seeking decision of the copyright board for grant of a license to translate a literary work in any of the Pakistani language (not English, French or Spanish) in the public interest. The board may allow the same if the original author of the work has not already licensed someone else in this regard or one year has passed since he or she had done it and there were not sufficient copies available in translation. The board may also fix an amount as a royalty to be paid to the author by the licensee. A statement of particulars of the work accompanies the application. As discussed earlier separate applications have to be filed if the work to be translated is on more than one cassette and registered as more than one work. For each of the application an official fee of Rs1500 (Fifteen Hundred) has to be deposited especially when the work is recorded and submitted on separate cassettes and registered as separate work. For example a work recorded on three different cassettes (audio or video) if needed to be licensed for translation, there will be three applications with a total of Rs4500 (Four Thousand Five Hundred) to be deposited as official fee.

#### **Form-V: Notice relinquishing copyright**

This is in fact a notice, by an author of a work, addressed to registrar wholly or partially relinquishing his right in the work registered earlier so that any one can benefit from it. An attached affidavit outlines the extent to which the right to that work is being relinquished. This also accompanies a statement of particulars of the work. There is naturally no fee for such an application.

Information about relinquishment of a right in a work can be obtained from the copyright office.

### **Form-VI: Prohibiting import/export of pirated work**

This is an application addressed to registrar copyrights by author or his authorized agent to seek orders for prohibiting unauthorized import or export of pirated work. The application is accompanied by copyright certificate of the work, an affidavit and statement of particulars of work. The registrar may, after holding an inquiry, order that the infringing copies of the work shall not be imported into or exported out of Pakistan. The registrar or any person authorized by him in this behalf may enter any ship, vehicle, dock or premises where infringing copies may be found and may examine such copies. The official fee for such an application is Rs2000 (Two Thousand) for each of the work registered at copyright office whose infringing copies are being prohibited from import/export.

### **Form-VII: License for printing & publication**

This is in fact an order sheet of the registrar wherein he is conveying a board's decision of granting a license for printing and publication of a translation work to an applicant with consent of the author. The order fixes an amount as a royalty to be paid by the licensee to the author on the retail-selling price of every copy of the work. An acceptance statement to be signed by the licensee accompanies the form.

### **Step-3: Filling up application form / providing information**

Copyright registration is done either by an original author or co-authors of a work or those people duly authorized by the author to share the work in a particular manner. As mentioned above Form-II has to be filled for the purpose. Form-II requires following actions and information to be taken and furnished respectively.



- The author applying for registration of his work must send by hand or registered post copy of the application to all those persons who he might think are concerned with the ownership of the work.
- In the application addressed to the registrar the author gives a list of the possible parties concerned and gives an undertaking that these concerned parties have been sent copies of the application.
- The author duly signs the application and provides complete address for future correspondence.

The statement of particulars accompanying the application requires following information to be furnished:

- Registration number (to be filled in by the copyright office from the serial number of the register being maintained)
- Name, address and nationality of the applicant
- Nature of applicant's address in the copyright of the work
- Class and description of the work and the year of its creation (By class and description means literary, dramatic, musical, artistic, cinematographic or record)
- Title of work
- Language of the work
- Name address and nationality of the author and if the author is dead, date of his death (in case of an applicant other than author seeking ownership for the dead author)
- Whether the work is published
- Year and country of the first publication and name and address of the publisher
- Year and countries of the subsequent publications, if any, and names, addresses and nationalities of the publishers
- Names, addresses, nationalities of the owners of the various rights comprising the copyrighted work and the extent of rights held by each, together with particulars of assignment and licensees, if any
- Names, addresses ad nationalities of the other persons, if any, authorized to assign or license the rights comprising the copyright

- If the work is an artistic work, the location of the original work, including name, address and nationality of the person in possession of the work (in case of an architectural the year of completion of the work should also be mentioned)
- Remarks if any

Another “statement of further particulars” requires of the applicant to provide following information, which applies only to that work which is categorized as literary, dramatic, musical and artistic work:

If the work being registered is an original work?

- A translation of a work in the public domain?
- A translation of a work in which the copyright subsists?
- An adaptation of a work in public domain? (See chapter on definition for adaptation)
- An adaptation of work in which copyright subsists?

If the work is a translation or adaptation of a work in which copyright subsists then

- Title of the work;
- Language of the original work;
- Name, address and nationality of the author of this original work and if the author is dead the date of his death;
- Name, address and nationality of the publisher, if any, of the work;
- Particulars of the authorization or a translation or adaptation including the name, address and nationality of the party authorizing.
- Remarks if any

#### **Step-4: Other documentary requirements**

- A sample of one work being registered may be provided in one material piece form like one cassette. A work recorded on two cassettes, for instance will be considered as two works for registration purposes.

- For each of the work thus being registered three sets of application forms have to be submitted with the copyright office.
- The application fee for copyright registration of each of the work (one cassette one work) is Rs500 (Five Hundred). Therefore for each work/cassette being submitted separate application (in triplicate) will be filed with Rs500 for each work/cassette. The registration of a video album, for example, can, if the author so desires, assume form of the same being registered in three separate forms - audio (sound of the singer), Lyrics (literary form), video (special performance dance/acting of singer), each requiring separate application process.
- If other authors are involved in the work then No Objection Certificate (NOC) on a Rs20 stamp paper has to be submitted by the applicant author.
- After submission of the application forms and other documents the artistic work is to be advertised in any National Urdu or English daily newspaper. The advertisement must be done within one month of filing of application, and two copies of the said newspaper are required to be submitted after their publication with the Registrar or deputy Registrar.
- A firm registered under partnership act 1932 can get copyright of its program or any work. Such firms have more than one owners/partners. Any one partner seeking copyright of a particular work of the firm in his own name shall provide names of others partners. He shall also provide the percentage share of each of the partner as described in their partnership deed. The applicant shall also provide an NOC from each of the partners of the firm.
- If the work is to be registered in company or firm's name then NOCs are not required. Similarly, private limited companies representatives are refused copyright in their individual capacity and they are asked to apply as a company. Similarly, In case a company indulges in copyright infringement then the person in charge of that company is considered to be guilty and liable to be punished.

- Radio station can enter into agreement with singers and get these registered in copyright office. They can get unlimited broadcasting rights from singers- but these can revert after ten years if the term of agreement is not mentioned or it can be reduced to lesser period by explicitly mentioning it. The station then can play replay and further license or sub let the right to other stations if agreed by the author. The licensee radio station can in this way prevent other stations from playing the songs of that particular singer.
- The federal government can declare a work or program as of public interest and can issue compulsory license for its publication. This happens when an author refuses to air a public interest program. The government or the copyright board can be approached to compel the author to air the same in the public interest. Any citizen can move the board in such case.
- Radio station can register copyright over a program theme. The theme will be in written form. Composition of special background music of a program can also be registered. Performer's style of expression can also be registered but an audio or video form has to be submitted. The employees of an organization have no copyright over their work, which they produce as part of their duty.
- Under the concept of neighboring right, copying of programs/works from other countries by any broadcasters without due permission is also violation of copyright and is cognizable.
- Folk music cannot be registered as a lyric but as music composition and performance in a video or audio. Similarly no one has copyright over Quran but its special style of calligraphy by a person can be copyright protected. The research works done by religious scholars are copyright registered, like Tafheem-ul-Quran of Maulana Maudoodi. The Quranic recitations and speeches of Maulana Maudoodi are also registered at the copyright office as audio cassettes-titled Pigham-e-Quran series.

- If a singer wants to register his own song for copyright, he also has to give affidavit on Rs20 stamp paper that it was his own song. This affidavit has to be attested by the oath commissioner.
- Product's label is a new right being introduced. Label designs are registered as an artistic expression and not as a slogan. Only the art aspects/getup/artistic features of the label can be registered. It is clearly mentioned on the copyright certificate issued by the copyright office, "Please note that title/name / brand/ mark / given by applicant in application form or appearing on work is not registered but only the expression style/ getup of the "work" is registered/protected under copy right law."
- Similarly, portraits and architectural work can be registered. A sample of such a work is provided to copyright office along with the application for record. Prior to that its publication is a must in the newspaper (announcing that the work is being registered) within one month of the filing of application. The newspaper, whether Urdu or English, has to be ABC certified and not a local language daily.
- Within one month from date of publication of advertisement objections can be filed before registrar and two months extension can also be sought for filing of objections which will require a payment of Rs500 as official fee. Application by fax is not entertained.

#### **Step-5: Foreign authors**

- A work will be considered to be first published in Pakistan even if it had been published simultaneously in some other country, unless process of attaining copyright in that country is of shorter term.
- The work will be considered to be simultaneously published in Pakistan and in another country, if the time between the publication in Pakistan and the publication in that country does not exceed thirty days.
- A corporate body is entitled to be considered domiciled in Pakistan if it is incorporated under any law, in force, in Pakistan or it has an established place of business in Pakistan.

- Compulsory licenses in public interest can only be acquired for Pakistani work and no compulsory license can be granted for any work whose author is not a citizen of Pakistan or whose work is not manufactured in Pakistan.

### **Step-6: Appeal against copyright certificate**

- Registration of copyright can always be challenged even after 50 years.
- The registrar may amend or alter the entries in the register after hearing the person who might be affected by the changes.
- In case of an objection notice is served on parties to appear before registrar within 5-10 days. Registrar decides on the proof of prior creator, originality of work.
- The objector can move the copyright board against the decision of the copyright registrar.
- Once registrar's decision is challenged before the copyright board then an official fee of Rs1500 (Fifteen Hundred) is to be paid by the applicant.
- For going direct to board for rectification a fee of Rs1500 (Fifteen Hundred) has to be deposited by the applicant.
- Board is competent to decide ex-parte if a party is absent for more than a couple of times. Board's decision can be appealed against before the High Court.
- Once the board decides on an appeal challenging the registrar's decision the board's decision too is challengeable before the High Court, but within the three months of the board's decision. However if someone goes to board directly then the board's decision is not challengeable.



## **Chapter 3**

### **Enforcing copyrights in broadcast industry**

#### **Nature of rights created through registration**

A person who writes, invents or produces some work is the owner of that work. Registering copyright of a work extends certain privileges to the owner. These rights include right to copy including utilization and reproduction, assign the copyrights, sale of rights and grant the license to copy or utilization of the work.

#### **Right to copy, reproduction or rebroadcast**

The owner has exclusive right to use, copy, or reproduce his work, invention or production. No one is allowed to use, copy or reproduce such work except with the express permission of its owner. For example, a broadcaster who produces a documentary on a certain subject has exclusive right to broadcast it. Similarly the person who develops some computer-based broadcasting software has a right to use it in the broadcasting or make copies of it. It is illegal to copy, use, reproduce or broadcast such music, documentaries or software without the permission of their owners.

#### **Right to authorise the reproduction etc**

The owner of copyright has a right to authorize the copying, reproduction or rebroadcast of his work. If the owner is a broadcaster he can authorize anyone else to rebroadcast his work. He can also permit to make fixation of his broadcasts and copy the fixations. Likewise the person who develops some computer software of broadcasting can authorize any other person to use it or reproduce it.

#### **Right to assign the copyrights**

The owner of the copyright has a right to assign his rights in any work of intellect to any other person. An assignment of copyright is transfer of whole



rights in a work to another person. Only the owner of the work, invention or production can assign his rights in the work. For instance, a singer has a right to assign his copyrights to a broadcaster to transmit his songs or he can assign his right to prepare and sell the audio/video of his songs.

### **Right to grant licence for copying or broadcasting etc**

The owner of copyrights has a right to grant license to any other person to copy, reproduce or broadcast his work or program. Through a license the owner can grant any interest in the right. A license can be for a particular right or privilege that does not constitute right or privilege in whole property. For example, the owner can grant a license to reproduce or broadcast only certain parts of a program. The license can be for prescribed period like for one or two years. A license can be for specific country or territory. This means, for instance, the licensee can reproduce or broadcast the program in a specified country or territory of a country.

### **Right to restraint and claim damages**

Though the author, producer or broadcaster has assigned his right to another person or has granted a license to a person for specific purpose, he still has some rights in that property. If the licensee or assignee found to be distorting, mutilating or modifying the work licensed or assigned in such a way that harms the honor or reputation of actual owner, he has a right to restraint the assignee or licensee from doing so. He can also claim damages through court in respect of any distortion, mutilation or other modification of the work in question.

### **Possible Actions against the infringement of copyrights**

The broadcasting or rebroadcast of a program or use of a computer software in broadcasting without the authorization, assignment or license of its owner amounts to infringement of the rights of the owner. If the broadcaster violates the law and infringes the rights of another broadcast organization or a

person, the organization or person whose right is infringed can take various actions. These actions are explained below.

### **Notice to stop the infringement of copyright and its response**

If the owner i.e. a real owner, an assignee, a licensee, a buyer or right or any authorized person in this regard, of the copyright discovers any broadcaster infringing his rights he may serve a legal notice to the broadcaster to stop such infringement. Though there is no statutory requirement to serve such notice, it can be helpful in resolving the matter through court. Likewise, the party allegedly involved in such infringement can admit it and stop the infringement. The notice must mention the manner of infringement of copyrights including the time and date of such infringement. It should mention the date for its response and consequences of failing to tender response. The notice should be addressed to the person responsible for such infringement. It should be dated, duly signed and certified by the person serving it.

### **Responding the notice**

The broadcaster, on whom the notice is served, if believes, he is not infringing rights of any person should respond to the notice instantly clarifying his position. Contrary to this, if he is involved in the infringement, he should admit his fault and either stop such infringement or start using it with license, authorization or assignment of its rights. The contents of every notice can vary from case to case. The broadcaster should:

- specifically respond to only those facts, which are mentioned in the notice;
- respond before the date mentioned for response in the notice;
- keep the copy of notice and its response with him. This can be used as evidence in the court if the person serving the notice decides to file a case against the alleged infringement.

The failure to respond to such notice within given time can result in commencement of lengthy litigations against him.

### **Consulting and hiring of lawyer**

Every person has a right to present his case without a lawyer. If any of the parties wants to be represented by a lawyer, he can also appoint a lawyer or advocate to represent him in the court. It is always helpful, prior to responding to the notice, to discuss the matter with a competent lawyer.

### **Application to Pakistan Electronic Media Regulatory Authority (PEMRA)**

If the owner of copyright feels that a licensee of Pakistan Electronic Media Regulatory Authority (PEMRA) is infringing his rights, he can approach PEMRA in this regard. The licensees of PEMRA are under obligation not to broadcast or distribute any program or advertisement in violation of copyright or other property right.

The Authority has power to:

- ban the program, which appears to be violation of the provisions of the license granted by PEMRA to a licensee;
- seize the broadcasting equipment and seal the premises of the licensee if he continues violating orders of the Authority to stop such violation;
- revoke, suspend or cancel the license if the licensee does not observe its orders;
- impose fine on the licensee in case he violates the provisions of the Ordinance;
- put him behind the bars and confiscate his equipment if he repeats such violation.

### **Judicial/administrative forums to deal with cases of infringements**

The owner of copyright, in addition to the forum of PEMRA, has other forums for redressal of his grievance. The owner can invoke the jurisdiction of court

of law and administrative authorities. The following sections deal with the procedures for actions at these forums.

#### **A) Civil suit in court**

The existing copyright laws provide the forum of court for civil remedies regarding infringement of copyrights. The owner of copyright can file a civil suit in the court for permanent injunctions to stop such infringement. He can also file a case for damages as well. If the person is interested in filing a case for injunctions or for damages for copyrights infringements he should know about the court authorized to entertain the cases of infringement of copyrights.

It is important to note here that the owner can apply to the court, with or without filing a suit for damages or permanent injunctions, for immediate provisional orders to prevent such infringements. The court can pass any **interim order** without prior notice to the defendant. Such orders can be passed only where the court believes that:

- there is a prima-facie case of infringement of copyrights;
- the balance of convenience will be in favour of plaintiff if such interim order is passed; and
- the plaintiff can face irreparable loss if such orders are not passed.

Alternatively, such order shall cease to have effect if the plaintiff fails to or does not file a suit for permanent injunctions within thirty days of passing of such order. In this situation the defendant can apply for costs for any injury, which such order may cause.

#### **Jurisdiction of court**

Prior to the filing of the case, knowledge about the jurisdiction of court is relevant. This helps in consulting or hiring a lawyer for litigation. In ordinary civil suits for injunctions and damages, a civil judge has jurisdiction to entertain them. In copyright laws the court of civil judge has no jurisdiction to entertain the suit for damages. Only the court of district judge has jurisdiction to entertain such cases.

### **Filing of plaint**

The owner of copyright whose right has been infringed has to file a statement of claim in the court of district judge. The person lodging the statement is called '**the Plaintiff**' and statement of the plaintiff's claim is called '**Plaint**'. In legal terms plaint is a written memorial tendered to a court in which the plaintiff sets forth the cause of action and seek judgement and relief from the court.

### **Amount of damages claimed**

The owner has a right to claim damages in addition to injunctions to stop copyright infringements. The owner can claim damages proportionate to his loss due infringement of his right. He can claim for millions but the ultimate authority to decide the amount resides with the court.

### **Court fee**

Where a suit for damages is filed and amount of claim exceeds the value of Rs25,000 the plaintiff is supposed to submit court fee along with the plaint. There is no court fee for suit for damages below Rs25,000. In suits for damages above this amount the court fee shall be computed on the basis of amount claimed and in manner prescribed in laws dealing with court fee.

Maximum amount of court fee is:

- Rs3,000 in Islamabad Capital Territory and NWFP province; and
- Rs15,000 in Balochistan, Sindh and Punjab province.

Maximum fee shall apply if the amount of claim exceeds:

- Rs. 200,000 in Islamabad and NWFP, Balochistan and Punjab; and
- Rs. 500,000 in Sindh province.

### **Registration of suit**

The court shall make the entry of particulars of the suit, which is filed, in the 'Register of Civil Suits.' After the suit has been registered the court will fix first date for response of opposite party, generally known as defendant(s) in legal language, regarding the suit. At this time the plaintiff's counsel/lawyer get the summons issued on the defendant(s), the person against whom the suit

is filed. In addition, the Court shall also order the defendant(s) to produce all documents (in his possession or power) upon which he intends to rely in support of his case.

### **Parties to the suit**

In case of copyright infringement by an FM radio, the company that owns the radio, directors of company, director(s), manager(s), producer(s) of radio station and any other person(s) concerned with such infringement can be parties to the suit as defendant(s).

### **Appearance of parties in the court and result of non-appearance**

On the day fixed in the summons for the defendant(s) to appear and respond the allegations of plaintiff, both the parties must be in attendance at the courthouse in person or by their respective counsels/lawyers. Where the summons has served and the defendant fails to attend the court intentionally or without lawful excuse the court can decide the case forthwith passing the decree against the defendant. The decree passed at this stage due to non-appearance of the defendant can be appealed only and cannot be set aside like ex-parte decree.

### **Written statement**

In legal terms the written statement is a concise statement in writing filed by the defendant in answer to claims of plaintiff raised in the plaint. As a substantial part of the pleadings it constitutes defence of the defendant(s) in the suit. These are the requisitions of a written statement.

- The defendant shall submit his written statement within a specified period. If the court does not mention the date for filing of written statement, the defendant can submit it before first hearing. Otherwise, the period allowed for filling the written statement does not ordinarily exceed thirty days.
- The written statement must be verified on oath or solemn affirmation.

- The defendant must produce, with the written statement, the documents on which he basis his defence.
- He must file a list of such documents on which he relies.

While drafting the written statement, the defendant must specifically plead all necessary facts and points of law in his written statement. Plaintiff should have an opportunity to establish or rebut any factual or legal question by adducing necessary evidence. Defendant will not be entitled to raise a plea in the arguments, which is not take in the written statement. Where any party from whom a written statement is so required, fails to present the same within the time fixed, the Court can close the defence and pronounce judgement against him. The decree can be appealed and cannot be set aside.

### **Hiring/consulting a lawyer for litigation**

Every person has a right to present his case in the court of law without hiring any lawyer. If any of the parties wants to be represented by a lawyer, he can also appoint a lawyer or advocate to representing him in the court. It is always helpful to hire a competent lawyer for the litigation. Every appointment of pleader shall be filed in Court. Such appointment shall remain enforce till the end of proceedings of the case unless the client or pleader die or client decides otherwise. A counsel has implied authority to do whatever he considers best for his client.

The broadcaster should discuss every minute details of the matter with his lawyer/counsel and should not hide any thing. This will help in establishing his defence. In addition, the fee of lawyer should be clearly determined and agreed upon.

### **Examination of parties at first hearing:**

The court may, after the defendant has submitted the written statement, examine the parties on first day of hearing to draw out and ascertain the real points in controversy. The examination at this stage is known as 'Better Statements of the Parties.' If any party or his counsel fails to appear before the Court on the date of hearing without lawful excuse, the court can pronounce

judgement and pass a decree against him. On passing of such decree, the party at default can only file appeal to next higher forum.

### **Issues**

Issue are the questions framed to be answered in the judgement. These are material proposition, which are affirmed by one party and denied by the other. There are two kinds of issues i.e. issue of fact and issue of law. These issues shall be framed by the court at first hearing after reading the plaint and written statement and after examination of the parties as may appear necessary for determination of the real points in controversy. The other materials for framing issues are:

- Allegations made on oath by parties or by person present on their behalf, or by their pleaders.
- Allegations in answer to interrogatories.
- Contents of documents produced by the parties.
- Statements made by parties or their representatives when examined by the Court.

The court has power to amend, strike out or frame additional issues at any time before passing decree.

### **Settlement (framing) of issues**

After the examination of both the parties by court, it is now time to settle the issue i.e. to determine the material points in controversy between the parties. The court shall ask each party or his counsel whether they expressly admit or deny particular allegation(s) made in plaint or response in written statement. The determination of issues has an important bearing on the trial and decision. It is basically the issues and not the pleadings, which indicate the appropriate evidence to be given.

### **Onus of proof**

The onus to prove the question of fact or mixed question of law and fact lies on the party alleging that fact. The onus to prove whether the defendant(s)



has infringed the copyrights of plaintiff lies upon the plaintiff. On other hand the defendant, for instance, has to prove that he was not involved in the infringement of copyrights of plaintiff.

### **Summoning and attendance of witnesses**

Both the plaintiff and defendant are required to submit lists of their witness in the Court. These lists will be submitted within seven days of settlement of issues. The witness can be called either to give evidence or to produce documents. The parties can file an application to the court for the attendance of witnesses at any time after the filing of suit. The applications should be made at earliest opportunity.

Where the summons has been duly served and the witness fails to attend the Court intentionally or without lawful excuse the Court may issue a warrant with or without bail for the witness's arrest at same time or afterward. In addition the court may also order attachment of his property. The court can impose fine on witness who intentionally avoids his appearance before the court. These steps can be taken in case where the evidence of the witness is material for the case.

### **Hearing of the suit**

After issues have been settled and the points on which the parties are in controversy have been clearly determined, the trial stage of the suit is well within sight. At this stage the party on whom burden of proof lies begins and open his case. More often it is the plaintiff who starts this process. After the plaintiff has opened the case he will produce his evidence. After this, the defendant will state his case and produce his evidence.

### **Examination of witnesses**

As the plaintiff has opened the case he has to produce his evidence before the Court. The court shall ask the parties to examine the witnesses and exhibit all relevant documents. There are two kinds of examination known as examination-in-chief and cross-examination.

- Examination-in-chief is the examination of a witness by the party who calls him. The object of this examination is to get from the witness all the material facts within his knowledge or such of them as he can testify to relating to the case.
- Cross-examination of a witness by the adverse party i.e. the party oppose to the one that calls him. The object of cross-examination is to sift the examination and to seek the truthfulness of the case.

Evidence shall start with the plaintiff's evidence, which includes the examination-in-chief and cross-examination of plaintiff's witnesses and exhibition of relevant original documents relied upon by the plaintiff. After the examination of plaintiff evidence, the court shall close the plaintiff's evidence on the statement of his counsel to close plaintiff's evidence. The right of rebuttal i.e. the right of plaintiff to rebut the evidence of defendant shall remain intact.

The Court then shall proceed to examine the defence witness. This includes the examination-in-chief and cross-examination of defence witnesses. The defence shall also exhibit those documents in original, which are relied upon by the defendant in his defence. The defence evidence shall be closed with the statement of defence counsel to close evidence of defendant. If any party fails to produce evidence in support of his claim, the court may proceed to decide the case forthwith and pass decree against the party at default.

### **Arguments**

After the parties have adduced all evidence and closed their case a very important stage comes. Now the lawyers of both the parties have to address the court. As the plaintiff has begun the case, the defendant argues first and the plaintiff has the right to reply. The object of the argument is to piece up the facts and circumstances brought out in the evidence and to present a whole picture of the case or defence consistent with the theory set up in order to persuade the Court to accept the particular point of view.

## **Adjournments**

The court normally does not grant any adjournment unless the party show sufficient cause for the adjournment. It should be remembered that grant of adjournment in a case is entirely discretionary. Court has ample discretion as to the cost occasioned by an adjournment. Cost for adjournment includes the cost of the day of hearing and a reasonable fee for the opposition party's pleader for that day.

## **Judgement and decree**

After the hearing, the judge shall pass a decree and pronounce judgment in open court either at once or on some future day. Prior notice of that day shall be given to the parties or their counsel. A judge may pronounce judgement written by his predecessor. It shall be dated and signed by the judge after pronouncement and shall not be altered or added except where law expressly provides for. The person in whose favour decree is passed is called 'decree-holder' whereas the person against whom decree is passed is called 'judgment-debtor.'

## **Civil remedies for infringement of copyright**

Where the court finds that defendant has infringed the copyrights of plaintiff it can grant various remedies to the plaintiff. These remedies include injunction, damages, cost of case and transfer of infringing copies to the right owner

## **Execution of decree**

Mere passing of decree does not give rise to any right of decree-holder and incur any liability upon judgment-debtor. If the decree involves payment of damages to the decree-holder he has to file application to the court for execution of the decree. The decree-holder can orally ask for execution of the decree. The application shall be submitted to the court that has passed the decree or to the court to whom the decree is sent for execution. In response to the application, the court shall

- order the judgment debtor to pay damages to decree holder on the day fixed;
- attach his property and freeze bank account(s) of judgment-debtor fails if he fails to pay the decreed amount on the day fixed;
- order the sale of attached property to satisfy the decreed amount
- declare him insolvent if he has no property to be attached and no bank accounts to be frozen;
- send him to 'civil prison' in case he defaults on payment of decreed amount. The decree-holder is liable to pay cost of the civil prison.
- In case the judgment debtor files appeal against the decision of trial court, the execution shall be stayed till the final decision of appellate court.

## **Appeal**

The word 'appeal' means the right of carrying a particular case from subordinate court to superior court with a view to ascertain whether the judgment is sustainable. Appeal is a creature of statute and only exists where expressly given. The person aggrieved from the decision of the District Judge have a right to appeal to the High Court within thirty days of the passing of such decision. There is no right of appeal against interlocutory orders of the Court.

## **B) Petition to registrar/board of copyright as alternative dispute resolution body**

The copyright law provides another forum to resolve the matters of infringement of copyright. The owner of copyright can submit an application in this regard to the Registrar Copyright whose office is situated in Karachi.

If the owner does not invoke the forum of Registrar, he can also institute a petition with the Board, which is established under the provisions of Copyright Ordinance 1962. The office of the Board is in Karachi. The owner can invoke the jurisdiction of Board only when he decides not to file a suit in court of law. The Board it self or through a committee consisting of the

Chairman and not less than two members of the Board shall consider the matter.

Both the Registrar and the Board have powers of civil court in summoning and enforcing attendance of witnesses, recovery and production of documents, receiving evidence on oath, issuing commissions for examination of witnesses and requisitioning any public record or copy of it.

After giving the parties an opportunity of being heard the Board or the committee shall pass the order as it thinks fit. No court shall entertain any suit regarding the matter pending with the Board. The order passed by the Registrar or the Board in these matters will be executable as a decree of the court. The process of execution of decree has been discussed above.

### **Appeal against the decision of registrar and board**

If any of the parties to the matter is aggrieved by the decision of Registrar he can file an appeal to Copyright Board. The appellant, the person who files an appeal, can file it within three months of decision or order of Registrar. The Registrar, if he is a member of the Board, shall not sit in its meeting when Board hears appeal against the decision of Registrar.

If the person is aggrieved by the decision of the Board he has a right to file an appeal with High Court. According to copyright laws, appellant can file this appeal in the High Court within whose jurisdiction he actually resides or personally work for gain.

### **C) Criminal proceedings against the infringement of copyright**

If the owner of copyright believes that a broadcaster has knowingly infringed his rights, he can also apply for initiation of criminal proceedings against him. This forum can be invoked when the accused is allegedly involved in unauthorised reproduction of work. He can lodge an application at police station in whose limit such infringement takes place. The police, upon receipt such application, shall register First Information Report (FIR) against the accused.

### **Investigation of the case by police**

On registration of FIR police starts investigation into the matter. In copyright as well as general criminal laws any police officer not below the rank of sub-inspector has authority to investigate into the matter. He can arrest the persons involved in such infringement. He can arrest the person allegedly involved in such offences without warrant of arrest, as the offences under copyright laws are cognizable.

### **Collection of evidence**

The police officer shall seize all equipment that is used for such unauthorized reproduction along with infringed copies of the work. He can do this only on the basis of application of the copyright owner because copyright law authorizes him to do so without any warrant in this respect. The seized equipment shall be produced to the court during the trial as an evidence of infringement of copyright.

### **Cognizance of offence by court**

The police officer shall investigate the case and submit his investigation report to the court. This report is called as 'challan'. Under copyright laws a Magistrate of first class has jurisdiction to try the offence. The investigation officer shall produce the persons arrested before the court and submit all seized equipment as well as infringed copies as well.

On other hand, if the accused absconds or conceals himself from the police the investigation officer can apply to the court for his proclamation order. This is written order of the court in which it requires the absconder to appear in the court or at any other specified place and specified time. If he does not appears at the day and time specified the court can attach his moveable and immovable property. If he appears on such day and time or police succeeded in arresting him he will be produced before the court. The court can either send him to jail on judicial remand or hand him over to police on physical remand for investigation.

### **Trial of the case**

After the investigations have been completed and report has been submitted the Court will decide to initiate the proceedings of the case. The trial of criminal case means the proceeding, which commences when the case is called on with the Judge on the bench, accused in the dock, and the representatives of the prosecution and defence present in the court for hearing of the case. It has different stages, which include the framing of charge, collection of evidence and examination of witnesses and, arguments and judgment.

The accused has a right to be defended by the pleader at the time the proceedings are actually going on. If the accused is in the custody of the police he should have reasonable opportunity of getting into communication with his legal advisor for the purpose of preparing his defence. The accused should also be given access to legal advice even while he is in police custody. Prior to the initiation of formal trial, the accused shall be provided with all relevant documents including copy of the complaint and statement of complainant and witnesses if any.

### **Framing of charge**

When the accused appears or is brought before the Court, the Judge frames a charge in writing against him. A 'charge' is a full notice of particulars of the offence, in a clear statement, to the accused, which he is charged with. In response to the charge, the accused either pleads guilty or not guilty. For example, in cases under copyright laws, the charge may include that whether the accused has been involved in reproducing any work without authorization of its owner.

### **The court shall:**

- read and explain the charge framed to the accused; and
- ask he whether he pleads guilty or he has any defence to make.

If the accused pleads 'guilty' and accept the charges, the Judge can decide the case and convict him on the basis of such guilty pleading. If the accused pleads 'not guilty' the Court is bound to proceed to try the case.

### **Examination of witnesses**

If the accused does not make any admission at the time of charge, the court shall ask the prosecution to produce all evidences in support the case. It is the duty of the prosecution to call all those witnesses, commonly known as prosecution witnesses, who can assist in proving the allegations against the accused.

### **The court:**

- may issue summons to any witness directing him to attend the court or produce required documents;
- shall record the statement of witnesses and read it to the accused;
- shall provide copies of the statements to the accused.

The evidence of prosecution will be closed with the statement of prosecution to close its evidence.

After the closing of prosecution evidence the court shall ask the accused that whether he wants to give statement on oath and to produce evidence in his defence. If the accused answers in affirmation, the court shall hear the accused and take all such evidence as he produces in his defence. The court is bound to examine all defence witnesses produced by the accused. The evidence of defence will be closed with the statement of defence to close the evidence.

After recording of prosecution and defence evidence, the court shall proceed further to examine the witnesses. The party that calls the witness will first examine him; this is called Examination-in-chief or direct examination. After the examination-in-chief the opposite party will examined him. This examination is called Cross-examination. Lastly, he may be re-examined by the party who called him to clear some ambiguity.

### **Arguments and pronouncement of judgment**

After the examination of witnesses and collection of the evidence, the Court gives an opportunity to the representatives of both prosecution and accused to argue on behalf of their respective sides. After hearing the councils of both prosecution and accused, the court can pronounce the judgment on same day.



### **Criminal penalties**

If the court finds accused to be in violation of provisions of copyright laws it can impose fine as well as imprisonment upon the accused.

### **Imprisonment and fine**

The Court can punish the person guilty of defamation with imprisonment for up to three years depending upon the nature of offence. Court can also impose fine up to one hundred thousand rupees. The Court can impose both imprisonment and fine simultaneously.

On imposition of such imprisonment the accused shall be sent to jail if he is in custody of police. If he is not in custody of police, his warrant of arrest shall be issued. If police fails to arrest him, court can issue orders of his proclamation and his property can be attached.

### **Appeal and revision**

In copyright laws the parties can file an appeal with Court of Sessions against the decision of Judicial Magistrate. The parties interested in filing the appeal should file it within thirty days of making of orders of trial court.

During the proceedings of the case, if accused feels that there is some irregularity in the proceedings of the case or finding, sentence or order of the Trial Court is illegal or improper, he can move next higher court to enquire into the matter in order to satisfy itself as to the regularity of any such proceedings. This move is called "revision petition." The Court of Sessions can suo moto invoke its power of revision.

## **Chapter 4**

### **Broadcasters' copyrights and their infringements**

The broadcaster, who produces any program for broadcasting, owns its whole rights including right to rebroadcast it. He can transfer his rights to rebroadcast the program. There are different modes of transferring the rights, which include assignment, licence and sale. The owner of the program can enter into agreement with another party for its joint broadcast.

#### **Assignment of copyrights**

In legal terms, assignment is a transfer of rights or property or any interest in property from one person to another. A broadcaster, who owns a broadcasting program, can transfer whole program or its broadcasting rights to others. There are few types of assignment.

- Absolute assignment. Where the assignment involves complete of transfer rights in a program. This assignment gives absolute rights to assignee to use the program. Assignee is a person to whom rights have been transferred. The broadcaster (assignee) can broadcast it in any manner and at any time he likes. Furthermore, he can use all or some parts of the program.
- Partial assignment. This signifies the kind of assignment that involves limited transfer of rights to the assignee. The assignor transfers few of his rights through partial assignment. For example, the assignor can transfer only right to broadcast the program to assignee.
- General assignment. This is where the assignment does not specify manner of using the program. The assignee can utilize the program in a manner he wants to. For example, a broadcaster who gets rights of a program without any specification of time for its broadcasting can broadcast it at any time during transmission.
- Specific assignment. Where the assignor specifies the manner of broadcasting the program through assignment. The assignee has no option but broadcast the program while observing the directions of assignor. For

example, if assignor mentions that assignee will broadcast the program at prime time or at any other specific time, the assignee is under obligation to broadcast at the time specified.

Under copyright laws an assignment can be made for maximum period of ten years. The period of ten years begins from the calendar year following the year in which the assignment is made. For example, an assignment made in March 2004 shall expire in December 2014 as the assignment period starts from January 2005. After expiry of such period, the right will revert back to its owner. In addition to assignment of rights in an existing work the owner of copyright can also assign his rights in a future work. But the assignment in a future work takes place only when the work comes into existence.

### **Validity of assignment and amending its terms and conditions**

The copyright laws require the assignor to make the assignment in writing and duly sign it. Otherwise the assignment shall not be considered as valid. The assignee can file an application to copyright board to reconsider the terms and conditions of the assignment if he feels his interests would be adversely affected by these. The application can be filed within the period of one year of entering into effect of such assignment. After hearing both the assignee and the assignor, the board can pass any order, which shall be binding on both the parties.

### **Licensing a copyright**

A license is a legal document granting permission to some one to do something. The person who grants such permission is called 'licensor' and to whom the permission is granted is a 'licensee.' The owner of the copyright can grant any interest in the copyright through license to another person. Where a broadcaster is the owner of copyrights of a program, he can grant a license to another broadcaster or person to broadcast or rebroadcast the same. The license can be for broadcasting of whole program or any part of it. In addition, a broadcaster who has developed broadcasting software can license other

broadcasters to use the same. All licenses should be in writing, duly signed and dated by the licensor.

License is not an absolute permission to do everything. The licensee is observed in accordance with the terms and condition of any given license. The licenses are granted for a specific time and purpose. The licensor can suspend, cancel or revoke the license at any time. Where the licensor is broadcaster and he suspends, cancels or revokes the license, the licensee, who can also be a broadcaster, can invoke jurisdictions of courts to redress his grievances.

Where a broadcaster wants to use a work that has already been performed in public, he has to file an application with copyright board for license to this effect. The board shall hold an enquiry and ask the owner of the right whether he has any objection in granting such a license. If there is no objection from the right owner the board shall grant license to the applicant keeping in view the public interest.

### **Mutual agreement**

A broadcaster produces a program or work or acquires the rights of a program through assignment, license or purchase, etc. If he is producer of a program, he owns its whole rights. He can make arrangements with another broadcaster to broadcast, use or reproduce it through mutual agreement. But if it is an acquired right, the holder of right can make agreement within the limits of right assigned, licensed or purchased. But if a broadcaster gets a right in a work to broadcast or use it only for his own broadcasting, it would be wrong to enter into agreement with a third broadcaster to further broadcast or use it.

### **Non-registered right**

Copyright laws do not require compulsory registration of rights. If an owner of a right does not get his right registered he still has all remedies available in the law if his right is infringed. In broadcast sector, the broadcaster becomes the owner of the program if he's producing and broadcasting that program. There is no need to register it with the copyright registrar. If some other broadcaster infringes his right the owner can approach

the registrar or copyright board, district judge and, where the infringement amounts to a criminal offence, to police as well.

### **Expiry of copyright period**

Copyrights subsist with the owner during his lifetime. After the death of owner, his rights transfer to his heirs. The copyrights remain with his heirs for fifty years after the death of actual owner. The heirs of the owners can transfer it to any body during this fifty-year period. In addition, where a broadcaster has produced a program and he dies before its broadcasting, the right would still remain with his heirs for the next fifty years. The fifty years shall start from next calendar year after the death of the owner or producer. If the production is result of joint efforts of two or more broadcasters the period of fifty years shall start from next calendar year after the death of producer/owner who dies last.

Where the work, whose author/owner is known, has not been broadcasted or published even after his death, such work shall fall into the public domain after fifty years of his death. On the other hand where the owner/author's identity is unknown the work shall fall into the public domain after fifty years of its creation.

Where government or an international organization is first owner of the copyright of a program, the right shall subsist with the government or the organization for fifty years after its first broadcasting or publication. After the expiry of ownership period of copyrights, the work shall fall into the public domain. At this stage, every one has a right to use the work keeping in view the best public interest.

### **What are the possible scenarios of copyright infringements?**

Use of a work without authorization of its owner amounts to infringement of his copyrights. Any act of:

- making or causing to make copies of any work for commercial purposes;
- broadcasting, re-broadcasting or causing to broadcast or re-broadcast program; or

- making or causing to make copies of such broadcasting;

without authorization of its rightful owner amounts to infringement of copyrights of its owner. Under copyright laws, copies of work made without authorization of copyright owner are called “infringed copies.”

If a broadcaster grants a license to another broadcaster to air some of his program, the agreement done to this effect would duly contain the manner and time of broadcasting the program. In this situation if the licensee broadcasts the program in the manner and time different to terms and conditions of the license, it will amount to infringement of copyrights.

In addition to above-mentioned cases of infringement of copyrights there are some other situations of copyrights infringement. These include:

- making infringed copies for sale or hire;
- selling or letting such infringed copies for hire;
- displaying infringed copies for purpose of trade;
- offering such copies for sale or hire;
- distributing such copies for the purpose of trade to such an extent as to affect prejudicially the owner of the copyright,
- exhibiting such copies in public for their trade; or
- importing infringed copies into Pakistan.

More importantly the attribution of false facts to the work also amounts to infringement of copyrights. For example, a broadcaster assigns his right of broadcasting a program to someone else. The actual title of program includes the name of owner of the program. While broadcasting, the assignee adds his own name or removes the name of his owner. This addition or deletion amounts to infringement of copyrights of the owner.



## **Chapter 5**

### **Ensuring copyrights in broadcasting**

The broadcaster must avoid the infringement of copyrights. He must give due credit to the owner or author of the work while using or broadcasting it. He must fulfil all legal requirements whenever he uses or broadcasts someone else's work. Following pages explain the manners for broadcasting or using work of others in the broadcasting.

#### **Fair dealing**

Fair dealing of a work is a precautionary measure in broadcasting others' work. Fair dealing of a literary work does not constitute infringement of copyright. If the owner alleges infringement of his copyrights and file a case in this regard against the broadcaster, the latter can take the plea of fair dealing in his defense. Fair dealing of a literary, dramatic or artistic work can constitute a defense if the person using it proves that he is using it for:

- research or private study;
- criticism or review;
- reporting as an event by broadcast.

A student using a broadcasted program for purpose of training, research or study is not infringing the right of the owner. Alternatively, a person is permitted to use a program for review or critique. In addition, the use of a program for reporting purposes is also permissible. The person using work in training, research, study or reporting must give due credit to its author or owner.

#### **Reproduction of work for legal purposes**

Reproduction of any literary, artistic or dramatic work without the express authorization of its owner is illegal. It does not constitute an infringement of copyrights in following circumstances.

- Where the reproduction is made for purpose of judicial proceedings or for purpose of a report of a judicial proceeding. For example, the court can ask for reproduction of copies of any work without the



permission of its owner(s) to make it part of record of the case. Such reproduction does not amount to infringement of copyrights. This can be done only when the court orders for such a reproduction.

- Where the work produced by a broadcaster is based on judgment or order of the court, tribunal, or other judicial authority or a matter published in official gazette or report of an address of political nature delivered at a public meeting, copyright does not subsist. Production and broadcasting of same judgment or order by another broadcaster does not amount to infringement of copyrights either.
- Where the reproduction of work is made in certified copies in accordance with any other law of the land, such reproduction shall not amount to infringement of copyright of the owner.

### **Legal modes to use or reproduce the work**

The copyright laws provide certain modes to the broadcasters to use or reproduce the work of other broadcasters, producer or programmers. These legally recognized manners include assignment, licensing, relinquishment, and purchasing of copyrights of a work.

### **Assignment of right**

The owner of the right can also transfer his right through assignment to another person. Through assignment a producer, singer or software developer can authorize others to use or reproduce his work. If a broadcaster is interested to use any work produced by someone else, he should get the copyrights of the work through assignment.

### **License to use**

The owner of copyright of any work can grant any interest in his copyrights through a license. A broadcaster having a license to broadcast or reproduce any work of another person has right to broadcast or reproduce it. The licensee has right to do only those things which license permits him to do. This right subsists with him till the owner revokes it.

### **Purchasing of copyrights**

The broadcaster can broadcast work of others after purchasing the rights from their owners, producers or developers. If he purchases the full rights of the work, he can use the work the way he may like to. On the other hand, it is illegal to use a right for commercial purpose that is purchased for personal use. For example, a genuine compact disc (CD) of song available in the market cannot be copied further for commercial purposes. The original CDs available in the market give the purchaser a right to use it for personal consumption only.

***Whether the broadcasting of genuine CD available in the market is permitted?***

It is illegal to use a pirated CD of songs, dramas, films, documentaries and computer software in broadcasting. Every one should use genuine compact disc of such work for personal as well commercial purposes. The genuine CDs of music available in the market are for domestic/personal consumption. It cannot be used for commercial/broadcasting purposes. If a broadcaster is interested in transmitting such music he should acquire rights to broadcast it. Most of the time, in Pakistan, local singers assign or sell their rights to companies. These companies produce CDs, audio and videocassettes of the songs. They have right to copy and sell them in the market. Some time the companies acquire whole right in the CD including further assignment of its rights. The broadcaster, in this situation, should contact the company for acquiring of broadcasting rights of the CD. If the singer transfers only marketing rights to the company the broadcaster has to contact the singer directly for broadcasting rights. The broadcasting of a music album available in the market can be used for personal listing. Same thing applies to computer software. It is not legal to copy or use it in broadcasting without acquiring its rights.

### **Relinquishment of copyright**

The copyright owner can relinquish his right in favor of any person. This is a permission by the owner to any other person to use his work of intellect. The copyright law requires the owner to give notice to the copyright registrar

if the relinquishment is in respect of a registered right. The broadcaster, who acquires the right as a result of such relinquishment, should also get a No Objection Certificate (NOC) from right owner. The broadcaster can produce such notice in the court if the owner or any other person initiates litigation against him with regard to such relinquished right.

### **Charity and educational purposes**

Where a broadcaster uses work of an artist or singer for some charitable, educational or purposes of public awareness it is not necessary to acquire the rights to broadcast it. For example, reproduction of lyrics of a song in a new song by students of a musical school or production house is not illegal. It is important here that such reproduction must be for the purpose of charity or education only. Unless the artist expressly prohibits the usage of his work for such purposes the user is permitted to use it.

### **Particulars of work to be mentioned**

Where a broadcaster broadcasts the production of others, he must keep in mind following things.

- He must mention/display name of the person who owns the copyright of the production.
- He must mention/display complete address of owner of copyright.
- He must mention/display a declaration of fact that the owner has authorized him to broadcast it.
- He must mention/display these elements prior to broadcasting of the programme.

Similarly, where the broadcaster is interested to use part or full production of someone's work in his program he must:

- mention the name and address of the person who owns it;
- mention a declaration of the fact that the owner has authorized him to use it in his production.

In case the broadcaster uses the production of others in his production, abovementioned particulars should be:

- displayed prior to telecasting of program if it is used in a television broadcasting;
- explained by DJ or announcer prior to its transmitting if the program is used in a radio broadcast.

If a broadcaster broadcasts or uses some work of others in this manner, it would not amount to infringement of copyrights. In addition, it can be used as a defense if the owner of right raises allegations or starts litigation against the broadcaster.

### **Royalty**

The consideration, which a broadcaster pays to the copyright owner in response to acquiring of broadcasting rights of certain item, is called royalty. If a broadcaster has to pay royalty to the right owner he must pay it within due dates and in manner agreed between both the parties. The copyright board has powers to determine the royalty. The board determines the royalty after taking into consideration prevailing standards of royalties. The copyright owner has a right to initiate a case against the broadcaster if he fails to or refuses to pay the royalty.



## **Conclusion**

An effort has been made through this guidebook to make a broadcaster or a journalist walk through the process of copyright litigation, knowing its pitfalls. The book does not aim at providing defenses to the broadcasters or telling them how to get away with the crime of copyright infringement. In fact, it is aimed at educating broadcasters about ways and means to avoid being caught on the wrong side of the copyright law. This knowledge is essential in view of the growing concerns and initiatives at the government level to curb violation of intellectual property rights in Pakistan.

Enforcement of copyright laws is a pre-requisite for an investment friendly climate. Foreign investors expect their intellectual property rights to be duly protected before they invest in any sector. This will however require a copyright friendly regime wherein people are aware of their copyrights, enforcement agencies proactively prosecute those who violate it, and the judiciary disposes of such cases expeditiously. There is a suggestion of establishing special intellectual property rights courts in Pakistan.

This guide will hopefully go a long way in creating public awareness on the issue, which has largely been ignored previously. The FM radio managers and broadcasters, private TV channels and cable operators, other media outlets and above all the genuine authors or creators, all are affected by the copyright violations. This book, however, is not a replacement of original laws on copyright, which have been annexed at the end of the book.



# **ANNEXURE**

1. The copyright ordinance, 1962
2. The amending copyright ordinance 2000
3. Agreement on trade-related aspects of intellectual property rights
4. Application form





## **The Copyright ordinance, 1962 ordinance No. XXXIV of 1962**

An Ordinance to amend and consolidate the law relating to copyright.

### **1. Short title, extend and commencement**

- (1) This Ordinance may be called the Copyright Ordinance, 1962.
- (2) It extends to the whole of Pakistan.
- (3) It shall come into force on such date as the Federal Government may, by notification in the official Gazette, appoint.

### **2. Definitions.** In this Ordinance, unless there is any thing repugnant in the subject or context:-

#### (a) "adaptation" means:-

- (i) in relation to a dramatic work, the conversion of the work into a non-dramatic work;
- (ii) in relation to a literary work or an artistic work, the conversion of the work into a dramatic work by way of performance in public or otherwise.
- (iii) in relation to a literary or dramatic work, any abridgment of the work or any version of the work in which the story or action is conveyed wholly or mainly by means of pictures in a form suitable for reproduction in a book, or in a newspaper, magazine or similar periodical; and
- (iv) in relation to a musical work, any arrangement or transcription of the work;
- (b) "architectural work of art" means any building or structure having an artistic character or design, or any model for such building or structure;

#### (c) "artistic" work' means:-

- (i) a painting, a sculpture, a drawing (including a diagram, map, chart or plan), an engraving or a photograph, whether or not any such work possess artistic quality;
- (ii) an architectural work of art; and
- (iii) any other work or artistic craftsmanship;

- (ca) "audio-visual work" means a work which consists of a series of related images which are intrinsically intended to be shown by the use of a machine or device, such as a projector, viewer or electronic equipment, together with accompanying sound, if any, regardless of the nature of the material object, such as film or tape, in which the work is embodied;";
- (d) "author" means:-
- (i) in relation to a literary or dramatic work, the author of the work;
  - (ii) in relation to a musical work, the composer;
  - (iii) in relation to an artistic work other than a photograph, the artist;
  - (iv) in relation to a photograph, the person taking the photograph;
  - (v) in relation to a cinematographic work, the owner of the work at the time of its completion; and
  - (vi) in relation to a record the owner of the original plate from which the record is made, at the time of the making of the plate;
- (e) "Board" means the Copyright Board constituted under section 45;
- (f) "book" includes every volume, or division of a volume, and pamphlet, in any language, and every sheet of music, map, chart or plan, separately printed or lithographed, but does not include a periodical or newspaper;
- (g) "calendar year" means the year commencing on the first day of January;
- (h) "cinematographic work" means any sequence of visual images including video films of every kind, recorded on material of any description (whether translucent or not), whether silent or accompanied by sound, which, if shown (played back, exhibited) conveys the sensation of motion;
- (ha) "copy" includes any material object in which a work is fixed by any method and from which the work can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device;

- (hb) "counterfeit copy" means a copy which is an imitation of another copy and appears to be, but is not, genuine;"
- (i) "delivery" in relation to a lecture, includes delivery by means of any mechanical instrument or by broadcast or telecast;
- (j) "dramatic work" includes any piece for recitation, choreographic work or entertainment in dumb show, the scenic arrangement or acting form of which is fixed in writing or otherwise but does not include a cinematographic work;
- (k) "engravings" include" etchings, lithographs, woodcuts, prints and other similar works, not being photographs;
- (l) "exclusive license" means a licence which confers on the licensee or on the licensee and persons authorized by him, to the exclusion of all other persons (including the owner of the copyright), any right comprised in the copyright in a work and "exclusive licensee" shall be construed accordingly;
- (m) "Government work" means a work which is made or published by or under the direction or control of:-
- (i) the Government or any department of the Government; or
- (ii) any court, tribunal or other judicial or legislative authority in Pakistan;
- (n) "infringing copy" means,-
- (i) in relation to a literary, dramatic or artistic work, a reproduction thereof otherwise than in the form of a cinematographic work;
- (ii) in relation to cinematographic work, a copy of the work or a record embodying the recording in any part of the sound track associated with the film;
- (iii) in relation to a record, any record, embodying the same recording; and
- (iv) in relation to a programme in which a broadcast reproduction right subsists under section 24, a record recording the programme:
- if such reproduction, copy or record is made or imported in contravention of any of the provision of this Ordinance;

- (o) "lecture" includes address, speech and sermon;
- (p) "literary work" includes works on humanity, religion, social and physical sciences, tables "compilations and computer programmes, that is to say programmes recorded on any disc, tape, perforated media or other information storage device, which, if fed into or located in a computer or computer-based equipment is capable of reproducing any information"
- (q) "manuscript" means the original document embodying the work, whether written by hand or not;
- (r) "musical work" means any combination of melody and harmony or either or them, printed, reduced to writing or otherwise graphically produced or reproduced;
- (s) "newspapers" means any printed periodical work containing public news or comments on public news published in conformity with the provisions of sections 5, 6, 7 and 8 of the Press and Publication Ordinance, 1960;
- (t) "Pakistani work" means a literary, dramatic musical or artistic work, the author of which is citizen of Pakistan and includes a cinematographic work or record made or manufactured in Pakistan;
- (u) "performance" includes any mode of visual or acoustic presentation, including any such presentation by the exhibition of a cinematographic work, or by means of broadcast or by the use of a record, or by any other means and, in relation to a lecture, includes the delivery of such lecture;
- (v) "performing rights society" means a society, association or other body, whether incorporated or not, which carries on in Pakistan the business of issuing or granting licences for the performance in Pakistan of any works in which copyright subsists;
- (va) "periodical" includes a publication with distinctive title intended to appear in successive numbers or in parts at regular or irregular intervals and, as a rule, for an indefinite time, each part generally containing articles by several contributors;";

- (w) "photograph" includes photo-lithograph and any work produced by any process analogous to photography but does not include any part of a cinematographic work;
- (x) "plate" includes any stereotype or other plate, stone, block, mould, matrix, transfer, negative, tape, wire, optical film, or other device used or intended to be used for printing or reproducing copies of any work, and any matrix or other appliances by which records for the accoustic presentation of the work are or are intended to be made;
- (y) "prescribed" means prescribed by rules made under the Ordinance;
- (z) "public libraries" means the national library of Pakistan, Islamabad, and such other libraries as may be so declared by the Federal Government by notification in the official Gazette;
- (za) "radio diffusion" includes communication to the public by any means of wireless diffusion whether in the form of sounds or visual images or both;
- (zb) "record" means any disc, tape, wire, perforated roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound track associated with a cinematographic work;
- (zc) "recording" means the aggregate of the sounds embodied in and capable of being reproduced by means of a record;
- (zd) "reproduction" in the case by a literary, dramatic or musical work, includes a reproduction in the form of a record or of a cinematographic work, and, in the case of an artistic work, includes a version produced by converting the work into a three-dimensional form, or if it is in three dimensions, by converting it into a two dimensional form and references to reproducing a work shall be construed accordingly;
- (ze) "Registrar" means the Registrar of Copyrights appointed under section 44 and includes a Deputy Registrar of Copyrights when discharging any function of the Registrar;
- (zf) "work" means any of the following works, namely:-

- (i) a literary, dramatic, musical or artistic work;
- (ii) a cinematographic work;
- (iii) a record;
- (zg) "work of joint authorship" means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other authors; and
- (zh) "work of sculpture" includes casts and models.

### **3. Meaning of copyright.**

1. For the purpose of this Ordinance, "copyright" means the exclusive right, by virtue of, and subject to, the provisions of this Ordinance:-
  - (a) in the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely:-
    - (i) to reproduce the work in any material form;
    - (ii) to publish the work;
    - (iii) to perform the work in public;
    - (iv) to produce, reproduce, perform or publish any translation of the work;
    - (v) to use the mark in a cinematographic work or make a record in respect of the work;
    - (vi) to broadcast the work, or to communicate the broadcast of the work to the public by a loudspeaker or any other similar instrument;
    - (vii) to make any adaptation of the work;
    - (viii) to do in relation to translation or an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (vi);
  - (b) in the case of an artistic work, to do or authorize the doing of any of the following acts, namely:-
    - (i) to reproduce the work in any material form;
    - (ii) to publish the work;
    - (iii) to use the work in a cinematographic work;
    - (iv) to show the work in television;
    - (v) to make any adaptation of the work;

- (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);
- (c) in the case of a cinematographic work, to do or authorize the doing of any of the following acts, namely:-
  - (i) to make copy of the work;
  - (ii) to cause the work in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
  - (iii) to make any record embodying the recording in any part of the sound track associated with the work by utilising such sound track;
  - (iv) to broadcast the work;
- (d) in the case of a record, to do or authorize the doing of any of the following acts by utilizing the record, namely:-
  - (i) to make any other record embodying the same recording;
  - (ii) to use the recording in the sound track of a cinematographic work;
  - (iii) to cause the recording embodied in the record to be heard in the public;
  - (iv) to communicate the recording embodied in the record by broadcast.
- (2) Any reference in sub-section(1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a part thereof.

#### **4. Meaning of publication.**

1. For the purposes of this Ordinance, "publication" means:-
  - (a) in the case of a literary, dramatic, musical or artistic work, the issue of copies of the work to the public in sufficient quantities;
  - (b) in the case of cinematographic work, the sale or hire or offer for sale or hire of the work or copies thereof to the public;
  - (c) in the case of a record, the issue of records to the public in sufficient quantities;
 but does not, except as otherwise expressly provided in this Ordinance, include:-
  - (i) in the case of a literary, dramatic or musical work the issue of any records recording such work;



- (ii) in the case of work of sculpture or an architectural work of art, the issue of photographs and engravings of such work.
- 2. If any question arises under sub-section (1) whether copies of any literary, dramatic, musical or artistic work, or records issued to the public are sufficient in quantities, it shall be referred to the Board whose decision thereon shall be final.

**5. When work not deemed to be published or performed in public.**

Except for the purposes of infringement of copyright, a work shall not be deemed to be published or performed in public, and a lecture shall not be deemed to be delivered in public, if published, performed in public or delivered in public, without the licence or consent of the owner of the copyright.

**6. When work deemed to be first published in Pakistan.**

- 1. For the purposes of this Ordinance, a work published in Pakistan, shall be deemed to be first published in Pakistan, notwithstanding that it has been published simultaneously in some other country, unless such other country provides a shorter term of copyright for such work and a work shall be deemed to be published simultaneously in Pakistan and in another country if the time between the publication in Pakistan and the publication in such other country does not exceed thirty days.
- 2. If any question arises under sub-section (1) whether the term of copyright for any work is shorter in any other country than that provided in respect of that work under this Ordinance, it shall be referred to the Board whose decision thereon shall be final.

- 7. **Nationality of author where the making of unpublished work is extended over considerable period.** Where in the case of an unpublished work, the making of the work is extended over a considerable period, the author of the work shall for the purposes of this Ordinance, be deemed to be a citizen of, or domiciled in, the country of which he was a citizen or wherein he was domiciled during the major part of that period.

**8. Domicile of corporation.**

For the purposes of this Ordinance a body corporate shall be deemed to be domiciled in Pakistan if it is incorporated under any law in force in Pakistan or if it has an established place of business in Pakistan.

**CHAPTER II**

**COPYRIGHT, OWNERSHIP OF COPYRIGHT AND  
THE RIGHTS OF THE OWNER**

**9. No copyright except as provided in this ordinance.**

No person shall be entitled to copyright or any right in any work, whether published or unpublished, otherwise than under and in accordance with the provision of this Ordinance, or of any other law for the time being in force, but nothing in this section shall be construed as abrogating any right or jurisdiction to restrain a breach of trust or confidence.

**10. Works in which copyright subsists**

(I) Subject to the provisions of this section and to the other provisions of this Ordinance, copyright shall subsist throughout Pakistan in the following classes of works that is to say:-

- (a) original, literary, dramatic, musical and artistic works;
- (b) cinematographic works ; and
- (c) records.

(2) Copyright shall not subsist in any work specified in subsection

(1) other than a work to which the provisions of section 53 or section 54 apply, unless:-

- (i) in the case of a published work, the work is first published in Pakistan, or where the work is first published outside Pakistan, the author is at the date of such publication, or in a case where the author was dead at that date, was at the time of his death, a citizen of Pakistan or domiciled in Pakistan;
- (ii) in the case of an unpublished work other than an architectural work of art, the author is at the date of the making of the work a citizen of Pakistan or domiciled in Pakistan; and
- (iii) in the case of an architectural work of art, the work is located in Pakistan.

- (2A) Copyright shall not subsist in any work referred to in sub-section (2) as respects its reprint, translation, adaptation or publication, by or under the authority of the Federal Government as text-book for the purposes of teaching, study or research in educational institutions.
- (3) Copyright shall not subsist:-
- (a) in any cinematographic work, if a substantial part of the work is an infringement of the copyright in any other work;
  - (b) in any record made in respect of a literary, dramatic or musical work, if, in making the record, copyright in such work has been infringed.
  - (4) The copyright or the lack of copyright in a cinematographic work or a record shall not affect the separate copyright in any work in respect of which or a substantial part of which, the work, or as the case may be, the record is made.
  - (5) In the case of an architectural work of art, copyright shall subsist only in the artistic character and design and shall not extend to the process or methods of construction.

**11. Work of joint author.** Where, in the case of a work of joint authorship, some one or more of the joint authors do not satisfy the conditions conferring copyright laid down by this Ordinance, the work shall be treated for the purposes of this Ordinance as if the other author or authors had been the sole author or authors thereof:

Provided that the term of the copyright shall be the same as it would have been if all the authors had satisfied such conditions.

**12. Provision as to designs registrable under Act II of 1911.**

- (1) Copyright shall not subsist under this Ordinance in any design which is registered under the Patents and Designs Act, 1911,
- (2) Copyright in any design which is capable of being registered under the Patents and Designs Act, 1911, but which has not been so registered, shall cease as soon as any article to which the design has been applied has been reproduced more than fifty times by an industrial process by the owner of the copyright or, with his license, by any other person.

**13. First owners of copyright.** Subject to the provisions of this Ordinance, the author of a work shall be the first owner of the copyright therein:

**Provided that:-**

- (a) in the case of a literary, dramatic or artistic work made by the author in the course of his employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, for the purpose of publication in a newspaper, magazine or similar periodical, the said proprietor shall, in the absence of any agreement to the contrary, be the first owner of the copyright in the work in so far as the copyright relates to the publication of the work in any newspaper, magazine or similar periodical, or to the reproduction of the work for the purpose of its being so published, but in all other respects the author shall be the first owner of the copyright in the work;
- (b) subject to the provisions of clause (a), in the case of a photograph taken, or a painting or portrait drawn, or an engraving or a cinematographic work made, for valuable consideration at the instance of any person, such person shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (c) in the case of a work made in the course of the author's employment under a contract of service or apprenticeship, to which clause (a) or clause (b) does not apply, the employer shall, in the absence of any agreement to the contrary be the first owner of the copyright therein;
- (d) in the case of a Government work, Government shall, in the absence of any agreement to the contrary, be the first owner of the copyright therein;
- (e) in the case of a work to which the provisions of section 53 apply, the international organization concerned shall be the first owner of the copyright therein.

**14. Assignment of copyright.**

- (1) The owner of the copyright in an existing work or the prospective owner of the copyright in a future work may assign to any person the copyright either wholly or partially and either generally or subject to limitations and either for the whole term of the copyright or any part thereof:

Provided that, in the case of the assignment of copyright in any future work, the assignment shall take effect only when the work comes into existence:

Provided further that, where the owner of the copyright in a work is the author of the work, no assignment of the copyright in the work or of any interest in such copyright shall be made, or if made shall be effective (except where the assignment is made in favour of Government or an educational, charitable, religious or non-profit institution) for a period of more than ten years beginning from the calendar year next following the year in which the assignment is made ; if an assignment of the copyright in a work is made in contravention of this proviso, the copyright in the work shall, on the expiry of the period specified in this proviso, revert to the author (who may re-assign the copyright in the work subject to the provisions herein contained), or if the author be dead to his representatives in interest.

Provided further that the copyright in an unpublished work assigned by its author to any person or organization for the specific purpose of its publication shall revert to the author if such work is not published within a period of three years from the date of its assignment."; and

- (2) Where the assignee of a copyright becomes entitled to any right comprised in the copyright, the assignee as respects the rights so assigned, and the assignor as respects the rights not assigned, shall be treated for the purposes of this Ordinance as the owner of copyright and the provisions of this Ordinance shall have effect accordingly.
- (2A) If the owner of a copyright or the publisher, or the publisher to whom such right has been assigned, considers any of the terms of the assignment to be likely to affect his interests adversely, he may within one year of such assignment apply to the Board to consider such term and the Board may, after hearing both the parties, pass such order as it may deem fit; and the order of the Board shall be binding on both the parties.

(3) In this section, the expression "assignee" as respects the assignment of the copyright in any future work includes the legal representatives of the assignee, if the assignee dies before the work comes into existence.

**15. Mode of assignment.** No assignment of the copyright in any work shall be valid unless it is in writing signed by the assignor or by his duly authorized.

**16. Transmission of copyright in manuscript by testamentary disposition.**

Where under a bequest a person is entailed to the manuscript of a literary, dramatic or musical work, or to an artistic work, and the work was not published before the death of the testator, the bequest shall, unless the contrary intention is indicated in the testator's will or any codicil thereto, to be construed as including the copyright in the work in so far as the testator was the owner of the copyright immediately before his death.

**17. Right of owner to relinquish copyright.**

- (1) The owner of the copyright in a work may relinquish all or any of the rights comprised in copyright by given notice in the prescribed form to the Registrar and thereupon such rights shall, subject to the provisions of sub-section (3), cease to exist from the date of the notice.
- (2) On receipt of a notice under sub-section (1), the Registrar shall cause it to be published in the official Gazette and in such other manner as he may deem fit.
- (3) The relinquishment of all or any of the rights comprised in the copyright in a work shall not affect any rights subsisting in favour of any person on the date of the notice referred to in subsection (1).

### **CHAPTER III**

#### **TERM OF COPYRIGHT**

**18. Term of copyright in published literary, dramatic, musical and artistic works.** Except as otherwise hereinafter provided, copyright shall subsist in any literary, dramatic, musical or artistic work (other than a photograph) published within the life time of the author until fifty years from the beginning of the calendar year next following the year in which the author dies.

Explanation. In this section, the reference to the author shall, in the case of a work of joint authorship, be construed as a reference to the author who dies last.

**19. Term of copyright in posthumous work.**

- (1) In the case of a literary, dramatic or musical work or an engraving, in which copyright subsists at the date of the death of the author or in the case of any such work of joint authorship, at or immediately before the date of the death of the author who dies last, but which or any adaptation of which, had not been published before that date, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published or . where an adaptation of the work is published in any earlier year, from the beginning of the calendar year next following that year.
- (2) For the purposes of this section. a literary, dramatic or musical work or an adaptation of any such work shall be deemed to have been published, if it has been performed in public or if any records made in respect of the work have been sold, or offered for sale, to the public.

**20. Term of copyright in cinematographic works, records and photographs.**

- (1) In the case of a cinematographic work, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is published.
- (2) In the case of a record, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the record is published.
- (3) In the case of a photograph, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the photograph is published.

**21. Term of copyright in anonymous and pseudonymous work.**

- (1) In the case of a literary, dramatic, musical or artistic work (other than a photograph), which is published anonymously or pseudonymously copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published:

Provided that where the identity of the author is disclosed before the expiry of the said period, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the author dies.

- (2) In sub-section (1), references to the author shall, in the case of an anonymous work of joint authorship, be construed:-
  - (a) where the identity of one of the authors is disclosed as references to that author;
  - (b) where the identity of more authors than one is disclosed, as references to the author who dies last from amongst such authors.
- (3) In sub-section (1), references to the author shall, in the case of a pseudonymous work of joint authorship, be construed:-
  - (a) where the names of one or more (but not all) of the authors are pseudonyms and his or their identity is not disclosed, as references to the author whose name is not a pseudonym, or, of the names of two or more of the author are not pseudonyms, as references to such one of those authors who dies last;
  - (b) where the names of one or more (but not all) of the authors are pseudonyms and the identity of one or more of them is disclosed, as references to the author who dies last from amongst the authors whose names are not pseudonyms and the authors whose names are pseudonyms and are disclosed ; and
  - (c) where the names of all the authors are pseudonyms and the identity of one of them is disclosed, as references to the author whose identity is disclosed or, if the identity of two or more of such authors is disclosed, as references to such one of those authors who dies last.

Explanation. For the propose of this section, the identity of an author shall be deemed to have been disclosed, if either the identity of the author is disclosed publicly by both the author and the publisher or is otherwise established to the satisfaction of the Board but that author.

**22. Term of copyright in Government works and in works of international organizations.**



- (1) Copyright in a Government work shall, where Government is the first owner of the copyright therein, subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.
- (2) In the case of a work of an international organization to which the provisions of section 53 apply, copyright shall subsist until fifty years from the beginning of the calendar year next following the year in which the work is first published.

**23. Term of copyright in unpublished work.**

- (1) If a work, whose author's identity is known, is not published posthumously within fifty years after the death of the author, such work shall fall into the public domain after fifty years from the beginning of the calendar years next following the year in which the author dies.
- (2) If a work, whose author's identity is not known, is not published within fifty years of its creation, such work shall fall into the public domain after fifty years from the beginning of the calendar year next following the year in which the work is created.

**CHAPTER IV**

**RIGHTS OF BROADCASTING ORGANIZATIONS**

**24. Rights of broadcasting organizations.**

- (1) Broadcasting organizations shall enjoy the right to authorize:-
  - (a) the rebroadcasting of their broadcasts;
  - (b) the fixation of their broadcasts; and
  - (c) the copying of fixations made of their broadcasts.
- (2) This right shall subsist until twenty-five years from the beginning of the calendar year next following the years in which the broadcast took place.

**25. Application of other provisions of this ordinance to broadcasts.** Any person who, without the authorization of the broadcasting organization, does or causes the doing of any of the acts referred to in section 24 shall be deemed to infringe the rights of the broadcasting organization, and the provisions contained in Chapter XII to XVI shall, within the limits permitted by the nature of the matter, apply to broadcasting organization and broadcasts as if they were authors and works, respectively.

**26. Definitions.**

- (a) "Broadcast" means communication to the public by any means of radio-diffusion, including communication by telecast, or by wire, or by both, and "broadcasting" shall be construed according."
- (b) "Rebroadcasting" means the simultaneous broadcasting by one broadcasting organization of the broadcast of author broadcasting organization.
- (c) "Fixation" means the incorporation of sounds or images or both in a device by means of which they can later be made aurally or visually perceivable.

**27. Other rights not affected.** For the removal of doubts, it is hereby declared that the rights conferred upon broadcasting organizations shall not affect the copyright in any literary, dramatic, musical, artistic or cinematographic work, or in any record used in the broadcast.

**CHAPTER V**

**RIGHTS IN PUBLISHED EDITIONS OF WORKS**

**28. Protection of typography and terms of protection.** The publisher of an edition of a work shall enjoy the right to authorize the making, by any photographic or similar process, of copies, intended for sale in commerce, of the typographical arrangement of the edition, and such right shall subsist until twenty-five years from the beginning of the calendar year next following the year in which the edition was first published.

**29. Infringement, etc.** Any person who, without the authorization of the publishers, makes or causes the making of, by any photographic or similar process, copies, intended for sale in commerce, of the typographical arrangement of the edition or any substantial part thereof, shall be deemed to infringe the rights of the publishers, and the provisions contained in Chapters XII to XVI shall, within the limits permitted by the nature of the matter, apply to the publisher and the typographical arrangements of editions as if they were authors and works respectively. Explanation. "Typographical arrangement" shall include calligraphy.

**30. Relations to copyright.** For the removal of doubts, it is hereby declared that the right conferred upon publishers by this Chapter shall:-

3. Amendment of section 30. Ordinance XXXIV of 1962.- In the said Ordinance, in section 30, after the words "declared that" the commas, words, brackets, figures and letter "subject to the provisions of sub-section (2A) of section 10," shall be inserted.

- (a) subsists irrespective of the question whether the edition is that of work protected or unprotected by copyright;
- (b) not affect the copyright, if any, in the literary, dramatic, musical or artistic work itself.

## **CHAPTER VI PERFORMING RIGHTS SOCIETIES**

### **31. Performing rights society to file statement of fees, charges and royalties.**

- (1) Every performing right society shall, within the prescribed time and in the prescribed manner, prepare, publish and file with the Registrar, statement of all fees, charges, royalties which is proposes to collect for the grant of licenses for the performance in public of works it respect of which it has authority to grant such licenses.
- (2) If any such society fails, in relation to any work, to prepare, publish or file with the Registrar the statements referred to in sub-sub-section (1) in accordance with the provisions of the sub-section, no action or other proceeding to enforce any remedy, civil or criminal, for infringement of the performing rights in that work shall be commenced except with the consent of the Registrar.

### **32. Objections relating to published statements.** Any person having any objections to any fees, charge or royalties or other particulars included in any statement referred to in section 31 may at any time lodge such objections in writing at the Copyright Office.

### **33. Determination of objections.**

- (1) Every objection lodged, at the Copyright Office under section 32 shall, as soon as may be, be referred to the Board and the Board shall decide such objection in the manner, hereinafter provided.
- (2) The Board shall notwithstanding that no objection has been lodged, take notice of any matter which, in its opinion, is one for objection.

- (3) The Board shall give notice in respect of every objections to the performing rights society concerned and shall give to such society and the person who lodged the objection a reasonable opportunity of being heard.
  - (4) The Board shall, after making the prescribed enquiry, make such alterations in the statements as it may think fit, and shall transmit the statements thus altered or unchanged, as the case may be, to the Registrar, who shall thereupon as soon as practicable after the receipt of such statements, publish them in the official Gazette and furnish the performing rights society concerned and the person who lodged the objection with a copy thereof.
  - (5) The statement of fees, charges or royalties as approved by the Board shall be the fees, charges or royalties which the performing rights society concerned may respectively lawfully sue for or collect in respect of the issue or grant by it of licenses for the performance in public of works to which such fees, charges or royalties relate.
  - (6) No performing rights society shall have any right of action or any right to enforce any civil or other remedy for infringement of the performing rights in any work claimed by such society against any person who has tendered or paid to such society the fees, charges or royalties which have been approved by the Board as aforesaid.
- 34. Existing rights not affected.** Nothing in this Chapter shall be deemed to affect:-
- (a) any rights or liabilities in relation to the performing rights in work accrued or incurred before the commencement of this Ordinance; and
  - (b) any legal proceedings in respect of such rights or liabilities pending at such commencement.

## **CHAPTER VII**

### **LICENSES**

- 35. Licenses by owners of copyright.** The owner of the copyright in any existing work or the prospective owner of the copyright in any future work may grant any interest in the copyright by license in writing signed by him or by his duly authorized agent:

Provided that in the case of a license relating to copyright in any future work, the license shall take effect only when the work comes into existence.

Explanation. When a person to whom a license relating to copyright in any future work is granted under this section dies before the work comes into existence, his legal representatives shall, in the absence of any provision to the contrary in the license, be entitled to the benefit of the license.

**36. Compulsory license in work withheld from public.**

- (1) If at any time during the term of copyright in any Pakistani work which has been published or performed in public, an application is made to the Board that the owner of the copyright in the work-
  - (a) has refused to republish or allow the republication of the work or has refused to allow the performance in public of the work and by reason of such refusal the work is withheld from the public; or
  - (b) has refused to allow communication to the public by broadcast of such work or, in the case of a record the work recorded in such record, on terms which the applicant considers reasonable. or
  - (c) is dead or is unknown or cannot be traced or found and republication of the work is necessary in the public interest; the Board, after giving to the owner of the copyright in the work a reasonable opportunity of being heard and after holding such inquiry as it may deem necessary, may, if it is satisfied that such refusal is not in the public interest, or that the grounds for such refusal are not reasonable, direct the Registrar to grant to the applicant a license to republish the work, perform the work in public or communicate the work to the public by radio-diffusion, as the case may be, subject to payment to the owner of the copyright of such compensation and subject to such other terms and conditions as the Board may determine; and thereupon the Registrar shall grant the license to the applicant in accordance with the direction of the Board, on payment of such fee as may be prescribed.
- (2) Where two or more persons have made applications under sub-section (1), the license shall be granted to the applicant who in the opinion of the Board, would best serve the interests of the general public.

**37. License to produce and publish translation.**

- (1) Any citizen of Pakistan or a person domiciled in Pakistan may apply to the Board for a license to produce and publish a translation of a literary or dramatic work in any Pakistani language or a language ordinarily used in Pakistan, not being English, French or Spanish
- (2) Every such application shall be made in such form as may be prescribed and shall state the proposed retail price of a copy of the translation of the work.
- (3) Every applicant for a license under this section shall, along with his application, deposit with the Registrar such fee as may be prescribed.
- (4) When an application is made to the Board under this section, it may, after holding such inquiry as may be prescribed, direct the Registrar to grant to the applicant a license, not being an exclusive license, to produce and publish a translation of the work in the language mentioned in the application, on condition that the applicant shall pay to the owner of the copyright in the work royalties in respect of copies of the translation of the work sold to the public, calculated at such rate as the Board may, in the circumstances of each case, determine in the prescribed manner;

Provided that no such license shall be granted, unless-

- (a) a translation of the work in the language mentioned in the application has not been published by the owner of the copyright in the work or any person authorized by him within one year of the first publication of the work, or if a translation has been so published, it has been out of print;
- (b) the applicant has proved to the satisfaction of the Board that he had requested and had been denied authorization by the owner of the copyright to produce and publish such translation or that he was unable to find the owner of the copyright;
- (c) where the applicant is unable to find the owner of the copyright he had sent a copy of his request for such authorization to the publisher whose name appears from the work not less than two months before the application for the license;

- (d) the Board is satisfied that the applicant is competent to produce and publish a correct translation of the work and possesses the means to pay to the owner of the copyright the royalties payable to him under section;
- (e) omitted
- (f) an opportunity of being heard is given wherever practicable to the owner of the copyright in the work;
- (g) the Board is satisfied, for reason to be recorded in writing, that the grant of the license will be in the public interest.

#### **CHAPTER VIII REGISTRATION OF COPYRIGHT**

##### **38. Register of copyrights, indexes form and inspection of register.**

- (1) The Registrar shall keep at the Copyright Office a register in the prescribed form to be called the Register of Copyrights in which shall be entered the names or titles of works and the names and addresses of authors, publishers and owners of copyright and such other particulars as may be prescribed.
- (2) The Registrar shall also keep such indexes of the Register of Copyrights as may be prescribed.
- (3) The Register of Copyright and the indexes thereof kept under this section shall at all reasonable times be open to inspection, and any person shall be entitled to take copies, of or make extracts from, any such register or index on payment of such fee and subject to such conditions as may be prescribed.

##### **39. Registration of copyrights.**

- (1) The author or publisher of, or the owner of or other person interested in the copyright in, any work may make an application in the prescribed form accompanied by the prescribed fee to the Registrar for entering particulars of the work in the Register of Copyrights.
- (2) On receipt of an application in respect of any work under subsection (1), the Registrar shall enter the particulars of the work in the Register of Copyrights and issue a certificate of such registration to the applicant unless, for reason to be recorded in writing, he considers that such entry should not be made in respect of any work.

**40. Registration of assignments, etc., of copyrights.**

- (1) Any person interested in the grant of an interest in a copyright, either by assignment or license may make an application in the prescribed form, accompanied by the prescribed fee, the original instrument of such grant and a certified copy thereof, to the Registrar for entering the particulars of the grant in the Register of Copyrights.
- (2) On receipt of an application in respect of any work under subsection (1), the Registrar shall, after holding such inquiry as he deems fit, enter the particulars of the grant in the Register of Copyrights unless, for reasons to be recorded in writing, he considers that such entry should not be made in respect of any grant.
- (3) The certified copy of the grant shall be retained at the Copyright Office and the original shall be returned to the person depositing it, with a certificate of registration endorsed thereon or affixed thereto.

**41. Correction of entries in the register of copyright and indexes, etc.**

- (1) The Registrar may in the prescribed cases and subject to the prescribed conditions, amend or alter the Register of Copyrights and the indexes by-
  - (a) correcting any error in any name, address or particular; or
  - (b) correcting any other error which may have arisen therein by accidental slip or omission.
- (2) The Board, on application of the Registrar or of any person aggrieved, may order the rectification of the Register of Copyrights by-
  - (a) the making of any entry wrongly omitted to be made in the Register, or
  - (b) the expunging of any entry wrongly made in or, remaining on, the Register, or
  - (c) the correction of any error or defect in the Register.

**42. Register of copyrights to be prima facie evidence of particulars entered therein**

- (1) The Register of Copyrights and the indexes shall be prima facie evidence of the particulars entered therein and documents purporting to be copies of any entry therein or extracts therefrom certified by the Registrar and sealed with the seal of the Copyright Office shall be admissible in evidence in all courts without further proof of production of the original.



- (2) A certificate of registration of copyright in a work shall be prima facie evidence that copyright subsists in the work and that the person shown in the certificate as the owner of the copyright is the owner of such copyright.

#### **CHAPTER IX**

#### **COPYRIGHT OFFICE, REGISTRAR OF COPYRIGHT AND COPYRIGHT BOARD**

##### **43. Copyright office.**

- (1) There shall be established for the purposes of this Ordinance an office to be called the Copyright Office.
- (2) The Copyright Office shall be under the immediate control of the Registrar of Copyrights who shall act under the superintendence and direction of the Central Government.
- (3) The Copyright Office shall have a seal the impression whereof shall be judicially noticed.

##### **43A.Branch of copyright office. -**

- (1) There shall be established for the purpose of facilitating the registration of copyrights, a Branch of the Copyright Office at such place in Pakistan as the Registrar may, with the approval of the Federal Government, determine.
- (2) The Branch Office shall discharge such functions of the Copyright Office as may be notified by the Registrar from time to time.

##### **44. Registrar and deputy registrars of copyrights.**

- (1) The Central Government shall, for the purposes of this Ordinance, appoint a Registrar of Copyrights and may appoint one or more Deputy Registrars of Copyrights.
- (2) The Registrar shall,-
  - (i) sign all entries made in the Register of Copyrights kept under this Ordinance;
  - (ii) sign all certificates of registration of copyrights and certified copies under the seal of the Copyright Office;
  - (iii) exercise the powers conferred and perform the duties imposed upon him by or under this Ordinance;

- (iv) be the Secretary of the Copyright Board; and
- (v) shall perform such other functions as may be prescribed.
- (3) A Deputy Registrar of Copyrights shall discharge, under the superintendence and direction of the Registrar, such functions of the Registrar under this Ordinance as the Registrar may, from time to time, assign to him.
- (4) The Registrar may, with the approval of the Federal Government, assign any particular functions of the Registrar under this Ordinance to officers other than the Deputy Registrar of Copyrights.

**45. Copyright board.**

- (1) The Central Government shall constitute a Board to be called the Copyright Board consisting of the following members, namely,-
  - (i) a Chairman appointed by the Central Government;
  - (ii) not less than three and not more than five other members appointed by the Central Government after consultation with the representative bodies of authors, publishers, cinematograph industry and any other interest relating to copyright:

Provided that adequate representation on the Board shall, as far as possible, be given to the resident of each Province; and

- (iii) the Registrar, ex-office.
- (2) The members, including the Chairman of the Board, other than the ex-officio member, shall hold office for such period and on such terms and conditions as may be prescribed.
- (3) The Chairman shall be a person who is, or has been a Judge of a High Court, or is qualified for appointment as such Judge.

**46. Powers and procedure of the board.**

- (1) The Board shall subject to any rules that may be made under this Ordinance, have power to regulate its own procedure including the fixing of places and times of its sittings.
- (2) If there is a difference of opinion among the members of the Board in respect of any matter coming before it for decision under this Ordinance, the opinion of the majority shall prevail:

Provided that where there is no such majority the opinion of the Chairman shall prevail.

- (3) The Board may authorize any of its members to exercise any of its powers under section 78 and any order made or act done in exercise of any such power by the member so authorized shall be deemed to be the order or act, as the case may be, of the Board.
- (4) No act done or proceeding taken by the Board under this Ordinance shall be questioned on the ground merely of the existence of any vacancy in, or defect in the constitution of the Board.
- (5) The Board shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898, and all proceedings before the Board shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of Pakistan Penal Code.
- (6) No member of the Board shall take part in any proceedings before the Board in respect of any matter in which he has a personal interest.

**CHAPTER X**  
**DELIVERY OF BOOKS AND NEWSPAPERS**  
**TO PUBLIC LIBRARIES**

**47. Delivery of books to public libraries.**

- (1) Subject to any rules that may be made under this Ordinance, but without prejudice to the provisions contained in section 40 of the Press and Publications Ordinance, 1960, the publisher of every book published in Pakistan after the commencement of this Ordinance shall, notwithstanding any agreement to the contrary, deliver at his own expense, one copy of the book to each of the "public libraries within thirty days from the date of its publication, and shall also furnish to it such particulars relating thereto as may be prescribed"
- (2) The copy delivered to the National Library of Pakistan, Islamabad shall be a copy of the whole book with all maps and illustrations belonging thereto finished and coloured in the same manner as the best copies of the same, and shall be bound, sewed or stitched together and on the best paper on which any copy of the book is printed.

- (3) The copy delivered to any other public library shall be on the paper on which the largest number of copies of the book is printed for sale, and shall be in the like condition as the books prepared for sale.
- (4) Nothing contained in sub-section (1), shall apply to any second or subsequent edition of a book in which edition no additions or alterations either in the letter press or in the maps, book prints or other engravings belonging to the book have been delivered under this section.

**48. Delivery of periodicals and newspapers to public libraries.-** Subject to any rules that may be made under this Ordinance, but without prejudice to the provisions contained in section 36 of the Registration of Printing Press and Publication Ordinance, 1989 (VII of 1989), the publisher of every periodical or newspaper published in Pakistan shall deliver, at his own expense, one copy of each issue or such periodical or newspaper as soon as it is published to each of the public libraries, and shall also furnish to it such particulars relating thereto as may be prescribed."

**49. Receipt for books, periodicals and newspapers delivered.** The person in-charge of a public library (whether called a librarian or by any other name) or any other person authorized by him in this behalf to whom a copy of a book, periodical or a newspaper is delivered under section 47 or Section 48, shall give to the publisher a receipt in writing thereto,

**50. Penalty.** Any publisher who contravenes any provision of this Chapter or any rule made thereunder shall be punishable with fine which may extend to five hundred rupees and if the contravention is in respect of a book or a periodical shall also be punishable with fine which shall be equivalent to the value of the book, or periodical and the Court trying the offense may direct that whole or any part of the fine realised from him shall be paid, by way of compensation, to the public library to which the book, periodical or newspaper, as the case may be, ought to have been delivered.

**51. Cognizance of offense under this chapter.**

- (1) No Court shall take cognizance of any offense punishable under this Chapter save no complaint made by an officer empowered in this behalf by the Central Government by a general or special order.

- (2) No Court inferior to that of a Magistrate of the first class shall try any offense punishable under this Chapter.

**52. Application of this chapter to books, periodicals and newspapers**

**published by government.** This Chapter shall also apply to books, periodicals and newspapers published by or under the authority of the Government, but shall not apply to books or periodicals meant for official use only.

**CHAPTER XI**

**INTERNATIONAL COPYRIGHT**

**53. Provisions as to works of certain international organizations.**

- (1) The Central Government may, by notification in the official Gazette, declare that this section shall apply to such organizations as may be specified therein of which one or more sovereign powers or the Government or Governments thereof are members.
- (2) Where;-
- (a) any work is made or first published by or under the direction or control of any organization to which this section applies; and
- (b) there would, apart from this section, be no copyright in the work in Pakistan at the time of the making or, as the case may be, of the first publication thereof; and
- (c) either;-
- (i) the work is published as aforesaid in pursuance of an agreement in that behalf with the author, being an agreement which does not reserve to the author the copyright, if any, in the work, or
- (ii) under section 13 any copyright in the work would belong to the organization, there shall subsist copyright in the work throughout Pakistan.
- (2A)Read with new sub-section
- (3) Any organization to which this section applies which at the material time had not the legal capacity of a body corporate shall have,
- (4) Amendment of section 53, Ordinance XXXIV of 1962.-In the said Ordinance, in section 53, in sub-section (2), after the word "Pakistan" at the end, the following shall be added, namely :-(Amended Act II of 1973)

"except as respects its reprint, translation adaptation or publication, by or under the authority of the Federal Government, as text-book for the purposes of teaching, study or research in educational institutions.

3. Any organization to which this section applies which at the material time had not the legal capacity of a body corporate shall have be deemed at all material times to have had, the legal capacity of a body corporate for the purpose of holding, dealing with, and enforcing copyright and in connection with all legal proceedings relating to copyright.

**54. Power to extend copyright to foreign works.**

- (1) The Central Government may, by order published in the official Gazette, direct that all or any of the provisions of this Ordinance shall apply;-
  - (a) to works first published in a foreign country to which the order relates in like manner as if they were first published within Pakistan;
  - (b) to unpublished works, or any class thereof, the authors whereof were at the time of making of the work, subjects or citizens of a foreign country to which the order relates, in like manner as if the authors were citizens of Pakistan;
  - (c) in respect of domicile in a foreign country to which the order relates in like manner as if such domicile were in Pakistan;
  - (d) to any work of which the author was at the date of the first publication thereof, or in a case where the author was dead at that date, was at the time of his death, a subject or citizen of a foreign country to which the order relates in like manner as if the author was a citizen of Pakistan at the date or time;and thereupon, subject to the provisions of this Chapter and of the order, this Ordinance shall apply accordingly:

Provided that:-

- (i) before making an order under this section in respect of any foreign country (other than a country with which Pakistan has entered into a treaty or which is a party to a convention relating to copyright to which Pakistan is also a party) the Central Government shall be satisfied that foreign country has made or has undertaken to make, such provisions, if any as it appears to the Central Government expedient to require for the

protection in that country of works entitled to copyright under the provisions of this Ordinance;

- (ii) the order may provide that the provisions of this Ordinance shall apply either generally or in relation to such classes of works or such classes of cases as may be specified in the order;
- (iii) the order may provide that the term of copyright in Pakistan shall not exceed that conferred by the law of the foreign country to which the order relates;
- (iv) the order may provide that the provisions of this Ordinance as to delivery of copies of books to public libraries shall not apply to works first published in such foreign country except so far as is provided by the order;
- (v) in applying the provisions of this Ordinance as to ownership of copyright the order may make such modification as appears necessary, having regard to the law of the foreign country;
- (vi) the order may provide that the provisions of this Ordinance or any part thereof shall not apply to works made, or first published before the commencement of the order.

## **CHAPTER XII**

### **INFRINGEMENT OF COPYRIGHT**

**56. When copyright infringed.** Copyright in a work shall be deemed to be infringed:-

- (a) when any person without the consent of the owner of the copyright or without a license granted by such owner or the Registrar under this Ordinance or in contravention of the conditions of a license so granted or of any condition imposed by a competent authority under this Ordinance;-
- (i) does anything the exclusive right to do which is by this Ordinance conferred upon the owner of the copyright; or
- (ii) permits for profit any place to be used for the performance of the work in public where such performance constitutes an infringement of the copyright in the work unless he was not aware and had no reasonable ground for suspecting, that such performance would be an infringement of copyright, or

- (b) when any person:-
  - (i) makes for sale or hire or sells or lets for hire, or by way of trade displays or offers for sale or hire, or
  - (ii) distributes either for the purpose of trade to such an extent as to affect prejudicially the owner of the copyright, or
  - (iii) by way of trade exhibits in public, or
  - (iv) imports into Pakistan any infringing copies of the work.

Explanation. For the purposes of this section, the reproduction of a literary, dramatic, musical or artistic work in the form of a cinematographic work shall be deemed to be an "infringing copy"

**57. Certain acts not to be infringement of copyright.**

- (1) The following acts shall not constitute an infringement of copyright, namely:-
  - (a) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of :-
    - (i) research or private study;
    - (ii) criticism or review, whether of that work or of any other work;
  - (b) a fair dealing with a literary, dramatic, musical or artistic work for the purpose of reporting current events:-
    - (i) in a newspaper, magazine or similar periodical, or
    - (ii) by broadcast or in a cinematographic work or by means of photographs;
  - (c) the reproduction of a literary, dramatic, musical or artistic work for the propose of a judicial proceeding or for the purpose of a report of a judicial proceeding;
  - (d) the publication in a newspaper of a report of an address of political nature delivered at a public meeting unless the report is prohibited by conspicuous written or printed notice affixed before and maintained during the lecture at or about the main entrance of the building in which the lecture is given and, except whilst the building is being used for public worship, in a position near the lecture; but nothing in his clause shall affect the provisions as to newspaper summaries;



- (e) the reproduction of any literary, dramatic, or musical work in the certified copy made or supplied in accordance with any law for the time being in force;
- (f) the reading or recitation in public of any reasonable extract from a published literary or dramatic work;
- (g) the publication in a collection, mainly composed of non-copyright matter, bona fide intended for the use of educational institutions and so described in the title and in any advertisement issued by or on behalf of the publisher, of short passages from published, literary or dramatic works, not themselves published for the use of educational institutions, in which copyright subsists:

Provided that not more than two such passages from works of the same author are published by the same published during any period of five years;

Explanation.- In the case of a work of joint authorship references in this clause to passages from works shall include references to passages or by any one or more of those authors in collaboration with any other person;

- (h) the reproduction or adaptation of a literary, dramatic, musical or artistic work:-
  - (i) in the course and for the sole purpose of instruction whether at an educational institution or elsewhere where the reproduction or adaptation is made by a teacher or a pupil otherwise than by the use of a painting process;
  - (ii) as part of the questions to be answered in an examination; or
  - (iii) in answers to such questions;
- (i) the performance, in the course of the activities of an educational institution, of a literary dramatic or musical work by the staff and students of the institution, or of a cinematographic work or a record, if the audience is limited to such staff and students, the parents and guardians of the students and persons directly connected with the activities of the institution;

- (j) the making of records in respect of any literary, dramatic or musical work, if:
  - (i) records recording the work have previously been made by or with the license or consent of, the owner of the copyright in the work; and
  - (ii) the person making the records has given the prescribed notice of his intention to make the records, and has paid in the prescribed manner to the owner of the copyright in the work royalties in respect of all such records to be made by him, at the rate fixed by the Board in this behalf:

Provided that in making the records such person shall not make any alterations in, or omissions from, the work, unless records recording the work subject to similar alterations and omissions have been previously made by, or with the license or consent of the owner of the copyright, or unless such alterations and omissions are reasonably necessary for the adaptation or the work to the records in question;

- (k) the causing of a recording embodied in a record to be heard in public utilizing the record,-
  - (i) at any premises where persons reside, as part of the amenities provided exclusively or mainly for residents therein, or
  - (ii) as part of the activities of a club, society or other organization which is not established or conducted for Profit
- (l) the performance of a literary, dramatic or musical work by an amateur club or society, if the performance is given to a non-paying audience, or for the benefit of a religious, charitable or educational institution;
- (m) the reproduction in a newspaper, magazine or other periodical of an article on current economic, political, social or religious topics, unless the owner of copyright of such article has expressly reserved to himself the right of such reproduction;
- (n) the publication in a newspaper, magazine or other periodical of a report of a lecture delivered to public;
- (o) the making of not more than three copies of a book (including a pamphlet, sheet of music, map, chart or plan) by or under the direction of the person in charge of a public library or a non-profit library available for use by the

public free of charge or a library attached to an educational institution for the use of such library if such book is not available for sale;

- (p) the reproduction, for the purpose of research or private study or with a view to publication, of an unpublished literary, dramatic or musical work kept in a library, museum or other institution to which the public has access:

Provided that where the identity of the author of any such work, or in the case of a work of joint authorship, of any of the authors, is known to the library, museum or other institution, as the case may be, the provision of this clause shall apply only if such reproduction is made at a time more than fifty years from the date of the death of the author or, in the case of a work of joint authorship, from the death of the author whose identity is known or, if the identity of more authors than whose identity is known or, if the identity of more authors than one is known, from the death of such one of those authors who dies last;

- (q) the reproduction or publication of-
  - (i) any matter which has been published in any official Gazette, or the report of any committee, commission, council, board or other like body appointed by the Government unless the reproduction or publication of such matter or report is prohibited by the Government ;
  - (ii) any judgment or order of a court, tribunal or other judicial authority, unless the reproduction or publication of such judgment or order is prohibited by the court, tribunal or other judicial authority, as the case may be;
- (r) the making or publishing of a painting, drawing, engraving or photograph or an architectural work of art;
- (s) the making or publishing of a painting, drawing, engraving or photograph or a sculpture or other artistic work if such work is permanently situate in a public place or and premises to which the public has access;
- (t) the inclusion in a cinematographic work of-
  - (i) any artistic work permanently situate in a public place or any premises to which the public has access; or

- (ii) any other artistic work, if such inclusion is only by way of background or is otherwise incidental to the principal matters represented in the work;
- (u) the use by the author of an artistic work, where the author of such work is not the owner of the copyright therein, of any mould, cast, sketch, plan, model or study made by him for the purpose of the work;  
Provided that he does not thereby repeat or imitate the main design of the work;
- (v) the making of an object of any description in three dimensions of an artistic work in two dimensions, if the object would not appear, to persons who are not experts in relation to objects of that description to be a reproduction of the artistic work;
- (w) the reconstruction of a building or structure in accordance with the architectural drawings or plans by reference to which the building or structure was originally constructed:  
Provided that the original construction was made with the consent and licence of the owner of the copyrights in such drawing or plans;
- (x) in relation to a literary, dramatic or musical work recorded or reproduced in any cinematographic work, the exhibition of such work after the expiration of the term of copyright therein:  
Provided that the provisions of sub-clause (ii) of clause (a), sub-clause (i) of clause (b) and clauses (f), (g), (m), and (p) shall not apply as respects any act unless that act is accompanied by an acknowledgment-
  - (i) identifying the work by its title or other description; and
  - (ii) unless the work is anonymous or the author of the work has previously agreed or required that no acknowledgment of his name should be made, also identifying the author.

Explanation. For the purposes of clause (a) or clause (b) of this sub-section-

- (i) in relation to a literary or dramatic work in prose, single extract up to four hundred words, or a series of extracts (with comments interposed) up to a total of eight hundred words with no one extract exceeding three hundred words; and

- (ii) in relation to a literary or dramatic work in poetry, an extract or extracts up to a total of forty lines and in no case exceeding one fourth of the whole of any poem may be deemed to be fair dealing with such work :  
Provided that in a review of a newly published work, reasonably longer extracts may be deemed fair dealing with such work.
- (2) The provisions of sub-section (1) shall apply to the doing of any act in relation to the translation of a literary, dramatic or musical work or the adaptation of a literary, dramatic, musical or artistic work as they apply in relation to the work itself.

**57-A Particulars to be included in records and video films-**

- (1) No person shall  
publish a record in respect of any Pakistani work unless the following particulars are displayed on the record and on any container thereof namely:-
  - (a) the name and address of the person who has made the record;
  - (b) the name and address or the owner of the copyright in such work;  
and
  - (c) the year of its first publication.
- (2) No person shall publish a video film in respect of any Pakistani work unless the following particulars are displayed in the video film when exhibited, and on the video cassette or other container thereof, namely:-
  - (a) if such work is a cinematographic film required to be certified for exhibition under the provisions of the Motion Picture Ordinance, 1979 (XLIII of 1979), a copy of the certificate granted in respect of such work by the Central Board of Film Censors under sub-section (3) of section 5 of that Ordinance or by any other agency authorized by the Government for the purpose;
  - (b) the name and address of the person who has made the video film and a declaration by him that he has obtained the necessary license or consent from the owner of copyright in such work for making such video film;  
and
  - (c) the name and address of the owner of the copyright in such work.

**58. Importation of infringing copies.**

- (1) The Registrar, on application by the owner of copyright in any work or by his duly authorized agent and on payment of the prescribed fee, may, after making such inquiry as he deems fit, order that copies made out of Pakistan of the work which if made in Pakistan would infringe copyright shall not be imported.
- (2) Subject to any rules that may be made under this Ordinance, the Registrar or any person authorized by him in this behalf may enter any ship, vehicle, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.
- (3) All copies to which any order made under sub-section (1) applies shall be deemed to be goods of which the bringing into Pakistan has been prohibited or restricted under section 19 of the Sea Customs Act, 1878, and all the provisions of that Act shall have effect accordingly.

**CHAPTER XIII  
CIVIL REMEDIES**

**59. Definitions.** For the purposes of this Chapter, unless the context otherwise requires, the expression "owner of copyright" shall include:-

- (a) an exclusive licensee;
- (b) in the case of an anonymous or pseudonymous literary, dramatic, musical or artistic work, the publisher of the work, until the identity of the author or in the case of an anonymous work of joint authorship or a work of joint authorship published under names all of which are pseudonyms, the identity of any of the authors, is disclosed publicly by the author and the publisher or is otherwise established to the satisfaction of the Board by that author or his legal representatives.

**60. Civil remedies for infringement of copyright.**

- (1) Where copyright in any work has been infringed, the owner of the copyright shall, except as otherwise provided by this Ordinance, be entitled to all such remedies by way of injunction, damages, accounts and otherwise as are or may be conferred by law for the infringement of a right:

Provided that if the defendant proves that at the date of the infringement he was not aware that copyright subsisted in the work and he had reasonable ground for believing that copyright did not subsist in the work, the plaintiff shall not be entitled to any remedy other than an injunction in respect of the infringement and a decree for the whole or part of the profits made by the defendant by the sale of the infringing copies as the court may in the circumstances deem reasonable.

- (2) Where, in the case of a literary, dramatic, musical or artistic work, a name purporting to be that of the author or the publisher, as the case may be, appears on copies of the work as published, or, in the case of an artistic work, appeared on the work when it was made, the person whose name so appears or appeared shall, in any proceedings in respect of infringement of copyright in such work, be presumed, unless the contrary is proved, to be the author or the publisher of the work, as the case may be.
- (3) The costs of all parties in any proceedings in respect of the infringement of copyright shall be in the discretion of the court.

**61. Protection of separate rights.** Subject to the provisions of this Ordinance, where the several rights comprising the copyright in any work are owned by different persons, the owner of any such right shall, to the extent of that right, be entitled to the remedies provided by this Ordinance and may individually enforce such right by means of any suit, action or other proceeding without making the owner of any other right a party to such suit or proceeding.

**62. Author's special rights.**

- (1) Notwithstanding that the author of work may have assigned or relinquished the copyright in the work, he shall have the right to restrain, or claim damages in respect of any distortion, mutilation or other modification of the said work, or any other action in relation to the said work which would be prejudicial to his honor or reputation.
- (2) The right conferred upon an author of a work by sub-section (1) may be exercised by the legal representatives of the author.

**63. Rights of owner against persons possessing or dealing with infringing copies.** All infringing copies of any work in which copyright subsists, and all plates used or intended to be used for the production of such infringing copies, shall be deemed to be the property of the owner of the copyright, who accordingly may take proceedings for the recovery of possession thereof or in respect of the conversion thereof:

Provided that the owner of the copyright shall not be entitled to any remedy in respect of the conversion of any infringing copies, if the opponent proves:-

- (a) that he was not aware that copyright subsisted in the work and he had reasonable ground for believing that copyright did not subsist in the work of which such copies are alleged to be infringing copies ; or
- (b) that he has reasonable ground for believing that such copies or plates do not involve infringement of the copyright in any work.

**64. Restriction on remedies in the case of works of architecture.**

- (1) Where the construction of a building or other structure, which infringes or which if completed, would infringe the copyright in some other work has been commenced, the owner of the copyright shall not be entitled to obtain an injunction to restrain the construction of such building or structure or to order its demolition.
- (2) Nothing in section 63 shall apply in respect of the construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work.

**65. Jurisdiction of court and limitation.**

- (1) Every suit or other civil proceeding regarding infringement of copyright shall be instituted and tried in the Court of the District Judge:

Provided that, where the person whose copyright in a work has been infringed does not intend to institute a suit or proceeding in the Court of the District Judge, he may, by petition in the prescribed manner, refer the matter to the Board for decision.

- (2) Where a petition as been filed under the proviso to sub-section (1), the Board, or a Committee consisting of the Chairman and not less than two



members of the Board as the Chairman may appoint, shall consider the matter, and after giving the parties an opportunity of being heard, pass such order as it thinks fit.

- (3) The decision of the Committee referred to in sub-section (2) shall be deemed to be the decision of the Board.
- (4) Where a matter has been referred to the Board under the proviso to sub-section (1), no court shall hear, try or entertain any suit or proceeding relating to that matter.
- (5) The decision of the Board shall, subject to the provisions as to appeal, be final, and shall be executed in the manner provided in section 79.

**66. Offences of infringement of copyright or other rights conferred by this ordinance** Any person who knowingly infringes or abets the infringement of :-

- (a) the copyright in a work, or
  - (b) any other right conferred by this Ordinance,
- shall be punishable with imprisonment which may extend to three years, or with fine which may extend to one hundred thousand rupees" or with both 66 (A), 66(B), 66(C), and 66(D),

Explanation. Construction of a building or other structure which infringes or which, if completed, would infringe the copyright in some other work, shall not be an offence under this section.

**66A. Penalty for publishing collections or compendiums of work which have been adapted, translated or modified in any manner without the authority of the owner of the copyright:-** Any person who knowingly publishes, or causes to be published, a collection or compendium of works which have been adapted, translated or modified in any manner without the authority of the owner of the copyright in the original works, or who fraudulently employs a title which tends to mislead the public or create confusion with another work published earlier, shall be punishable with imprisonment which may extend to three years, or with fine which may extend to one hundred thousand rupees. or with both.

**66B. Penalty for unauthorised reproduction or distribution of counterfeit copies of sound recording and cinematographic work:-**

Any person who unauthorisedly makes or distributes counterfeit of sound recording and cinematographic work for the purpose of business, profit or gain shall be punishable with imprisonment which may extend to three years, or with fine which may extend to one hundred thousand rupees, or with both.

**66C. Penalty for exploitation and appropriation of recording or audio-visual work intended for private use:-**

Any person who for the purpose of business, profit or gain, exploits or appropriates any sound recording or audio-visual work intended for private use, shall be punishable with imprisonment which may extend to three years, or with fine which may extend to one hundred thousand rupees, or with both.

**66D. Penalty for making copies or reproduction in excess of those authorised by the copyright owner or his successor in title:-**

Any person who produces or causes to be produced, copies or reproductions in excess of the number authorised by the copyright owner or his successor in title. shall be punishable with imprisonment which may extend to three years or with fine which may extend to one hundred thousand rupees or with both.

**67. Possession of plates for purpose of making infringing copies.** If any person knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists, or knowingly and for his private profit causes any such work to be performed in public without the consent of the owner of the copyright, he shall be punishable with "imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees" or with both.

**68. Penalty for making false entries in the Register, etc., or producing or tendering false evidence.** Any person who:-

- (a) makes or causes to be made a false entry in the Register of Copyright, or

- (b) makes or causes to be made a writing falsely purporting to be a copy of any entry in the Register, or
- (c) produces or tenders or causes to be produced or tendered as evidence any such entry or writing, knowing the same to be false;  
shall be punishable with "imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees" or with both.

**69. Penalty for making false statements for the purpose of deceiving or influencing any authority or officer.** Any person who:-

- (a) with a view to deceiving any authority or officer in the performance of any of his functions under any of the provisions of this Ordinance, or
- (b) with a view to inducing or influencing the doing or omission of anything in relation to this Ordinance or any matter thereunder.

makes a false statement or representation knowing the same to be false, shall be punishable, with "imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees" or with both.

**70. False attribution or authorship, etc.** Whosoever:-

- (1) inserts or affixes the name of any person in or on a work of which that person is not the author, or in or on a reproduction of such a work, in such a way as to imply that such person is the author of the work ; or ;
- (2) publishes or sells or lets for hire, or by way or trade offers, exposes for the sale or hire, or by way of trade exhibits in public a work in or on which the name of a person has been inserted or affixed in such a way as to imply that such person is the author of the work, or the publisher of the work, who to his knowledge is not the author or the publisher, as the case may be, of such work; or
- (3) does any of the acts mentioned in clause (2) in relation to, or distributes, reproductions of a work, being reproduction in or on which any person's name has been inserted or affixed in such a way as to imply that such person is the author of the work who to his knowledge is not the author of such work, or performs in public, or broadcasts the work as being the

work of a particular author, who to his knowledge is not the author of such work ;

shall be punishable with "imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees" or with both.

**70A. Penalty for contravention of section 57A:-** Any person who publishes a record or a video film in contravention of the provisions of section 57A. shall be punishable with "imprisonment which may extend to three years, or with fine which may extend to one hundred thousand rupees" or with both.

**70B. Enhanced fine in the case of subsequent offences:-** Where any person convicted for an offence punishable under section 66, 66A, 66B, 66C, 66D, or 70A, is again convicted for the same offence, the said section shall have effect as if for the words "one hundred thousand" therein the words "two hundred thousand" were substituted."

#### **71. Offences by companies.**

- (1) Where any offence under this Ordinance has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for, the conduct of the business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly :

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

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

Explanation. For the purposes of this section:-

- (a) "company" means any body corporate and includes a firm or other association of persons; and
- (b) "director" in relation to a firm means a partner in the firm

**72. Cognizance of offence.**

No court inferior to that of a Magistrate of the first class shall try any offence under this Ordinance.

**73. Power of the court to dispose of infringing copies plates or recordings equipment for purpose of making infringing copies.** The court before which any offence under this Ordinance is tried may, whether the alleged offender is convicted or not, order that all copies of the work or all plates or recording equipment in the possession of the alleged offender, which appear to it to be infringing copies, or plates or recording equipment used or intended to be used for purpose of making infringing copies, be destroyed or delivered to the owner of the copyright or otherwise dealt with as the court may think fit.

**74. Power of police to seize infringing copies**

- (1) Any police officer, not below the rank of Sub-inspector, shall, if he is satisfied that an offence under Chapter XIV in respect of infringement of copyright in any work has been, is being, or is likely to be, committed, seize without warrant all copies of the work and all plates and recording equipments used for the purposes of making infringed copies of the work, wherever found, and all copies, plates and recording equipments so seized shall, as soon as practicable, be produced before a Magistrate.  
Provided that no such copy, plate or recording equipment as is owned by any public library for a library attached to an educational institution or a non-profit library available for use by the public free of charge or in the possession of any person for his bonafide use shall be seized. “;and
- (2) Any person having an interest in any copies of a work, plates or recording equipment seized under sub-section (1) may, within fifteen days of such seizure, make an application to the Magistrate for such copies plates or recording equipment being restored to him and the magistrate, after

hearing the applicant and the complainant and making such further inquiry as may be necessary, shall make such order on the application as he may deem fit.

(3). " All offence under this Ordinance shall be cognizable and non- bailable."

**74(A). Power of Magistrate to award compensation for offences under**

**this chapter (1)** The Magistrate may, when passing a sentence of fine, direct that an amount not exceeding fifty per cent of the fine imposed by him but commensurate with the loss suffered by the party shall be paid as compensation to the person whose right has been infringed or to the heirs or legal representatives of such person.

(4) Payment of any compensation to any person under sub- section (1) shall be without prejudice to his right to any claim in a suit or other proceeding which may be instituted, or may be pending in a Court, in relation to the same matter.

**75. Appeals against certain orders of Magistrate.**

Any person aggrieved by an order made under section 73, sub-section (2) of section 74 or sub-section (1) of section 74(A) may, within thirty days of the date of such order, appeal to the court to which appeals from the court making the order ordinarily lie, and such appellate court may direct that execution of the order be stayed pending disposal of the appeal.

**76. Appeals against orders of Registrar.**

Any person aggrieved by any final decision or order of the Registrar may, within three months from the date of this decision or order, appeal to the Board:

Provided that the Registrar shall not sit as a member of the Board when he hears an appeal under this section.

**77. Appeals against orders of the board.** (1) any person aggrieved by any final decision or order of the Board, not being the decision or order made in an appeal under section 76 may, within three months from the date of such decision or order, appeal to the High court within whose jurisdiction the appellant actually and voluntarily resides or carries on business or personally works for gain:

provided that no such appeal shall lie against a decision of the Board under sub-section (2) of section 4 and sub-section (2) of section 6.

- (2). In calculating the period of three months provided for an appeal under section 76 and sub-section (1), the time taken in granting a certified copy of the order or record of the decision appealed against shall be excluded.

**78. Registrar and board to certain powers of civil court.**

The Registrar and the Board shall have the power of a civil court when trying a suit under the code of Civil Procedure, 1908, in respect of the following, namely:-

- (a). summoning and enforcing the attendance of any person and examining him on oath;
- (b). requiring the discovery and production of any document;
- (c ). receiving evidence on affidavits;
- (d). issuing commission for the examination of witnesses or documents;
- (e). requisitioning any public record or copy thereof from any court or office;
- (f) any other matter of procedure which may be prescribed.

Explanation. For the purpose of enforcing the attendance of witnesses, the local limits of the jurisdiction of the registrar or the Board, as the case may be, shall be the whole of Pakistan.

**79. Order for payment of money passed by Registrar or Board to be executable as decree.**

Every order made by the Registrar or the Board under this ordinance for the payment of any money or by the High Court in any money appeal against any such order of the Board shall, on a certificate issued by the Registrar, the Board or the Registrar of High Court, as the case may be, be deemed to be a decree of a civil court and shall be executable in the same manner as a decree of such court.

- 80. Indemnity.** No suit or other legal proceeding shall lie against any person in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance.

- 81. Certain persons to be public servants.** Every officer appointed under this Ordinance and every member of the Board shall be deemed to be a

public servant within the meaning of section 21 of the Pakistan Penal Code.

**82. Powers to make rules.**

- (1) The Central Government may, after previous publication, make rules for carrying out the purposes of this ordinance:-
- (2) In particular and without prejudice to the generality of the foregoing power, the rules may provide for all or any of the following, namely:-
  - (a) the term of office and conditions of service of the Chairman and other members of the Board;
  - (b) the form of complaints and application to be made and the license to be granted, under this Ordinance ;
  - (c) the procedure to be followed in connection with any proceeding before the Registrar or the Board;
  - (d) the manner of determining any royalties payable under this Ordinance , and the security to be taken for the payment of such royalties;
  - (e) the form of Register of Copyrights to be kept under this Ordinance and the particulars to be entered therein;
  - (f) the matters in respect of which the Registrar and the Board shall have powers of a civil court;
  - (g) the fees which may be payable under the Ordinance;
  - (h) the regulations of business of the Copyright Office and of all things by this Ordinance placed under the direction or control of the **Registrar**.

**83. Repeal.** The Copyright Act, 1914, and the Copyright Act of 1911 passed by the Parliament of the United Kingdom, as modified in its application to Pakistan by the Copyright Act, 1914, are hereby repealed .

**84. Saving and transitory provisions.**

- (1) Where any person has, before the commencement of this Ordinance, taken any action whereby he has incurred any expenditure or liabilities in connection with the reproduction or performance of a work at a time when such reproduction or performance any work in a manner which at the time was lawful or for the purpose of or with a view to the reproduction or performance would, but for the coming into force of this



Ordinance, have been lawful nothing in this section shall diminish or prejudice any rights or interest arising from or in connection with such actions which are subsisting and valuable at the said date unless the person who by virtue of this Ordinance becomes entitled to restrain such reproduction or performance agrees to pay such compensation as failing agreement may be determined by the Board.

- (2) Copyright shall not subsist by virtue of this Ordinance in any work in which copyright did not subsist immediately before the commencement of this Ordinance under any Act repealed by section 83.
- (3) Where copyright subsist in any work immediately before the commencement of this Ordinance the rights comprising such copyright shall, as from the date of such commencement, be the rights specified in section 3 in relation to the class of works to which such work belongs, and where any new rights are conferred by that section the owner of such rights shall be:
  - (a) in any case where copyright in the work was wholly assigned before the commencement of this Ordinance the assignee or his successor-in - interest; and
  - (b) in any other case the person who was the first owner of the copyright in the work under any Act repealed by section 83 or his legal representatives.
- (4) Except as otherwise provided in this Ordinance, where any person was entitled immediately before the commencement of this Ordinance to copyright in any such work or any right in such copyright or to any interest in any such right, he shall continue to be entitled to such right or interest for the period for which he would have been entitled thereto if this Ordinance had not come into force.
- (5) nothing contained in this Ordinance shall be deemed to render any act done before its commencement an infringement of copyright if that act would not otherwise have constituted such an infringement.

## **The Amending copyright ordinance**

**No. LIII of 2000**

### **1. Short title and commencement: -**

- (1) This Ordinance may be called the Copyright (Amendment) Ordinance, 2000.
- (2) It shall come into force at once.

### **2. Amendment of section 2, Ordinance XXXIV of 1962: -**

In the Copyright Ordinance 1962 (XXXIV of 1962), hereinafter referred to as the said Ordinance, in section 2.

- (a) for Clause (p) the following shall be substituted, namely:-

"(p) "literary work" includes works on humanity, religion, social and physical sciences, tables, compilations of data or other material in any form and computer programmes, that is to say. Programmes recorded on any disc, tape, perforated media or other information storage device, which, if fed into or located in a computer or computer based equipment is capable of reproducing any information;" and
- (b) after clause (zc), the following new clause shall be inserted, namely:-

"(zcc) "rental" means the authorization to use the original or a copy of a computer program or a cinematographic work for a limited period of time for consideration;"

### **3. Amendment of section 3, Ordinance XXXIV of 1962:-**

In the said Ordinances in section 3:-

- (a) in sub-section (1),-
  - (i) in clause (a), after sub-clause (viii), the following new sub-clause shall be added namely:-

"(ix)to authorize the rental of computer programmes;" and
  - (ii) in clause (c), after sub-clause (iv), the following new sub-clause shall be inserted, namely:-
- (b) after sub-section (2), the following, new sub-section shall be inserted, namely:-

"(3) Entitlement to copyright in compilation of data or other material shall not extend to data or other material itself and shall be without prejudice to

any copyright subsisting in the data or other material, that is to say, the copyright shall subsist to the extent of compilation only."

**4. Amendment of section 10, Ordinance XXXIV of 1962: -**

In the said Ordinances in section 10, sub-section (2 A) shall be omitted.

**5. Substitution of title to Chapter IV, Ordinance XXXIV of 1962: -**

In the said Ordinances in Chapter IV, for the title the following shall be substituted, namely: -

**"RIGHTS OF BROADCASTING ORGANIZATIONS, PERFORMERS AND PRODUCERS OF PHONOGRAMS (SOUND RECORDING)".**

**6. Insertion of new section 24 A, Ordinance XXXIV of 1962:-**

In the said Ordinances after section 24, the following new section shall be substituted, namely:-

"24 A. Rights of performers and producers of phonograms (sound recording):-

- (1) The performers shall have the right to do or to prevent fixation of their unfixed performance and reproduction of such fixation and broadcasting by wireless means and communication to the public of their live performance.
- (2) The producers of phonograms shall have the right to do or to prohibit the direct or the indirect reproduction of their fixation and any rental thereof.
- (3) The rights specified in sub-sections (1) and (2) shall subsist for a period of fifty years computed from the end of the calendar year in which fixation was made or performance took place."

**7. Substitution of section 25, Ordinance XXXIV of 1962:-**

In the said Ordinance, for section 25 the following shall be substituted, namely:-

"25. Application of other provisions of this Ordinance to broadcasting, performers and producers of phonograms. Any person who, without authorization of the broadcasting organization, performers and organization, performers and producers of phonograms (sound recording) does or causes the doing of any of the acts referred to in section 24 and 24 A shall be deemed to infringe the rights of the broadcasting organization, performers and producers of phonograms (sound recording) and the provisions contained in Chapters XII to XVI shall, within the limits

permitted by the nature of the matter, apply to broadcasting organization, performers and producers of phonograms (sound recording) as if they were authors and works, respectively."

**8. Substitution of section 26, Ordinance XXXIV of 1962:-**

In the said Ordinance, for section 26 the following shall be substituted, namely:-

"26. Definitions:-

- (a) "broadcasting" means communication to the public of sound or images or both by means of radio diffusion, including communication by telecast, or wire, or by both, or any other means of communication.
- (b) "fixation" means the incorporation of sounds or images or both in a device by means of which they can later be made aurally or visually perceivable.
- (c) "phonogram" means any exclusively aural fixation of sounds of a performance or of other sounds.
- (d) "producer of phonogram" means a person who, or the legal entity which, fixes the sounds of a performance or other sounds.
- (e) "rebroadcasting" means the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization".

**9. Amendment of section 36, Ordinance XXXIV of 1962: -**

In the said Ordinance, in section 36, after sub-section (2), the following new sub-section shall be added namely:-

- "(3) The Federal Government or the Board may, upon an application by any governmental or statutory institution, in the public interest, grant a license to reprint, translate, adapt or publish any text book on non-profit basis".

**10. Amendment of section 39, Ordinance XXXIV of 1962: -**

In the said Ordinances in section 39, in sub-section (2), for the full stop, at the end, a colon shall be substituted and thereafter the following proviso shall be added, namely:-

"Provided that in the case of artistic works the Registrar shall not enter the particulars of the work in the Register of Copyrights and shall not issue a certificate of registration to the applicant unless within one month of the filing of the application, or within such extended time as the

Registrar may determine, the applicant has advertised the work itself in a newspaper as may be prescribed, and send two copies thereof to the Registrar and unless within one month thereafter, or within such extended time as the Registrar may determine, not exceeding two months, the Registrar has not received any objections to the registration of particulars of the work in the Register of Copyrights".

**11. Substitution of section 58, Ordinance XXXIV of 1962: -**

In the said Ordinance, for section 58 the following shall be substituted namely:-

"58. Importation and exportation of infringing copies: -

- (1) The Registrar, on application of owner of copyright or his duly authorized agent and on payment of prescribed fee, may, after making such inquiry as he may deem fit, order that no infringing copies of the work shall be imported into or exported out of Pakistan.
- (2) Subject to such provisions as may be prescribed, the Registrar or any person authorized by him in this behalf may enter any ship, vehicle, dock or premises where any such copies as are referred to in sub-section (1) may be found and may examine such copies.
- (3) All copies to which any order made under sub-section (1) applies, shall be deemed to be goods of which the bringing into or exporting out of Pakistan is prohibited or restricted under the provisions of the Customs Act, 1969 (IV of 1969), and all the provisions of that Act shall have effect accordingly".

**12. Insertion of new section 60A, Ordinance XXXIV of 1962: -**

In the said Ordinance, after section 60, the following new section 60A shall be inserted, namely:-

"60 A. Special remedies for infringement of copyright: -

- (1) Where copyright in any work has been infringed and the owner of the copyright is unable to institute immediate regular legal proceedings for sufficient cause, the owner or any other person having any interest in the copyright in the work may apply to the court for immediate provisional orders to prevent infringement of the copyright in such work and for

preservation of any evidence relating to such infringement notwithstanding that regular proceedings in the form of a suit or other civil proceedings have not yet been instituted by the owner.

- (2) The court may pass any interim orders envisaged in sub-section (1) without prior notice to the defendant, if the court is satisfied that the applicant has some interest in copyright in the work and the right of the applicant is likely to be infringed, affected or prejudiced and any delay in passing such orders is likely to cause irreparable harm to the applicant or where there is a reasonable risk of evidence, either being destroyed, hidden or removed from the jurisdiction of the court or otherwise there is a likelihood of frustration of the intended proceedings if immediate action could not be instituted or there is likelihood of multiplicity of proceeding in the absence of such orders.
- (3) Where the copyright owner or any other person having any interest in the copyright has sought interim orders as provided in sub-sections (1) and (2), such orders shall cease to have effect if a suit for infringement of copyright or other civil proceedings are not initiated within a maximum period of thirty days, and where such regular proceedings have been filed by the owner of the copyright, the provisional proceedings in respect of such a work by whosoever filed shall merge into the regular proceedings.
- (4) While exercising powers under sub-sections (1) and (2), the court, in case of import or export of consignment containing infringing copies of works, may direct the customs authorities, in whose custody such consignment is lying for the time being to refuse release of such consignment pending decision of the matter by the court:  
Provided that where interim orders are revoked or cease to have effect due to any act or omission of the applicant, the court may award appropriate costs to the defendant for any injury caused".

**13. Amendment of section 65, Ordinance XXXIV of 1962: -**

In the said Ordinance, in section 65, for sub-section (1) the following shall be substituted, namely:-

"(!) Every suit or other civil proceedings regarding infringement of copyright shall be instituted and tried in the Court of District Judge which shall ordinarily be decided within a period of twelve months".

**14. Insertion of new Chapter XIII A and sections 65A, 65B and 65C, Ordinance XXXIV of 1962: -**

In the said Ordinance, after Chapter XIII, the following new chapter and sections 65A, 65B and 65C, shall be inserted, namely:-

**CHAPTER XIII A**

**PROHIBITION OF IMPORTATION AND EXPORTATION**

65A. Prohibition: - No infringing copies of any work, whether themselves or depicted or applied to any article or goods or in any other form, shall be allowed to be imported into or exported out of Pakistan either by sea, air, land or through any other means or channel of communication.

65B. Jurisdiction of officers of customs: - (1) An officer customs functioning under the Customs Act, 1969 (IV of 1969), may, upon an application by the owner of copyright in the work or any other person having an interest in the copyright in the work, detain any consignment intended to be imported into or exported out of Pakistan which is suspected to contain infringing copies of any work.

(2) A consignment detained under sub-section (1), shall be examined by an officer, of customs in the presence of the parties and upon determination that such consignment contains infringing copies of any work. The same shall be ordered to be confiscated and the importer or exporter thereof, as the case may be, shall liable to such penalties as provided in this behalf in the Customs Act, 1969 (IV of 1969):

Provided that all the process of detention and examination of the consignment as provided in this section shall be completed ordinarily within a period of fifteen days of the filing of the application by the aforesaid person:

Provided further that an order passed by any officer of customs under this section shall be deemed to be an order passed under the Customs Act, 1969 (IV of 1969), and shall be appeal able as such.

65C. Release of detained consignment: - In case where the consignment intended to be imported into or exported out of Pakistan has been

detained by an officer of customs under section 65B and the requirements of the first proviso to that section are not completed, the importer or exporter of such consignment, as the case may be, may apply to the concerned customs authorities for release of such goods subject to furnishing such security as may be deemed appropriate by the officer of customs".

**15. Amendment of section 66, Ordinance XXXIV of 1962: -**

In the said Ordinance, in section 66, in clause (a), the word "or", at the end, shall be omitted and thereafter the following new clauses shall be inserted, namely:-

"(ab) the rental rights in cinematographic works and computer programmes:-

(ac) the rights of performers or producers of sound recording; or".

**16. Insertion of new section 66E, Ordinance XXXIV of 1962:-**

In the said Ordinance, after section 66D, the following new section shall be inserted, namely:-

"66E. Penalty for unauthorized rental of cinematographic works and computer programmes. Any person who, without authorization of the copyright owner or his licensee rents out the original or copies of the cinematographic works or computer programmes, shall be punishable with imprisonment which may extend to three years, or with fine which may extend to one hundred thousand rupees or with both."

**17. Amendment of section 70B, Ordinance XXXIV of 1962: -**

In the said Ordinance in section 70B, after the figure letter and comma "66D," the figure and letter "661" shall be inserted.



# **AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

## **PART I GENERAL PROVISIONS AND BASIC PRINCIPLES**

## **PART II STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS**

1. Copyright and Related Rights
2. Trademarks
3. Geographical Indications
4. Industrial Designs
5. Patents
6. Layout-Designs (Topographies) of Integrated Circuits
7. Protection of Undisclosed Information
8. Control of Anti-Competitive Practices in Contractual Licences

## **PART III ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

1. General Obligations
2. Civil and Administrative Procedures and Remedies
3. Provisional Measures
4. Special Requirements Related to Border Measures
5. Criminal Procedures

## **PART IV ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES**

## **PART V DISPUTE PREVENTION AND SETTLEMENT**

## **PART VI TRANSITIONAL ARRANGEMENTS**

## **PART VII INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS**

# **AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

Members,

Desiring to reduce distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade;

Recognizing, to this end, the need for new rules and disciplines concerning:

- (a) the applicability of the basic principles of GATT 1994 and of relevant international intellectual property agreements or conventions;
- (b) the provision of adequate standards and principles concerning the availability, scope and use of trade-related intellectual property rights;
- (c) the provision of effective and appropriate means for the enforcement of trade-related intellectual property rights, taking into account differences in national legal systems;
- (d) the provision of effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments; and
- (e) transitional arrangements aiming at the fullest participation in the results of the negotiations;

Recognizing the need for a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods;

Recognizing that intellectual property rights are private rights;

Recognizing the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives;

Recognizing also the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base;

Emphasizing the importance of reducing tensions by reaching strengthened commitments to resolve disputes on trade-related intellectual property issues through multilateral procedures;

Desiring to establish a mutually supportive relationship between the WTO and the World Intellectual Property Organization (referred to in this Agreement as "WIPO") as well as other relevant international organizations;  
Hereby agree as follows:

**PART I**  
**GENERAL PROVISIONS AND BASIC PRINCIPLES**

**Article 1 Nature and Scope of Obligations**

1. Members shall give effect to the provisions of this Agreement. Members may, but shall not be obliged to, implement in their law more extensive protection than is required by this Agreement, provided that such protection does not contravene the provisions of this Agreement. Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice.
2. For the purposes of this Agreement, the term "intellectual property" refers to all categories of intellectual property that are the subject of Sections 1 through 7 of Part II.
3. Members shall accord the treatment provided for in this Agreement to the nationals of other Members.<sup>1</sup> In respect of the relevant intellectual property right, the nationals of other Members shall be understood as those natural or legal persons that would meet the criteria for eligibility for protection provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits, were all Members of the WTO members of those conventions.<sup>2</sup> Any Member availing itself of the possibilities provided in paragraph 3 of Article 5 or paragraph 2 of Article 6 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for Trade-Related Aspects of Intellectual Property Rights (the "Council for TRIPS").

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<sup>1</sup> When "nationals" are referred to in this Agreement, they shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

<sup>2</sup> In this Agreement, "Paris Convention" refers to the Paris Convention for the Protection of Industrial Property; "Paris Convention (1967)" refers to the Stockholm Act of this Convention of 14 July 1967. "Berne Convention" refers to the Berne Convention for the Protection of Literary and Artistic Works; "Berne Convention (1971)" refers to the Paris Act of this Convention of 24 July 1971. "Rome Convention" refers to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, adopted at Rome on 26 October 1961. "Treaty on Intellectual Property in Respect of Integrated Circuits" (IPIC Treaty) refers to the Treaty on Intellectual Property in Respect of Integrated Circuits, adopted at Washington on 26 May 1989. "WTO Agreement" refers to the Agreement Establishing the WTO.

#### Article 2 Intellectual Property Conventions

1. In respect of Parts II, III and IV of this Agreement, Members shall comply with Articles 1 through 12, and Article 19, of the Paris Convention (1967).
2. Nothing in Parts I to IV of this Agreement shall derogate from existing obligations that Members may have to each other under the Paris Convention, the Berne Convention, the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits.

#### Article 3 National Treatment

1. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection<sup>3</sup> of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organizations, this obligation only applies in respect of the rights provided under this Agreement. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention (1971) or paragraph 1(b) of Article 16 of the Rome Convention shall make a notification as foreseen in those provisions to the Council for TRIPS.
2. Members may avail themselves of the exceptions permitted under paragraph 1 in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

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<sup>3</sup> For the purposes of Articles 3 and 4, "protection" shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement.

#### **Article 4 Most-Favoured-Nation Treatment**

With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members. Exempted from this obligation are any advantage, favour, privilege or immunity accorded by a Member:

- (a) deriving from international agreements on judicial assistance or law enforcement of a general nature and not particularly confined to the protection of intellectual property;
- (b) granted in accordance with the provisions of the Berne Convention (1971) or the Rome Convention authorizing that the treatment accorded be a function not of national treatment but of the treatment accorded in another country;
- (c) in respect of the rights of performers, producers of phonograms and broadcasting organizations not provided under this Agreement;
- (d) deriving from international agreements related to the protection of intellectual property which entered into force prior to the entry into force of the WTO Agreement, provided that such agreements are notified to the Council for TRIPS and do not constitute an arbitrary or unjustifiable discrimination against nationals of other Members.

#### **Article 5 Multilateral Agreements on Acquisition or Maintenance of Protection**

The obligations under Articles 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.

#### **Article 6 Exhaustion**

For the purposes of dispute settlement under this Agreement, subject to the provisions of Articles 3 and 4 nothing in this Agreement shall be used to address the issue of the exhaustion of intellectual property rights.

#### **Article 7 Objectives**

The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users

of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

#### **Article 8 Principles**

1. Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement.
2. Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

### **PART II**

#### **STANDARDS CONCERNING THE AVAILABILITY, SCOPE AND USE OF INTELLECTUAL PROPERTY RIGHTS**

##### **SECTION 1: COPYRIGHT AND RELATED RIGHTS**

#### **Article 9 Relation to the Berne Convention**

1. Members shall comply with Articles 1 through 21 of the Berne Convention (1971) and the Appendix thereto. However, Members shall not have rights or obligations under this Agreement in respect of the rights conferred under Article 6bis of that Convention or of the rights derived there from.
2. Copyright protection shall extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts as such.

#### **Article 10 Computer Programs and Compilations of Data**

1. Computer programs, whether in source or object code, shall be protected as literary works under the Berne Convention (1971).
2. Compilations of data or other material, whether in machine readable or other form, which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such. Such protection, which shall not extend to the data or material itself, shall be without prejudice to any copyright subsisting in the data or material itself.

#### **Article 11 Rental Rights**

In respect of at least computer programs and cinematographic works, a Member shall provide authors and their successors in title the right to authorize or to prohibit the commercial rental to the public of originals or copies of their copyright works. A Member shall be excepted from this obligation in respect of cinematographic works unless such rental has led to widespread copying of such works which is materially impairing the exclusive right of reproduction conferred in that Member on authors and their successors in title. In respect of computer programs, this obligation does not apply to rentals where the program itself is not the essential object of the rental.

#### **Article 12 Term of Protection**

Whenever the term of protection of a work, other than a photographic work or a work of applied art, is calculated on a basis other than the life of a natural person, such term shall be no less than 50 years from the end of the calendar year of authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years from the end of the calendar year of making.

#### **Article 13 Limitations and Exceptions**

Members shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.

#### **Article 14 Protection of Performers, Producers of Phonograms (Sound Recordings) and Broadcasting Organizations**

1. In respect of a fixation of their performance on a phonogram, performers shall have the possibility of preventing the following acts when undertaken without their authorization: the fixation of their unfixed performance and the reproduction of such fixation. Performers shall also have the possibility of preventing the following acts when undertaken without their authorization: the broadcasting by wireless means and the communication to the public of their live performance.
2. Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

3. Broadcasting organizations shall have the right to prohibit the following acts when undertaken without their authorization: the fixation, the reproduction of fixations, and the rebroadcasting by wireless means of broadcasts, as well as the communication to the public of television broadcasts of the same. Where Members do not grant such rights to broadcasting organizations, they shall provide owners of copyright in the subject matter of broadcasts with the possibility of preventing the above acts, subject to the provisions of the Berne Convention (1971).
4. The provisions of Article 11 in respect of computer programs shall apply *mutatis mutandis* to producers of phonograms and any other right holders in phonograms as determined in a Member's law. If on 15 April 1994 a Member has in force a system of equitable remuneration of right holders in respect of the rental of phonograms, it may maintain such system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of right holders.
5. The term of the protection available under this Agreement to performers and producers of phonograms shall last at least until the end of a period of 50 years computed from the end of the calendar year in which the fixation was made or the performance took place. The term of protection granted pursuant to paragraph 3 shall last for at least 20 years from the end of the calendar year in which the broadcast took place.
6. Any Member may, in relation to the rights conferred under paragraphs 1, 2 and 3, provide for conditions, limitations, exceptions and reservations to the extent permitted by the Rome Convention. However, the provisions of Article 18 of the Berne Convention (1971) shall also apply, *mutatis mutandis*, to the rights of performers and producers of phonograms in phonograms.

## **SECTION 2: TRADEMARKS**

### **Article 15 Protectable Subject Matter**

1. Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark. Such signs, in particular



words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible.

2. Paragraph 1 shall not be understood to prevent a Member from denying registration of a trademark on other grounds, provided that they do not derogate from the provisions of the Paris Convention (1967).
3. Members may make registrability depend on use. However, actual use of a trademark shall not be a condition for filing an application for registration. An application shall not be refused solely on the ground that intended use has not taken place before the expiry of a period of three years from the date of application.
4. The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.
5. Members shall publish each trademark either before it is registered or promptly after it is registered and shall afford a reasonable opportunity for petitions to cancel the registration. In addition, Members may afford an opportunity for the registration of a trademark to be opposed.

#### **Article 16 Rights Conferred**

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

2. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to services. In determining whether a trademark is well-known, Members shall take account of the knowledge of the trademark in the relevant sector of the public, including knowledge in the Member concerned which has been obtained as a result of the promotion of the trademark.
3. Article 6bis of the Paris Convention (1967) shall apply, *mutatis mutandis*, to goods or services which are not similar to those in respect of which a trademark is registered, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered trademark and provided that the interests of the owner of the registered trademark are likely to be damaged by such use.

#### **Article 17 Exceptions**

Members may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

#### **Article 18 Term of Protection**

Initial registration, and each renewal of registration, of a trademark shall be for a term of no less than seven years. The registration of a trademark shall be renewable indefinitely.

#### **Article 19 Requirement of Use**

1. If use is required to maintain a registration, the registration may be cancelled only after an uninterrupted period of at least three years of non-use, unless valid reasons based on the existence of obstacles to such use are shown by the trademark owner. Circumstances arising independently of the will of the owner of the trademark which constitute an obstacle to the use of the trademark, such as import restrictions on or other government requirements for goods or services protected by the trademark, shall be recognized as valid reasons for non-use.
2. When subject to the control of its owner, use of a trademark by another person shall be recognized as use of the trademark for the purpose of maintaining the registration.

## **Article 20 Other Requirements**

The use of a trademark in the course of trade shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking.

## **Article 21 Licensing and Assignment**

Members may determine conditions on the licensing and assignment of trademarks, it being understood that the compulsory licensing of trademarks shall not be permitted and that the owner of a registered trademark shall have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

### **SECTION 3: GEOGRAPHICAL INDICATIONS**

## **Article 22 Protection of Geographical Indications**

1. Geographical indications are, for the purposes of this Agreement, indications which identify a good as originating in the territory of a Member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.
2. In respect of geographical indications, Members shall provide the legal means for interested parties to prevent:
  - (a) the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good;
  - (b) any use which constitutes an act of unfair competition within the meaning of Article 10bis of the Paris Convention (1967).
3. A Member shall, ex officio if its legislation so permits or at the request of an interested party, refuse or invalidate the registration of a trademark

which contains or consists of a geographical indication with respect to goods not originating in the territory indicated, if use of the indication in the trademark for such goods in that Member is of such a nature as to mislead the public as to the true place of origin.

4. The protection under paragraphs 1, 2 and 3 shall be applicable against a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory.

#### **Article 23 Additional Protection for Geographical Indications for Wines and Spirits**

1. Each Member shall provide the legal means for interested parties to prevent use of a geographical indication identifying wines for wines not originating in the place indicated by the geographical indication in question or identifying spirits for spirits not originating in the place indicated by the geographical indication in question, even where the true origin of the goods is indicated or the geographical indication is used in translation or accompanied by expressions such as "kind", "type", "style", "imitation" or the like.<sup>4</sup>
2. The registration of a trademark for wines which contains or consists of a geographical indication identifying wines or for spirits which contains or consists of a geographical indication identifying spirits shall be refused or invalidated, ex officio if a Member's legislation so permits or at the request of an interested party, with respect to such wines or spirits not having this origin.
3. In the case of homonymous geographical indications for wines, protection shall be accorded to each indication, subject to the provisions of paragraph 4 of Article 22. Each Member shall determine the practical conditions under which the homonymous indications in question will be differentiated from each other, taking into account the need to ensure equitable treatment of the producers concerned and that consumers are not misled.

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<sup>4</sup> Notwithstanding the first sentence of Article 42, Members may, with respect to these obligations, instead provide enforcement by administrative action.

4. In order to facilitate the protection of geographical indications for wines, negotiations shall be undertaken in the Council for TRIPS concerning the establishment of a multilateral system of notification and registration of geographical indications for wines eligible for protection in those Members participating in the system.

**Article 24 International Negotiations; Exceptions**

1. Members agree to enter into negotiations aimed at increasing the protection of individual geographical indications under Article 23. The provisions of paragraphs 4 through 8 below shall not be used by a Member to refuse to conduct negotiations or to conclude bilateral or multilateral agreements. In the context of such negotiations, Members shall be willing to consider the continued applicability of these provisions to individual geographical indications whose use was the subject of such negotiations.
2. The Council for TRIPS shall keep under review the application of the provisions of this Section; the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which, at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section.
3. In implementing this Section, a Member shall not diminish the protection of geographical indications that existed in that Member immediately prior to the date of entry into force of the WTO Agreement.
4. Nothing in this Section shall require a Member to prevent continued and similar use of a particular geographical indication of another Member identifying wines or spirits in connection with goods or services by any of its nationals or domiciliaries who have used that geographical indication in a continuous manner with regard to the same or related goods or

services in the territory of that Member either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date.

5. Where a trademark has been applied for or registered in good faith, or where rights to a trademark have been acquired through use in good faith either:

- (a) before the date of application of these provisions in that Member as defined in Part VI;

or

- (b) before the geographical indication is protected in its country of origin; measures adopted to implement this Section shall not prejudice eligibility for or the validity of the registration of a trademark, or the right to use a trademark, on the basis that such a trademark is identical with, or similar to, a geographical indication.

6. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to goods or services for which the relevant indication is identical with the term customary in common language as the common name for such goods or services in the territory of that Member. Nothing in this Section shall require a Member to apply its provisions in respect of a geographical indication of any other Member with respect to products of the vine for which the relevant indication is identical with the customary name of a grape variety existing in the territory of that Member as of the date of entry into force of the WTO Agreement.

7. A Member may provide that any request made under this Section in connection with the use or registration of a trademark must be presented within five years after the adverse use of the protected indication has become generally known in that Member or after the date of registration of the trademark in that Member provided that the trademark has been published by that date, if such date is earlier than the date on which the adverse use became generally known in that Member, provided that the geographical indication is not used or registered in bad faith.

8. The provisions of this Section shall in no way prejudice the right of any person to use, in the course of trade, that person's name or the name of that person's predecessor in business, except where such name is used in such a manner as to mislead the public.
9. There shall be no obligation under this Agreement to protect geographical indications which are not or cease to be protected in their country of origin, or which have fallen into disuse in that country.

#### **SECTION 4: INDUSTRIAL DESIGNS**

##### **Article 25 Requirements for Protection**

1. Members shall provide for the protection of independently created industrial designs that are new or original. Members may provide that designs are not new or original if they do not significantly differ from known designs or combinations of known design features. Members may provide that such protection shall not extend to designs dictated essentially by technical or functional considerations.
2. Each Member shall ensure that requirements for securing protection for textile designs, in particular in regard to any cost, examination or publication, do not unreasonably impair the opportunity to seek and obtain such protection. Members shall be free to meet this obligation through industrial design law or through copyright law.

##### **Article 26 Protection**

1. The owner of a protected industrial design shall have the right to prevent third parties not having the owner's consent from making, selling or importing articles bearing or embodying a design which is a copy, or substantially a copy, of the protected design, when such acts are undertaken for commercial purposes.
2. Members may provide limited exceptions to the protection of industrial designs, provided that such exceptions do not unreasonably conflict with the normal exploitation of protected industrial designs and do not unreasonably prejudice the legitimate interests of the owner of the protected design, taking account of the legitimate interests of third parties.
3. The duration of protection available shall amount to at least 10 years.

## **SECTION 5: PATENTS**

### **Article 27 Patentable Subject Matter**

1. Subject to the provisions of paragraphs 2 and 3, patents shall be available for any inventions, whether products or processes, in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application.<sup>5</sup> Subject to paragraph 4 of Article 65, paragraph 8 of Article 70 and paragraph 3 of this Article, patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced.
2. Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.
3. Members may also exclude from patentability:
  - (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals;
  - (b) plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof. The provisions of this subparagraph shall be reviewed four years after the date of entry into force of the WTO Agreement.

### **Article 28 Rights Conferred**

1. A patent shall confer on its owner the following exclusive rights:
  - (a) where the subject matter of a patent is a product, to prevent third parties not having the owner's consent from the acts of: making, using, offering

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<sup>5</sup> For the purposes of this Article, the terms "inventive step" and "capable of industrial application" may be deemed by a Member to be synonymous with the terms "non-obvious" and "useful" respectively.



- for sale, selling, or importing <sup>6</sup> for these purposes that product;
- (b) where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of: using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process.
2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts.

#### **Article 29 Conditions on Patent Applicants**

1. Members shall require that an applicant for a patent shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may require the applicant to indicate the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, at the priority date of the application.
2. Members may require an applicant for a patent to provide information concerning the applicant's corresponding foreign applications and grants.

#### **Article 30 Exceptions to Rights Conferred**

Members may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

#### **Article 31**

Other Use Without Authorization of the Right Holder Where the law of a Member allows for other use <sup>7</sup> of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

- (a) authorization of such use shall be considered on its individual merits;

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<sup>6</sup> This right, like all other rights conferred under this Agreement in respect of the use, sale, importation or other distribution of goods, is subject to the provisions of Article 6.

<sup>7</sup> "Other use" refers to use other than that allowed under Article 30.

- (b) such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- (c) the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
- (d) such use shall be non-exclusive;
- (e) such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- (f) any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;
- (g) authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- (h) the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- (i) the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;

- (j) any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;
- (k) Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;
- (l) where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
  - (i) the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
  - (ii) 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; and
  - (iii) the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

#### **Article 32 Revocation/Forfeiture**

An opportunity for judicial review of any decision to revoke or forfeit a patent shall be available.

#### **Article 33 Term of Protection**

The term of protection available shall not end before the expiration of a period of twenty years counted from the filing date.<sup>8</sup>

#### **Article 34 Process Patents: Burden of Proof**

1. For the purposes of civil proceedings in respect of the infringement of the rights of the owner referred to in paragraph 1(b) of Article 28, if the subject matter of a patent is a process for obtaining a product, the judicial

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<sup>8</sup> It is understood that those Members which do not have a system of original grant may provide that the term of protection shall be computed from the filing date in the system of original grant.

authorities shall have the authority to order the defendant to prove that the process to obtain an identical product is different from the patented process. Therefore, Members shall provide, in at least one of the following circumstances, that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process:

- (a) if the product obtained by the patented process is new;
  - (b) if there is a substantial likelihood 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.
2. Any Member shall be free to provide that the burden of proof indicated in paragraph 1 shall be on the alleged infringer only if the condition referred to in subparagraph (a) is fulfilled or only if the condition referred to in subparagraph (b) is fulfilled.
3. In the adduction of proof to the contrary, the legitimate interests of defendants in protecting their manufacturing and business secrets shall be taken into account.

## **SECTION 6: LAYOUT-DESIGNS (TOPOGRAPHIES) OF INTEGRATED CIRCUITS**

### **Article 35 Relation to the IPIC Treaty**

Members agree to provide protection to the layout-designs (topographies) of integrated circuits (referred to in this Agreement as "layout-designs") in accordance with Articles 2 through 7 (other than paragraph 3 of Article 6), Article 12 and paragraph 3 of Article 16 of the Treaty on Intellectual Property in Respect of Integrated Circuits and, in addition, to comply with the following provisions.

### **Article 36 Scope of the Protection**

Subject to the provisions of paragraph 1 of Article 37, Members shall consider unlawful the following acts if performed without the authorization of the right holder:<sup>9</sup> importing, selling, or otherwise distributing for commercial

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9 The term "right holder" in this Section shall be understood as having the same meaning as the term "holder of the right" in the IPIC Treaty.

purposes a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or an article incorporating such an integrated circuit only in so far as it continues to contain an unlawfully reproduced layout-design.

**Article 37 Acts Not Requiring the Authorization of the Right Holder**

1. Notwithstanding Article 36, no Member shall consider unlawful the performance of any of the acts referred to in that Article in respect of an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the person performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout-design. Members shall provide that, after the time that such person has received sufficient notice that the layout-design was unlawfully reproduced, that person may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum equivalent to a reasonable royalty such as would be payable under a freely negotiated licence in respect of such a layout-design.
2. The conditions set out in subparagraphs (a) through (k) of Article 31 shall apply mutatis mutandis in the event of any non-voluntary licensing of a layout-design or of its use by or for the government without the authorization of the right holder.

**Article 38 Term of Protection**

1. In Members requiring registration as a condition of protection, the term of protection of layout-designs shall not end before the expiration of a period of 10 years counted from the date of filing an application for registration or from the first commercial exploitation wherever in the world it occurs.
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2. In Members not requiring registration as a condition for protection, layout-designs shall be protected for a term of no less than 10 years from the date of the first commercial exploitation wherever in the world it occurs.
3. Notwithstanding paragraphs 1 and 2, a Member may provide that protection shall lapse 15 years after the creation of the layout-design.

**SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION**  
**Article 39**

1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices<sup>10</sup> so long as such information:
  - (a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
  - (b) has commercial value because it is secret; and
  - (c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such

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<sup>10</sup> For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

## **SECTION 8: CONTROL OF ANTI-COMPETITIVE PRACTICES IN CONTRACTUAL LICENCES**

### **Article 40**

1. Members agree that some licensing practices or conditions pertaining to intellectual property rights which restrain competition may have adverse effects on trade and may impede the transfer and dissemination of technology.
2. Nothing in this Agreement shall prevent Members from specifying in their legislation licensing practices or conditions that may in particular cases constitute an abuse of intellectual property rights having an adverse effect on competition in the relevant market. As provided above, a Member may adopt, consistently with the other provisions of this Agreement, appropriate measures to prevent or control such practices, which may include for example exclusive grantback conditions, conditions preventing challenges to validity and coercive package licensing, in the light of the relevant laws and regulations of that Member.
3. Each Member shall enter, upon request, into consultations with any other Member which has cause to believe that an intellectual property right owner that is a national or domiciliary of the Member to which the request for consultations has been addressed is undertaking practices in violation of the requesting Member's laws and regulations on the subject matter of this Section, and which wishes to secure compliance with such legislation, without prejudice to any action under the law and to the full freedom of an ultimate decision of either Member. The Member addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting Member, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to

the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting Member.

4. A Member whose nationals or domiciliaries are subject to proceedings in another Member concerning alleged violation of that other Member's laws and regulations on the subject matter of this Section shall, upon request, be granted an opportunity for consultations by the other Member under the same conditions as those foreseen in paragraph 3.

### **PART III**

## **ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

### **SECTION 1: GENERAL OBLIGATIONS**

#### **Article 41**

1. Members shall ensure that enforcement procedures as specified in this Part are available under their law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.
2. Procedures concerning the enforcement of intellectual property rights shall be fair and equitable. They shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays.
3. Decisions on the merits of a case shall preferably be in writing and reasoned. They shall be made available at least to the parties to the proceeding without undue delay. Decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard.
4. Parties to a proceeding shall have an opportunity for review by a judicial authority of final administrative decisions and, subject to jurisdictional provisions in a Member's law concerning the importance of a case, of at least the legal aspects of initial judicial decisions on the merits of a case. However, there shall be no obligation to provide an opportunity for review of acquittals in criminal cases.



5. It is understood that this Part does not create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general, nor does it affect the capacity of Members to enforce their law in general. Nothing in this Part creates any obligation with respect to the distribution of resources as between enforcement of intellectual property rights and the enforcement of law in general.

## **SECTION 2: CIVIL AND ADMINISTRATIVE PROCEDURES AND REMEDIES**

### **Article 42**

Fair and Equitable Procedures Members shall make available to right holders<sup>11</sup> civil judicial procedures concerning the enforcement of any intellectual property right covered by this Agreement. Defendants shall have the right to written notice which is timely and contains sufficient detail, including the basis of the claims. Parties shall be allowed to be represented by independent legal counsel, and procedures shall not impose overly burdensome requirements concerning mandatory personal appearances. All parties to such procedures shall be duly entitled to substantiate their claims and to present all relevant evidence. The procedure shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements.

### **Article 43 Evidence**

1. The judicial authorities shall have the authority, where a party has presented reasonably available evidence sufficient to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party, to order that this evidence be produced by the opposing party, subject in appropriate cases to conditions which ensure the protection of confidential information.
2. In cases in which a party to a proceeding voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a

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<sup>11</sup> For the purpose of this Part, the term "right holder" includes federations and associations having legal standing to assert such rights.

procedure relating to an enforcement action, a Member may accord judicial authorities the authority to make preliminary and final determinations, affirmative or negative, on the basis of the information presented to them, including the complaint or the allegation presented by the party adversely affected by the denial of access to information, subject to providing the parties an opportunity to be heard on the allegations or evidence.

#### **Article 44 Injunctions**

1. The judicial authorities shall have the authority to order a party to desist from an infringement, inter alia to prevent the entry into the channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right, immediately after customs clearance of such goods. Members are not obliged to accord such authority in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right.
2. Notwithstanding the other provisions of this Part and provided that the provisions of Part II specifically addressing use by governments, or by third parties authorized by a government, without the authorization of the right holder are complied with, Members may limit the remedies available against such use to payment of remuneration in accordance with subparagraph (h) of Article 31. In other cases, the remedies under this Part shall apply or, where these remedies are inconsistent with a Member's law, declaratory judgments and adequate compensation shall be available.

#### **Article 45 Damages**

1. The judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity.

2. The judicial authorities shall also have the authority to order the infringer to pay the right holder expenses, which may include appropriate attorney's fees. In appropriate cases, Members may authorize the judicial authorities to order recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity.

#### **Article 46 Other Remedies**

In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed. The judicial authorities shall also have the authority to order that materials and implements the predominant use of which has been in the creation of the infringing goods be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering such requests, the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties shall be taken into account. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit release of the goods into the channels of commerce.

#### **Article 47 Right of Information**

Members may provide that the judicial authorities shall have the authority, unless this would be out of proportion to the seriousness of the infringement, to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution.

#### **Article 48 Indemnification of the Defendant**

1. The judicial authorities shall have the authority to order a party at whose request measures were taken and who has abused enforcement procedures to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse. The judicial

authorities shall also have the authority to order the applicant to pay the defendant expenses, which may include appropriate attorney's fees.

2. In respect of the administration of any law pertaining to the protection or enforcement of intellectual property rights, Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith in the course of the administration of that law.

#### **Article 49 Administrative Procedures**

To the extent that any civil remedy can be ordered as a result of administrative procedures on the merits of a case, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

### **SECTION 3: PROVISIONAL MEASURES**

#### **Article 50**

1. The judicial authorities shall have the authority to order prompt and effective provisional measures:
  - (a) to prevent an infringement of any intellectual property right from occurring, and in particular to prevent the entry into the channels of commerce in their jurisdiction of goods, including imported goods immediately after customs clearance;
  - (b) to preserve relevant evidence in regard to the alleged infringement.
2. The judicial authorities shall have the authority to adopt provisional measures *inaudita altera parte* where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed.
3. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant is the right holder and that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a security or equivalent assurance sufficient to protect the defendant and to prevent abuse.
4. Where provisional measures have been adopted *inaudita altera parte*, the parties affected shall be given notice, without delay after the execution of the measures at the latest. A review, including a right to be heard, shall

take place upon request of the defendant with a view to deciding, within a reasonable period after the notification of the measures, whether these measures shall be modified, revoked or confirmed.

5. The applicant may be required to supply other information necessary for the identification of the goods concerned by the authority that will execute the provisional measures.
6. Without prejudice to paragraph 4, provisional measures taken on the basis of paragraphs 1 and 2 shall, upon request by the defendant, be revoked or otherwise cease to have effect, if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority ordering the measures where a Member's law so permits or, in the absence of such a determination, not to exceed 20 working days or 31 calendar days, whichever is the longer.
7. Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have the authority to order the applicant, upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.
8. To the extent that any provisional measure can be ordered as a result of administrative procedures, such procedures shall conform to principles equivalent in substance to those set forth in this Section.

#### **SECTION 4: SPECIAL REQUIREMENTS RELATED TO BORDER MEASURES**<sup>12</sup>

##### **Article 51 Suspension of Release by Customs Authorities**

Members shall, in conformity with the provisions set out below, adopt procedures<sup>13</sup> to enable a right holder, who has valid grounds for suspecting

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<sup>12</sup> Where a Member has dismantled substantially all controls over movement of goods across its border with another Member with which it forms part of a customs union, it shall not be required to apply the provisions of this Section at that border.

<sup>13</sup> It is understood that there shall be no obligation to apply such procedures to imports of goods put on the market in another country by or with the consent of the right holder, or to goods in transit.

that the importation of counterfeit trademark or pirated copyright goods<sup>14</sup> may take place, to lodge an application in writing with competent authorities, administrative or judicial, for the suspension by the customs authorities of the release into free circulation of such goods. Members may enable such an application to be made in respect of goods which involve other infringements of intellectual property rights, provided that the requirements of this Section are met. Members may also provide for corresponding procedures concerning the suspension by the customs authorities of the release of infringing goods destined for exportation from their territories.

#### **Article 52 Application**

Any right holder initiating the procedures under Article 51 shall be required to provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is prima facie an infringement of the right holder's intellectual property right and to supply a sufficiently detailed description of the goods to make them readily recognizable by the customs authorities. The competent authorities shall inform the applicant within a reasonable period whether they have accepted the application and, where determined by the competent authorities, the period for which the customs authorities will take action.

#### **Article 53 Security or Equivalent Assurance**

1. The competent authorities shall have the authority to require an applicant to provide a security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

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<sup>14</sup> For the purposes of this Agreement:

- (a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;
- (b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

2. Where pursuant to an application under this Section the release of goods involving industrial designs, patents, layout-designs or undisclosed information into free circulation has been suspended by customs authorities on the basis of a decision other than by a judicial or other independent authority, and the period provided for in Article 55 has expired without the granting of provisional relief by the duly empowered authority, and provided that all other conditions for importation have been complied with, the owner, importer, or consignee of such goods shall be entitled to their release on the posting of a security in an amount sufficient to protect the right holder for any infringement. Payment of such security shall not prejudice any other remedy available to the right holder, it being understood that the security shall be released if the right holder fails to pursue the right of action within a reasonable period of time.

**Article 54 Notice of Suspension**

The importer and the applicant shall be promptly notified of the suspension of the release of goods according to Article 51.

**Article 55 Duration of Suspension**

If, within a period not exceeding 10 working days after the applicant has been served notice of the suspension, the customs authorities have not been informed that proceedings leading to a decision on the merits of the case have been initiated by a party other than the defendant, or that the duly empowered authority has taken provisional measures prolonging the suspension of the release of the goods, the goods shall be released, provided that all other conditions for importation or exportation have been complied with; in appropriate cases, this time-limit may be extended by another 10 working days. If proceedings leading to a decision on the merits of the case have been initiated, a review, including a right to be heard, shall take place upon request of the defendant with a view to deciding, within a reasonable period, whether these measures shall be modified, revoked or confirmed. Notwithstanding the above, where the suspension of the release of goods is carried out or continued in accordance with a provisional judicial measure, the provisions of paragraph 6 of Article 50 shall apply.

**Article 56 Indemnification of the Importer and of the Owner of the Goods**

Relevant authorities shall have the authority to order the applicant to pay the importer, the consignee and the owner of the goods appropriate compensation for any injury caused to them through the wrongful detention of goods or through the detention of goods released pursuant to Article 55.

**Article 57 Right of Inspection and Information**

Without prejudice to the protection of confidential information, Members shall provide the competent authorities the authority to give the right holder sufficient opportunity to have any goods detained by the customs authorities inspected in order to substantiate the right holder's claims. The competent authorities shall also have authority to give the importer an equivalent opportunity to have any such goods inspected. Where a positive determination has been made on the merits of a case, Members may provide the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee and of the quantity of the goods in question.

**Article 58 Ex Officio Action**

Where Members require competent authorities to act upon their own initiative and to suspend the release of goods in respect of which they have acquired prima facie evidence that an intellectual property right is being infringed:

- (a) the competent authorities may at any time seek from the right holder any information that may assist them to exercise these powers;
- (b) the importer and the right holder shall be promptly notified of the suspension. Where the importer has lodged an appeal against the suspension with the competent authorities, the suspension shall be subject to the conditions, mutatis mutandis, set out at Article 55;
- (c) Members shall only exempt both public authorities and officials from liability to appropriate remedial measures where actions are taken or intended in good faith.

**Article 59 Remedies**

Without prejudice to other rights of action open to the right holder and subject to the right of the defendant to seek review by a judicial authority,



competent authorities shall have the authority to order the destruction or disposal of infringing goods in accordance with the principles set out in Article 46. In regard to counterfeit trademark goods, the authorities shall not allow the re-exportation of the infringing goods in an unaltered state or subject them to a different customs procedure, other than in exceptional circumstances.

#### **Article 60 De Minimis Imports**

Members may exclude from the application of the above provisions small quantities of goods of a non-commercial nature contained in travellers' personal luggage or sent in small consignments.

### **SECTION 5: CRIMINAL PROCEDURES**

#### **Article 61**

Members shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies available shall include imprisonment and/or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for crimes of a corresponding gravity. In appropriate cases, remedies available shall also include the seizure, forfeiture and destruction of the infringing goods and of any materials and implements the predominant use of which has been in the commission of the offence. Members may provide for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, in particular where they are committed wilfully and on a commercial scale.

### **PART IV**

### **ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS AND RELATED INTER-PARTES PROCEDURES**

#### **Article 62**

1. Members may require, as a condition of the acquisition or maintenance of the intellectual property rights provided for under Sections 2 through 6 of Part II, compliance with reasonable procedures and formalities. Such procedures and formalities shall be consistent with the provisions of this Agreement.

2. Where the acquisition of an intellectual property right is subject to the right being granted or registered, Members shall ensure that the procedures for grant or registration, subject to compliance with the substantive conditions for acquisition of the right, permit the granting or registration of the right within a reasonable period of time so as to avoid unwarranted curtailment of the period of protection.
3. Article 4 of the Paris Convention (1967) shall apply *mutatis mutandis* to service marks.
4. Procedures concerning the acquisition or maintenance of intellectual property rights and, where a Member's law provides for such procedures, administrative revocation and inter partes procedures such as opposition, revocation and cancellation, shall be governed by the general principles set out in paragraphs 2 and 3 of Article 41.
5. Final administrative decisions in any of the procedures referred to under paragraph 4 shall be subject to review by a judicial or quasi-judicial authority. However, there shall be no obligation to provide an opportunity for such review of decisions in cases of unsuccessful opposition or administrative revocation, provided that the grounds for such procedures can be the subject of invalidation procedures.

## **PART V**

### **DISPUTE PREVENTION AND SETTLEMENT**

#### **Article 63 Transparency**

1. Laws and regulations, and final judicial decisions and administrative rulings of general application, made effective by a Member pertaining to the subject matter of this Agreement (the availability, scope, acquisition, enforcement and prevention of the abuse of intellectual property rights) shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and right holders to become acquainted with them. Agreements concerning the subject matter of this Agreement which are in force between the government or a governmental agency of a Member and the government or a governmental agency of another Member shall also be published.

2. Members shall notify the laws and regulations referred to in paragraph 1 to the Council for TRIPS in order to assist that Council in its review of the operation of this Agreement. The Council shall attempt to minimize the burden on Members in carrying out this obligation and may decide to waive the obligation to notify such laws and regulations directly to the Council if consultations with WIPO on the establishment of a common register containing these laws and regulations are successful.  
The Council shall also consider in this connection any action required regarding notifications pursuant to the obligations under this Agreement stemming from the provisions of Article 6ter of the Paris Convention (1967).
3. Each Member shall be prepared to supply, in response to a written request from another Member, information of the sort referred to in paragraph 1. A Member, having reason to believe that a specific judicial decision or administrative ruling or bilateral agreement in the area of intellectual property rights affects its rights under this Agreement, may also request in writing to be given access to or be informed in sufficient detail of such specific judicial decisions or administrative rulings or bilateral agreements.
4. Nothing in paragraphs 1, 2 and 3 shall require Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

#### **Article 64 Dispute Settlement**

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.
2. Subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.

3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under subparagraphs 1(b) and 1(c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial Conference for approval. Any decision of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process.

## **PART VI**

### **TRANSITIONAL ARRANGEMENTS**

#### **Article 65 Transitional Arrangements**

1. Subject to the provisions of paragraphs 2, 3 and 4, no Member shall be obliged to apply the provisions of this Agreement before the expiry of a general period of one year following the date of entry into force of the WTO Agreement.
2. A developing country Member is entitled to delay for a further period of four years the date of application, as defined in paragraph 1, of the provisions of this Agreement other than Articles 3, 4 and 5.
3. Any other Member which is in the process of transformation from a centrally-planned into a market, free-enterprise economy and which is undertaking structural reform of its intellectual property system and facing special problems in the preparation and implementation of intellectual property laws and regulations, may also benefit from a period of delay as foreseen in paragraph 2.
4. To the extent that a developing country Member is obliged by this Agreement to extend product patent protection to areas of technology not so protectable in its territory on the general date of application of this Agreement for that Member, as defined in paragraph 2, it may delay the application of the provisions on product patents of Section 5 of Part II to such areas of technology for an additional period of five years.
5. A Member availing itself of a transitional period under paragraphs 1, 2, 3 or 4 shall ensure that any changes in its laws, regulations and practice

made during that period do not result in a lesser degree of consistency with the provisions of this Agreement.

#### **Article 66 Least-Developed Country Members**

1. In view of the special needs and requirements of least-developed country Members, their economic, financial and administrative constraints, and their need for flexibility to create a viable technological base, such Members shall not be required to apply the provisions of this Agreement, other than Articles 3, 4 and 5, for a period of 10 years from the date of application as defined under paragraph 1 of Article 65. The Council for TRIPS shall, upon duly motivated request by a least-developed country Member, accord extensions of this period.
2. Developed country Members shall provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least-developed country Members in order to enable them to create a sound and viable technological base.

#### **Article 67 Technical Cooperation**

In order to facilitate the implementation of this Agreement, developed country Members shall provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favour of developing and least-developed country Members. Such cooperation shall include assistance in the preparation of laws and regulations on the protection and enforcement of intellectual property rights as well as on the prevention of their abuse, and shall include support regarding the establishment or reinforcement of domestic offices and agencies relevant to these matters, including the training of personnel.

### **PART VII**

#### **INSTITUTIONAL ARRANGEMENTS; FINAL PROVISIONS**

##### **Article 68 Council for Trade-Related Aspects of Intellectual Property Rights**

The Council for TRIPS shall monitor the operation of this Agreement and, in particular, Members' compliance with their obligations hereunder, and shall afford Members the opportunity of consulting on matters relating to the trade-related aspects of intellectual property rights. It shall carry out such

other responsibilities as assigned to it by the Members, and it shall, in particular, provide any assistance requested by them in the context of dispute settlement procedures. In carrying out its functions, the Council for TRIPS may consult with and seek information from any source it deems appropriate. In consultation with WIPO, the Council shall seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of that Organization.

#### **Article 69 International Cooperation**

Members agree to cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights. For this purpose, they shall establish and notify contact points in their administrations and be ready to exchange information on trade in infringing goods. They shall, in particular, promote the exchange of information and cooperation between customs authorities with regard to trade in counterfeit trademark goods and pirated copyright goods.

#### **Article 70 Protection of Existing Subject Matter**

1. This Agreement does not give rise to obligations in respect of acts which occurred before the date of application of the Agreement for the Member in question.
2. Except as otherwise provided for in this Agreement, this Agreement gives rise to obligations in respect of all subject matter existing at the date of application of this Agreement for the Member in question, and which is protected in that Member on the said date, or which meets or comes subsequently to meet the criteria for protection under the terms of this Agreement. In respect of this paragraph and paragraphs 3 and 4, copyright obligations with respect to existing works shall be solely determined under Article 18 of the Berne Convention (1971), and obligations with respect to the rights of producers of phonograms and performers in existing phonograms shall be determined solely under Article 18 of the Berne Convention (1971) as made applicable under paragraph 6 of Article 14 of this Agreement.

3. There shall be no obligation to restore protection to subject matter which on the date of application of this Agreement for the Member in question has fallen into the public domain.
4. In respect of any acts in respect of specific objects embodying protected subject matter which become infringing under the terms of legislation in conformity with this Agreement, and which were commenced, or in respect of which a significant investment was made, before the date of acceptance of the WTO Agreement by that Member, any Member may provide for a limitation of the remedies available to the right holder as to the continued performance of such acts after the date of application of this Agreement for that Member. In such cases the Member shall, however, at least provide for the payment of equitable remuneration.
5. A Member is not obliged to apply the provisions of Article 11 and of paragraph 4 of Article 14 with respect to originals or copies purchased prior to the date of application of this Agreement for that Member.
6. Members shall not be required to apply Article 31, or the requirement in paragraph 1 of Article 27 that patent rights shall be enjoyable without discrimination as to the field of technology, to use without the authorization of the right holder where authorization for such use was granted by the government before the date this Agreement became known.
7. In the case of intellectual property rights for which protection is conditional upon registration, applications for protection which are pending on the date of application of this Agreement for the Member in question shall be permitted to be amended to claim any enhanced protection provided under the provisions of this Agreement. Such amendments shall not include new matter.
8. Where a Member does not make available as of the date of entry into force of the WTO Agreement patent protection for pharmaceutical and agricultural chemical products commensurate with its obligations under Article 27, that Member shall:

- (a) notwithstanding the provisions of Part VI, provide as from the date of entry into force of the WTO Agreement a means by which applications for patents for such inventions can be filed;
  - (b) apply to these applications, as of the date of application of this Agreement, the criteria for patentability as laid down in this Agreement as if those criteria were being applied on the date of filing in that Member or, where priority is available and claimed, the priority date of the application; and
  - (c) provide patent protection in accordance with this Agreement as from the grant of the patent and for the remainder of the patent term, counted from the filing date in accordance with Article 33 of this Agreement, for those of these applications that meet the criteria for protection referred to in subparagraph (b).
9. Where a product is the subject of a patent application in a Member in accordance with paragraph 8(a), exclusive marketing rights shall be granted, notwithstanding the provisions of Part VI, for a period of five years after obtaining marketing approval in that Member or until a product patent is granted or rejected in that Member, whichever period is shorter, provided that, subsequent to the entry into force of the WTO Agreement, a patent application has been filed and a patent granted for that product in another Member and marketing approval obtained in such other Member.

#### **Article 71 Review and Amendment**

1. The Council for TRIPS shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 of Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date, and at identical intervals thereafter. The Council may also undertake reviews in the light of any relevant new developments which might warrant modification or amendment of this Agreement.
2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other



multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPS.

**Article 72 Reservations**

Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

**Article 73 Security Exceptions**

Nothing in this Agreement shall be construed:

- (a) to require a Member to furnish any information the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Member from taking any action which it considers necessary for the protection of its essential security interests;
- (i) relating to fissionable materials or the materials from which they are derived;
- (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;
- (iii) taken in time of war or other emergency in international relations; or
- (c) to prevent a Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

**FROM II**

**APPLICATION FOR REGISTRATION  
OF COPYRIGHTS [See rule 4 (1)]**

To  
The Registrar of Copyrights,  
Copyright Office,  
Karachi.

Sir,

In accordance with section 39 of the Copyright Ordinance, 1962 (XXXIV of 1962), I hereby apply for registration of copyright and request that entries may be made in the Register of Copyrights as in the enclosed statement of particulars sent herewith in triplicate.

\*I also send herewith duly completed the statement of further particulars relating to my work.

2. In accordance with sub-rule (3) of rule 4 of the Copyright Rules, 1967, I have sent by hand/pre-paid registered post copies of this letter and of the enclosed statement(s) to the other parties \*\*concerned, as shown below :-

Name and address of the parties	Date of Despatch
1	2

3. The prescribed fee has been paid, as per details below: -

7. Communication on the subject may be addressed to: \_\_\_\_\_

Yours faithfully,

.....

(Signature)

List of enclosures.

Place.....

Date.....

Statement of particulars (To be sent in triplicate)

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\*For Literary, Dramatic, Musical and Artistic works only.

\*\* See entries 7,11,12,and 13 of the statement of particulars and the party referred to in entry 2(e) of the statement of further particulars.

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### **STATEMENT OF PARTICULARS**

(To be sent in triplicate)

1. Registration Number (to be filled in the copyright Office).
2. Name, address and nationality of the applicant.
3. Nature of the applicant's interest in the copyright of the work.
4. Class and description of the work and the year of creation
5. Title of the work.
6. Language of the work.
7. Name, address and nationality of the author and if the author is dead, the date of his death.
8. Whether work is published or unpublished?
9. Years and countries of first publication and name, address and nationality of the publisher
10. Years and countries of subsequent publications, if any and names, addresses and nationalities of the publishers.
11. Names, addresses and nationalities of the owners of the various rights comprising the copyright in the work and the extent of rights held by each, together with particulars of assignment and Licences, if any.
12. Names, addresses and nationalities of the other person, if any, authorized to assign or licence the rights comprising the copyright
13. If the work is an artistic work, the location of the original work, including name, address and nationality of the person in possession of the work (in the case of an architectural work the year of completion of the work should also be mentioned.
14. Remarks, if any

Place.....

Date.....

.....  
(Signature)