



**PARLIAMENT OF THE DEMOCRATIC  
SOCIALIST REPUBLIC OF  
SRI LANKA**

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**INTELLECTUAL PROPERTY  
ACT, No. 36 OF 2003**

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**[Certified on 12th November, 2003]**

*Printed on the Order of Government*

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L.D.—O. 54/2002.

AN ACT TO PROVIDE FOR THE LAW RELATING TO INTELLECTUAL PROPERTY AND FOR AN EFFICIENT PROCEDURE FOR THE REGISTRATION, CONTROL AND ADMINISTRATION THERE OF ; TO AMEND THE CUSTOMS ORDINANCE (CHAPTER 235) AND THE HIGH COURT OF THE PROVINCES (SPECIAL) PROVISIONS ACT, No. 10 OF 1996 ; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Intellectual Property Act, No. 36 of 2003. Short title.

## PART I

### ADMINISTRATION

2. (1) There shall be a person to be or to act as the Director-General of Intellectual Property of Sri Lanka (hereinafter referred to as the “Director-General”). Appointment and powers of the Director-General.

(2) The Director-General shall—

- (a) be vested with the power of implementation of the provisions of this Act, the control and superintendence of the registration and administration of Industrial Designs, Patents, Marks and of any other matter as provided by the Act, and the supervision and control of all persons appointed for, or engaged in, the implementation of the provisions of this Act ; and
- (b) take all necessary steps to promote and encourage national awareness of the subject of Intellectual Property including copyright and related rights by organisation of exhibitions, contests, seminars and publications and by promoting and encouraging the establishment and proper functioning of organisations or societies to protect and administer copyright and related rights under Part II of the Act.

(3) The Director-General shall comply with the general policy of the government with respect to subject of intellectual property and with any general or special directions issued by the Minister in relation to such policy.

Director and  
Deputy Directors.

**3.** (1) There may from time to time be appointed a fit and proper person or persons, to be or to act as Director of Intellectual Property and such other Deputy Directors for the proper implementation and administration of the provisions of this Act.

(2) Any person so appointed may exercise, perform and discharge any power, duty or function expressly conferred or imposed upon the Director or the Deputy directors, as the case may be, and may, subject to the directions of the Minister and under the authority and control of the Director-General, exercise, perform and discharge any powder, duty or function conferred or imposed upon the Director-General by or under this Act.

(3) There shall be appointed such other officers and servants as may be necessary for the administration of the Act.

Office and  
maintenance of  
registers.

**4.** (1) There shall be an office called the National Intellectual Property Office of Sri Lanka (hereinafter referred to as the "Office"). Such office shall be the sole office in Sri Lanka for the registration and administration of Industrial designs, patents, marks and any other matter as provided by the Act.

(2) All registers required to be kept and maintained under the provisions of this Act shall be kept and maintained under the supervision of the Director-General at the Office and such registers shall be the only legally recognized registers in Sri Lanka for the registration of industrial designs, patents, marks and any other matter as provided by the Act.

PART II

CHAPTER I

COPYRIGHT

5. For the purposes of this Part—

Interpretation.

“audiovisual work” means a work that consists of a series of related images which impart the impression of motion, with or without accompanying sounds, susceptible of being made visible, and where accompanied by sounds susceptible of being made audible ;

“author” means the physical person who has created the work ;

“broadcasting” means the communication of a work, a performance or a sound recording to the public by wireless transmission, including transmission by satellite ;

“collective work” means a work created by two or more physical persons at the initiative and under the direction of a physical person or legal entity, with the understanding that it will be disclosed by the latter person or entity under his or its own name and that the identity of the contributing physical persons will not be indicated ;

“communication to the public” means the transmission to the public by wire or without wire of the images or sounds, or both, of a work, a performance or a sound recording including the making available to the public of a work, performance or sound recording in such a way that members of the public may access them from a place and at a time individually chosen by them ;

“computer” means an electronic or similar device having information processing capabilities ;

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

“economic rights” means the rights referred to in section 9 ;

“expression of folklore” means a group oriented and tradition based creation of groups or individuals reflecting the expectation of the community as an adequate expression of its cultural and social identity, its standards and values as transmitted orally, by imitation or by other means, including :

- (a) folktales, folk poetry, and folk riddles ;
- (b) folk songs and instrumental folk music ;
- (c) folk dances and folk plays ;
- (d) productions of folk arts in particular, drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, handicrafts, costumes, and indigenous textiles ;

“infringement” means an act that violated any right protected under this Part ;

“moral rights” means rights referred to in section 10 ;

“performers” means singers, musicians, and other persons who sing, deliver, declaim, play in, or otherwise perform, literary or artistic works or expressions of folklore ;

“photographic work” means the recording of light or other radiation on any medium on which an image is produced or from which an image may be produced, irrespective of the technique (chemical, electronic or other) by which such recording is made, a still picture extracted from an audiovisual work shall not be considered a “photographic work” but a part of the audiovisual work concerned ;

“producer” of an audiovisual work or a sound recording means the physical person or legal entity that undertakes the initiative and responsibility for the making of the audiovisual work or sound recording ;

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

- (a) directly ;
- (b) by means of a film, slide, television image or otherwise on screen ;
- (c) by means of any other device or process ; or
- (d) in the case of an audiovisual work, the showing of individual images nonsequentially at a place or places where persons outside the normal circle of a family and its closest social acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time or at different places or times, and where the work can be displayed without communication to the public within the meaning of the definition of the expression “Communication to the Public”;

“public lending” means the transfer of the possession of the original or a copy of a work or a sound recording for a limited period of time for non-profit making purposes, by an institution, the services of which are available to the public, such as a public library or archives ;

“public performance” means—

- (a) in the case of a work other than an audiovisual work, the recitation, playing, dancing, acting or otherwise performing the work in public either directly or by means of any device or process ;
- (b) in the case of an audiovisual work, the showing of images in sequence or the making of accompanying sound audible in public ; and
- (c) in the case of a sound recording, making the recording sounds audible at a place or at places where persons outside the normal circle of the family and its closest acquaintances are or can be present, irrespective of whether they are or can be present at the same place and time, or at different places or times, and where the performance can be perceived without the need for communication to the public within the meaning of the definition of the expression “communication to the public” ;

“published” means a work or a sound recording—

- (a) copies of which have been made available to the public in a reasonable quantity for sale, rental, public lending or for transfer of the ownership or the possession of the copies ;  
or
- (b) which has been made available to the public by means of an electronic system :

Provided that, in the case of a work, the making available to the public took place with the consent of the owner of the copyright, and in the case of a sound recording, with the consent of, the producer of the sound recording or his successor in title ;

“rental” means the transfer of the possession of the original or a copy of a work or sound recording for a limited period of time for profit making purposes ;

“reproduction” means the making of one or more copies of a work or sound recording in any material form, including any permanent or temporary storage of a work or sound recording in electronic form ;

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

“work” means any literary, artistic or scientific work referred to in section 6 ;

“work of applied art” means an artistic creation with utilitarian functions or incorporated in a useful article, whether made by hand or produced on an industrial scale ;

“work of joint authorship” means a work to the creation of which two or more authors have contributed, provided the work does not qualify as “a collective work”.

**6.** (1) The following works shall be protected as literary, artistic or scientific work (hereinafter referred to as “works”) which are original intellectual creations in the literary, artistic and scientific domain, including and in particular—

Works protected.

- (a) books, pamphlets, articles, computer programs and other writings ;
- (b) speeches, lectures, addresses, sermons and other oral works ;



- (c) dramatic, dramatic-musical works, pantomimes, choreographic works and other works created for stage productions ;
- (d) stage production of works specified in paragraph (c) and expressions of folklore that are apt for such productions ;
- (e) musical works, with or without accompanying words ;
- (f) audiovisual works ;
- (g) works of architecture ;
- (h) works of drawing, painting, sculpture, engraving, litho-graphy, tapestry and other works of fine art ;
- (j) photographic works ;
- (k) works of applied art ;
- (l) illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science.

(2) The works specified in subsection (1) of this section shall be protected by the sole fact of their creation and irrespective of their mode or form of expression, as well as of their content, quality and purpose.

Derivative works.

**7.** (1) The following shall also be protected as works :—

- (a) translations, adaptations, arrangements and other transformations or modifications of works ; and
- (b) collections of works and collections of mere data (data bases), whether in machine readable or other form, provided that such collections are original by reason of the selection, co-ordination or arrangement of their contents.

(2) The protection of any work referred to in subsection (1) shall be without prejudice to any protection of a pre-existing work incorporated in, or utilized for, the making of such a work.

**8.** Notwithstanding the provisions of sections 6 and 7, no protection shall be extended under this Part —

Works not protected.

- (a) to any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained, illustrated or embodied in a work ;
- (b) to any official text of a legislative, administrative or legal nature, as well as any official translation thereof ;
- (c) to news of the day published, broadcast, or publicly communicated by any other means.

**9.** (1) Subject to the provisions of sections 11 to 13 the owner of copyright of a work shall have the exclusive right to carry out or to authorize the following acts in relation to the work —

Economic rights.

- (a) reproduction of the work ;
- (b) translation of the work ;
- (c) adaptation, arrangement or other transformation of the work ;
- (d) the public distribution of the original and each copy of the work by sale, rental, export or otherwise ;
- (e) rental of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a data base or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned ;

- (f) importation of copies of the work, (even where the imported copies were made with the authorization of the owner of the copyright) ;
- (g) public display of the original or a copy of the work ;
- (h) public performance of the work ;
- (j) broadcasting of the work ; and
- (k) other communication to the public of the work.

(2) The provisions of subsection (1) of this section shall apply to both the entire work and a substantial part thereof.

(3) The rights of rental in terms of paragraph (e) of subsection (1) shall not apply to rental of computer programs where the program itself is not the essential object of the rental.

(4) Notwithstanding the provisions of paragraph (d) of subsection (1), the owner of a work or a copy of a work lawfully made or any person authorized in that behalf by such owner, is entitled without the authority of the owner of the copyright, to sell or otherwise dispose of that copy.

Moral Rights.

**10.** (1) The author of a work shall independently of his economic rights and even where he is no longer the owner of those economic rights, have the following rights :—

- (a) to have his name indicated prominently on the copies and in connection with any public use of his work, as far as practicable ;
- (b) the right to use a pseudonym and not have his name indicated on the copies and in connection with any public use of his work ;
- (c) to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honour or reputation.

(2) No right mentioned in subsection (1) shall be transmissible during the life time of the author, however on the death of the author, the right to exercise any of those rights shall be transmissible by testamentary disposition or by operation of law.

(3) The author may waive any of the moral rights mentioned in subsection (1), provided that such a waiver is in writing and clearly specifies the right or rights waived and the circumstances to which the waiver applies :

Provided that where any waiver of the rights under paragraph (c) of subsection (1) specifies the nature and extent of the modification or other action in respect of which the right is waived, subsequent to the death of the author, the physical person or legal entity upon whom or which the moral rights have devolved shall have the right to waive the said rights.

**11.** (1) Notwithstanding the provisions of subsection (1) of section 9, the fair use of a work, including such use by reproduction in copies or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship or research, shall not be an infringement of copyright.

Fair use.

(2) The following factors shall be considered in determining whether the use made of a work in any particular case is fair use :—

- (a) the purpose and character of the use, including whether such use is of a commercial nature or is for non-profit educational purposes ;
- (b) the nature of the copyrighted work ;
- (c) the amount and substantiality of the portion used in relation to the copyrighted work as a whole ; and
- (d) the effect of the use upon the potential market for, or value of, the copyrighted work.

(3) The acts of fair use shall include the circumstances specified in section 12.

Act of fair use.

**12.** (1) Notwithstanding anything contained in paragraph (a) of subsection (1) of section 9 and subject to the provisions of subsection (2) of this section, the private reproduction of a published work in a single copy shall be permitted without the authorization of the owner of the copyright, where the reproduction is made by a physical person from a lawful copy of such work exclusively for his own personal purposes.

(2) The permission under subsection (1) of this section shall not be extended to the reproduction—

- (a) of a work of architecture in the form of a building or other constructions ;
- (b) in the form of reprography of the whole or a substantial part of a book or of a musical work in the form of notations ;
- (c) of the whole or a substantial part of a data base ;
- (d) of a computer program, except as provided in subsection (7) ; and
- (e) of any work, in case the reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the owner of the copyright.

(3) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, the reproduction, in the form of a quotation, of a short part of a published work shall be permitted without authorization of the owner of copyright :

Provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction. The quotation shall be accompanied by an indication of the source and the name of the author, if his name appears in the work from which the quotation is taken.

(4) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, the following acts shall be permitted without the authorization of the owner of the copyright :—

- (a) the reproduction of a short part of a published work for teaching purposes by way of illustration, in writing or sound or visual recordings, provided that the reproduction is compatible with fair practice and does not exceed the extent justified by the purpose of such reproduction;
- (b) the reprographic reproduction for face to face teaching in any educational institution the activities of which do not serve direct or indirect commercial gain, of published articles, other short works or short extracts of works, to the extent justified by the purpose, provided that the act of reproduction is an isolated one occurring, if repeated, on separate and unrelated occasions :

Provided however the source of the work reproduced and the name of the author shall be indicated as far as practicable on all copies made under this subsection.

(5) Notwithstanding the provisions of paragraph (a) of subsection (1) of section 9, any library or archives, whose activities do not serve any direct or indirect commercial gain may, without the authorization of the owner of copyright, make a single copy of the work by reprographic reproduction—

- (a) where the work reproduced is a published article, other short work or short extract of a work, and where the purpose of the reproduction is to satisfy the request of a physical person :

Provided that—

- (i) the library or archives is satisfied that the copy will be used solely for the purposes of study, scholarship or private research,

- (ii) the act of reproduction is an isolated occurrence, occurring if repeated, on separate and unrelated occasions ;
- (b) where the copy is made in order to preserve and, if necessary replace a copy, or to replace a copy which has been lost, destroyed or rendered unusable in the permanent collection of another similar library or archives :

Provided that it is not possible to obtain such a copy under reasonable conditions ; and

Provided further, that the act of reprographic reproduction is an isolated occurrence occurring if repeated, on separate and unrelated occasions.

(6) Notwithstanding the provisions of paragraphs (a), (h) and (j) of subsection (1) of section 9, and subject to the condition that the source and the name of the author is indicated as far as practicable, the following acts shall be permitted in respect of a work without the authorization of the owner of copyright—

- (a) the reproduction in a newspaper or periodical, manner of broadcasting or other manner of communication to the public, of an article published in a newspaper or periodical on current economic, political or religious topics or a broadcast or communication relating to the same, and such permission shall not apply where the right to authorize reproduction, broadcasting or other communication to the public is expressly reserved on the copies, by the owner of copyright, or in connection with broadcasting or other communication to the public of the work ;
- (b) for the purpose of reporting current events, the reproduction and the broadcasting or other communication to the public of short excerpts of a

work seen or heard in the course of such events, to the extent that it is justified by the purpose of such reproduction;

- (c) the reproduction in a newspaper or periodical, broadcasting or other manner of communication to the public, of a political speech, a lecture, address, sermon or other work of a similar nature delivered in public, or a speech delivered during legal proceedings, to the extent that it is justified by reason of the fact of providing current information.

(7) (a) Notwithstanding anything contained in paragraphs (a) and (c) of subsection (1) of section 9, reproduction in a single copy or the adaptation of a computer program by the lawful owner of a copy of that computer programme, shall be permitted without the authorization of the owner of copyright provided that the copy or adaptation is necessary—

- (i) for use of the computer program with a computer for the purpose and extent for which the computer program has been obtained ;
- (ii) for archival purposes and for replacement of the lawfully owned copy of the computer program in the event that the said copy of the computer program is lost, destroyed or rendered unusable.

(b) No copy or adaptation of a computer program shall be used for any purpose other than those specified in paragraph (a), and any such copy or adaptation shall be destroyed in the event that continued possession of the copy of the computer program ceases to be lawful.

(8) Notwithstanding the provisions of paragraph (f) of subsection (1) of section 9, the importation of a copy of a work by a physical person for his own personal purposes shall be permitted without the authorization of the owner of copyright.



(9) Notwithstanding anything contained in paragraph (g) of subsection (1) of section 9, the public display of originals or copies of works shall be permitted without the authorization of the owner of copyright :

Provided that the display is made other than by means of a film, slide, television image or otherwise on screen or by means of any other device or process :

Provided further, the work has been published or the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title.

(10) Notwithstanding anything contained in this Part, the following shall not be an infringement of copyright :-

- (a) the performance or display of a work for educational or teaching purposes by government or non profit educational institutions, in classrooms or similar places set aside for education :

Provided that, in the case of an audiovisual work, the performance or the display of individual images, is given by means of a lawfully made copy, or the person responsible for the performance did not know or had no reason to believe that the copy was not lawfully made.

- (b) the communication of a transmission embodying a performance or display of a work by the public reception of the transmission on a single receiving apparatus, of a kind commonly used in private homes, unless –
- (i) a direct charge is made to see or hear the transmission ; or
- (ii) the transmission thus received is further transmitted to the public.

**13.** (1) Subject to the provisions of subsections (2), (3), (4) and (5), the economic and moral rights shall be protected during the life time of the author and for a further period of seventy years from the date of his death.

Duration of  
copyright.

(2) In the case of a work of joint authorship, the economic and moral rights shall be protected during the life of the last surviving author and for a further period of seventy years from the date of the death of the last surviving author.

(3) In the case of a collective work, other than a work of applied art, and in the case of an audiovisual work, the economic and moral rights shall be protected for seventy years from the date on which the work was first published, or failing publication within seventy years from the making of the work.

(4) In the case of a work published anonymously or under a pseudonym, the economic and moral rights shall be protected for seventy years from the date on which the work was first published :

Provided that, where the author's identity is revealed or is no longer in doubt before the expiration of the said period, the provisions of subsection (1) or subsection (2) shall apply, as the case may require.

(5) In the case of work of applied art, the economic and moral rights shall be protected for twenty-five years from the date of the making of the work.

(6) Every period provided for under the preceding subsections shall run to the end of the calendar year in which it would otherwise expire.

**14.** (1) Subject to the provisions of subsections (2), (3), (4) and (5), of this section, the author who created the work shall be the original owner of economic rights.

Original  
ownership of  
economic rights.

(2) In respect of a work of joint authorship, the co-authors shall be the original owners of the economic rights. If, however, a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the economic rights in respect of the part that he has created.

(3) In respect of a collective work, the physical person or legal entity at the initiative, and under the direction, of whom or which the work has been created shall be the original owner of the economic rights.

(4) In respect of a work created by an author employed by a physical person or legal entity in the course of his employment, the original owner of the economic rights shall, unless provided otherwise by way of a contract, be the employer. If the work is created pursuant to a commission, the original owner of economic rights shall be, unless otherwise provided in a contract, the person who commissioned the work.

(5) In respect of an audiovisual work, the original owner of the economic rights shall be the producer, unless otherwise provided in a contract. The co-authors of the audiovisual work and the authors of the pre-existing works, included in, or adapted for, the making of the audiovisual work shall, however, maintain their economic rights in their contributions or pre-existing works, respectively, to the extent that those contributions or pre existing works can be the subject of acts covered by their economic rights separately from the audiovisual work.

Presumption of authorship and of representation of the author.

**15.** (1) The physical person whose name is indicated as the author on a work in the usual manner shall, in the absence of proof to the contrary, be presumed to be the author of the work. The provisions of this section shall be applicable even if the name is a pseudonym, where the pseudonym leaves no doubt as to the identity of the author.

(2) The physical person or legal entity whose name appears on an audio-visual work shall, in the absence of proof to the contrary, be presumed to be the producer of the said work.

**16.** (1) The owner of a copyright may -

Assignment or  
licence of  
author's rights.

- (a) grant licence to a physical person or legal entity to carry out all or any of the acts relating to the economic rights referred to in section 9 ;
- (b) assign or transfer in whole or any part of the economic rights referred to in section 9.

(2) Any assignment or transfer of an economic right, and any licence to do such an act subject to authorization by the owner of the copyright, shall be in writing signed by the assignor and the assignee, transferor and the transferee or by the licensor and the licensee, as the case may be.

(3) An assignment or transfer in whole or in part of any economic right, or a licence to do an act subject to authorization by the owner of copyright, shall not include or be deemed to include the assignment or transfer or licence in respect of any other rights not expressly referred to therein.

## CHAPTER II

### RELATED RIGHTS

[PROTECTION OF RIGHTS OF PERFORMERS, PRODUCERS OF SOUND  
RECORDING AND BROADCASTING ORGANIZATION]

**17.** (1) Subject to the provisions of section 21, a performer shall have exclusive right to carry out or to authorize any of the following acts :—

Rights requiring  
authorization of  
performers.

- (a) the broadcasting or other communication to the public of his performance or a substantial part thereof, except where the broadcasting, or the other communication—
  - (i) is made from a fixation of the performance, other than a fixation made in terms of section 21 ; or

(ii) is a re-broadcasting, made or authorized by the organisation initially broadcasting the performance or substantial part thereof ;

(b) the fixation of his unfixed performance or substantial part thereof ;

(c) the reproduction of a fixation of his performance or substantial part thereof.

(2) Once the performer has authorized the incorporation of his performance in a audiovisual fixation, the provisions of subsection (1) shall have no further application.

(3) Nothing in this section shall be construed to deprive performers of the right to enter into contracts in respect of their performances on terms and conditions more favourable to them.

(4) The rights under this section shall be protected from the moment the performance takes place until the end of the fiftieth calendar year following the year in which the performance takes place.

Rights of  
producers of  
sound recordings.

**18.** (1) Subject to the provisions of section 21, a producer of a sound recording shall have the exclusive right to carry out or to authorise any of the following acts :—

(a) the direct or indirect reproduction of the sound recording or substantial part thereof ;

(b) the importation of copies of the sound recording or a substantial part thereof even where such imported copies were made with the authorisation of the producer ;

(c) the adaptation or other transformation of the sound recording or a substantial part thereof ;

(d) the rental of a copy of the sound recording or a substantial part thereof, irrespective of the ownership of the copy rented ;

- (e) the sale or offering for sale to the public of the original or copies of the sound recording or substantial part thereof.

(2) The rights under subsection (1) of this section shall be protected from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication, or if the sound recording has not been published, from the date of fixation of the sound recording until the end of fiftieth calendar year following the year of fixation.

**19.** (1) where a sound recording published for commercial purposes, or a reproduction of such sound recording, is used directly for broadcasting or other form of communication to the public, or is publicly performed, a single equitable remuneration for the performer or performers and the producer of the sound recording shall be paid by the user.

Equitable remuneration for use of sound recordings.

(2) Unless otherwise agreed between the performer or the producer, half of the sum received by the producer under subsection (1) shall be paid by the producer to any performer.

(3) The right to an equitable remuneration under this section shall subsist from the date of publication of the sound recording until the end of the fiftieth calendar year following the year of publication, or if the sound recording has not been published, from the date of fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation.

**20.** (1) Subject to the provisions of section 21, a broadcasting organisation shall have the exclusive right to carry out or to authorize any of followings acts :—

Rights of broadcasting organisation.

- (a) the re-broadcasting of its broadcast or a substantial part thereof ;
- (b) the communication to the public of its broadcast or a substantial part thereof ;

- (c) the fixation of its broadcast or a substantial part thereof ;
- (d) the reproduction of a fixation of its broadcast or a substantial part thereof.

(2) The rights under this section shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calender year following the year in which broadcast takes place.

Limitations on protection.

**21.** Sections 17, 18, 19 and 20 shall not apply where the acts referred to in those sections are related to—

- (a) the use by a physical person exclusively for his own personal purposes ;
- (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information ;
- (c) use solely for the purpose of face to face teaching activities or for scientific research ;
- (d) cases where, under copyright, a work can be used without the authorization of the owner of copyright.

Enforcement of rights and disputes resolution.

**22.** (1) Any person who infringes or is about to infringe any of the rights protected under this Part may be prohibited from doing so by way of an injunction and be liable to damages. The owner of such rights is entitled to seek such other remedy as the court may deem fit.

- (2) (a) The Court shall have power and jurisdiction—
  - (i) to grant such injunctions to prohibit the commission of any act of, infringement or the continued commission of such acts of infringement of any right protected under this Part ;

- (ii) to order the impounding of copies of works or sound recordings suspected of being made sold, rented or imported without the authorization of the owner of any right protected under this Part where the making, selling, renting or importation of copies is subject to such authorization, as well as the impounding of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers, referring to, such copies.

(b) The Court shall in addition have the jurisdiction to order the payment by the infringer, of damages for the loss suffered as a consequence of the act of infringement, as well as the payment of expenses caused by the infringement, including legal costs. The amount of damages shall be fixed taking into account *inter alia*, the importance of the material and moral prejudice suffered by the owner of the right, as well as the importance of the infringer's profits attributable to the infringement. Where the infringer did not know or had no reasonable cause to know that he or it was engaged in infringing activity, the court may limit damages to the profits of the infringer attributable to the infringement or to pre established damages.

(c) The Court shall have the authority to order the destruction or other reasonable manner of disposing of copies made in infringement of any right protected under this Part if available and their packaging outside the channels of commerce in such a manner as would avoid harm to the owner of the rights, unless he requests otherwise. The provisions of this section shall not be applicable to copies and their packaging which were acquired by a third party in good faith.

(d) Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the Court shall, whenever and to the extent that it is reasonable, order their destruction or other reasonable manner of disposing of the same outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the rights.



(e) Where there is a danger that acts of infringement may be continued, the court shall make such orders as may be necessary prevent such acts being committed.

(f) The provisions of Chapter XXXV of this Act relating to infringement and remedies shall apply, *mutatis mutandis*, to rights protected under this Part.

(g) Any person who infringes or attempts to infringe any of the rights protected under this Part shall be guilty of an offence and on conviction be liable to any penalty as provided for in Chapters XXXVIII and XLI of the Act.

(3) (a) The Director-General may on an application being made in the prescribed form and manner by a person aggrieved by any of his rights under this Part being infringed or in any other manner affected, and after such inquiry as he thinks fit determine any question that may be necessary or expedient to determine in connection with such application and such decision shall be binding on the parties subject to the provisions of paragraph (b) of this subsection.

(b) Any person aggrieved by the decision of the Director-General may make an appeal to the Court and unless the Court issues an interim order staying the operation of the decision of the Director-General, such decision shall continue to be in force until the matter is decided by the Court.

Measures, remedies and sanctions against abuses in respect of technical means.

**23.** (1) The following acts shall be considered unlawful and in the application of section 22 shall be assimilated to infringements of the rights of the owner of copyright :—

- (i) the manufacture or importation for sale or rental of any device or means specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of copies made (the latter device or means hereinafter referred to as “copy protection or copy management device or means”);

- (ii) the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including reception by satellite, by those who are not entitled to receive the program.

(2) In the application of section 22, any illicit device and means mentioned in subsection (1) of this section shall be assimilated to infringing copies of works.

(3) The owner of copyright in a work shall also be entitled to the damages for infringement provided for in section 22 where—

- (a) authorized copies of the work have been made and offered for sale or rental in an electronic form combined with a copy protection or copy management device or means, and a device or means specifically designed or adapted to circumvent the said device or means, made or imported for sale or rental ;
- (b) the work is authorised for inclusion in an encrypted program, broadcast or otherwise communicated to the public, including by satellite, and a device or means enabling or assisting the reception of the program by those who are not entitled to receive the program made or imported, for sale or rental.

**24.** (1) Subject to the provision of subsection (4) of this section expressions of folklore shall be protected against—

- (a) reproduction ;
- (b) communication to the public by performance, broadcasting, distribution by cable or other means ;
- (c) adaptation, translation and other transformation, when such expressions are made either for commercial purposes or outside their traditional or customary context.

Protection of expressions of folklore and damages.

(2) The rights conferred by subsection (1) of this section shall not apply where the acts referred to therein are related to –

- (a) the use by a physical person exclusively for his own personal purposes ;
- (b) using short excerpts for reporting current events to the extent justified by the purpose of providing current information ;
- (c) the use solely for the purpose of face to face teaching or for scientific research ;
- (d) instances referred to in sections 11 and 12, where a work can be used without the authorization of the owner of copyright.

(3) In all printed publications, and in connection with any communication to the public of any identifiable expression of folklore, its source shall be indicated in an appropriate manner and in conformity with fair practice by mentioning the community or place from where the expression utilized has been derived.

(4) The right to authorize acts referred to in subsection (1) of this section shall subject to the payment of a prescribed fee, vest in a Competent authority to be determined by the Minister.

(5) The money collected under subsection (4) shall be used for purposes of cultural development.

(6) Any person who, without the permission of the Competent Authority referred to in subsection (4), uses an expression of folklore in a manner not permitted by this section shall be in contravention of the provisions of this section and shall be liable to damages, and be subject to an injunctions and any other remedy as the Court may deem fit to award in the circumstances.

25. (1) (a) No person or body of persons corporate or unincorporate shall, after the coming into operation of this Act, commence or carry on the business of issuing or granting licences in respect of any right protected under this Part except under or in accordance with, the provisions of paragraph (c) of this subsection :

Registration of society, administration of rights by societies, control over the rights and submission of report.

Provided that the owner of such right shall, in his individual capacity, continue to have the right to grant licences in respect of his own rights. Where such owner is a member of a society registered under this section the grant of such licences shall be consistent with his obligations as a member of such society.

(b) Any body of persons corporate or unincorporate which fulfils such conditions as may be prescribed, apply to the Director-General for permission to engage in the business specified in paragraph (a) and register the society.

(c) The Director-General may having regard to the interests of the owners of the rights protected under this Part, the interests and convenience of the public and in particular of the groups of persons who are most likely to seek licences in respect of relevant rights and the ability and professional competence of the applicant to grant permission to commence or carry on business specified in paragraph (a) of subsection (1) and register such person or body of persons as a collective society subject to such conditions as may be prescribed :

Provided that the Director-General shall not ordinarily register more than one such society to do business in respect of the same class of rights.

(d) The Director-General may, if he is satisfied that the society is being managed in a manner detrimental to the interests of the owners of rights concerned, cancel or suspend the registration of the society and the permission to commence or carry on business as specified in paragraph (a) of this subsection, after such inquiry as may be necessary.

(e) The Director-General may by order cancel or suspend the registration of such society and the permission to carry on business pending inquiry for such period not exceeding one year as may be specified in such order under paragraph (d) of this subsection.

(f) Where the Director-General suspends the registration of a society, he shall thereupon appoint an administrator to carry out the functions of the society.

(2) (a) Subject to such conditions as may be prescribed—

- (i) a society may accept from an owner of the rights exclusive authorization to administer any right under this Part by the issue of licences or collection of licence fees or both ; and
- (ii) an owner of the rights shall have the right to withdraw such authorization without prejudice to the rights of the society under any contract between such owner and society.

(b) It shall be competent for a society to enter into any agreement with any foreign society or organization administering rights corresponding to the rights protected under this Part, and to entrust to such foreign society or organization the administration in any foreign country of rights administered by the said society in Sri Lanka, or for administering in Sri Lanka the rights administered in a foreign country by such foreign society or organization :

Provided that no such society or organization shall permit any discrimination in regard to the terms of a licence or the distribution of fees collected in connection with the rights protected under this Part and in such foreign country.

(c) Subject to such conditions as may be prescribed, a society may –

- (i) issue licences in respect of any rights protected under this Part ;

- (ii) collect fees in pursuance of such licences ;
- (iii) distribute such fees among owners of rights after making deductions for its own expenses ;
- (iv) perform any other functions consistent with the provisions of subsection (4).

(3) (a) Every society shall be subject to the collective control of the owners of rights under this Part whose rights are administered in such a manner as may be prescribed in order to —

- (i) obtain the approval of such owners of rights for its procedures of collection and distribution of fees ;
- (ii) obtain their approval for the utilization of any amounts collected as fees for any purpose other than distribution to the owner of rights ; and
- (iii) provide to such owners regular, full and detailed information concerning all its activities, in relation to the administration of their rights.

(b) All fees distributed among the owners of rights shall, as far as may be, be distributed in proportion to the actual use of their works.

(4) (a) Every Society shall submit to the Director-General such returns as may be prescribed.

(b) The Director-General may call for any report or records of any society for the purpose of satisfying himself that the fees collected by the society in respect of the rights administered by it are being utilized or distributed in accordance with the provisions of this Part.

**26.** (1) The provisions of this Part in respect of the protection of literary, artistic or scientific works shall apply to —

Scope of application.

- (a) works of authors who are nationals of , or have their habitual residence in, Sri Lanka ; and

- (b) works first published in Sri Lanka, works first published in another country and hereupon published in Sri Lanka, within thirty days from such publication, irrespective of the nationality or residence of the author.

(2) The provisions of this Part shall also apply to works that are protected in Sri Lanka by virtue of, and in accordance with, any international convention or any international agreement to which Sri Lanka is a party.

Protection of performers.

**27.** (1) The provisions of this Part in respect of protection of performers shall apply to—

- (a) performers who are nationals of Sri Lanka ;
- (b) performers who are not nationals of Sri Lanka but whose performances :—
  - (i) take place on the territory of Sri Lanka ; or
  - (ii) are incorporated in sound recordings that are protected under this Part ; or
  - (iii) have not been fixed in a sound recording but are included in broadcasts qualifying for protection under this Part.

(2) The provisions of this Part on the protection of sound recordings, shall apply to —

- (a) sound recordings the producers of which, are nationals of Sri Lanka ;
- (b) sound recordings first fixed in Sri Lanka ; and
- (c) sound recordings first published in Sri Lanka.

(3) The provisions of this Part on the protection of broadcasts shall apply to—

- (a) broadcasts of broadcasting organisations where the registered office of such organisations are situated in Sri Lanka ; and

- (b) broadcasts transmitted from transmitters situated in Sri Lanka.

(4) The provisions of this Part shall in addition apply to performers, producers of sound recordings and broadcasting organisations protected by virtue of, and in accordance with, any international convention or any international agreement to which Sri Lanka is a party.

### PART III

#### CHAPTER III

##### INDUSTRIAL DESIGNS

###### SCOPE OF THIS PART AND DEFINITIONS

- 28.** The protection of industrial designs provided under this Part shall be in addition to and not in derogation of any other protection provided under any other written law, in particular under Part II of this Act. Conditions for protection.
- 29.** The protection provided under this Part shall— Scope of this Part.
- (a) apply only to new industrial designs ;
  - (b) not apply to an industrial design which consists of any scandalous design or is contrary to morality or public order or public interest or which, in the opinion of the Director-General or of any Court to which such matter has been referred to is likely to offend the religious or racial susceptibilities of any community.
- 30.** For the purposes of this Part any composition of lines or colours or any three dimensional form, whether or not associated with lines or colours, that gives a special appearance to a product of industry or handicraft and is capable of serving as a pattern for a product of industry or handicraft shall be deemed to be an industrial design : Definition of industrial design.



Provided that anything in an industrial design which serves solely to obtain a technical result shall not be protected under this Part.

Definition of novelty.

**31.** (1) For the purpose of this Part a new industrial design means an industrial design which had not been made available to the public anywhere in the world and at any time whatsoever through description, use or in any other manner before the date of an application for registration of such industrial design or before the priority date validly claimed in respect thereof.

(2) An industrial design shall not be deemed to have been made available to the public solely by reason of the fact that, within the period of six months preceding the filing of an application for registration, it had been a display at an official or officially recognized, international exhibition.

(3) An industrial design shall not be considered a new industrial design solely by reason of the fact that it differs from an earlier industrial design in minor respects or that it concerns a type of product different from a product embodying an earlier industrial design.

## CHAPTER IV

### RIGHT TO PROTECTION OF INDUSTRIAL DESIGN

Ownership and right to protection of industrial design.

**32.** (1) The right to obtain protection of an industrial design belongs to its owner.

(2) Subject to provisions of section 34, the owner of an industrial design or his successor in title is its creator .

(3) Where two or more persons have jointly created an industrial design, the right to obtain protection shall belong to them jointly :

Provided that a person who has merely assisted in the creation of an industrial design but has made no contribution of a creative nature shall not be deemed to be the creator or a co-creator of such industrial design.

(4) Subject to the provisions of sections 33 and 34 the person who makes the first application for the registration of an industrial design or the person who first validly claims the earliest priority for his application shall be deemed to be the creator of such industrial design.

**33.** (1) Where the essential elements of an industrial design, are the subject of an application for registration or have been derived from an industrial design, for which the right to protection belongs to another person, such other person may apply in writing to the Director-General to assign the said application or registration to him.

Industrial design.

(2) The application for assignment shall be forwarded with the prescribed fee and evidence to substantiate the claim of the applicant. Where the registration has already been effected, the application under subsection (1) shall be made within one year from the date of the publication of the registration under section 44.

(3) The Director-General shall forthwith send a copy of such application for assignment to the applicant for registration or the registered owner of the industrial design, who shall within a period of three months from the date of such notice forward to the Director-General a counter statement in the prescribed manner together with the prescribed fee and evidence to substantiate his claim.

(4) If the applicant or the registered owner forwards a counter statement as referred to in subsection (3), the Director-General shall after hearing the parties, if he considers it necessary decide as expeditiously as possible whether the application or registration should be assigned and, where applicable whether the register should be rectified. If the applicant or the registered owner fails to forward a counter statement as provided for in subsection (3) within the period of three months, the Director-General shall allow the application referred to in subsection (1).

(5) Where, after an application for the registration of an industrial design has been filed, the person to whom the right to protection belongs gives his consent to the filling of the said application, such consent shall, for all purposes, be deemed to have been effective from the date of filling of such application.

Industrial design created by the employee to accrue to employer.

**34.** (1) In the absence of any provision to the contrary in any contract of employment or for the execution of work, the ownership of an industrial design created in the performance of such contract or in the execution of such work shall be deemed to accrue to the employer, or the person who commissioned the work, as the case may be :

Provided that where the industrial design acquires an economic value much greater than the parties could reasonably have foreseen at the time of concluding the contract of employment or for the execution of work, as the case may be, the creator shall be entitled to equitable remuneration which may be fixed by the Court on an application made by the creator to Court in the absence of an agreement between the parties.

(2) Where an employee whose contract of employment does not require him to engage in any creative activity creates, in the field of activities of his employer, an industrial design using data or means placed at his disposal by his employer, the ownership of such industrial design shall be deemed to accrue to the employer in the absence of any provision to the contrary in the contract of employment :

Provided that the employee shall be entitled to equitable remuneration, which in the absence of agreement between the parties, may be fixed by the Court on an application made by the employee, taking into account his emoluments, the economic value of the industrial design and any benefit derived from it by the employer.

(3) The rights conferred on the creator of an industrial design by subsections (1) and (2) shall not be restricted by contract.

**35.** (1) The creator of an industrial design shall be named as such in the registration, unless by a declaration in writing signed by him or any person authorized by him in writing in that behalf and submitted to the Director-General indicates his willingness to forgo his name being used in such registration.

Naming of creator of an industrial design.

(2) The provisions of subsection (1) not be altered, varied or modified by the terms of any contract.

## CHAPTER V

### REQUIREMENTS OF APPLICATION AND PROCEDURE FOR REGISTRATION OF AN INDUSTRIAL DESIGN

**36.** (1) An application for registration of an industrial design shall be made to the Director-General in the prescribed form and shall be accompanied by the prescribed fee and shall contain—

Requirements of application.

- (a) a request for registration of the industrial design ;
- (b) the name, address and description of the applicant and, if he is a resident outside Sri Lanka, a postal address for service in Sri Lanka ;
- (c) a specimen of the article embodying the industrial design or copies of a photographic or graphic representation of the industrial design, in colour where it is in colour, or drawings and tracings of the design ;
- (d) an indication of the kind of products for which the industrial design is to be used and, where the regulations make provision for classification, an indication of the class or classes in which such products are included ;
- (e) a declaration by the applicant that the industrial design is new to the best of his knowledge.

(2) The application for registration may be accompanied by a declaration signed by the creator of the industrial design, giving his name and address and requesting the same to be indicated in the registration.

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

(4) The Director-General shall in every case where the applicant is not the creator of the Industrial design, shall serve the creator with a copy of the statement referred to in subsection (3). The creator of the industrial design shall have the right to inspect the application and to receive, on payment of the prescribed fee, a copy thereof.

(5) Where the application is filed through an agent, it shall be accompanied by power of attorney granted to such agent by the applicant.

Right of priority.

**37.** The applicant for registration of an industrial design who desires to availhim self of the priority of an earlier application filed in a convention country shall, within six months of the date of such earlier application, append to his application a written declaration indicating the date and number of the earlier application, the name of the applicant and the country in which he or his predecessor in title filed such application and shall, within a period of three months from the date of the later application filed in Sri Lanka, furnish a copy of the earlier application certified as correct by the Appropriate Authority of the country where such earlier application was filed.

Application fee.

**38.** An application for registration of an industrial design shall not be entertained unless the prescribed fee has been paid to the Director-General.

Examination of application.

**39.** (1) The Director-General shall examine whether the applicant has complied with the provisions of sections 36, section 37 (where applicable) and section 38.

(2) Where the applicant fails to comply with the provision of sections 36 and 37 the Director-General shall refuse registration of the industrial design :

Provided that the Director-General shall first notify the applicant of any defect in the application and shall afford him an opportunity to remedy such defect within three months from the date of receipt of such notification.

(3) Where the applicant fails to comply with the provisions of section 37 the Director-General shall not, in connection with the registration of the industrial design, make any reference to the priority claimed

(4) Where the applicant complies with the provisions of section 37 the Director-General shall, in connection with the registration of the industrial design, record the priority claimed.

(5) Where the Director-General refuses to register an industrial design he shall, state the grounds for such refusal and inform the applicant, on payment of a prescribed fee of the grounds for his decision.

**40.** (1) Where the applicant complies with the provisions of sections 36 and 38 the Director-General shall examine the industrial design in relation to the provisions of section 29.

Registration.

(2) Where the industrial design is not registrable under section 29 the Director-General shall notify the applicant accordingly, stating the grounds for refusal of registration.

(3) Where the Director-General refuses the application of a person for registration of an industrial design, the applicant may within a period of one month from the date of such notification in terms of section (2), make his submissions in writing on the matter of such refusal to the Director-General.

(4) On receipt of any such submission as required by subsection (3) the Director-General may grant such applicant a hearing and inform him of the date and time of such hearing. The Director-General may after such hearing register or refuse to register such industrial design.

(5) (a) Notwithstanding the provisions of subsections (1) (2), (3) and (4) where the Director-General finds that the essential elements of an industrial design is derived from an industrial design already registered in respect of which an application for registration is made, he shall notify the applicant accordingly and request him, with a copy to the registered owner of the cited industrial design, to show that the industrial design is not so derived.

(b) The applicant may, within a period of three months from the date of such notice, tender his written submissions to the Director-General with the prescribed fee. The registered owner of the cited industrial design may also tender his observations in writing within the same period of time.

(c) On receipt of such written submissions and observations, if any, the Director-General shall after hearing the parties if he considers it necessary forthwith determine whether such industrial design should be registered or not.

(d) Where the applicant fails to tender his written submissions as required by paragraph (b) of subsection (5) the Director-General shall refuse the application for the registration of the industrial design for reasons to be stated and he shall in writing, if the applicant so requests, inform the applicant in writing of the grounds for his decision on payment by the applicant of the prescribed fee.

(6) Where the Director-General is of the opinion that the industrial design is registrable he may request the applicant to pay within a period of one month the prescribed fee for publication of the application.

(7) Where the fee for publication of the application is not paid within the prescribed period registration of the industrial design shall be refused.

(8) (a) If the fee for publication is paid within the prescribed period the Director-General shall proceed to publish the application setting out the date of application, number of the application, the name and address of the applicant and if the applicant is resident outside Sri Lanka, a postal address for service in Sri Lanka, the priority claimed, a description of the industrial design and the kind and class of the industrial design.

(b) Notwithstanding the provisions of subsections (6), (7) and paragraph (a) of subsection (8), the Director-General may in his discretion by a written notice, require the applicant to publish the application in accordance with the provisions of paragraph (a) of subsection (8) and in the form as indicated by the Director-General. Where the applicant fails or neglects to publish the application as required by the Director-General within a period of two months from the said notice of the Director-General, the application may be refused.

(9) Where any person considers that the industrial design is not registrable on one or more grounds referred to in section 29 he may within a period of two months from the date of publication give to the Director-General in a prescribed form and together with the prescribed fee, notice of opposition to such registration stating his grounds of opposition accompanied by evidence to substantiate such grounds.

(10) Where notice of opposition has not been received by the Director-General within the period specified in subsection (9) the Director-General shall register the industrial design.

(11) Where, within the period specified in subsection (9) notice of opposition in the prescribed form is received by the Director-General, together with the prescribed fee, he shall serve a copy of such grounds of opposition on the applicant and shall request him to present his observations on those grounds in writing accompanied by evidence to support his application within a period of one month.



(12) On receipt of the observations of the applicant the Director-General shall after hearing the parties, where taking all the circumstances into consideration he considers such hearing necessary, decide, as expeditiously as possible, whether or not the industrial design may be registered. If he decides that the industrial design is registrable he shall accordingly register such industrial design—

- (a) where no appeal is preferred against his decision, upon the expiry of the period within which an appeal may be preferred against his decision ;
- (b) where an appeal is preferred against his decision, upon the dismissal of such appeal, as the case may be.

(13) The Director-General may allow a reasonable extension of the prescribed period within which any act has to be done or any fee has to be paid under this section.

Issue of certificate of registration.

**41.** Upon the registration of an industrial design, the Director-General shall issue to the registered owner thereof a Certificate of Registration and shall, at the request of the registered owner, send such certificate to him by registered post to his last recorded postal address in Sri Lanka or, if he is resident outside Sri Lanka, to his last recorded postal address.

Register of Industrial Designs.

**42.** (1) The Director-General shall keep and maintain a register called the “Register of Industrial Designs” wherein shall be recorded, in the order of their registration, all registered industrial designs and such other particulars relating to the industrial designs as are authorised or directed by this Part to be so recorded or may from time to time be prescribed

(2) The registration of an industrial design shall include a representation of the industrial design and shall specify its number, the name and address of the registered owner and, if the registered owner is resident outside Sri Lanka, a postal address for service in Sri Lanka ; the date of application and

registration ; if priority is validly claimed, an indication of that fact and the number, date and country of the application on the basis of which the priority is claimed ; the kinds and classes of products referred to in paragraph (d) subsection (1) of section 36 and the name and address of the creator of the industrial design, if he has requested his name to be indicated as such in the registration.

**43.** Any person may examine the register and may obtain certified extracts therefrom on payment of the prescribed fee.

Examination of register and certified copies.

**44.** The Director-General shall cause to be published in the Gazette, in the prescribed form, all registered industrial designs in the order of their registration, including in respect of each industrial design so published reference to such particulars as may be prescribed.

Publication of registered industrial designs.

## CHAPTE R VI

### DURATION OF REGISTRATION OF AN INDUSTRIAL DESIGN

**45.** Subject to, and without prejudice to the other provisions of this Part, registration of an industrial design shall expire on the completion of five years from the date of receipt of the application for registration.

Duration of registration.

**46.** (1) Registration of an industrial design may be renewed for two consecutive periods of five years each, on an application made in that behalf and on payment of the prescribed fee.

Renewal.

(2) The renewal fee shall be paid within the six months preceding the date of expiration of the period of registration :

Provided, however, that a period of grace of six months shall be allowed for the payment of the fee after the date of such expiration, upon payment of such surcharge as may be prescribed.

(3) The Director-General shall record in the register and cause to be published in the Gazette in the prescribed form a list of all renewals of registration of industrial designs.

(4) Where the renewal fee has not been paid within such period or such extended period as is specified in subsection (2), the Director-General shall remove from the relevant register the registration relating to such industrial design.

## CHAPTER VII

### RIGHTS OF A REGISTERED OWNER OF AN INDUSTRIAL DESIGN

Rights of a registered owner of an industrial design.

**47.** (1) Subject and without prejudice to other provisions of this Part, the registered owner of an industrial design shall in relation to such industrial design have the exclusive rights to —

- (a) reproduce and embody such industrial design in making a product ;
- (b) import, offer for sale, sell or use a product embodying such industrial design ;
- (c) stock for the purpose of offering for sale, selling or using, a product embodying such industrial design ;
- (d) assign or transmit the registration of the industrial design ;
- (e) conclude licence contracts.

(2) No person shall do any of the acts referred to in subsection (1) without the consent of the registered owner of the industrial design.

(3) The acts referred to in subsection (1), if done by any unauthorized person, shall not be lawful solely by reason of the fact that the reproduction of the registered industrial design differs from the registered industrial design in minor respects or that the reproduction of the registered industrial design is embodied in a type of product different from a product embodying the registered industrial design.

- 48.** The provisions of subsection (1) of section 47 shall—
- (1) extend only to acts done for industrial or commercial purposes ;
  - (2) not preclude third parties from performing any of the acts referred to therein in respect of a product embodying the registered industrial design after the said product has been lawfully manufactured, imported, offered for sale, sold, used or stocked in Sri Lanka.
- Limitation of registered owner's rights.

## CHAPTER VIII

### ASSIGNMENT AND TRANSMISSION OF APPLICATIONS FOR REGISTRATION OF INDUSTRIAL DESIGNS AND REGISTRATIONS OF THE SAME

- 49.** (1) An application for registration or the registration of an industrial design may be assigned or transmitted and such assignment or transmission shall be in writing signed by or on behalf of the contracting parties.
- Assignment and transmission of applications and registrations.
- (2) Any person becoming entitled by assignment or by transmission to an application for registration or the registration of an industrial design may apply to the Director-General in the prescribed manner along within the prescribed fee to have such assignment or transmission recorded in the register.
- (3) No such assignment or transmission shall be recorded in the register unless the prescribed fee has been paid to the Director-General.
- (4) No such assignment or transmission shall have effect against third parties unless so recorded in the register.

- 50.** In the absence of any agreement to the contrary between the parties, joint owners of an application for registration or the registration of an industrial design may, separately, assign or transmit their rights in the application
- Joint ownership of applications and registration.

or registration, use the industrial design and exercise the exclusive rights referred to in paragraphs (a) to (c) of subsection (1) of section 47, but may only jointly withdraw the application, renounce the registration or conclude a licence contract.

## CHAPTER IX

### LICENCE CONTRACTS OF INDUSTRIAL DESIGNS

Interpretation.

**51.** For the purposes of this Part licence contract means any contract by which the registered owner of an industrial design (“the Licensor”) grants to another person or enterprise (“the licensee”) a licence to do any or all of the acts referred to in paragraphs (a), (b) and (c) of subsection (1) of section 47.

Form and record of licence contract.

**52.** (1) A licence contract shall be in writing signed by or on behalf of the contracting parties.

(2) Upon a request in writing signed by or on behalf of the contracting parties, the Director-General shall on payment of the prescribed fee, record in the register such particulars relating to the contract as the parties thereto requires to be recorded :

Provided that the parties shall not be required to disclose or have recorded any other particulars relating to the said contract.

Rights of licensee.

**53.** In the absence of any provision to the contrary in the licence contract, the licensee shall—

- (a) be entitled to do any or all of the acts referred to in paragraphs (a), (b) and (c) of subsection (1) of section 47 within Sri Lanka, during the period of validity of the registration of the industrial design, inclusive of the period of renewal if any ;
- (b) not be entitled to assign or transmit his rights under the licence contract or grant sub-licenses to third parties.

**54.** (1) In the absence of any provision to the contrary in the licence contract, the licensor may grant further licenses to third parties in respect of the same industrial design or on behalf of himself do any or all of the acts referred to in sub-paragraphs (a), (b) and (c) of subsection (1) of section 47.

Rights of licensor.

(2) Where the license contract provides that the license is exclusive, and unless it is expressly provided otherwise in such contract, the licensor shall not grant further licenses to third parties in respect of the same industrial design or not execute any of the acts referred to in sub-paragraphs (a), (b) and (c) of subsection (1) of section 47 or cause to be executed.

**55.** Any clause or condition in a license contract shall be null and void in so far as it imposes upon the licensee, in industrial or commercial field, restrictions not derived from the rights conferred by this Part on the registered owner of an industrial design, or unnecessary for safeguarding of such rights :

Invalid clauses in license contracts.

Provided that—

- (a) restrictions concerning the scope, extent, or duration of use of the industrial design, or the geographical area in or the quality or quantity of the products in connection with which the industrial design may be used ; and
- (b) obligations imposed upon the licensee to refrain from all acts capable of prejudicing the validity of the registration of the industrial design,

shall not be deemed to constitute such restrictions.

**56.** Where, before the expiration of the license contract the registration is declared null and void the licensee in such event not be required to make any payment to the licensor under the licence contract, and shall be entitled to reimbursement of the payments already made :

Effect of nullity of registration of license contract.