

# LEGISLATIVE DIGEST

An assessment of the Copyright  
regime in Ghana.

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Legislation

**Copyright Act, 2005 (Act 690) as amended**

Purpose of the legislation

**To bring the provisions on copyrights and the Copyright Office in conformity with the Constitution and to provide for related purposes**

Implementing institution

**The Copyright Office**

Affected industry

**All individuals and businesses**

## SCOPE OF APPLICATION OF THE ACT

### Work eligible for copyright<sup>1</sup>

An author, co-author, or joint author of the following works is entitled to copyright and protection:

- a) Literary work;
- b) Artistic work;
- c) Musical work;
- d) Sound recording;
- e) Audio-visual work;
- f) Choreographic work;
- g) Derivative work, and
- h) Computer software or programs.

### Eligibility criteria for copyright<sup>2</sup>

A work is not eligible for copyright unless:

- a) It is original in character (product of the independent effort of the author).
- b) It has been fixed in any definite medium of expression now known or later to be developed with the result that the work can either directly or with the aid of any machine or device be perceived, reproduced, or otherwise communicated.

<sup>1</sup>Section 1(1), Copyright Act 2005 (Act 690) (as amended)

<sup>2</sup>Section 1(2), Copyright Act 2005 (Act 690) (as amended)

c) It is created by a citizen or a person who is ordinarily resident in Ghana, first published in Ghana, and in the case of a work first published outside Ghana is subsequently published in Ghana within 30 days of its publication outside Ghana, and a work in respect of which Ghana has an obligation under an international treaty to grant protection.

***NB. The eligibility of a work for copyright is not affected by its artistic quality, the purpose of the author in creating it, or by the manner or form of its expression.<sup>3</sup>***

#### **Exclusions<sup>4</sup>**

Copyright is not extended to ideas, concepts, procedures, methods, or other things of a similar nature.

#### **KEY DEFINITIONS UNDER THE ACT<sup>5</sup>**

**Artistic work:** means irrespective of artistic quality any of the following works:

- a) Painting, drawing, etching, lithograph, woodcut, engraving, print, fashion design, and wood design;
- b) Photography not comprised in an audio-visual film;
- c) Map, plan, or diagram;
- d) Sculpture;
- e) Work of architecture in the form of a building or model; or
- f) Work of applied art, whether handicraft or produced on an industrial scale.

**Author:** means a person who creates a work, and in the case of cinematographic work or sound recording means the person by whom the arrangements for the making of the work or recording is undertaken

**Choreographic work:** includes forms of dance, whether or not in a dramatic form.

**Communication to the public:** means the transmission, other than broadcasting, by wire or without wire, of the images or sounds or both of a work, a performance, or a sound recording in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates that without the transmission, the images or sounds would not be perceivable irrespective of whether the person can receive images or sounds at the same place and time, or at different places or time individually chosen by them

**Copy:** means a reproduction of a work in a written form, or in the form of a recording or film, or in any manner or form but an object shall not be taken to be a copy of architectural work unless the object is a building or a model

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<sup>3</sup>Section 1(3), Copyright Act, 2005 (Act 690) (as amended)

<sup>4</sup>Section 2, Copyright Act, 2005 (Act 690) (as amended)

<sup>5</sup>Section 76, Copyright Act, 2005 (Act 690) (as amended)

**Derivative work:** means a work resulting from adaptation, translation, or other transformation of an original work in so far as it constitutes an independent creation

**Fixation:** means the embodiment of sounds, images, or images and sounds or of representation made from them from which the sounds, images, or images and sounds can be perceived, reproduced, or communicated through a device.

**Folklore:** means the literary, artistic, and scientific expressions belonging to the cultural heritage of Ghana which are created, preserved, and developed by ethnic communities of Ghana or by an unidentified Ghanaian author, and includes kente and adinkra designs, where the author of the designs are not known, and any similar work designated to be works of folklore.

**Literary work:** includes

- a) Novels, stories, or poetical works;
- b) Plays, stage directions, film scenarios, or broadcasting scripts;
- c) Textbooks, treaties, histories, biographies, essays, or articles
- d) Encyclopedias, dictionaries, directories, time tables, anthologies, databases, or compilation of data or other material, whether in machine readable form, which by reason of the selection or arrangement of contents constitutes intellectual creations;
- e) Letters, reports, or memoranda;
- f) Lectures, addresses, or sermons; and
- g) Computer programs whatever may be the mode or form of expression

**Musical work:** includes any musical work irrespective of its musical quality and words composed for musical accompaniment

**Owner:** means the person to whom the copyright in a work belongs and includes the heir of an author or an assignee in whole or in part of a copyright

**Performance:** means the presentation of a work by such action as dancing, playing, reciting, singing, delivering, declaiming, or projecting to listener or spectators

**Publisher:** means a person who undertakes the publication of a work by the issue of copies to the public usually for sale or in the case of a sound recording or audio-visual work a publisher is the person who issues duplicates of the sound recording or audiovisual work

**Sound recording:** means work that results from the fixation of a series of musical, spoken, or other sounds, or of a representation of sounds but does not include sounds accompanying a motion picture or other audio-visual work regardless of the nature of the material objects in which those sounds are embodied.



**Work of joint authorship:** means a work created by two or more authors in collaboration, in which the individual contributions are indistinguishable from each other.

## **RIGHTS CONFERRED BY THE ACT<sup>6</sup>**

1. Copyright of work of Ghana Government and Folklore vest in the President on behalf of and in trust for the people of Ghana.<sup>7</sup>
2. The economic right of the author of any protected copyright work to the exclusive economic right in respect of the reproduction in any manner or form; the translation, adaptation, arrangement, or any other transformation of the work; the public performance, broadcasting, and communication of the work to the public; the distribution to the public of originals or copies of the work by way of first sales or other first transfer of ownership, and the commercial rental to the public of originals or copies of the work.<sup>8</sup>
3. The sole moral right of the author of protected copyright work to claim authorship of the work and in particular to demand that the name or pseudonym of the author be mentioned in the use of the work and to object to and seek relief in connection with any distortion, mutilation or other modification of the work where that act would be or is prejudiced to the reputation of the author or where the work is discredited by the act.<sup>9</sup>
4. The right to transfer economic rights in protected copyright work in whole or in part.<sup>10</sup>
5. The right to transfer moral rights in protected copyright work within the scope of the underlying contract.<sup>11</sup>
6. The right to transfer copyright by assignment, testamentary disposition, or by operation of law.<sup>12</sup>
7. The right to apply to the High Court for review of a decision of the Copyright Administrator.<sup>13</sup>
8. The right to assign, grant a licence or undertake testamentary disposition in respect of an existing work or future work.<sup>14</sup>

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<sup>6</sup>Enjoyment of rights not dependent on the registration of the work per Section 39 (34), Copyright Act, 2005 (Act 690) (as amended)

<sup>7</sup>Section 3 and 4, Copyright Act, 2005 (Act 690) (as amended)

<sup>8</sup>Section 5, Copyright Act, 2005 (Act 690) (as amended)

<sup>9</sup>Section 6, Copyright Act, 2005 (Act 690) (as amended)

<sup>10</sup>Section 9 (1), Copyright Act, 2005 (Act 690) (as amended)

<sup>11</sup>Section 9 (2), Copyright Act, 2005 (Act 690) (as amended)

<sup>12</sup>Section 9 (3), Copyright Act, 2005 (Act 690) (as amended)

<sup>13</sup>Section 9 (8) Copyright Act, 2005 (Act 690) (as amended)

<sup>14</sup>Section 9 (9), Copyright Act, 2005 (Act 690) (as amended)

9. The right to grant permitted use of work protected by copyright.<sup>15</sup>
10. A performer has the right to grant authorization or prohibit the use of his or her works.<sup>16</sup>
11. A performer has the right to contract for the use of his or her performance by another person.<sup>17</sup>
12. A performer has the moral right independent of economic rights even after the transfer of those rights to require to be identified with the performer's live oral performances and performances fixed in phonograms and to object to any distortion, mutilation, or other modification of a personal performance which would be prejudicial to the reputation of the performer.<sup>18</sup>

## **DURATION OF COPYRIGHT RIGHTS**

1. Economic rights shall be protected during the life of the author and 70 years after the death of the author.<sup>19</sup> And in the case of joint authors, the economic rights shall be protected during the life of the last surviving author and 70 years after the death of that author.<sup>20</sup>
2. Copyright ownership by a public corporation or other body corporates shall be for 70 years from the date on which the work was either made or first published, whichever date is later.<sup>21</sup>
3. The economic rights in anonymous work or work published under a pseudonym shall be protected until the expiration of 70 years from the date on which the work was either made, first made available to the public or first published whichever date is later. But where the identity of the author is no longer in doubt or known before the expiration of the 70 years, the protection shall be during the life of the author and 70 years after the death of the author.<sup>22</sup>
4. The economic rights in an audio-visual work are protected until the expiration of 70 years from the date of the making of the work or where the work is made available to the public during that period with the consent of the author, until the expiration of 70 years from the date on which the work was either made, first made available to the public or first published,

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<sup>15</sup>Section 19, Copyright Act, 2005 (Act 690) (as amended)

<sup>16</sup>Section 28, Copyright Act, 2005 (Act 690) (as amended)

<sup>17</sup>Section 30, Copyright Act, 2005 (Act 690) (as amended)

<sup>18</sup>Section 31, Copyright Act, 2005 (Act 690) (as amended)

<sup>19</sup>Section 12 (1), Copyright Act, 2005 (Act 690) (as amended)

<sup>20</sup>Section 12 (2) Copyright Act, 2005 (Act 690) (as amended)

<sup>21</sup>Section 13, Copyright Act, 2005 (Act 690) (as amended)

<sup>22</sup>Section 14, Copyright Act, 2005 (Act 690) (as amended)

<sup>23</sup>Section 15, Copyright Act, 2005 (Act 690) (as amended)

whichever date is later.<sup>23</sup>

5. The economic rights in sound recordings are protected from the publication of the sound recording until the expiration of 70 years after the year of publication or if the sound recording has not been published from the fixation of the sound recording, until the expiration of 70 years after the fixation.<sup>24</sup>
6. The rights in folklore exist in perpetuity or forever.<sup>25</sup>
7. The moral rights of authors exist in perpetuity and are enforceable by the author during his or her lifetime and after his or her death, by his or her successor where the economic rights are still vested in the author or his or her successors in title.<sup>26</sup>
8. The rights of a performer in respect of performance are protected for a period of 70 years starting from the end of the calendar year in which the performance was fixed on a physical medium or in the absence of such a fixation, from the end of the calendar year in which the performance took place.<sup>27</sup>

## **OBLIGATIONS IMPOSED UNDER THE ACT**

1. The obligation to apply for copyright registration in the prescribed form, paying prescribed fees where an author desires.<sup>28</sup>
2. The obligation of producers of sound recordings or audio-visual works to state on the label of the sound recording or audio-visual work or its container, the name of the author and those of the main performers, the title of the work, the year the original matrix was cut, the individual or corporate name or the distinguishing mark of the producer, and the rights accruing are reserved, although the absence of these shall invalidate the copyright protection in the works.<sup>29</sup>
3. The obligation to give notice of the protection of rights of producers.<sup>30</sup>
4. The obligation to monitor the unauthorized use of protected copyright works and take the necessary steps to get remedies, injunct, and prevent further uses.<sup>31</sup>

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<sup>24</sup>Section 16, Copyright Act, 2005 (Act 690) (as amended)

<sup>25</sup>Section 17, Copyright Act, 2005 (Act 690) (as amended)

<sup>26</sup>Section 18, Copyright Act, 2005 (Act 690) (as amended)

<sup>27</sup>Section 29, Copyright Act, 2005 (Act 690) (as amended)

<sup>28</sup>Section 39, Copyright Act, 2005 (Act 690) (as amended)

<sup>29</sup>Section 10, Copyright Act, 2005 (Act 690) (as amended)

<sup>30</sup>Section 11, Copyright Act, 2005 (Act 690) (as amended)

<sup>31</sup>Section 47, Copyright Act, 2005 (Act 690) (as amended)

## SANCTIONS IMPOSED UNDER THE ACT

1. A person who infringes a right of a protected copyright work commits an offence and is liable on summary conviction to a fine of not more than 1000 penalty units and not less than 500 penalty units or to a term of imprisonment of not more than 3 years or to both, and in the case of a continuing offence to a further fine of not less than 25 penalty units and not more than 100 penalty units for each day during which the offence continues.<sup>32</sup>
2. It is an offence to contravene provisions related to folklore and a person will become liable on summary conviction to a fine of not more than 1000 penalty units and not less than 150 penalty units or to a term of imprisonment of not more than 3 years or to both, and in the case of a continuing offence to a further fine of not less than 25 penalty units and not more than 100 penalty units for each day during which the offence continues.
3. Where an offence is committed by a body of persons, in the case of a body corporate other than a partnership, every director or secretary of the body corporate shall also be deemed to have committed the offence and in the case of a partnership, every partner shall also be deemed to have committed the offence.<sup>33</sup>

## DEFENSES TO SANCTIONS UNDER THE ACT

1. A director, secretary, or partner shall not be considered to have committed an offence when the offence is committed by a body of persons if the person proves to the satisfaction of the Court that the offence in the respect of which the person is charged was committed by some other person and was without the consent or connivance of the person charged and that the person charged exercised the diligence required to prevent the commission of that offence that a person ought to have exercised having regard to the circumstances.<sup>34</sup>

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<sup>32</sup>Section 43, Copyright Act, 2005 (Act 690) (as amended)

<sup>33</sup>Section 45 (1) (a) (b), Copyright Act, 2005 (Act 690) (as amended)

<sup>34</sup>Section 45 (2), Copyright Act, 2005 (Act 690) (as amended)



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