PROCLAMATION No. 872/2014

A PROCLAMATION TO AMEND THE COPYRIGHT AND NEIGHBOURING RIGHTS PROTECTION PROCLAMATION

WHEREAS, it has become necessary to amend the Copyright and Neighbouring Rights Protection Proclamation No. 410/2004 to provide legal protection that is compatible with an ever growing development of copyright and neighbouring rights and to create conditions enabling the right holders to administer their rights in an organized and enhanced manner;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

1. Short Title

This Proclamation may be cited as the “Copyright and Neighbouring Rights Protection (Amendment) Proclamation No. 872/2014”.

Negarit G. P.O.Box 80001
2. Amendment

The Copyright and Neighbouring Rights Protection Proclamation No. 410/2004 is hereby amended as follows:

1/ the following new paragraph (j) is added under sub-article (30) of Article 2 of the Proclamation:

"(j) applied art;"

2/ the following new sub-article (31), (32), (33), (34) and (35) are added under Article 2 of the Proclamation:

"31/ 'royalty' means fees payable to an owner of a work protected under this Proclamation by the user of such work for commercial purpose;

32/ 'collective management society' means a society formed by the owners of copyright and neighbouring rights to jointly administer their rights;

33/ 'royalty scheme' means a method employed to calculate the amount of royalty collected from the users of work based on the type of work and the category of users;

34/ 'work without a master' means work which have been declared by the court of law as a work without a master;

35/ 'entry of works for public performance' means an entry of a foreign work, which is not administered by a collective management society established in Ethiopia except on the basis of reciprocity agreement for the purpose of public
performance or display by any means other than sale or rent.”

3/ Sub-article (2) of Article 6 of the Proclamation is deleted and the existing sub-article (3) is renumbered as sub-article (2).

4/ The following new sub-article (3) is added under Article 9 of the Proclamation:

“3/ Private reproduction of a published work in accordance with sub-article (1) of this Article shall be allowed if that physical person is the owner of an original copy.”

5/ Sub-article (1) of Article 20 of the Proclamation is deleted and replaced by the following new sub-article (1):

“1/ Economic rights shall belong to the author during his lifetime and to the heirs or legatees for fifty years after the death of the author, and the term of protection shall run from the 1st day of January following the death of the author.”

6/ The following new sub-article (3) is added under Article 28 of the Proclamation:

“3/ A statement on the label of recording or on its container referred to in sub-article (1) of this Article shall be prima facie evidence of the facts stated thereon for the purposes of any proceedings brought under this Proclamation with respect to the rights of the producer of sound recording or audio visual work.”
7/ Article 30 of the Proclamation is deleted and the existing Article 31 and 32 are re-numbered as Article 30 and 31, respectively.

8/ The following new Part Six is added after Article 31 of the Proclamation (as renumbered pursuant to sub-article (7) of this Article):

"PART SIX
COLLECTIVE MANAGEMENT SOCIETY

32. Formation of Collective Management Society

1/ Right holders of works protected under this Proclamation may form collective management society to jointly administer their rights.

2/ A collective management society shall be formed based on the recognition granted by the office.

3/ A collective management society shall be formed for non-profit purpose.

4/ The organization of a collective management society shall be determined by the memorandum of association.

33. Pre-conditions for the Formation of a Collective Management Society

1/ An application for recognition of the formation of a collective management society shall be submitted to the office in a written form accompanied with the following documents:

a) description of the types of members’ creative works;

b) internal rules of regulations;

c) memorandum of association; and

d) list of sector associations established under it, and their respective individual members.
2. The number of sector associations established under a collective management society may not be less than three.

34. **Powers and Duties of the Collective Management Society**

A collective management society shall have the following powers and duties to:

1. collect royalties from users of works protected under this Proclamation as well as works protected abroad and distribute same to the right holders;

2. by taking into account the country’s objective reality, prepare and submit to the Office royalty scheme and implement same upon approval;

3. prepare and submit to the Office working manual for collection and distribution of royalty and implement same upon approval;

4. withhold income tax in accordance with law from royalties distributed to members and pay same to the appropriate revenue collecting body;

5. grant permit, upon payment of reasonable fee, to foreign musical bands or performing groups for entry of works for public performance or as well as foreign exhibitors of fine arts;

6. collect royalties from works without masters and pay same to the Office;

7. own property, enter into contract, sue and be sued in its own name;
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8/ submit performance report at any time when requested by the Office;

9/ perform other functions necessary for the achievement of its objectives as may be assigned to it by the Office.

35. Budget

1/ The budget of a collective management society shall be drawn from the following sources:

a) deductions made from the royalties collected in accordance with this Proclamation;

b) membership contributions;

c) fees collected from other related services.

2/ The annual deduction to be made pursuant to sub-article (1) (a) of this Article may not exceed thirty per cent of the total collected amount of royalty.

3/ The amount of deduction to be made in accordance with sub-article (2) of this Article shall be submitted annually to the Office for approval before its implementation.

36. Books of Accounts

1/ A collective management society shall keep complete and accurate books of accounts.

2/ The books of accounts and financial documents of a collective management society shall be audited annually by external auditors.

3/ A collective management society shall submit audited financial reports of the preceding year and its budget of the following year to the Office.
4/ The budget year of collective management society shall be the Ethiopian budget year.

5/ The Office may, at any time, request a collective management society to submit a financial report and inspect its books of accounts.

37. Revocation of Recognition
The Office may revoke recognition granted to any collective management society on the following grounds:

1/ when it carries out acts contrary to its powers and duties stipulated in this Proclamation;

2/ when members decide by majority vote to dissolve the collective management society; or

3/ when a court of law having jurisdiction orders the revocation of recognition of the collective management society.

38. Obligation to Pay Royalty

1/ Any person who uses any works protected under this Proclamation for commercial purpose shall have the obligation to pay royalty to the relevant collective management society.

2/ Category of works for which royalty payment is to be made and list of users subject to pay royalty shall be decided by the Office based on proposals submitted by the collective management societies.
39. Royalty Collected from Works Without Masters

1/ The Office shall, by taking into account the types of works, identify and notify the collective management society which shall be responsible to collect royalty from works without masters.

2/ The amount of royalty to be collected from a work without a master shall be equal to the amount of royalty collected from other similar work by the collective management society within a specific period of time.

3/ Royalties collected from works without masters shall be used by the office to support activities carried out for the promotion of protection of copyright and neighbouring rights.”

9/ The existing Part Six of the Proclamation is renumbered as Part Seven and the existing Articles 33 to 36 of this part are re-numbered as Articles 40 to 43, respectively.

10/Sub-article (1) of Article 42 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article) is deleted and replaced by the following new sub-article (1):

“1/ The Ethiopian Customs and Revenue Authority shall, based on a written application of the owner of copyright or neighbouring right, retain under its control goods, which in the opinion of the applicant infringe his right or, based on its own initiative, it believes that they may cause infringement of rights.”
11/ The following new sub-article (4) and (5) are added under Article 43 of the Proclamation (as renumbered pursuant to sub-article (9) of this Article):

"4/ Whosoever intentionally violates a right protected under this Proclamation, shall in addition to the imprisonment stipulated under sub-article (1) of this Article, be punished with a fine not less than Birr 25,000 and not exceeding Birr 50,000.

5/ Whosoever by gross negligence violates a right protected under this Proclamation, shall in addition to the imprisonment stipulated under sub-article (2) of this Article, be punished with a fine not less than Birr 5,000 and not exceeding Birr 25,000."

12/ The existing Part Seven of the Proclamation is renumbered as Part Eight and the existing Articles 37 to 40 of this part are re-numbered as Articles 47 to 50, respectively, and the following new Article 44, 45 and 46 are added:

"44. Power of Adjudication

1/ Except cases related to extra-contractual liability, the power of adjudication of civil cases arising in relation to this Proclamation, shall be vested in the Intellectual Property Tribunal to be established under the Office.

2/ An appeal against the decision of the Intellectual Property Tribunal may be taken to the Federal High Court by an aggrieved party on question of law within 60 days from the date of the decision."
3/ The regular courts shall continue to adjudicate civil cases arising in relation to this Proclamation until the establishment of the Intellectual Property Tribunal pursuant to sub-article (1) of this Article.

45. Punishment Applicable to Legal Person

According to Article 34 of the Criminal Code, when a legal person participate in infringement of copyright and neighbouring rights criminal offence protected under this Proclamation, be punished in accordance with Article 90 of the Criminal Code.

46. Publicizing Decisions

The Office shall publicize final decisions on any copyright and neighbouring rights infringement through mass-media having wide coverage”.

3. Effective Date

This Proclamation shall enter into force on the date of publication in the Federal Negarit Gazette.

Done at Addis Ababa, this 14th day of January, 2015.

MULATU TESHOME (DR.)

PRESIDENT OF THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA