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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

L.D.B. - 01/2005.

INTELLECTUAL PROPERTY ACT, No. 36 OF 2003

REGULATIONS made by the Minister of Trade, Commerce and Consumer Affairs under Section 204 of the Intellectual Property Act, No. 36 of 2003.

JEYARAJ FERNANDOPULLE,
Minister of Trade, Commerce and
Consumer Affairs.

Ministry of Trade, Commerce and Consumer Affairs,
Colombo.
11th October, 2005.

1. These regulations may be cited as the Intellectual Property Regulations No. 01 of 2005 and shall come into operation on 19th October, 2005.

Copyright and Related Rights

2. (1) The owner of copyright shall, subject to the provisions of the Act, have the right to receive a payment for authorizing to carry out any of the acts specified in section 9 of the Intellectual Property Act (hereinafter referred to as the "Act") as agreed by such owner and the person who obtains the authorization.

(2) Every performer or producer of a sound recording or broadcasting organization shall, subject to the provisions of the Act, have the right to receive a payment, as agreed by such performer or producer of sound recording or broadcasting organization and the person who obtains the authorization, for authorizing to carry out any of the acts referred in sections 17, 18 and 20 of the Act respectively.

3. (1) Every application by a person aggrieved by any of his rights being infringed (hereinafter referred to as the "applicant") under paragraph (a) of sub-section (3) of section 22 of the Act, shall be made within a period of one month from the date on which the applicant becomes aware of the existence of the dispute to be resolved and such application shall be substantially in the form C 01 set out in the First Schedule hereto. Such application shall be signed by the applicant or his duly appointed Agent.

(2) The application shall contain a clear and concise statement of the dispute to be resolved and evidence to substantiate the claims made by the applicant by way of affidavit.

(3) The application shall be made in duplicate.

(4) Upon receipt of the application the Director General shall cause to be served a copy of such application on the person alleged to have infringed the rights (hereinafter referred to as the "alleged infringer") with the request for his observations on the contents of the application.

(5) The alleged infringer shall submit his observations within a period of one month from the date of receipt of the request of the Director General.

(6) The alleged infringer may forward his observations along with any evidence by way of an affidavit to counter the claims made by the applicant and substantiate his position with regard to the relevant dispute.

(7) Upon receipt of the observations, the Director General shall, as expeditiously as possible, fix a date for hearing and inform the parties accordingly.

(8) The evidence at the hearing shall, unless otherwise directed by the Director General, be submitted in the form of an affidavit and after submission of evidence the parties shall file written submissions, if any, simultaneously on a date given by the Director General.

(9) The Director General shall make a decision in respect of the dispute and communicate his decision to the parties as expeditiously as possible, having considered the evidence and submission made by the parties at the hearing.

(10) Where the alleged infringer violates the provisions of paragraph (6) or fails or neglects to appear before the Director General as directed, the Director General may make the order *ex parte*.

Folklore

4. (1) The Competent Authority referred to in sub-section (4) of section 24 of the Act shall be the Director General.

(2) Any request for authorization referred to in sub-section (4) of section 24 of the Act shall be substantially in the form C 02 of the First Schedule hereto with the fee specified in the Second Schedule hereto and shall be signed by the applicant or his duly appointed Agent.

(3) the Director General shall grant the authorization subject to the conditions as he may consider appropriate including the period of time, purpose and restrictions, if any, having been satisfied that the grant of authorization is appropriate.

(4) (a) The Secretary to the Ministry of the Minister in charge of the subject of Trade Commerce and Consumer Affairs shall determine the purposes of the cultural development for which the money specified in sub-section (5) of section 24 to be used in consultation with the Director General and the Secretary to the Ministry of the Minister in charge of the subject of Cultural Affairs.

(b) Subject to the provisions of section 176 of the Act, Director General shall maintain a separate account for the money collected under sub-section (4) of section 24 of the Act.

Collective Societies

5. (1) The application for the registration of a society referred to in paragraph (b) of sub-section (1) of section 25 of the Act shall be substantially in form C 03 set out in the first Schedule hereto and shall be signed by the applicant or his duly appointed Agent.

(2) The applicant shall forward to the Director General along with the application for registration of the society the memorandum and articles of association or the constitution of the society.

(3) Upon the registration of the society under paragraph (c) of sub-section (1) of section 25 of the Act, the Director General shall issue a certificate of registration together with a licence.

(4) The licence shall contain the name, address, registered no., relevant area/class of rights, professional competence of the applicant and other information, as the Director General considers necessary.

(5) The Director General who is in possession of information to the effect that the particular society is being managed in a manner detrimental to the interests of the owners of the rights concerned shall require the management of the society to be present for an inquiry. He may also request any person who is interested in the affairs of such society to take part in the inquiry.

(6) The Director General may examine all the documents, files and information of and relating to the society.

(7) Director General shall cancel the registration of society and the permission to do business, having been satisfied that the society is being managed in a manner detrimental to the interests of the owners of rights concerned.

(8) Every Society shall submit to the Director General at the end of every financial year the final financial report of the society duly audited by a qualified Auditor. Such report shall also contain the performance reports of the society for the year under consideration.

For the purpose of these regulations, "qualified auditor" means -

- (a) an individual who being a member of the Institute of Chartered Accountants of Sri Lanka, or of any other Institute established by law, possesses a certificate to practise as an Account issued by the Council of such Institute ; or
- (b) a firm of Accountants each of the resident partners of which, being a member of the Institute of chartered Accountants of Sri Lanka or of any other Institute established by law possesses a certificate to practise as an Accountant issued by the Council of such Institute.

FIRST SCHEDULE

Form C 01 INTELLECTUAL PROPERTY ACT, No. 36 OF 2003 COPYRIGHT AND RELATED RIGHTS APPLICATION FOR DISPUTE RESOLUTION	<i>For official use only</i> Date of Receipt : :
The Applicant	
Name :	
Address :	
Telephone and Fax Nos. and E-mail Address (if any) :	
The respondent :	
Name :	
Address :	
Telephone and Fax Nos. and E-mail Address, if available :	
The account of the dispute to be resolved (attach extra papers if necessary) :	
The relief sought :	
I state that the above information are true and correct and request that the Director General will take action to resolve the dispute referred to above and make an appropriate decision. The required affidavits are annexed.	
Date : Signature.

Form C 02 THE INTELLECTUAL PROPERTY ACT, No. 36 OF 2003 FOLKLORE APPLICATION FOR AUTHORIZATION		For official use only Date of Receipt : Fees paid on :
Applicant		
Name :		
Address :		
Telephone No. ; Fax No. and E-mail Address (if any) :	
Identification of the folklore Concerned :		
The place of origin, if known :		
Holders of the folklore, if known :		
Purposes for which the Authorization is required :		
No. of copies to be made :		
No. of instances to be performed :		
No. of instances to be broadcast :		
I undertake to limit the use of the Folklore referred to above to the purposes mentioned herein. I shall abide by any other condition that the Director General may impose.		
	 Signature.
Date:		

Form C 03	INTELLECTUAL PROPERTY ACT, No. 36 OF 2003 COPYRIGHT AND RELATED RIGHTS APPLICATION FOR THE REGISTRATION OF A SOCIETY AND PERMISSION FOR ISSUING LICENCES	<i>For official use only</i> Date of Receipt :
The Applicant		
Name :		
Address :		
Telephone No. ; Fax No. and E-mail Address :		
The area/class of the rights for which the registration and permission is sought :		
The details relating to the ability and professional competency of the applicant (Add extra papers if necessary) :		
The above information are true and correct. The registration of the society and the permission to issue licences under the Intellectual Property Act, No. 36 of 2003 are requested. A copy of the Constitution / Memorandum and Articles is annexed.		
Date : Signature.	

SECOND SCHEDULE

Fees

Copyright and Related Rights

1. Fees for authorization under Section 24 (4).

- (i) Reproduction - 2% of the sales value of the copies
- (ii) Performance - each - Rs. 500.00
- (iii) Broadcasting - each - Rs. 500.00
- (iv) Other communication to public -each - Rs. 500.00
- (v) Translation or adoption - Rs. 500.00