

**UNESCO**  
**WORLD ANTI PIRACY OBSERVATORY**

**LESOTHO**

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<b>I. LEGISLATION</b>	<b>3</b>
1. Copyright laws	3
2. Other laws	3
3. Latest developments and perspectives	3
4. Summary of legislation	3
5. International Conventions and Treaties	6
<b>II. MEASURES AND REMEDIES</b>	<b>6</b>
1. Copyright infringement	6
2. Remedies to protect copyright holders	6
3. Provisional measures	6
4. Penalties for copyright infringement	6
5. Requirements for foreign persons	7
<b>III. ENFORCEMENT</b>	<b>7</b>
1. Enforcement authorities	7
2. Enforcement at the border	7
<b>IV. PUBLIC AWARENESS</b>	<b>8</b>
1. Awareness campaigns and actions	8
2. Promotion of legal exploitation	8
3. Associations and organizations with awareness-raising purpose	8
4. Best practices	8
<b>V. CAPACITY-BUILDING</b>	<b>8</b>
1. Training	8

2. Establishment of specialized units and intersectoral group	8
3. Best practices	8
<b>VI. OTHER</b>	<b>9</b>
1. TPM/DRM	9
2. Licensing schemes	9
3. Optical discs	9
4. Hotlines	9
5. Contact details	9

## I. Legislation

### 1. Copyright laws

In Lesotho copyright is protected through international and regional copyright Treaties and Conventions. The principal national legislation regulating copyright and related rights is the [Copyright Order No 13 of 1989](#).

### 2. Other laws

Les autres textes législatifs et réglementaires se rapportant à l'application du droit d'auteur et à des mesures de lutte contre la piraterie sont:

- Administration of Estates Proclamation, 1935 as amended
- The Law of Inheritance, 1873 as amended
- Interstate Succession Proclamation, 1953 as amended

### 3. Latest developments and perspectives

The Copyright Order No 13, 1989 came into force the 25th of August 1989. It repeals the Copyright Proclamation, 1912 [Chapter 93].

### 4. Summary of legislation

The law provides for the protection of original works of authorship in literary, artistic and scientific works [section 3(1)]. Derivative works such as translations, adaptations, arrangements and other transformations of literary, artistic or scientific works, collections of literary works, works inspired by expressions of folklore are also protected as original works [section 4(1)]

Ownership in the first instance is by the author or authors who created the work. The authors of a work of joint authorship are regarded as the co-owners of the work [section 14 (1)].

In the case of a work created by an author for any person or body corporate in the course of fulfillment of his duties under a contract of service or employment, the copyright in the work in the absence of provisions to the contrary shall be deemed to be assigned to the employer [section 14(4)].

- *Exclusive rights of the authors and of the owners of neighbouring rights*

#### Exclusive Rights of the authors

##### a) Economic Rights

In Lesotho, authors of original, literary, artistic and scientific works enjoy both economic and moral rights. The exclusive economic rights include the right to;

- Reproduce the work;
- Communicate the work to the public by performance, broadcasting, distribution by cable or any other means; and
- Make an adaptation, translation, arrangement or other transformation of the work [section 7].

##### b) Moral Rights

The author of a protected work also has exclusive and non-transferable moral rights to;

- Claim authorship of his work in particular that his authorship be indicated in connection with any of the acts referred to above except where the work is included incidentally or accidentally when reporting current events by means of photography, sound or visual recording, broadcasting or distribution by cable; and to
- Object to and to seek relief in connection with any distortion, mutilation or other modification of, and any other derogatory action in relation to his work, where such action would be or is prejudicial to his honour or reputation [section 8(1) and (2)].

Exclusive right of the owners of neighbouring rights

Performers enjoy the following economic rights;

- (a) the broadcasting or distribution by cable of their performance;
- (b) the communication to the public of their performance;
- (c) the fixation of their unfixed performance;
- (d) the reproduction of a fixation of their performance; and
- (e) equitable remuneration.

Producers of phonograms have the right to;

- (a) directly reproduce or indirectly reproduce by using any communication over a distance;
- (b) import for the purpose of distribution to the public;
- (c) distribute to the public duplicates of his program; and
- (d) equitable remuneration.

The rights of broadcasting organizations include;

- (a) rebroadcast its broadcast or parts of it;
- (b) distribute by cable its broadcast or parts of it;
- (c) fix its broadcast or parts of it; and
- (d) reproduce a fixation of its broadcast or parts of it

- *Exceptions and limitations to copyright*

The Act provides free use of copyrighted material without prior authorization from the author [section 9]. Such free use includes;

- The reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user's personal and private use;
- Quotations provided the source is acknowledged;
- For teaching purposes provided it is compatible with fair use;
- For purposes of reporting current events;
- The distribution by cable of any work broadcast where the beneficiaries of the distribution by cable live in one and the same building, or group of buildings none of which is separated from another building by a public street or road, if the cable distribution originated in such a building or group of buildings and the distribution by cable is done without gainful intent;
- The reproduction of works of art and of architecture in an audio-visual work or video-recording and communication to the public of works so reproduced if the said works are permanently located in a place where they can be viewed by the public or are included in the audio-visual work or video recording only by way of background or as incidental to the essential matters re-presented;
- The reproduction by photography, sound or video-recording of electronic storage by public libraries, national archives and museums, non-commercial documentation centre.

- The ephemeral recording by any broadcasting organizations for the purpose of its own broadcasts and by means of its own facilities, in one or several copies, of any work which it is authorized to broadcast.

The law allows for free use of works protected by related rights in the following instances;

- Private use;
- The reporting of current events;
- Use of short excerpts provided such use is compatible with fair practice.

- *Protection of foreign works*

Works of foreign authors are protected by virtue of the fact the Lesotho is a signatory to the Berne Convention which provides for the equal treatment of national and foreign authors [section 38].

In addition, the law provides in section 36 (1) that 'Any person' whose rights are in imminent danger of being infringed or have been infringed may institute proceedings in a court of competent jurisdiction in Lesotho. By implication 'any person' refers to foreign nationals whose works may be infringed.

- *Period of copyright protection*

The economic and moral rights of an author shall be protected during the life of the author and for 50 years after his death.

In the case of joint authorship, the economic and moral rights are protected during the life of the last surviving author and for 50 years after his death.

In the case of a published anonymously or under a pseudonym, the economic rights are protected until the expiration of 50 years from the date on which such work was first lawfully published.

In the case of a cinematography or audio-visual work, the economic rights shall be protected until the expiration of 50 years from the making of the work or, if the work is made available to the public during that period of 50 years with the consent of the author, 50 years from the date of its communication to the public.

In the case of a photographic work or a work of applied art, the substance of copyright and the economic rights shall be protected until the expiration of 25 years from the making of the work [section 13].

The period of protection of performer's rights is twenty years computed from the end of the year in which the performance took place [section 24(5)].

The protection for producers of phonograms subsists for twenty years computed from the end of year in which the phonogram was published for the first time [section 26(2)].

Protection of the rights of broadcasting organizations is twenty years computed from the end of the year in which the broadcast took place [section 29(2)].

- *Registration*

Such rights are automatic by the sole creation of the work and the copyright owner does not need to register the work in order to enjoy copyright protection [section 3(1)]. However, registration of works, productions and associations of authors, artists and performers with the Copyright Society helps the authentication of ownership of copyright.

## **5. International Conventions and Treaties**

Lesotho is a member of the following International Convention and Treaties on Copyright and Related Rights:

- [Berne Convention for the Protection of Literary and Artistic Works](#)
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS)

### **Membership to Regional Treaties/Protocols**

Lesotho is also member of the [African Regional Intellectual Property Organization](#) (ARIPO) which has a mandate to protect copyright and related rights. ARIPO has developed a Protocol on Copyright and Related Rights which is to be adopted by Member States.

## **II. Measures and Remedies**

### **1. Copyright infringement**

The law does not provide for a definition of infringement or specifically for actions which constitute an infringement. However, infringement can be deduced from doing certain acts which have been provided in the Act as requiring the authorization of the author, performer, producer of phonograms and broadcasting organization [sections 24, 25 and 29]

### **2. Remedies to protect copyright holders**

Remedies for infringement are divided into civil and criminal sanctions. The civil remedies include;

- Payment of damages suffered in consequence of the infringement, including any profits enjoyed by the infringing person that are attributable to the infringement;
- Award of exemplary damages, if the infringement is found to have been prejudicial to the reputation of the person whose rights were infringed;
- An order that all reproductions, duplicates, extracts, limitations and other material involved in the infringement be forfeited and disposed of as the court may direct having regard to all circumstances relating to the infringement.

### **3. Provisional measures**

Section 36 (1) provides that any person whose rights under the order are in imminent danger of being infringed or whose rights have been infringed may institute proceedings in a competent court for an interdict to prevent the infringement or prohibit the continuation of the infringement.

### **4. Penalties for copyright infringement**

In addition to the civil remedies above, copyright infringers are also liable to criminal sanctions which are as follows;

- (a) A general infringement of the rights provided for in the Act is a penalty of M12 000 or imprisonment for 5 years or both fine and imprisonment shall be imposed for any person who without prejudice to the remedies available in the Act and violates the rights protected [section 37(1)].
- (b) A fine of M12 000 or to imprisonment for five years or both for importing, distributing for sale copies of expressions of folklore without the authority of the Minister section 37(2)].

- (c) A fine of M7 200 to imprisonment for 3 years or both for any person who does not acknowledge source of any work that he uses without authorization is charged.
- (d) a fine of M7 200 and/or to imprisonment for 3 years for Any person who rebroadcasts, distributes by cable, fixes f reproduces broadcast of a broadcasting organization without the authorization of that organization.
- (e) A fine of M1 000 and / or imprisonment for 5 months for any person who removes rights management information such as the name of the author, trademark or other appropriate designation.

## **5. Requirements for foreign persons**

Lesotho is a member of the Berne Convention. Foreign nationals as a result can be protected and receive the same treatment to nationals under the condition that their country is a member of the Berne Convention too.

## **III. Enforcement**

### **1. Enforcement authorities**

#### **a) Authorities responsible for enforcing the copyright law**

The Act is silent on the competent authorities involved in the implementation of copyright except for the Registrar, the Minister and judiciary.

- Ministry of Tourism, Sports and Culture;
- The judiciary;
- Registrar of copyright who is responsible for implementing the provisions of the Act, monitoring the activities of collecting societies, collecting and distributing of any royalties or other remuneration accruing from expressions of folklore [section 34 and 35]; and
- The police by virtue of their arresting powers.

#### **b) Enforcement bodies entitles to act ex-officio in copyright infringement cases**

Information not available

#### **c) Courts dealing with copyright cases**

- The Magistrates court
- The High Court

### **2. Enforcement at the border**

The Copyright Order does not have any provisions on border enforcement measures.

## **IV. Public Awareness**

### **1. Awareness campaigns and actions**

Information not available

### **2. Promotion of legal exploitation**

Information not available

### **3. Associations and organizations with awareness-raising purpose**

Information not available

### **4. Best practices**

Information not available

## **V. Capacity-building**

### **1. Training**

### **2. Establishment of specialized units and intersectoral group**

The law provides for the establishment of a collecting society known as the Society of Authors and Artists which shall be a non-profit making organization [section 31]. The society is supposed to be responsible for the promotion and protection of the interests of authors, artists and performers who are its members. However, at the moment the society has not been established in order to protect the interests of the owners of copyright.

### **3. Best practices**

Information not available



## **VI. Other**

### **1. TPM/DRM**

Information not available

### **2. Licensing schemes**

The law allows for use of works even without authorization of the author, provided the user of the works has a license accorded by the Minister in terms of the regulations of the owner of the copyright or by a copyright society [section 11 and 16].

### **3. Optical discs**

Information not available

### **4. Hotlines**

Information not available

### **5. Contact details**

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