

UNESCO
WORLD ANTI PIRACY OBSERVATORY

MAURITIUS

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I. Legislation

1. Copyright laws

The main legislation for the protection of copyright and related rights in Mauritius is the [Copyright Act 1997](#) as amended in 2000.

2. Other laws

The other laws pertaining to anti-piracy measures and copyright enforcement are:

- The Code Civil Mauricien
- The Customs Act 1988
- The Unfair Competition Act 1993 – Act No. 47 of 1993
- The Cinematographic Act – 29 June 2009
- The Information Technology Act 1998
- The Electronic Transaction Act 2000
- The ICT Act 2001
- The Computer Misuses and Cybercrime Act 2003
- The Data Protection Act 2004

3. Latest developments and perspectives

The 1997 Copyright Act was amended in 2000. A new draft Copyright Act has been proposed in 2008. The main proposed amendments and changes are as follows:

- A Copyright Tribunal, the ICTA was suggested. The main function of the tribunal will be to decide, when the parties cannot agree between themselves, the terms and conditions of licenses offered by, or licensing schemes operated by, collective licensing bodies in the copyright and related rights area;
- Limitations to copyright incorporated with regard to persons with perceptual difficulties.
- The name of the collective 'Mauritius Society of Authors' replaced by the 'Mauritius Collective Management Society';
- Changes in remedies;
- A section specifically drafted to provide rights to photographers.

4. Summary of legislation

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

Exclusive Rights of the authors

a) *Economic Rights*

Copyright owners have the exclusive right to do or authorize: the reproduction of the work; the distribution to the public of the original and each copy of the work by sale, rental or otherwise; the importation of the work; the translation of the work, the adaption, the arrangement or other transformation of the work; performing the work in public; communicating the work to the public; and broadcasting the work (section 4 of the Copyright Act 1997).

b) *Moral Rights*

The author also enjoys moral rights which are not transferable include: the right to claim authorship of the work: the right to object to any distortion, mutilation or other modification of the work, where such distortion, mutilation or modification is or would be prejudicial to the honor or reputation of the author; and the right to remain anonymous or use a pseudonym (section 5 of the Copyright Act 1997).

Exclusive rights of the owners of neighboring rights

Broadcasting Organizations (section 23)

Broadcasting Organizations are granted the rights to carry out or authorize the following acts:

- rebroadcasting of their broadcasts;
- fixation of their broadcasts; and
- reproduction of the fixation of their broadcasts.

Performers (section 24)

Performers are granted the rights to carry out or authorize the following acts:

- broadcasting or communicating to the public a performance of such performer;
- making a fixation of the unfixed performance of such performer; and
- making a reproduction of a fixation of a performance of such performer.

Producers (section 26)

Producers of sound recordings are granted the rights to carry out or authorize the following acts:

- direct or indirect reproduction of the sound recording;
- importation of copies of the sound recording, even where the imported copies were made with the authorization of the producer;
- adaptation or other transformation of the sound recording; and
- rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent.

- *Exceptions and limitations to copyright*

The law allows for use of copyright protected material without authorization from the owner of the copyright in the following circumstances (Part IV of the Copyright Act 1997):

- Private reproduction for personal purposes (section 13);
- Quotation (section 14);
- Reproduction for teaching (section 15);
- Reprographic reproduction by libraries and archives (section 16);
- Reproduction, broadcasting and other communication to the public for informatory purposes (section 17);
- Reproduction and adaptation of computer programmes (section 18);
- Importation for personal purposes (section 19);
- Re-distribution of copies of works (section 20);
- Public lending (section 21); and
- Display of works (section 22).

The exceptions to subject matter protected under neighboring rights are;

- for private study or personal and private use;
- for reporting current events to the extent justified by the purpose of providing current information;
- for teaching or scientific research;
- for judicial proceedings;

- *Bonafide* demonstration of radio or television receivers.
- *Protection of foreign works*

As a signatory to the Berne Convention for the protection of literary and artistic works, foreign works enjoy the same protection as the works of Mauritius nationals (section 31(1)). The protection referred to shall apply to performers, producers of sound recordings and broadcasting organizations, which are to be protected by virtue of, and in accordance with, any international convention or other international agreement to which Mauritius is party (section 31(5)).

- *Period of copyright protection*

The economic rights relating to the work of an author shall be protected during his lifetime and for 50 years thereafter (section 12). Where a work was created in the course of employment or commissioned by another person and the economic right relating to the work is deemed to be assigned, the work shall be protected until the expiration of 50 years from the making of the work (section 12(4)). Where a work is published anonymously or under a pseudonym, the economic rights relating to the work shall be protected until the expiration of 50 years from the date on which the work was first published (section 12(3)). The economic rights relating to a work of joint authorship shall be protected during the lifetime of the last surviving author and for 50 years thereafter (section 12(2)).

The economic rights relating to an audiovisual work shall be protected until the expiration of 50 years from the making of the work; or where the work is broadcast or communicated to the public, 50 years from the end of the year during which the authorization was granted (section 12(5)).

The economic rights relating to a photographic work or a work of applied art shall be protected until the expiration of 25 years from the making of the work (section 12(6)).

- *Registration*

Article 3(3) of the Copyright Act provides that an artistic, literary or scientific work or a derivative work shall not be subject to any formality in order to be protected.

5. International Conventions and Treaties

Mauritius is a member of the following International Conventions and Treaties on Copyright and Related Rights:

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

II. Measures and Remedies

1. Copyright infringement

The Copyright Act does not define copyright infringement, but it provides in article 44 the types of offences that might constitute copyright infringement.

Article 44 provides that a person commits an offence when he or she, without the express authorization of the copyright owner:

- publishes, distributes or reproduces a work;
- performs a work for the public;
- communicates a work to the public;
- broadcasts a work;
- makes a derivative work;
- imports, other than exclusively for his own private and personal use, sells, exposes or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute such an infringement if the copy of the work were made in Mauritius;
- manufactures or imports for sale or rental any device or means which is:
 - 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 any copy made thereof;
 - susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;
- has in his possession any apparatus, article or object, that it is to be used for making infringing copies of a work.

2. Remedies to protect copyright holders

Civil Remedies

Article 41 of the Copyright provides remedies for copyright infringement. The Supreme Court may grant remedies, by way of damages, injunction, and forfeiture of any infringing copy or article used in making the infringing copies or otherwise, as the Supreme Court thinks fit.

Where a person has an infringing copy of a work in his possession, custody or control, or has in his possession, custody or control an article specifically designed or adapted for making copies of a work entitled to protection under this act, the copyright owner may apply to a Judge in Chambers for an order that the infringing copy or article be delivered to him or to such other person as the Judge in Chambers may direct.

Criminal Penalties

Article 44(3) provides that any person who commits an offence shall:

- On a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years.
- On a second or subsequent offence be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.
- Notwithstanding any other enactment, a District Magistrate shall have jurisdiction to try any person charged with an offence under this Act.

3. Provisional measures

The provisional measures available in Mauritius are:

- Seizure (article 41 of the Copyright Act)
- Injunction (article 41 of the Copyright Act)
- Ordering the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence.
- Ordering that such apparatus, article or thing shall be delivered up to any person lawfully entitled to it.

4. Penalties for copyright infringement

Civil Remedies

Article 41 of the Copyright provides remedies for copyright infringement. The Supreme Court may grant remedies, by way of damages, injunction, and forfeiture of any infringing copy or article used for the making the infringing copies or otherwise, as the Supreme Court thinks fit.

Where a person has an infringing copy of a work in his possession, custody or control; or has in his possession, custody or control an article specifically designed or adapted for making copies of a work entitled to protection under this act, the copyright owner may apply to a Judge in Chambers for an order that the infringing copy or article be delivered to him or to such other person as the Judge in Chambers may direct.

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- On a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years
- On a second or subsequent offence be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.

Also notwithstanding any other enactment, a District Magistrate shall have jurisdiction to try any person charged with an offence under this Act, and:

- Order the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence
- Order that such apparatus, article or thing shall be delivered up to any person lawfully entitled to it.

Publication

It is not compulsory for the Court to publish the judgment in the press.

5. Requirements for foreign persons

Part IV of the Copyright Act 1997 states that:

- The protection shall apply to a performer who is not a citizen of Mauritius, but whose performance is incorporated in a sound recording that is protected under the Copyright Act (section 31(2)).
- The protection shall apply to a sound recording in the case of which the first fixation of the sound was made in Mauritius or which was first published in Mauritius (section 31(3)).

- The protection shall apply to a broadcast of a broadcast organization the headquarters of which are situated in Mauritius or transmitted from transmitters situated in Mauritius (section 31(4)).

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The authorities responsible for enforcing the copyright law are the courts, police and customs. More specifically, the Anti Piracy Unit (APU) of the Mauritian Police Force has joined in the fight against piracy by effecting seizures and arrests at an accelerated pace. Equipment used in the illegal reproduction of musical works, as well as pirated CDs, are seized on a regular basis. As of February 2009, some 175 piracy related cases have been sent to the law courts; 150 cases are still being investigated by Police; and about a hundred culprits have been condemned. In February 2009, 1.4 million CDs and sleeves have been disposed of at the Mare Chicose landfill. The destroyed CDs were seized by the APU between 2003 and 2007.

b) Enforcement bodies entitled to act ex-officio in copyright infringement cases

The enforcement bodies under a) are entitled to act ex-officio in copyright infringement cases.

c) Courts dealing with copyright cases

The Courts dealing with copyright cases include the lower and intermediate courts as well as the Supreme court..

2. Enforcement at the border

The Customs Act 1988 provides for specific measures under the law for enforcing copyright at the border.

Article 66A of the Customs Act 1988 provides that any owner of copyright may apply in writing to the Director General to suspend the clearance of any goods imported or being exported on the grounds where copyright is being or is likely to be infringed.

The application shall specify a period not exceeding 2 years during which the Director General may suspend the clearance of such goods.

An application shall be accompanied by -

- (a) Any evidence that the applicant is the owner of the copyright;
- (b) A statement of the grounds for the application, and in particular, the prima facie evidence showing that his or her right has been or is likely to be infringed; and
- (c) Particulars relating to the description of the goods making them readily recognizable by Customs, and the place where such goods are to be found.

The applicant shall furnish adequate security to protect the Director General for any loss or damage that may result from the suspension of the clearance of the goods and to cover any reasonable expenses likely to be incurred as a result of such suspension.

Article 66B provides that on receipt of an application under section 66A, the Director General shall within 7 days of the date of receipt of the application –

- (a) Grant or reject the application; and
- (b) Notify the applicant in writing of his decision.

Where the application is granted, the Director General shall notify in writing the applicant, importer, exporter, or his agent of the suspension of the clearance of the goods.

Article 66C provides that where within a period of not more than 10 working days after the applicant has been served notice of the suspension under section 66B (3), the Director General has not been informed in writing that legal proceedings have been initiated by the applicant, the goods shall be released, provided that all other conditions for importation or exportation have been complied with.

The Director General may, in appropriate cases and on the applicant's request, extend the time limit by another period of not more than 10 working days. The Director General shall release the goods forthwith where he is informed by the registered owner or authorized user referred to in section 66A that the collective mark, mark or copyright registered in the name of the owner has ceased to be valid provided that all other conditions for importation or exportation have been complied with.

Article 66D provides that without prejudice to the protection of confidential information, the Director General may authorize the owner of a collective mark or mark, or copyright owner, or importer, exporter or agent, to -

- (a) Inspect the goods of which the clearance has been suspended; and
- (b) Remove samples for examination, testing and analysis.

The Customs Department is the competent authority that acts on behalf of copyright holders for the protection of their intellectual property rights at borders by way of an application being made at Customs for the suspension of clearance of goods suspected to be infringing. Suspension of clearance of IPR infringing goods is governed by Part VI A of the Customs Act 1988.

Guidelines for application:

- (i) Copyright holders should ensure that their copyright is registered at the Mauritius Society of Authors (MASA).
- (ii) At Customs, an application form downloadable from the Department's website should be fully completed and submitted for approval by Mauritius Customs.
- (iii) A Power of attorney is required in case applicant is an authorized user.
- (iv) Adequate security is required to protect the Director General of the Mauritius Revenue Authority for any loss or damage that may result from the suspension of clearance of the goods and to cover any reasonable expenses likely to be incurred as a result of such suspension as required under Section 66(A) (4) of the Customs Act 1988. Presently the security in the form of a bank guarantee equivalent to Rs. 20,000 [Mauritian rupees] may be initially furnished by the applicant at the time of application. However, if it is found upon suspension of a consignment that the initial security is not sufficient, Customs will request additional security.

Whenever a suspension of goods is affected, the right holder and the importer are informed expeditiously by way of fax and letter the details of such suspension.

The prescribed time limit for any suspension of goods is 10 working days to allow for copyright holders to file legal proceedings and may be extended for a further 10 days [section 66C of the Customs Act].

Upon determination of infringement, IPR infringing goods are considered prohibited goods by virtue of Part VI of the Customs Act and as such they are liable for destruction.

Mauritian Customs are entitled to act ex-officio in copyright infringement cases by virtue of section 63(c) of the Customs Act.

The Customs Act does not provide for a *de minimis* import exception, while section 19 of the Copyright Act 1997 does provide for importation for personal use.

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

Information not available

2. Establishment of specialized units and intersectoral group

The main specialized unit is MASA, Mauritius Society of Authors:

<http://www.gov.mu/portal/sites/ncb/masa/index.html>

3. Best practices

As of February 2009, some 175 piracy related cases have been sent to the courts; 150 cases are still being investigated by Police; and about a hundred culprits have been condemned. In February 2009, 1.4 million CDs and sleeves were disposed of at the Mare Chicose landfill. The destroyed CDs were seized by the APU (Anti-Piracy Unit) in 2003 and 2007.

MASA also has signed a Memorandum of Understanding with Business Software Alliance (BSA) pertaining to the regular training of Mauritians in the fight against piracy.

VI. Other

1. TPM/DRM

Information not available

2. Licensing schemes

Information not available

3. Optical discs

Information not available

4. Hotline(s)

Information not available

5. Contact details

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