

UNESCO
WORLD ANTI PIRACY OBSERVATORY

NAMIBIA

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I. Legislation

1. Copyright laws

The principal legislation for the protection of copyright and related rights in Namibia is the [Copyright and Neighboring Rights Protection Act](#), of 1994.

2. Other laws

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

- The Arbitration Act, 1965 (Act 42 of 1965)
- The High Court Act, 1990 (Act 16 of 1990)
- Section 14 of the Supreme Court Act, 1990 (Act 15 of 1990)
- The Customs and Excise Act, 1964 (Act 91 of 1964)
- The Commissions Act, 1947 (Act 8 of 1947)
- The Namibian Communications Commission Act, 1992 (Act 4 of 1992)
- The Criminal Procedures Act
- The Civil Procedures Act
- The Law of Contracts
- The Liability Law
- The Press and Media Regulations Act

3. Latest developments and perspectives

The [Copyright and Neighboring Rights Protection Act](#), came into force the 14th April 1994. It repealed the Copyright Act, 1965. The law has been under review since 2001 to cater to some relevant provisions of the two WIPO Treaties of 1996, i.e. WCT and WPPT. It will give effect to the following:

- Specifically provide for powers of police officers in infringement cases [section 68];
- Provide for the protection of derivative works [section 4];
- Provide for technical devices for rights management information [section 28];
- Provide for the protection of producers of phonograms and expressions of folklore [section 50];
- Establish a competent authority to administer and protect works of folklore [section 65]; and
- Adjust fines and penalties including the extension of prison terms.

4. Summary of legislation

Works protected by copyright

Under section 2(1) of the Act, the following works are eligible for copyright protection:

- Artistic works
- Literary Works
- Musical Works
- Cinematographic films
- Sound recordings
- Broadcasts
- Programme-carrying signals
- Published editions and
- Computer programs

The Act also specifies that a work other than a broadcast or a programme carrying signal shall not be eligible for copyright protection unless it has been written down, recorded or otherwise reduced to material form [section 2(2)]. A broadcast or a programme carrying signal shall not be eligible for copyright protection until, in the case of a broadcast, the broadcast has been made, and in the case of a programme carrying signal, such signal has been transmitted by satellite [section 2(3)].

Ownership of copyright

Where a literary or artistic work is made by an employee in the course of his or her employment by the proprietor of a newspaper, magazine or similar periodical under a contract of service or apprenticeship, and such work is so made for the purpose of publication in a newspaper, magazine or similar periodical, that proprietor shall be the owner of the copyright in the work with respect to publication of the work in a newspaper, magazine or similar periodical or reproduction of the work for the purpose of such publication; but in all other respects, the employee shall be the owner of the copyright subsisting in the work by virtue of nationality, domicile or residence [section 27(1)].

Where a person commissions the taking of a photograph, the painting or drawing of a portrait, or the making of a gravure, cinematographic film or sound recording against payment of any valuable consideration, the person who commissions such a work shall be the owner of any copyright subsisting in the work by virtue of nationality, domicile or residence [section 27(2)].

In the case of either contract of employment or a commissioned work, if a work is made by an employee in the course of his or her employment under a contract of service or apprenticeship, such a person's employer shall be the owner of any copyright subsisting in the work by virtue of nationality, domicile or residence [section 27(3)].

Ownership of copyright made under the direction or control of the State or such international organizations as may be prescribed, and any work made for the State's administrative purposes shall vest in the State or the international organization concerned [section 27(5)].

- *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 directly or indirectly, broadcasting or re-broadcasting, making adaptations, publishing of adaptations, causing the work to be transmitted in a diffusion service, performing the work in public, publishing the work, selling and renting to the public, importing or exporting of the work.

b) Moral Rights

The author also enjoys moral rights which are not transferable even if the economic rights have been assigned. The moral rights include: the right to claim authorship of the work, and 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 honour or reputation of the author provided for under Section 25 (1) (a) and (b) of the Act.

Exclusive right of the owners of neighboring rights

Exclusive rights granted to the owners of neighboring rights include: right of reproduction, right of publication, right to perform the work in public, right to broadcast the work and in relation to a broadcast, rebroadcasting it, right to transmit the work in a diffusion service, right to hire or let the work directly or indirectly, recording rights, distribution rights, right to make a derivative work and right to communicate the work to the public in any other manner [section 10 (a) to (l)] .

Currently, the law specifically provides for protection of the rights of performers [section 45]. Performers are granted the following with respect to their performances;

- 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.

- *Exceptions and limitations to copyright*

Sections 11 – 22, Sections 50, 53, 54 and 55 cover general exceptions.

The law allows for use of copyright protected material without authorization from the owner of the copyright [sections 15 to 24] in the following circumstances:

- for the purpose of research or private study;
- for the purpose of criticism or review of the work or of another;
- for the purpose of reporting on a current event;
- for judicial proceedings, quotation and mention of the quoted author;
- for illustrations in publications;
- for reproduction for lawful broadcasts, pending the destruction of the copy before the expiration of six months immediately following the making of the reproduction or such longer period as may be agreed to by the owner of the relevant part of the copyright in the work, for inforamatory purposes and mention of the author if work is used either on a religious or political topics.

The above exceptions are only applicable if the source and the name of the author are mentioned, compatible with fair practice, reproduction is not in conflict with a normal exploitation of the work and such use does not exceed the extent justified by the purpose.

The exceptions to works protected under neighboring rights are:

- for private study or personal and private use;
- for criticism or review of the performance or for reporting on current events;
- for teaching or scientific research;
- for judicial proceedings; and
- bona fide 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 works of Namibian nationals [sections 5 and 6].

Works of foreign nationals are also protected as provided for in the contracts of reciprocal agreements signed by the copyright societies with. Furthermore, section 63 (1) provides that the Minister may, by notice, provide that any of the Acts specified in the notice shall apply in relation to certain works protected under the Act provided such country is a convention country [section 63(3)].

- *Period of copyright protection*

The duration for copyright protection under the Namibian Act is the life of the author plus fifty (50) years after the death of the author [section 6].

- *Registration*

Copyright protection does not require any formality in Namibia. Protection is acquired automatically once an artistic or literary work is created.

5. International Conventions and Treaties

Namibia 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](#)
- [TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights](#)
- [WIPO Copyright Treaty](#) (WCT), 1996
- [WIPO Performances and Phonograms Treaty](#) (WPPT)

Namibia is also member of the [African Regional Intellectual Property Organization](#) (ARIPO), which has developed a Protocol on the Protection of Copyright and Related rights, yet to be adopted by the Member States.

II. Measures and Remedies

1. Copyright infringement

The law does not provide for a definition of infringement, but only provides for actions which constitute infringement.. These actions include:

- Use of copyrighted material without a license of the owner and of which the owner has the exclusive right to do or to authorize, such as reproduction, publication and broadcasting of the work.
- Importation of the work for the purpose other than for private or domestic use; selling and distributing in Namibia an article for the purposes of trade and acquiring in Namibia an article relating to a computer program without prior consent from the copyright owner.
- Permitting a place of public entertainment to be used for a public performance of the work, where the performance constitutes an infringement of the copyright in the work.

2. Remedies to protect copyright holders

Civil Remedies

Under Civil Procedures Act, the complainant can apply to the Civil Court for an interdict through which he could have the infringing materials, articles and apparatus that were involved in committing an act of infringement, confiscated and delivered to him. Remedies in this case may include a claim of damages, the compensation of which should be in accordance with the intended loss of revenue.

Criminal Remedies

Legal proceedings, remedies, criminal penalties for copyright infringements under the Criminal Procedures Act are carried out in accordance with the provisions of the Copyright Act, as provided for under sections 29 – 30 and 32 – 33 respectively.

3. Provisional measures

Provisional measures are not specifically available but an interdict may be used as a “provisional measure” at the pleasure of the plaintiff. This is clear under Section 30(7) (a) and (b) which reads as follows:

- “In an action for infringement of copyright in respect of the construction of a building, if the construction has already begun, no interdict or other order may be granted or made so as to prevent the building from being completed or require the building, in so far as it has been constructed, to be demolished.”

4. Penalties for copyright infringement

Civil Penalties

The applied penalties in a civil case vary depending on the nature of the infringement. The basic penalty fees range from N\$12,000 and N\$20,000 in the old Act and N\$50,000 and N\$100,000 in the newly amended Bill, which is slated to take place sometime during the course of 2009.

The penalties do not necessarily include attorneys' fees, but should the defendant be found guilty, attorneys' fees apply. Damages suffered by the plaintiff, which the defendant pays, are determined by the nature of infringement, including the degree of infringement, expected profit that the copyright holder has been deprived and so forth.

Criminal Sanctions

Terms of imprisonment for copyright infringement range between three and five years in the old Act and four and six years in the new Bill.

Publication

The publication of the judgment in a copyright infringement case is not included in the penalties, but it may be published in any local newspaper or professional magazine.

5. Requirements for foreign persons

Any work found in Namibia is automatically protected by virtue of international Conventions to which Namibia is party. Copyright holders in these works are not subject to any special formalities to enforce their copyright in Namibia. Sections 5 and 6 provide for these rights.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

In addition to the Commission of Customs, officials from the Copyright office, the police and the judiciary, there are three competent authorities in Namibia that are responsible for copyright and neighboring rights protection, namely:

- the Ministry of Information and Communication Technology (MICT), which is the main custodian of the Copyright Act;
- the Namibian Society of Composers and Authors of Music (NASCAM), which is a collective management organization for musical works only; and
- the Namibia Reproduction Rights Organization (NAMRRO), which is a collective management organization for literary, artistic and dramatic works.

The Directorate of Customs and Excise in the Ministry of Finance also plays a pivotal role in the enforcement of the Copyright law, most provisions of which run almost parallel to those of the Customs and Excise Act of 1998.

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

The enforcement bodies may act *ex-officio* in copyright infringement cases.

c) Courts dealing with copyright cases

There are no specialized courts tasked to deal with copyright cases in Namibia currently. The Copyright Act makes provision for the establishment of a Copyright Tribunal, but the process is yet to be initiated through the Ministry of Information and Communication Technology. Copyright cases are heard in the High Court.

2. Enforcement at the border

Sections 33(1) – (8) provide for the restriction on the importation of copyrighted works into Namibia. The Directorate of Customs and Excise in the Ministry of Finance is partly responsible for identifying copyright infringing copies at the borders. The Directorate then informs the relevant collective management organizations about any infringement. While the relevant collective management organization pursue the case by identifying the works and rights holders involved, the Customs officials retain the suspected copies, articles and equipments.

Once a copyright infringement act has been duly determined by the trained officials of the relevant collective management organization, the Namibian Police is notified of the case and the suspected goods are duly confiscated by the Customs officials and stored in their designated warehouses for safe keeping while the Police investigations continue.

The time limit for the Customs and Excise authorities to release the confiscated goods is sixty (60) days, in which the Police should have finalized their investigations and the case should have been heard in court.

In most cases, once the rights holders have been notified of the infringement, they agree with the relevant collective management organization that the infringing copies, articles, equipments and so forth that have been used in the infringement process be destroyed in front of the media.

De minimis imports of items of non-commercial quantity and items acquired by way of gifts abroad are allowed into the country under the *fair use* provision.

IV. Public Awareness

1. Awareness campaigns and actions

Information not available

2. Promotion of legal exploitation

The Government and private and civil societies play a combined role in the fight against piracy in the following manners:

- assisting officials from law enforcement institutions to obtain training from inter-governmental organizations, such as WIPO and UNESCO on issues related to the fight against piracy and counterfeiting; and
- assisting in the establishment of collective management organizations, such as NASCAM and NAMRRO.

The Ministry of Information and Communication Technology is contemplating spearheading the establishment of an anti-piracy organization in Namibia as soon as NAMRRO is up and running with its licensing, collection activities and advocacy activities.

The Ministry of Information and Communications Technology has developed an annual Public Awareness Campaign programme that is carried out in collaboration with the two collective management organizations. It includes copyright information-sharing seminars and workshops at institutions of higher learning, targeting lecturers and students alike.

3. Associations and organizations with awareness-raising purpose

The list of organizations that are involved in the protection of copyright work and the enforcement thereof:

| ORGANISATION/ INSTITUTION | CONTACT PERSON | E-MAIL ADDRESS | PHONE AND FAX |
|------------------------------|-------------------|--|---|
| NAMRRO | Moses M. Moses | namro@iway.na | Tel: +264-61-222 246 Fax: +264-61-305 282 |
| NASCAM | Max Eino John | namsoc@iafrica.na | Tel: +264-61-229 116 Fax: +264-61-249 240 |
| Customs & Excise Office | Wilka Haikonda | wilka.haikonda@mof.na | Tel: +264-61-209 9111 Fax: +264-61-239 278 |
| MICT | Roseslia Penda | roseliapenda@ymail.com | Tel: +264-61-289 9111 Fax: +264-61-305 282 |

4. Best practices

The MICT, Directorate of Customs and Excise, NAMRRO and NASCAM are collaborating to establish an Anti-piracy movement to be launched during the course of 2009.

The annual MICT IPR Information-sharing Programmes where NAMRRO and NASCAM conduct joint seminars and workshops at institutions of higher learning are doing wonders in terms of education and informing lecturers, students, regional councils and members of the general public about the significance of IP as a tool for socio-economic development.

The Police and Customs officials are also trained on the above subject from time to time by the officials from the two collective management organizations.

V. Capacity-Building

1. Training

Namibia has, with the assistance of the UNESCO Windhoek Cluster Office, hosted two successful Anti-piracy and Counterfeit Training Workshops in 2006 and 2008, respectively.

These training programs have empowered law enforcement agencies, such as the police and customs officials, to be more effective in the implementation process of copyright law.

2. Establishment of specialized units and intersectoral group

The Namibian authors and composers established two collective societies aimed at ensuring the protection of authors. The collective societies are the Namibian Society of Composers and Authors of Music (NASCAM), which was established in 1994. In 2006, the Namibian Reproduction Rights Organization (NAMRRO) began catering to the rights of authors and publishers in literary and artistic works.

3. Best practices

Information not available

VI. Other

1. TPM/DRM

Technical Protection Measures (TPM) are provided for under Sections 28(1) and (2), which stipulate that a person infringes copyright if he:

- manufactures or imports for sale or hire any device designed or adapted to circumvent any device that is intended to prevent or restrict a reproduction of a work or impair the quality of the copies so made;
- removes or alters any electronic rights management information without the consent of the owner of the copyright;
- distributes, imports or communicates to the public an infringing work from which the (electronic) rights management information has been removed and while knowing or having reason to know that such information has been removed from the work in question.

2. Licensing schemes

Information not available

3. Optical discs

Information not available

4. Hotlines

Information not available

5. Contact details

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