

UNESCO
WORLD ANTI PIRACY OBSERVATORY

ZAMBIA

I. LEGISLATION	3
1. Copyright laws	3
2. Other laws	3
3. Latest developments and perspectives	3
4. Summary of legislation	3
5. International treaties	5
II. MEASURES AND REMEDIES	6
1. Copyright infringement	6
2. Remedies to protect copyright holders	6
3. Provisional measures	7
4. Penalties for copyright infringement	7
5. Requirements for foreign persons	8
III. ENFORCEMENT	9
1. Enforcement authorities	9
2. Enforcement at the border	9
IV. PUBLIC AWARENESS	10
1. Awareness campaigns and actions	10
2. Promotion of legal exploitation	10
3. Associations and organizations with awareness-raising purpose	10
4. Best practices	10
V. CAPACITY-BUILDING	11
1. Training	11

2.	Establishment of specialized units and intersectoral groups	11
3.	Best practices	11
VI.	OTHER	11
1.	TPM/DRM	11
2.	Licensing Schemes	11
3.	Optical Discs	11
4.	Hotlines	11
5.	Useful Contacts	11

I. Legislation

1. Copyright laws

Copyright in Zambia is protected through International Agreements, the [Copyright and Performance Rights Act 1994](#) and other legislation related to the enforcement of the provisions of the Copyright law.

The main copyright legislation is the Copyright and Performance Rights Act 1994.

2. Other laws

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

- The Authentication of Documents Act [Cap.85]
- The Copyright regulations made in terms of section 57 of the Act
- The State Proceedings Act
- The Service Commissions Act 24 of 1991

3. Latest developments and perspectives

The Copyright and Performance Rights Act 1994 entered into force the 31st December 1994. It repeals the Copyright Act [Cap: 701].

The entire copyright law is also being reviewed for the following reasons:

- To comply with WIPO internet treaties;
- To comply with the TRIPS Agreement;
- To address enforcement challenges relating to complainants, the applicable rank of the arresting officers and number of copies considered to be infringing copies; and
- To protect works of folklore and cultural expressions.

Among the provisions that will be amended include:

- The Court of jurisdiction
- The Number of infringing items to constitute piracy
- The Rank of police inspector to carry out an arrest
- The Inclusion of a hologram on all audio and video products etc

Zambia is a member of the African Regional Intellectual Property Organization (ARIPO) which has as one of its objectives the protection of copyright and related rights. It has drafted a Protocol on Copyright and Related Rights to be approved by Member States.

4. Summary of legislation

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

Exclusive Rights of the authors

According to the Act, the products of creativity in which copyright may subsist under the Act include literary, musical, artistic works, computer programs, audiovisual works, sound recordings, broadcasts, cable programs and typographical arrangements of published editions of literary works (s 8(1)).

a) *Economic Rights*

The exclusive rights are divided into economic and moral rights. The owner of the copyright owners enjoys the exclusive right to do or to authorize of the following acts to their works of original authorship:

- Reproducing the work in any material form
- Publishing the work
- Importing the work or copies into Zambia
- Broadcasting / re-broadcasting the work
- Including the work in a cable program service
- Communicating the work to the public by any other means adapting the work (s 17)

b) *Moral Rights*

The moral rights of the author are established under section 24 of the Copyright and Performance Rights Act 1994.

Moral rights include the right to be identified as the author or director of and to object to any distortion, mutilation or other modification or derogatory action in relation to the work that would be prejudicial to his/her honour or reputation. These moral rights expire on the death of the author (s.24).

Exclusive right of the owners of neighboring rights

Neighboring rights refer to the rights of performers, producers of sound recordings and broadcasting organizations. The law of Zambia protects the rights of performers and holders of recording rights and is silent on the rights of broadcasting organizations (s 45).

Producers' rights of sound recordings include the following:

- Broadcasting the performance
- Recording
- Including in a cable program service their recordings

Recording rights are also not assignable or otherwise transferable (s 46(2)).

Performer's rights shall not be assignable or transferable except on death by testamentary disposition or by operation of law (s 46(1)).

- *Exceptions and limitations to copyright*

In general the law allows for use of a work without the permission of the owner under limitations and exceptions (s 21). The exceptions apply in the following cases;

- Fair dealing for research or private study;
- Criticism or review provided sufficient acknowledgement is given, for the purposes of reporting current events
- Reproduction or recording for purposes of judicial proceedings;
- Public Reading and Recitals
- Educational Use
- Replace or conserve library or archival copies of works;

In addition copyright is not infringed when the work is of unknown authorship; and it is reasonable to assume that copyright has expired; or that the author died (s 21 (3)).

It further states that an act which conflicts with the normal exploitation of the work or unreasonably prejudices the legitimate commercial interests of the owner of the copyright in a work shall not be treated as fair dealing (s 21(2)).

The same instances of exceptions are applicable to performers and producers of sound recordings. The exceptions apply in the following cases;

- News reporting
- Incidental Inclusion
- Publishing, broadcasting, inclusion in a cable program service, or the communication to the public by any other means of anything the making of which was not an infringement of performer's right or recording right (s 50 (1)).

Any act which conflicts with the normal commercial exploitation of a performance, or unreasonably prejudices the legitimate interests of the performer or holder of a recording right in a work shall not be treated as fair dealing (s 50 (2)).

- *Protection of foreign works*

The law provides for foreign nationals of countries that are members of the same convention or treaty to which Zambia is part to, to enjoy the same protection accorded to Zambians. In this case, they need to satisfy the law enforcement agencies that the said works belong to them (s 56).

- *Period of copyright protection*

The protection period for copyright in literary, musical and artistic works is for a period of 50 years from the end of the calendar year in which the author dies (s 12). The fifty (50) year period also applies to all the domains of copyright protected under the Act (sections 13, 14, 15), except for typographical arrangements of a published edition which is protected for a period of 25 years from the end of the calendar year in which the edition was first published (s 16).

Rights in performances subsist for 50 years from the end of the calendar year in which the performance takes place (s 47).

- *Registration*

The law provides that the existence and enforceability of a copyright shall be independent of whether or not it is registered under the Act (s 39(4)).

The registration of a work shall be done with the registrar who will issue a certificate of registration (s 40).

The law provides that the Registrar of copyright shall keep a register of copyrights in works other than broadcasts or cable programs (s 39(2)).

The register, and copies of the works concerned, shall be made available for inspection to members of the public on payment of a prescribed fee.

5. International treaties

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

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

Membership to Regional Treaties and Convention/Protocols

Zambia is also a member of the African Regional Intellectual Property Organization (ARIPO)

II. Measures and remedies

1. Copyright infringement

There is no specific definition but the Act refers to “the doing of any controlled acts” as infringement and states the circumstances in which copyright is infringed. Copyright in a work is infringed:

- By a person who, without the license of the copyright owner, transmits the work by electronic means (otherwise than by broadcasting or by means of a cable transmission service) knowing or having reason to believe that infringing copies of the work will be made by means of the reception of the transmission in Zambia or elsewhere (s 20 (2)).
- By making or trading in articles for making infringing copies, or transmission for the purpose of making infringing copies (s 20 (1)).
- By a person who, without the consent of the owner of the copyright, does, or authorizes another person to reproduce, broadcast, perform; publish a protected work (s 18).
- By the importation into Zambia otherwise than for private and domestic use, selling or letting for hire, offering or exposing for sale or hire, exhibiting in public or distribution in the course of trade or business to such an extent as to affect prejudicially the owner of the copyright articles which are infringing copies (s 19).

The same instances of infringement are applicable to performers and producers of sound recordings (s 48).

There are no references to internet piracy.

2. Remedies to protect copyright holders

The law provides proceedings against infringement can be brought against an infringer where he/she is in possession, custody or control five or more infringing copies of a work.

The Zambian law provides for both civil and criminal remedies to owners of copyright and related rights (s.25 (1)).

Civil Remedies

The following remedies are available in cases of infringement:

- Injunctions (available in certain circumstances and not applicable where injunction requires a completed or partly built building to be demolished or prevents the completion of a partly built building) (s 25(5)).
- Damages (proof of actual damage shall not be required) (s 25(3)).
- Account for profits
- Right to delivery up of infringing copies or forfeiture of such copies (s 26)
- Restriction on importation of infringing copies (s 27).
- Delivery up to the owner of the copyright or destruction of articles used or intended to be used for making infringing copies or for the commission of an offence in terms of the Act (s 28 (4)).

Criminal Remedies

Any person found guilty of infringing the provisions of the copyright law is punishable by imprisonment for a period not exceeding 5 years on first conviction, not exceeding 10 years on subsequent conviction to imprisonment.

The following remedies are available in cases of infringement:

- Seizure
- Forfeiture
- Destruction of infringing goods
- Damages

There is no requirement from the Court in ordering the publication of the judgment in the press.

3. Provisional measures

Where information is given on oath to a Magistrate that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any article used or intended to be used for making infringing copies, or any other article, book or document by means of or in relation to which is committed, the Magistrate may issue a warrant under his hand by virtue of which any police officer, of or above the rank of Inspector, may enter the house or premises at any reasonable time by day or night and search for and seize any such copy or device.

A police officer who seizes anything under this section shall, within forty-eight hours after the seizure, produce the same before a Magistrate, and upon the production the Magistrate shall direct the same to be kept in the custody of the officer in charge of the police for the purpose of any investigation or prosecution under this Act.

Any police officer of or above the rank of Inspector may, in the exercise of powers conferred by under section use force to enter the premise or detain every person found on the premises until such premises have been searched (s 34).

The police office may seal things or documents in the premises or container in cases where it is impractical to seize the goods. The officer shall also prepare a list of the things sealed or seized.

4. Penalties for copyright infringement

The general rule is as followed:

In civil cases

- On first conviction to a fine not exceeding
 - Fifty thousand penalty units; or
 - Ten penalty units for each infringing copy;
- On subsequent conviction, to a fine not exceeding
 - One hundred thousand penalty units; or
 - Twenty penalty units for each infringing copy

For criminal offence in copyright cases

- On first conviction to imprisonment for a term not exceeding five years;
- On subsequent conviction to imprisonment for a term not exceeding ten years.

For the following circumstances the rule is as followed:

- A person who makes or imports for sale or hire any article specifically designed to circumvent the operation of a device or system designed to prevent or control the reproduction of a recording of a work shall be guilty of an offence and liable on conviction to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years or both.
- A person who dishonestly receives a program included in a broadcast or in a cable program service with intent to avoid payment of any charge applicable to the reception of the program shall be guilty of an offence and shall be liable to a fine not exceeding fifty thousand penalty units or to imprisonment for a term not exceeding five years or to both.
- Any person who obstructs a police officer to access any place when the officer is seeking to exercise his powers under the Act shall be guilty of an offence and shall be liable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding twelve months or to both (s 38).
- A person without lawful authority, breaks, tampers with or damages documents sealed by a police officer to preserve evidence shall be guilty of an offence and liable on conviction to a fine not exceeding twenty thousand penalty units or imprisonment for a term not exceeding two years, or to both.
- A person who does an act which constitute an infringement of performer's right or recording right in relation to a performance knowing or having reason to believe that the act would constitute such an infringement shall be guilty of an offence, and shall be liable on conviction to a fine not exceeding twenty thousand penalty units or to imprisonment for a term not exceeding two years, or to both.
- A person who represents falsely that he is authorized by a person to give consent in relation to a performance shall be guilty of an offence, and shall be punishable on conviction to a fine not exceeding ten thousand penalty units or to imprisonment for a term not exceeding one year or both.

Seizure, confiscation, forfeiture and destruction of all infringing copies

The Copyright Act also empowers the courts of law to order seizure, forfeiture and destruction of infringing goods of all infringing goods.

The court may also order the infringer to pay the copyright owner damages. The Court is not required to order the publication of the judgment in the press.

5. Requirements for foreign persons

The law provides for foreign nationals of countries that are members of the same convention or treaty to which Zambia is part to, to enjoy the same protection accorded to Zambians. In this case, they need to satisfy the law enforcement agencies that the said works belong to them (s 56).

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

- The Ministry of Information and Broadcasting, which is the principal Ministry responsible for the implementation of the Copyright law.
- The Director of Public Prosecutions, who examines certain cases of alleged copyright infringement (s 54(2) (c)).
- The Registrar of Copyright, who in addition to monitoring the activities of collecting societies and being responsible for registration of copyrights in works other than broadcasts or cable programs, arbitrates on disputes between copyright owners and collecting societies.(Sections 39 and 54).
- The Zambia Police Services.
- The Customs Officials - the Controller of Customs who has the authority to issue a notice in the *Gazette* to the effect that infringing copies of the work concerned shall be prohibited imports (s 27(4)).
- The Judiciary - the High Court and Magistrates Court.

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

c) Courts dealing with copyright cases

- The competent court for the adjudication of copyright is the High Court of Zambia, which is located in Lusaka, the capital.
- Magistrates may also issue search warrants for purposes of entering, searching and seizing infringing copies. Within 48 hours of seizing the infringing copies or articles, the relevant police office is required to produce the copies or articles before a magistrate who shall direct that the evidence by kept in safe custody for the purpose of investigation or prosecution (s 33(2)).

2. Enforcement at the boarder

The Copyright Act provides in section 27 restrictions to imports of infringing goods by the right holder giving notice in writing to the Controller of Customs. The competent authority to enforce copyright law at the border is the Zambia Revenue Authority.

The owner shall give notice in writing to the controller of Customs that he is the owner of the copyright in the work and may request the controller to treat as prohibited goods during the period specified in the notice copies of the work which are infringing. Such notice shall be supported by such evidence as he thinks. The period specified in a notice shall not exceed five years or the remainder of the duration of the copyright whichever is less.

When the Controller of Customs is satisfied that there is a reasonable probability that attempts may be made to import infringing copies of the work, and that it is in the public interest that the copies be made prohibited imports, he shall issue a notice in the *Gazette* to the effect that, during the specified period infringing copies of the work concerned shall be prohibited imports.

During the period so specified:

- A person shall not import infringing copies of the work concerned, otherwise than for his private and domestic use; and
- Any infringing copy imported in contravention of the notice shall be subject to forfeiture.

IV. Public Awareness

1. Awareness campaigns and actions

The Ministry of Information and Broadcasting Services where the Copyright Office falls has conducted several workshops dedicated to copyright law.

The private sector which includes collecting societies and companies such as *Cycorp* also play a pivotal role in the enforcement of copyright and related rights.

2. Promotion of legal exploitation

The Copyright Office has trained officers on how to enforce the copyright law. It has also trained journalists.

3. Associations and organizations with awareness-raising purpose

These training programs have led the officers to form the Anti-Piracy Crack Squads. The Anti-Piracy Crack Squads comprises:

- the police with their powers to arrest;
- customs authorities with border measure;
- immigration because most people engaging in piracy are foreigners;
- the councils because they control markets where infringing goods are sold;
- drug enforcement commission with their Act on prohibition of money laundering as a result of these illegal deals.

These training programs have also led to an association called Journalists Against Piracy in Zambia (JAPIZ). The association has been very effective in raising awareness on Intellectual Property matters. Since its inception, JAPIZ members have written a lot of stories on copyright and piracy.

4. Best practices

To date, the Anti-Piracy Crack Squads have seized billions of kwacha worth of pirated goods. These were destroyed early last year and more will be destroyed this year.

The JAPIZ has been very effective in raising awareness on Intellectual Property matters. Since its inception, JAPIZ members have written a lot of stories on copyright and piracy.

V. Capacity-building

1. Training

2. Establishment of specialized units and intersectoral groups

- Creation of an intellectual property unit

The government created an intellectual property unit called the Zambia Police Intellectual Property Unit. The police in conjunction with the private sector and civil society conduct raids against piracy infringement. The police have trained officials responsible for the enforcement of copyright and related rights.

However, the police officer with the authority to enforce copyright provisions is the police officer of or above the rank of Inspector (s 33).

- Creation of a collective management organization

The Act provides for the establishment of collecting societies in section 22.

Zambia Music Copyright Protection Society (ZMCOPS) and Zambia Reproduction Rights Society (ZARRSO) are the two collecting societies that were created and registered by the Registrar of Copyright to negotiate and administer collective copyright license agreements on behalf of the owners of copyright and related rights. ZMCOPS was created in 1996 and ZARRSO was created in 2008.

3. Best practices

Anti-piracy training programmes for law enforcement agencies

The Ministry of Information and Broadcasting collaborates with national stakeholders to facilitate ongoing anti-piracy training programs. The Zambia Police Services has on many occasions worked with the American Embassy in Zambia, Interpol and Microsoft on such training programs. WIPO, IFRRO and UNESCO play a major role in providing the financial support for these training programs.

VI. Other

1. TPM/DRM

2. Licensing Schemes

3. Optical Discs

4. Hotlines

5. Useful Contacts

The Contact details of person who can provide vital information on Crack Squads are:
Kenneth Musamvu – Copyright Registrar (0977 692798)

Ministry of Information and Broadcasting (Kenneth Masamvu)
Registrar of Copyright
Government Complex,

Independence Avenue,
P.O. Box 51025 - Lusaka
Tel: +260 211 237165
Fax: +260 211 235410
Email: kenroyal2000@yahoo.co.uk

Zambia Music Copyright Society (ZAMCOPS)
Mutale Kayemba
Zambia Educational Publishing House
P.O. Box 51259 - Lusaka
Tel: 260 1 229 270
Email: zamcops@zamnet.zm

Zambia Reprographic Rights Organisation (ZAARSO)
Brenda Mukata
Zambia Police Services
Email: lmusonda@yahoo.com