

UNESCO
WORLD ANTI PIRACY OBSERVATORY

ZIMBABWE

| | |
|--|-----------|
| 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 | 5 |
| 1. Copyright infringement | 5 |
| 2. Remedies to protect copyright holders | 6 |
| 3. Provisional measures | 6 |
| 4. Penalties for copyright infringement | 7 |
| 5. Requirements for foreign persons | 7 |
| III. ENFORCEMENT | 7 |
| 1. Enforcement authorities | 7 |
| 2. Enforcement at the border | 8 |
| IV. PUBLIC AWARENESS | 9 |
| 1. Awareness campaigns and actions | 9 |
| 2. Promotion of legal exploitation | 9 |
| 3. Associations and organizations with awareness-raising purpose | 9 |
| 4. Best practices | 10 |
| V. CAPACITY-BUILDING | 10 |
| 1. Training | 10 |

| | | |
|------------|---|-----------|
| 2. | Establishment of specialized units and intersectoral groups | 10 |
| 3. | Best practices | 10 |
| 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

The copyright legislation in Zimbabwe is composed of the following statutes: [Copyright and Neighboring Rights Act \[Chapter 26:05\] 2000](#) and Copyright and Neighboring Rights Regulations 2006.

2. Other laws

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

- The Intellectual Property Tribunal Act [Chapter 26:06]
- The High Court Act
- The Magistrate Court Act [Chapter 7:10]
- The Criminal Procedure and Evidence Act [Chapter 9:07]
- The Competition Act [Chapter 14:28]
- The Commissions of Inquiry Act [Chapter 10:07]
- The Customs and Excise Act [Chapter 23:02]

3. Latest developments and perspectives

[The Copyright and Neighboring Rights Act \[Chapter 26:05\] 2000](#) entered into force the September 10, 2004. It repeals the Copyright Act [Chapter 26: 01]. No amendments are currently planned.

4. Summary of legislation

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

Zimbabwean Copyright laws provide copyright owners with both exclusive economic and moral rights.

Exclusive rights of the Authors

a) *Economic Rights*

The copyright owners enjoy the exclusive right to do or to authorize the doing of the following acts to their works of original authorship under section 17 (a – h) of the Copyright Act:

- Reproducing the work;
- Publishing the work;
- Importing the work into Zimbabwe or exporting the work out of Zimbabwe otherwise than for the personal and private use of the person importing or exporting it;
- Performing the work in public;
- Broadcasting the work;
- Causing the work to be transmitted in a cable program service unless the service transmits a lawful broadcast including the work and is operated by the original broadcaster;
- Making an adaptation of the work, except in the case of a computer programme the case of a computer, publishing an adaptation of the program and by way of business, to directly or indirectly selling or renting a copy of the program or offering or exposing a copy of the program for sale or hire.

These exclusive economic rights apply in all the domains protected under copyright.

b) *Moral Rights*

The moral rights of the author are established under section 61 and 64 of the Copyright Act.

Moral rights include the right to be identified as the author of the work and right to object to derogatory treatment of work.

Moral rights are not transmissible and are enforced in all respects as if the persons in whom they vest were owners of copyright and such infringements of rights were infringements of that copyright (s 67).

Exclusive Rights of owners of neighboring rights

Neighboring rights are enforced in the same way as copyright is enforced (s 77).

The **performers' rights** include the following:

- Making a recording of a performance
- Broadcasting a performance live
- Being remunerated for commercial use of sound recording of performance

The **producers' rights** of sound recordings include the following;

- Making a recording of a performance
- Broadcasting the performance

Performers and producers of sound recordings also enjoy moral rights in the same manner that owners of copyright do enjoy (s 79).

- *Exceptions and limitations to copyright*

The Copyright and Neighboring Rights Act section 24 - 44 and section 73 allows for free use of copyright protected material, which is without the authorization of the owner of the copyright and payment of remuneration. The exceptions apply in the following cases:

- Research or private study;
- Educational use;
- Replace or conserve library or archival copies of works;
- Parliamentary or judicial proceedings;
- Criticism, review or news reporting;
- Informatory purposes;
- Quotations;
- Public readings and recitals;
- Reconstruction of architectural works;
- Incidental inclusion;
- Advertising or sale;
- Demonstration purposes; and
- Backup copies in cases of computer programs.

- *Protection of foreign works*

There is no specific and express provision relating to protection of foreign works.

However by virtue of being a member of the Berne Convention Zimbabwe is obliged to give protection to works of foreign nationals who are also members of the Berne Convention and accord them the same treatment accorded to Zimbabwean nationals.

Works of foreign nationals are also protected as provided for in the contracts of reciprocal agreements signed by the copyright societies with other societies in foreign countries.

In terms of section 125 of the Act there are no special procedures that a foreign person shall prove in order to access the national courts in Zimbabwe. The provision states that in any civil or criminal proceedings relating to copyright in any work, an entry in the copyright Register showing that a collecting society is registered in terms of the Act in respect of the class of works to which the work concerned belongs shall be *prima facie proof* that the society represents the owner of the copyright in the work concerned.

- *Period of copyright protection*

Copyright is protected for the life of the author and 50 years after the death of the author and in the case of joint authorship 50 years after the death of the last surviving author (s 15).

- *Registration*

The rights of the author, performer or producer are acquired by virtue of the creation of a work, by contract or by license.

Section 45 provides that copyright may also be transmitted as incorporeal movable property by assignment, testamentary disposition or operation of law.

However, registration of works with the Copyright Society helps the authentication of ownership of copyright.

5. International treaties

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

Membership to International Treaties

- [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 and Convention/Protocols

- Zimbabwe is also a party to the [African Regional Intellectual Property Organisation](#) (ARIPO) Development Community

II. Measures and remedies

1. Copyright infringement

The law does not specifically provide for the definition of infringement. However it does provide for actions considered to be infringing by their nature. In addition, there are no specific provisions pointing out the issue of internet piracy, but just talks of reproduction in the general sense.

Copyright is infringed by any person who is not the owner of the copyright and, who, without the owner's authority, does or causes another person to do an act in Zimbabwe which the owner has the exclusive right to do or to authorize. Infringement involves doing any of the following acts (s 59);

- Making an infringing copy
- Importing or exporting otherwise than for private use

- In the course of business, exhibiting, or distributing to the public
- Selling it or lets it for hire or offers it for sale or hire
- Distributing it to such an extent that the owner of the copyright is prejudiced
- Transmitting the infringing copies to the public; and
- Permitting a place of public entertainment to be used for a performance of the work, where the performance constitutes an infringement

2. Remedies to protect copyright holders

Civil Remedies

Subject to section 52 of the Act, an infringement of copyright is actionable at the suit of the owner of the copyright. In any proceedings for an infringement of copyright, the plaintiff has remedies by way of damages, interdict, attachment, the rendering of accounts, the delivery of infringing copies or articles used or intended to be used for making infringing copies or otherwise as are available in respect of the infringement of any other proprietary right.

Section 53 of the Act also provides for rights and remedies of exclusive licensee. It provides that an exclusive licensee shall have the same rights of action and be entitled to the same remedies as if the license were an assignment, and those rights and remedies are concurrent with the rights and remedies of the owner of copyright under which the license was granted. If an exclusive licensee intends to exercise the option of calculating the damages on the basis of the amount of a reasonable royalty which would have been payable under the circumstances by a licensee in respect of the copyright concerned, the licensee shall give written notice of his intention to the owner of the copyright concerned.

The remedies available to the court are:

- an injunction (s 52)
- damages calculated on the basis of the amount of a reasonable royalty which would have been payable taking into consideration the extent and nature of the infringement, the market value of the work concerned, the flagrancy of the infringement and the need to deter persons from committing further infringements (s 53)
- additional/ exemplary damages as the court may deem fit (s 53)
- an account of profits (s 52)
- delivery up of infringing copies (s 52)
- forfeiture of infringing goods (s 52)
- attachment of property (s 52)

Criminal Penalties

Any person found guilty of infringing the provisions of the copyright law is punishable by imprisonment for a period of two years or a fine not exceeding level ten or both (s 59).

3. Provisional measures

Anton Pillar orders

This order which is aimed at preserving evidence relating to infringing copies is granted without notice to the person who is allegedly in possession of the documents, infringing copies or other things relating to the infringement. Such an order is only granted when the court or Tribunal is satisfied that there is a real possibility that the documents or infringing copies will be hidden, destroyed or rendered inaccessible if notice is given.

Search warrants

Upon reasonable suspicion that infringing copies are being kept in a particular premise, an inspector or police officer may apply to a competent for a search warrant in order to enter, search and seize infringing copies (s 110B(7)).

4. Penalties for copyright infringement

In civil cases

The penalties available to the court are:

- an injunction (s 52)
- damages calculated on the basis of the amount of a reasonable royalty which would have been payable taking into consideration the extent and nature of the infringement, the market value of the work concerned, the flagrancy of the infringement and the need to deter persons from committing further infringements (s 53)
- additional/ exemplary damages as the court may deem fit (s 53)
- an account of profits (s 52)
- delivery up of infringing copies (s 52)
- forfeiture of infringing goods (s 52)
- attachment of property (s 52)

For criminal offence in copyright cases

Any person found guilty of infringing the provisions of the copyright law is punishable by imprisonment for a period of two years or a fine not exceeding level ten or both (s 59).

Seizure, confiscation, forfeiture and destruction of all infringing copies

The law provides for the following special measures: the Anton Piller orders and the search warrants.

5. Requirements for foreign persons

Zimbabwe 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.

Works of foreign nationals are also protected as provided for in the contracts of reciprocal agreements signed by the copyright societies with other societies in foreign countries.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

- The Director of Customs and Excise
- The Registrar of Copyright
- The Copyright Inspectors (s 110B (1))
- The Police Officers (s 110B (4))
- The Judiciary – this comprises of the Magistrates court and the High Court as the courts of first instance in copyright infringement cases in both criminal and civil cases.

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

The competent authorities may act ex-officio in copyright infringement cases.

c) Courts dealing with copyright cases

- The Civil Court
- The Criminal Court
- The High Court
- The Supreme Court
- The Magistrates Court
- The Tribunal Court

The decision to submit a case before the Magistrates Court or the High Court depends on the monetary value of the goods that have been infringed.

Magistrates Courts are located in each of the ten provinces of the country and there are circuit courts every month in each of the districts of the country.

The High Court is located in the Harare and Bulawayo which are the major cities in Zimbabwe.

The courts have the power to make any such order that will compensate the owner of the copyright for loss of profits and damage caused by the infringement. They also have the power to order seizure or destruction of the infringing goods and order interim relief to stop the infringement.

2. Enforcement at the boarder

The copyright law provides for border measures to stop infringement during importation or exportation of infringing works (s 60). However, the process is lengthy and may be difficult to enforce. The owner of the copyright in a work may give notice in writing to the Director of Customs and Excise to treat goods which he/she may suspect to be infringing as prohibited goods.

The Director of Customs can only comply with the request of the owner of the copyright until the owner furnishes the Director with security in such form and amount as the Director may require so as to secure the fulfillment of any liability and the payment of any expense which he/she may incur as a result of the detention of the goods (s 60(d)).

In the event that the owner of the copyright has paid the required security deposit the Director of Customs only holds the alleged infringing goods for a period of 10 days unless if the owner of the copyright institutes proceedings in a court of law for an order leading to a decision that the importation and exportation of the copies shall continue to be prohibited until the final determination of the matter (s 60(2)).

The copyright law provides for border measures to stop infringement during importation or exportation

If the owner of the copyright in any work, by written notice to the Director of Customs and Excise

- (a) informs the Director that he is the owner of the copyright in the work and
- (b) satisfies the Director that there are reasonable grounds for suspecting that copies of the work which-
 - (i) are infringing copies or
 - (ii) would be infringing copies if they had been made in Zimbabwe have been or may be imported into or exported from Zimbabwe and
 - (iii) requests the Director to treat the copies as prohibited goods and describes the copies concerned with sufficient particularity to make them readily identifiable.

Where a request has been made, and has not been withdrawn, the importation into or exportation from Zimbabwe of any copy of the work to which the request relates shall be prohibited for a period of 10 working days from the date on which the Director of Customs and Excise complies with the request.

The law provides for a de minimis import exception such as the import for personal use of a non-commercial and new items and things acquired for personal use.

IV. Public Awareness

1. Awareness campaigns and actions

Copyright units, creation of copyright associations, inter-sectoral groups, training institutions, public awareness campaigns and initiatives related to the legal exploitation of protected material, licensing schemes, optical discs regulations.

2. Promotion of legal exploitation

The Copyright Society conducts copyright sensitization workshops in different areas of the country educating the general public on the copyright laws as they apply in their country and encouraging the general public to desist from infringing on copyright.

3. Associations and organizations with awareness-raising purpose

Unlike the Copyright Act of 1966, the current Act expressly provides for the establishment of collective management organizations and the conditions that have to be met by the CMOs in order to represent rights holders.

The existing collective management organizations are;

- The Reproduction Rights Organization of Zimbabwe (ZIMCOPY)
ZIMCOPY was established in 1992. The organization has not been collecting since inception due to initially absence of an enabling legal environment. There was no legal basis for licensing institutions that use copyright protected material. After the law was passed, the challenge has been one of negotiating licensing agreements with various institutions under a harsh economic and political environment. Many institutions cannot sustain daily operations and therefore paying for copyright licensing agreements is a challenge.

- The Zimbabwe Music Rights Association (ZIMRA)
ZIMRA was established in 1982 and only got government approval on 28 June 2008. ZIMRA collects royalties on public performance for composers of music. Thus it protects public performance rights although there are plans to venture into mechanical rights. Current membership stands at 1400. It was incorporated in 1980 as company limited by guarantee. Since then it has been collecting royalties on behalf of its members.

The publishers' organization is the Zimbabwe Book Publishers Association (ZBPA).

Authors' organizations include the following;

- The Zimbabwe Academic and Non-Fiction Authors Association
- The Zimbabwe Writers Union
- The Zimbabwe African Languages Writers Association
- The Zimbabwe Writers Union

- The Zimbabwe Women Writers
- The Zimbabwe Book Publishers Association
- The Zimbabwe Union of Journalists

4. Best practices

- Stakeholders workshop organized by the Zimbabwe Intellectual Property Office in 2003.
- Stakeholders' sensitization workshop on copyright organized by the Zimbabwe Intellectual Property Law Trust in 2005 with financial assistance from UNESCO (National Commission).
- Media sensitization Workshop on copyright held in 2006 organized by the Zimbabwe Intellectual Property Law Trust with support from UNESCO and ARIPO.
- National Anti-piracy Training of Trainers Workshop for Law Enforcement Agencies, organized by ZIMCOPY with financial and technical assistance from ZIMCOPY, IFRRO and UNESCO (2006)
- Artists sensitization workshop on copyright organized by ZIMRA in 2006 and 2007
- Provincial Anti-piracy Training of Trainers Workshop for Law Enforcement Agencies in Bulawayo, organized and financed by ZIMCOPY

V. Capacity-building

1. Training

The Zimbabwe Music Rights Association train the Law enforcement agencies on the provisions of the copyright act.

2. Establishment of specialized units and intersectoral groups

3. Best practices

The Zimbabwe Music Rights Association in cooperation with the Anti-Piracy of Zimbabwe is currently lobbying the government to introduce a security device system to enable them to identify between pirated, counterfeit and genuine products. They are currently using a lead tape which is at the end of the cassette tape which only works with cassettes and not CDs. The IFPI number also serves as a security system on the CDs and DVDs.

The Zimbabwe Music Rights Association also appoints inspectors who at any reasonable time and on production of his certificate of authority, enter any premises, ship, aircraft or vehicle for the purpose of ascertaining whether there is or has been, on or in connection with those premises, ship, aircraft or vehicle any contravention of the provisions of the Copyright Act.

The Police also work hand in hand with the Zimbabwe Music Rights Association and the Anti-piracy of Zimbabwe in all efforts to curb piracy.

The customs officials in Zimbabwe also inspect all imported and exported goods.

VI. Other

1. TPM/DRM

The law provides the development and implementation of copy protection devices aimed at circumventing copy protection (s 129). Section 129 of the Act provides for the development and implementation of copy-protection devices. These copy-protection devices are defined as any device or arrangement of any description which is designed to prevent or restrict the making of unauthorized copies of a work or to impair the quality of any such copies made. Any person who removes rights management information shall be guilty of an offence

2. Licensing Schemes

A copyright owner may by license authorize another person to exercise any of his/her economic rights in the work (s 49). This minimizes unlawful reproductions of the work.

3. Optical Discs

There is a provision in the Zimbabwe Copyright and Neighboring Rights Act section 129 which deals with the introduction of security device systems to authenticate sound recordings on devices such as tapes, discs, compact discs read only memory (CD-ROM), digital video discs (DVDs) etc and to strengthen copyright enforcement and to reduce piracy.

4. Hotlines

5. Useful Contacts

Ministry of Justice Legal and Parliamentary Affairs
Address: P. Bag 7751, Causeway – Harare
Tel: 774620-4

African Regional Intellectual Property Organization - Mr Gift Sibanda (Director General)
Address: 11 Natal Road, Belgravia - Harare
Tel: + 263 4 794068
Fax: +263 4 794072
Email: gsadyalunda@aripo.org

Zimbabwe Intellectual Property Office – Mr Clifford Chimombe (Principal Examiner)
Address: 38 Nelson Mandela Avenue, Century House East - Harare
Tel: +263 4 775544-6 / 777372 / 781835

Anti-Piracy Organization of Zimbabwe – Mr Innocent Matsengarwodzi
Suite 905 Dolphin House - Harare
Tel: +263 4 2906505
Mobile: +263 912 607 010
Email: antipiracyorg@yahoo.com

Registrar of Copyright
Address: Century House East, 49 Samora Machel Avenue – Harare
Tel: + 263 4 777373
Email: zolozw@yahoo.com

National Arts Council of Zimbabwe - Mr Elvas Mari (Acting Director)

Address: 2nd Floor Education Services Centre, Upper East Road, Mt Pleasant, P O Box UA 463, Harare, Zimbabwe

Tel: +263 4 336389 / 304530

Fax: +263 4 304510

Mobile:+263 11 442 479 / +263 912 887 927

Email: natarts@zol.co.zw

Zimbabwe Music Rights Association – Mr Polisile Ncube (General Manager)

Address: P O Box A1961, Avondale - Harare

Tel: +263 33 6185

Fax: + 263 33 61 87

Email: zimra@mweb.co.zw

Kingstons Entertainment – Mr Stephen Chifunyise

Address: Cnr Kwame Nkruma/Nelson Mandela

Tel: 750547

Email: kingbook@africaonline.co.zw

ZIMCOPY – Mr Greenfield Chilongo (Executive Director)

Address: 123 The Chase Mt Pleasant - Harare

Tel: + 263 4 744339

Fax: + 263 4 745123

Email: zimcopy@africaonline.co.zw

Willie Mushayi (Deputy Controller of Copyright)

Tel: +263 4 775162

Fax: +263 4 777372