

Copyright and Performance Rights [No. 25 Of 2010 367  
(Amendment)

GOVERNMENT OF ZAMBIA

ACT

No. 25 of 2010

Date of Assent: 14th August, 2010

[16th August, 2010

ENACTED by the Parliament of Zambia

1. This Act may be cited as the Copyright and Performance Rights (Amendment) Act, 2010, and shall be read as one with the Copyright and Performance Rights Act, in this Act referred to as the principal Act.

2. The principal Act is amended in section two-

(a) by the deletion of the definition of

"court" and the substitution thereof of the following new definition:

"court" means the High Court or a subordinate court; and

(b) by the insertion in the appropriate places of the following new definitions:

"Committee" means the Technical Implementation Committee; and

"synchronise" means the application of an audio or audiovisual compilation in which copyright subsists to an audio or audiovisual compilation without the licence of the copyright holder.

3. The principal Act is amended by the repeal of section twenty eight and the substitution thereof of the following new section:

28. (1) Any person who, during the subsistence of copyright in  
Enactment

Short title

Cap. 406

Amendment of section 2

Repeal and replacement of section 28

Offences

work-

(a) makes for sale or hire any infringing copy;

(b) sells, lets for hire or by way of trade, exposes or offers for sale or hire, any infringing copy;

(c) distributes infringing copies;

(d) possesses, otherwise than for that person's private and domestic use, any infringing copy;

Copies of this Statutory Instrument can be obtained from the Government Printer, P.O.Box 30136,10101 Lusaka Price K3000 each

368 No. 25 of 2010] Copyright and Performance Rights  
(Amendments)

- (e) by way of trade, exhibits in public any infringing copy;
- (f) imports into Zambia, otherwise than—
  - (i) for that person's private and domestic use; and
  - (ii) as items accompanying that person on entry into Zambia; an infringing copy;
- (g) makes or has in that person's possession, any article used or intended to be used for the purpose of making infringing copies;
  - (h) installs an infringing computer program in a computer;
- (O) compiles musical tracks or visual images otherwise than is permissible under this Act;
- 0) offers for sale infringing musical compilations or visual images or audiovisual compilations;
- (k) uses a record company or publisher's registered label or trademark on an infringing compilation;
  - (I) unlawfully re-transmits or re-broadcasts a broadcast;
- (m) unlawfully uses a single unit dwelling device from multiple dwelling;
  - (n) unlawfully accesses a television signal;
  - (O) unlawfully records for sale or hire a broadcast; or
- (P) synchronises music and visual works without the consent of the copyright owner;
  - unless the person satisfies the court that the person had acted in good faith and had no reasonable grounds for supposing that copyright would or might thereby be infringed, commits an offence and is liable, upon conviction
    - (i) on a first conviction, to a fine not exceeding
      - (A) one hundred thousand penalty units; or
      - (B) twenty penalty units for each infringing copy;
    - whichever is greater, or to imprisonment for a term not exceeding five years, or to both; or
    - (ii) on a subsequent conviction, to a fine not exceeding
      - (A) two hundred thousand penalty units; or
      - (B) forty penalty units for each infringing copy;
    - whichever is greater, or to imprisonment for a term not exceeding ten years, or to both.

Copyright and Performance Rights  
(Amendment)

[No. 25 Of 2010 369

---

(2) A person who makes or imports for sale or hire any article specifically designed or adapted to circumvent the operation of a device or system designed or adapted to

prevent or control the reproduction of a recording of a work commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(3) A person who dishonestly receives or re-distributes a program included in a broadcast or in a cable program service provided from a place in Zambia with intent to avoid payment of any charge applicable to the reception or re-distribution of the program commits an offence and is liable, upon conviction, to a fine not exceeding five hundred thousand penalty units or to imprisonment for a term not exceeding five years, or to both.

(4) Where a person is charged with an offence under this section, the court may, whether or not the person is convicted of the offence, order that any article in the person's possession which appears to the court to be an infringing copy, or to be an article used or intended to be used for making infringing copies or for the commission of an offence under this section, be destroyed or dealt with as the court may direct.

(5) The Attorney-General shall, in the absence of the copyright holder, be a copyright holder ad litem for the purposes of the prosecution of an offence under this Act.

4. Section thirty-three of the principal Act is amended in

(a) subsection (1), by the deletion immediately after the words "police officer" of the comma and the words "of or above the rank of inspector";

(b) subsection {2}-

(i) by the insertion immediately after the words "this section", of the words "or section twenty-eight"; and

(ii) by the deletion immediately after the word "within" of the words "forty-eight hours" and the substitution thereof of the words "seven days".

5. The principal Act is amended by the insertion of the following new section:  
Amendment of section 33

Insertion of new sections 38A, 38B, 38C, 38D, 38E and 38F

370 No. 25 of 2010] Copyright and Performance Rights  
(Amendments)  
Security holograms

Affixation of hologram

Accreditation  
of producer

Accreditation of importer

Technical  
Implementation  
Committee

38A. (1) A person shall use a hologram device in relation to sound recordings and cinematograph films intended or offered for sale, rental, hiring, lending or otherwise distributed for the public or for commercial purposes within the Republic.

(2) The hologram device referred to under subsection (1) shall be in such form as the Registrar may determine and shall be tamper proof and for the exclusive use of the Registrar.

38B. (1) The Registrar shall cause a hologram stamp to be affixed-

- (a) in the case of works produced in the Republic, at the point of production; and
- (b) in the case of works imported into the Republic, except where such works are for domestic use, before they are released into the channels of commerce.

(2) A hologram shall be affixed to every cassette, disc, or other medium in which the sound recording or film is embodied, in such manner as to make the hologram visible to prospective

purchasers.

38C. (1) A person engaged in the reproduction of sound recordings and cinematograph films shall, for the purpose of using a hologram device, apply to the Registrar for accreditation in the prescribed manner and form.

(2) The Registrar shall, on accreditation, issue the applicant with a certificate of accreditation and such accreditation shall be renewable annually.

38D. (1) A person who imports into the Republic any sound recording or cinematograph film for the purpose of sale, rental, hiring, lending or otherwise distributing to the public for commercial purposes, shall apply to the Registrar for accreditation to use a hologram device in connection with such works.

(2) The Registrar shall grant accreditation under this section upon the applicant satisfying the Registrar that the copy imported into the Republic is not an infringing copy.

38E. (1) There is hereby established the Technical Implementation Committee which shall assist the Registrar in the exercise of the functions related to the use of holograms.

Copyright and Performance Rights (No. 25 Of 2010 371  
(Amendment)

(2) The Committee shall consist of the following members:

- (a) a representative of the Inspector General of Police;
- (b) a representative of the Commissioner-General, customs; and
- (c) two representatives each from the music and film industries representing the interests of authors and producers.

38F. A person accredited under sections thirty-eight C and thirty-eight D shall keep such books and make periodic returns as may be required and in the prescribed manner.

<p><b>Source:</b> World Intellectual Property Organization <a href="http://www.wipo.int">http://www.wipo.int</a></p>
--