

GOVERNMENT OF ZAMBIA

ACT

No. 25 of 2010

Date of Assent: 14th August, 2010

An Act to amend the Copyright and Performance Rights Act.

[16th August, 2010

ENACTED by the Parliament of Zambia

Enactment

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.

Short title

Cap. 406

2. The principal Act is amended in section *two*—

Amendment
of section 2

(a) by the deletion of the definition of

“court” and the substitution therefor 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 therefor of the following new section:

Repeal and
replacement
of section 28

28. (1) Any person who, during the subsistence of copyright in a work —

Offences

(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;

- (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;
- (i) compiles musical tracks or visual images otherwise than is permissible under this Act;
- (j) 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;
- (l) unlawfully re-transmits or re-broadcasts a broadcast;
- (m) unlawfully uses a single unit dwelling device for 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.

(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—

Amendment
of section 33

(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 therefor of the words "seven days".

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

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

Security
holograms

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.

Affixation of
hologram

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.

Accreditation
of producer

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.

Accreditation
of importer

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.

Technical
Implementation
Committee

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.

(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.

Keeping of
books and
returns

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.