

**UNESCO**  
**WORLD ANTI PIRACY OBSERVATORY**

**MALAWI**

---

<b>I. LEGISLATION</b>	<b>3</b>
1. Copyright laws	3
2. Other laws	3
3. Latest developments and perspectives	3
4. Summary of legislation	3
5. International Conventions and Treaties	8
<b>II. MEASURES AND REMEDIES</b>	<b>9</b>
1. Copyright infringement	9
2. Remedies to protect copyright holders	9
3. Provisional measures	10
4. Penalties for copyright infringement	10
5. Requirements for foreign persons	10
<b>III. ENFORCEMENT</b>	<b>11</b>
1. Enforcement authorities	11
2. Enforcement at the border	11
<b>IV. PUBLIC AWARENESS</b>	<b>11</b>
1. Awareness campaigns and actions	11
2. Promotion of legal exploitation	11
3. Associations and organizations with awareness-raising purpose	11
4. Best practices	11
<b>V. CAPACITY-BUILDING</b>	<b>12</b>
1. Training	12

2. Establishment of specialized units and intersectoral group	12
3. Best practices	12
<b>VI. OTHER</b>	<b>13</b>
1. TPM/DRM	13
2. Licensing schemes	13
3. Optical discs	13
4. Hotlines	13
5. Contact details	13

## I. Legislation

### 1. Copyright laws

Copyright in Malawi is protected through international agreements, the [Copyright Act of 1989](#) and other legislation related to copyright enforcement..

### 2. Other laws

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

- Production and distribution of sound recordings regulations (Banderole Regulations).
- Broadcasting and Public Performance Regulations.
- Anti-competition law.

### 3. Latest developments and perspectives

The [Copyright Act of 1989](#) repealed the Copyright Act of 1965 which was adopted from British legislation, [Chapter 49:03]. The title and date of adoption of the Copyright Act are as follows;

<b>Title:</b>	<a href="#">Copyright Act, 1989</a>
<b>Act No and Date of enactment:</b>	Act No. 9 enacted April 26, 1989
<b>Entry into force:</b>	May 8, 1989
<b>Repealed legislation:</b>	Copyright Act of 1965 [Cap. 49:03]

The Copyright Act came into force on 8 May 1989 and was further amended by Law (No.2) of 2 November 1989 and Schedule amendment of 1<sup>st</sup> July 2001.

The whole Act is under review for the following reasons:

- To bring it to international standards and make it compliant with the WIPO Internet treaties.
- To facilitate prosecution of copyright infringement cases.
- To incorporate provisions on reprographic reproduction and extended collective licenses.

### 4. Summary of legislation

#### Works protected by copyright

In accordance with section 4(1) of the Copyright Act, copyright subsists in the following works:

- a) Literary, dramatic, musical and artistic works;
- b) Expressions of folklore developed and maintained in Malawi;
- c) Performances;
- d) Audio-visual work and sound recordings;
- e) Broadcasts; and
- f) Typographical arrangements of works published in Malawi.

The Act also provides that copyright protection shall subsist in derivative works such as translations, adaptations, arrangements and collections of literary, dramatic, musical, artistic works and works inspired by expressions of folklore [Section 6(1)].

Registration of copyright is not a prerequisite for a work to enjoy protection under the copyright law of Malawi. An author of any work is by mere fact of creating the work, entitled to enjoy an exclusive property right in the work against any persons [Section 3].

#### *Copyright in expressions of folklore*

Works of folklore are protected under the Copyright Act. However, the Act acknowledges that such protection shall not prejudice or limit protection of such expression of folklore conferred by any other written law or treaty or convention to which Malawi is a party. They are defined as referring to all literary, dramatic, musical and artistic works belonging to the cultural heritage of Malawi created, preserved and developed by ethnic communities of Malawi or by unidentified Malawi authors. They include;

- (a) folktales, folk poetry and riddles;
- (b) folk songs and instrumental folk music;
- (c) folk dances, plays and artistic forms of rituals;
- (d) production of folk art, in particular drawings, paintings, carvings, sculptures, pottery, terracotta, mosaic, woodwork, metalware, jewellery, baskets and costumes; and
- (e) traditional musical instruments.

#### **Ownership of copyright**

The author of the work is the owner of the copyright in the work [section 11 (a)]. If two or more persons are the authors of the work, the rights vest in them jointly [section 11 (b)]. In addition, the person whose name is indicated on the work is presumed to be the author unless there is evidence to the contrary.

In cases where the work is created by a natural person in the course and scope of his or her employment for the government, a body corporate or another individual or under a contract for services with, or as a work commissioned by, the government, a body corporate or another individual, the copyright (economic rights only) shall vest in the person, natural or otherwise who employed the author or the commissioned work [section 12].

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

#### Exclusive Rights of the authors

##### a) Economic rights

The law does provide for both economic and moral rights in terms of section 8 and 9 respectively. The author of any work, by mere fact of its creation enjoys an exclusive property right in the work against all persons. The exclusive economic rights enjoyed by the author include the rights to do or to authorize other persons to:

- Reproduce the work;
- Distribute the work to the public;
- Communicate the work to the public;
- Translate the work; and
- Adapt, re-arrange or any other transformation of the work.

##### b) Moral rights

The author also enjoys moral rights which include the exclusive right to:

- Claim authorship of his work and demand that his name or pseudonym be mentioned when the work is used in any manner, except when the work is included when reporting current events;
- Object to, and to seek relief in connexion with any distortion, mutilation or other modification of his work where such act would be prejudicial to his honor or reputation; and
- Alter the work at any time.

#### Exclusive right of the owners of neighboring rights

The law does provide for the protection of the rights of broadcasters, performers and producers of sound recordings. Just like authors, broadcasters, performers and producers of sound recordings enjoy both economic and moral rights.

#### **Performers rights**

Performers have the right to authorize:

- a) The broadcasting or distribution by cable or their performance
- b) The communication to the public of their performance
- c) The fixation of their unfixed performance
- d) The reproduction of a fixation of their performance; where the performance was initially fixed without their authorisation, or where the reproduction is made for purposes different from those for which the performers gave their authorisation or where the performance was initially fixed with their consent but the reproduction is made for purposes different from any of those consented to by the performers.

#### **Broadcasters rights**

The broadcasting organisation shall have the right to authorize or prohibit:

- a) the rebroadcasting of its broadcasts
- b) the fixation of its broadcasts
- c) the reproduction of its fixation of its broadcasts; where the fixation used to make the reproduction is made without authorisation and the broadcast is initially fixed with the consent of the broadcaster for a specific purpose but the reproduction for different purposes

#### **Producers of sound recordings rights**

Producers of sound recordings have the right to:

- a) direct or indirect reproduction;
- b) importation for the purposes of distribution to the public;
- c) distribution to the public of copies of his sound recordings; and
- d) communication to the public of the sound recordings by performance or other means [sections 32 and 33].

In addition to the economic rights, performers also enjoy moral rights. The rights include the right to claim authorship or the work (section 35(1) of the Copyright Act).

- *Exceptions and limitations to copyright*

### Authors' rights

The Copyright Act allows for use of protected works without the permission of the author and without any obligation to pay remuneration for the use of such works in the following circumstances;

- reproduction, translation, adaptation, arrangement or other transformation of such work exclusively for the user's own personal or private use [section 10 (a) (i)];
- inclusion, subject to mention of the source and the name of the author, of quotations from such work in another work, provided that such quotations are compatible with fair practice and their extent does not exceed that justified by the purpose, including quotations from newspaper articles and periodicals in the form of press summaries [section 10 (a) (ii)];
- use of the work by way of illustration in publications, broadcasts, programmes distributed by cable, or audio-visual works or sound recordings for teaching to the extent justified by the purpose, or communication for teaching purposes of the work broadcast or distributed by cable for use in schools, universities and professional training, provided such is compatible with fair practice and that the source and the name of the author are mentioned in the publication, the broadcast, the programme distributed by cable or the recording [section 10 (a) (iii)];
- for reporting on current events to the extent justified by the informative purpose [section 10 (d)];
- the reproduction, the photography, audio-visual work or sound recording or electronic storage by public libraries, non-commercial documentation centers, scientific institutions and educational establishments, of literary, dramatic, musical and artistic works which have already been made lawfully available, provided that such reproduction does not conflict with the normal uses of the work nor unreasonably prejudice the legitimate interests of the author [section 10 (f)];
- the reproduction in the press or communication to the public of any political speech delivered in public or any speech delivered during legal proceedings, any lecture, address, sermon or other work of the same nature delivered in public provided that the use is exclusively for the purpose of current information [section 10 (g)];
- the recording of any broadcasting organization for the purpose of its own broadcasts and by means of its own facilities of any work which it is authorized to broadcast [section 10 (h)];
- the reproduction of works of art or of architecture in an audiovisual work or video recording, if such works are permanently located in a place where they can be viewed by the public or are included in the audiovisual work or video recording by way of background or as incidental to the essential matters represented [section 10 (e)];
- the reproduction of any article published in newspapers or periodicals on current economic, political, social or religious topics provided that the source of the article or the work when used is clearly indicated [section 10 (c)]; and
- the distribution by cable of any work broadcast or played back from lawful recording where the distribution is done without direct or indirect gainful intent [section 10 (b)].

### Related rights

No permission of the owner is required where the use concerns;

- private use;
- the reporting of current events, except that no more than short excerpts of a performance, sound recording or broadcast are used;
- teaching or research;
- quotations in the form of short excerpts of a performance, sound recording or broadcast, which are compatible with fair practice and are justified by the informative purpose of those quotations

## Folklore

The Act provides for instances where expressions of folklore can be used without the written authorization of the Minister. These include:

- use for the purposes of education;
- use by way of illustration in an original work of an author provided that the extent of such use is compatible with fair practice;
- use of expressions of folklore for creating an original work by an author inspired by folklore; and
- incidental use of expressions of folklore, including, in particular:
- use in the course of a current event by means of photography, broadcasting or audio-visual work or sound recording, provided that the extent of such use is justified by the informative purposes therefore, and
- use of objects containing expressions of folklore which are permanently located in a place where they can be viewed by the public, if the use consists in the inclusion of their image in a photograph, a film or a television broadcast [section 26].

The Act also states that sources of expressions of folklore should be acknowledged in any printed publication or communication to the public wherein expressions of folklore have been used except in cases where the work of folklore has been used to create an original work or the use is compatible with fair practice.

- *Protection of foreign works*

There is no specific provision providing for the protection of foreign works. In addition to protection provided in compliance with international agreements to which Malawi is a party, the following provisions of the Copyright Act are applicable:

- The law does provide for the protection of literary, dramatic, musical and artistic works which are first published in Malawi irrespective of the nationality or residence of their authors [section 4(1) (a) (ii)].
- It also protects performance of foreign nationals if the performances took place in Malawi, the performance is fixed in a sound recording qualifying for copyright, the performance, which has not been fixed in a sound recording, is embodied in a broadcast qualifying for protection [section 4 (1) (c)] .
- Audio-visual works of foreign nationals are protected where first fixation of the audio-visual work or sound recording was made in Malawi or the audio-visual work or sound recording was first published in Malawi [section 4(1) (d)].
- Broadcasts of foreign national are protected in cases where the headquarters of the broadcasting organization is situated in Malawi or the broadcast was transmitted from a transmitter situated in Malawi [section 4(1) (e)].

- *Period of copyright protection*

Copyright is protected during the life of the author and fifty years after his death.

In the case of work of joint authorship, the work is protected during the life of the last surviving author and for fifty years after his death [section 13(1) (a) and (b)].

In the case of work published anonymously or under a pseudonym, until the expiration of fifty years from the date on which such work was first lawfully published [section 13 (1) (c)].

In cases of audio-visual work, until the expiration of fifty years from the date on which such work is created or, if the work is made available to the public during such period with the consent of the author, fifty years from the date of its first communication to the public [section 13(1) (d)].

In the case of work owned by the government or any body corporate, fifty years commencing from the date on which the work was first made available to the public [section 13 (1) (e)]

In the case of computer programs, for ten years calculated from either the date when the program is first used or the date when the computer software is first sold, leased or licensed [section 13 (1) (f)].

In the case of photographic works or a work of applied art, protection subsists until the expiration of twenty five years from the date on which the work was first published or made [section 13 (1) (g)].

The term of protection of performers' rights is twenty years computed from the end of the year in which the performance took place.

The protection for broadcasts shall subsist for twenty years computed from the end of the year in which the broadcast took place.

Recordings are protected for twenty years computed from the end of the year in which the sound recording was published for the first time.

Copyright in expressions of folklore vests in perpetuity in the Government of Malawi, in trust and for the benefit of the people of Malawi [Section 24].

- *Registration*

## **5. International Conventions and Treaties**

Malawi is a member of the following international Conventions and Treaties:

- [Berne Convention for the Protection of Literary and Artistic Works](#), since October 12, 1991
- [Universal Copyright Convention](#) (UCC) since July 26, 1965
- [WTO TRIPS Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS), since May 31, 1995.

At regional level Malawi is a member of the African Regional Intellectual Property Organisation (ARIPO) which has as one of its objectives the protection of copyright and related rights.



## II. Measures and Remedies

### 1. Copyright infringement

The law provides a specific definition of “copyright infringement” [section 47(1)], where, without valid transfer, license or authorization under this Act, a person does, permits or causes another person to:

- reproduce, fix, duplicate, extract, imitate or import into Malawi otherwise than for his private use or permit or cause to be reproduced, fixed, duplicated, extracted, imitated or imported into Malawi otherwise than for his private use; or
- distribute or permit or cause to be distributed in Malawi by way of sale, hire, rental or like manner; or
- offer or expose to the for distribution by way of sale, hire, rental or otherwise; or
- exhibit or permit or cause to be communicated to the public, for commercial purposes by way of broadcast, public performance or otherwise any work protected by the copyright law.

In addition, section 47(2) states that the use of a work in a manner prejudicial to the honor or reputation of the author of that work shall be deemed an infringement of copyright. The aforementioned provisions also apply in the case of infringement of related rights. The Act provides that infringement of copyright is actionable at the suit of the owner of the copyright or related right.

There are no specific provisions concerning internet copyright infringement (internet piracy). However, such infringement can be adduced by virtue of the definition of the term “infringement”. Infringement of copyright shall be actionable at the suit of the owner of copyright who may be the first owner, an assignee or an exclusive licensee [section 49(1) as read with section 49(5)].

The law allows collective management organizations or other representatives of creators of works to sue for copyright infringement on behalf of the copyright owner or his successor in title provided that an affidavit is made on oath before a magistrate, notary public or other person competent to administer an oath [section 50].

There are no special provisions relating to special approvals or the engagement of any special agents by foreign nationals in order to have access to national courts, customs officials, or police officials in order to obtain enforcement of their copyright in Malawi.

### 2. Remedies to protect copyright holders

The Copyright Act provides for both criminal and civil remedies to copyright holders.

#### Civil remedies

- Damages;
- Injunction;
- Account for profits

#### Criminal remedies

Any person who infringes any copyright shall be guilty of an offence and liable to a fine of not less than K200 and not exceeding K15, 000 and to imprisonment for a term not exceeding one year and in the case of a continuing offence to a further fine of not less than K5 and not exceeding K50 for each day during which the offence continues [section 48 (1)].

Any person who imports, sells, offers or exposes for sale or distribution without the authorization of the Minister works of Malawian folklore shall be guilty of an offence and shall be liable to a fine not exceeding one year and in the case of a continuing offence to a further fine not less than K10 and not exceeding K50 for each day during which the offence continues.

Any person who has in his possession any infringing copy of a work other than for his private or domestic use or who has in his possession any machinery, plate, matrix or other device with the intention of using such device to produce infringing copies, shall be guilty of an offence and shall be liable to a fine of not less than K2, 000 and not exceeding K10, 000 and to imprisonment for a term not exceeding one year and, in the case of a continuing offence, to a further fine of K50 for each day during which the offence continues.

**Other remedies**

- The court may order that all reproductions, duplications, extracts, imitations and other material involved in the infringement and all implements or devices used in such infringement be given to the copyright owner, or if such material be dangerous to the public, be destroyed by the court.
- Orders to enable the plaintiff to obtain evidence of any infringement which he/ she intends to adduce at the trial.
- Prohibit the defendant from removing his assets from the jurisdiction of the court or otherwise wasting them, to the extent that such assets are necessary to satisfy the plaintiffs claim if he/she succeeds at the trial.

**3. Provisional measures**

An inspector may seize and detain any substance or article which he has reasonable cause to believe to be an infringing copy of any work or in relation to which or by means of which he has reasonable cause to believe than an offence under the Act has been or is being committed, and any document which he has reasonable cause to believe to be a document which may be required in proceedings under the Act.

However, where an inspector seizes any work he shall notify in writing the person from whom it is seized the fact of that seizure and shall in that notification specify any item seized.

**4. Penalties for copyright infringement**

See Remedies section

**5. Requirements for foreign persons**

Malawi is a member of the Berne Convention. Foreign nationals as a result can be protected and receive the same treatment as Malawi nationals under the condition that their country is a member of the Berne Convention.

### **III. Enforcement**

#### **1. Enforcement authorities**

##### **a) Authorities responsible for enforcement of copyright law**

The principal Ministry responsible for the implementation of copyright law is the Ministry of Youth, Sports and Culture. Much of the implementation is delegated to the Copyright Society of Malawi (COSOMA), which is both a quasi government agency (Copyright office) and a collecting society.

The police, the public prosecutors, the judiciary, customs officials, inspectors from the Collecting Society are the key officials responsible for the implementation and enforcement of copyright.

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

Information not available.

##### **c) Courts dealing with copyright cases**

There are no specialized courts dealing with copyright and related rights issues. The general courts such as the Magistrate Courts and the High Court deal with copyright matters like any other matter. The High Court is in Lilongwe and Blantyre. There are no specialized tribunals set up to deal with copyright matters in Malawi although there is a fast track court within the High Court to deal with copyright matters.

#### **2. Enforcement at the border**

The law is silent on border enforcement measures.

### **IV. Public Awareness**

#### **1. Awareness campaigns and actions**

Information not available.

#### **2. Promotion of legal exploitation**

Information not available.

#### **3. Associations and organizations with awareness-raising purpose**

Information not available.

#### **4. Best practices**

Information not available.

## **V. Capacity-building**

### **1. Training**

Following the UNESCO/IFRRO Anti-piracy Training of Trainers workshop held in Namibia in 2006, several other anti-piracy training programs for law enforcement agencies have been organised by the Copyright Society of Malawi with the support and in collaboration with regional and international partners.

### **2. Establishment of specialized units and intersectoral group**

#### The role of the Copyright Society of Malawi (COSOMA)

COSOMA is the only multi-purpose collecting society/collective administration organisation in Malawi that is responsible for the promotion and protection of the interests of authors, performers, translators, producers of sound recordings, broadcasters, publishers and in particular to collect and distribute any royalties or other remuneration accruing to them in respect of their copyright.

COSOMA has been pivotal in sensitising stakeholders and the public on the dangers of piracy and has adopted a national anti-piracy device called the hologram in order to fight piracy in Malawi.

In addition the society is mandated to appoint inspectors for the purposes of enforcing the provisions of the Act and issue them with certificates of authority to act as such inspectors (Section 51(1)). In addition to inspectors appointed under subsection (1) any member of the society, a police officer of the rank of Sub-inspector (Section 51(2)). Such inspectors may, at any reasonable time and on production of his/her certificate of authority, enter any premises for the purposes of ascertaining whether there is or has been any contravention of the Act (Section 52). The inspectors are also indemnified for acts done by them under the Act.

### **3. Best practices**

A conference on anti-piracy for magistrates, prosecutors and police was organized by COSOMA and the National Commission of UNESCO in 2006, followed in 2007 by a colloquium on copyright and related rights for judges, in collaboration with the World Intellectual Property Organization, in 2007. As a result of these initiatives the judiciary took the initiative to allocate a fast track court for all copyright infringement cases in order to expedite their prosecution.

## **VI. Other**

### **1. TPM/DRM**

The Copyright law does not provide for technological protection measures. However, the regulations concerning production of sound recordings (Banderole Regulations) empower the Copyright Society of Malawi to administer a technological protection measure known as the hologram in relation to musical works.

In addition, Section 35 and 36 concerning the obligations of producers and sound recordings provides for measures which are critical for fighting piracy in Malawi. Among other things producers of sound recordings are obliged to state on the label of the recording or on its container;

- the names of the author and those of the main performer;
- the title of the work;
- the name, whether individual or corporate, or distinguishing mark of the producer; and
- that the rights accruing to the producer under this Act are reserved;
- The symbol (P); and
- The year of first publication of the sound recording, placed in such a manner as to give reasonable notice of claim of protection of the rights of the producer.

### **2. Licensing schemes**

Information not available

### **3. Optical discs**

Information not available

### **4. Hotlines**

Information not available

### **5. Contact details**

Ministry of Youth, Sports and Culture  
Lingadzi House, Private Bag 384, Lilongwe 3, MALAWI, Central Africa  
Tel: (+265) 1 774 999, 1 771 319  
Fax: (+265) 1 771 018  
Email: [sports@malawi.gov.mw](mailto:sports@malawi.gov.mw)

Dora Makwinja  
Copyright Society of Malawi  
COSOMA House  
Off Chilambula Road next to  
Malawi Rural Finance Company Offices  
Lilongwe, Malawi  
Tel: 265 (01) 751148  
Fax: 265 (01) 753018  
Email: [cosoma@cosoma.org](mailto:cosoma@cosoma.org)  
[cosoma@sndp.org.mw](mailto:cosoma@sndp.org.mw)

Rosario Kamanga  
COSOMA  
Senior Licencing Officer  
Tel: 265 (1) 751148  
[Rkamanga@cosoma.org](mailto:Rkamanga@cosoma.org)