3. Best practices

VI. OTHER

1. TPM/DRM

2. Licensing schemes

3. Optical discs

4. Hotlines

5. Contact details
I. Legislation

1. Copyright laws

The main legislation for the protection of copyright and related rights in Mauritius is the Copyright Act 1997.

2. Other laws

The other laws pertaining to anti-piracy measures and copyright enforcement are:
- The Code Civil Mauricien
- The Customs Act 1988
- The Unfair Competition Act 1993 – Act No. 47 of 1993
- The Cinematographic Act – 29 June 2009
- The Information Technology Act 1998
- The Electronic Transaction Act 2000
- The ICT Act 2001
- The Computer Misuses and Cybercrime Act 2003
- The Data Protection Act 2004

3. Latest developments and perspectives

The Copyright Act 1997 was amended in 2000. A new Copyright Act, the Copyright and Neighboring Act 2008, is about to be proposed.

The main amendments and changes are as followed:
- A Copyright Tribunal, the ICTA was suggested.
- The main function of the tribunal will be to decide, when the parties cannot agree between themselves, the terms and conditions of licenses offered by, or licensing schemes operated by, collective licensing bodies in the copyright and related rights area.
- Persons with perceptual difficulties were incorporated as limitations to copyright.
- The name of the collective ‘Mauritius Society of Authors’ was replaced by the ‘Mauritius Collective Management Society’.
- Some changes were also done in terms of remedies.
- A section was specifically drafted to provide Rights to Photographers.

4. Summary of legislation

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

Exclusive Rights of the authors

a) **Economic Rights**

Copyright owner has the exclusive right to do or authorize: the reproduction of the work, the distribution to the public of the original and each copy if the work by sale, rental or otherwise; the importation of the work, the translation of the work, the adaption, the arrangement or other transformation of the work; performing the work in public; communicating the work to the public; broadcasting the work (section 4 of the Copyright Act 1997).
b) Moral Rights
The author also enjoys moral rights which are not transferable even if the economic rights have been assigned. The moral rights include the right to claim authorship of the work, the right to object to any distortion, mutilation or other modification of the work, where such distortion, mutilation or modification is or would be prejudicial to the honor or reputation of the author, the right to remain anonymous or use a pseudonym (section 5 of the Copyright Act 1997).

Exclusive right of the owners of neighboring rights

Exclusive rights granted to the owners of neighboring rights include right of reproduction, right of publication, right to perform the work in public, right to broadcast the work and in relation to a broadcast, rebroadcasting it, right to transmit the work in a diffusion service, right to hire or let the work directly or indirectly, recording rights, distribution rights, right to make a derivative work and right to communicate the work to the public in any other manner (Part V of the Copyright Act 1997).

Broadcasting Organizations (section 23)
Broadcasting Organizations are granted the following rights in respect of their broadcasting:
- broadcasting of their broadcasts
- fixation of their broadcasts
- reproduction of the fixation of their broadcasts

Performers (section 24)
Performers are granted the following rights in respect of their performances which take place:
- broadcasting or communicating to the public a performance of such performer
- making a fixation of the unfixed performance of such performer; and
- making a reproduction of a fixation of a performance of such performer

Producers (section 26)
Producers of sound recording shall have the right to carry out or to authorize any of the following acts:
- direct or indirect reproduction of the sound recording
- importation of copies of the sound recording, even where the imported copies where made with the authorization of the producer
- adaptation or other transformation of the sound recording
- rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent

Exceptions and limitations to copyright

The law allows for use of copyright protected material without authorization from the owner of the copyright in the following circumstances (Part IV of the Copyright Act 1997):
- Private reproduction for personal purposes (section 13)
- Quotation (section 14)
- Reproduction for teaching (section 15)
- Reprographic reproduction by libraries and archives (section 16)
- Reproduction, broadcasting and other communication to the public for informative purposes (section 17)
- Reproduction and adaptation of computer programmes (section 18)
- Importation for personal purposes (section 19)
- Distribution of copies of works (section 20)
Mauritius

- Public lending (section 21)
- Display of works (section 22)

The exceptions to works protected under neighboring rights are;
- for private study or personal and private use;
- for reporting current events to the extent justified by the purpose of providing current information;
- for teaching or scientific research;
- for judicial proceedings; and Bonafide demonstration of radio or television receivers.

- Protection of foreign works

As a signatory to the Berne Convention for the protection of literary and artistic works, foreign works enjoy the same protection as the works of Mauritius nationals (section 31(1)). The protection referred shall apply to performers, to producers of sound recordings and to broadcasting organizations which, are to be protected by virtue of, and in accordance with, any international convention or other international agreement to which Mauritius is party (section 31(5)).

- Period of copyright protection

The economic rights relating to the work of an author shall be protected during his lifetime and for 50 years thereafter (section 12).
Where a work was created in the course of employment or commissioned by another person and the economic right relating to the work is deemed to be assigned, the work shall be protected until the expiry of 50 years from the making of the work (section 12(4)).
Where a work is published anonymously or under a pseudonym, the economic rights relating to the work shall be protected until the expiry of 50 years from the date on which the work was first published (section 12(3)).
The economic rights relating to a work of joint authorship shall be protected during the lifetime of the last surviving author and for 50 years thereafter (section 12(2)).
The economic rights relating to an audiovisual work shall be protected until the expiry of 50 years from the making of the work; or where the work is broadcast or communicated to the public 50 years from the end of the year during which the authorization was granted (section 12(5)).
The economic rights relating to a photographic work or a work of applied art shall be protected until the expiry of 25 years from the making of the work (section 12(6)).

- Registration

Article 3(3) of the Copyright Act provides that an artistic, literary or scientific work or of a derivative work shall not be subject to any formality in order to be protected.
In case a person would like to register his work Article 32(A) provides the different steps to be taken.
A certificate of registration is to be obtained at the Mauritius Collective Management Society (MCMS).
Application for the registration of a copyright in a work may be made by or on behalf of the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by license.
Mauritius

An application must be filed with the Collective Society, be accompanied by the fee prescribed by or determined under the regulations, and contain the following information:

(a) the name and address of the owner of the copyright in the work;
(b) a declaration that the applicant is the author of the work, the owner of the copyright in the work, an assignee of the copyright, or a person to whom an interest in the copyright has been granted by license;
(c) the category of the work;
(d) the title of the work;
(e) the name of the author and, if the author is dead, the date of the author’s death, if known;
(f) in the case of a published work, the date and place of the first publication; and
(g) any additional information prescribed by regulation.

5. International Conventions and Treaties

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

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

II. Measures and remedies

1. Copyright infringement

The Copyright Act does not define copyright infringement but provides in article 44 the types of offences that might constitute a copyright infringement.

Article 44 provides that a person constitutes an offence when without the express authorization of the copyright owner:

- publishes, distributes or reproduces a work
- performs a work for the public
- communicates a work to the public
- broadcasts a work; makes a derivative work
- imports otherwise than exclusively for his own private and personal use, sells, exposes or offers for sale or hire, or has in his possession in the course of trade, any copy of a work which constitutes an infringement of the copyright of its owner, or would constitute such an infringement if the copy of the work were made in Mauritius
- manufactures or imports for sale or rental any device or means which is-
  - specifically designed or adapted to circumvent any device or means intended to prevent or restrict reproduction of a work or to impair the quality of any copy made thereof; or
  - susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, by a person who is not entitled to receive the program;
- has in his possession in the course of trace any apparatus, article or thing, knowing that it is to be used for making infringing copies of a work.

2. Remedies to protect copyright holders

Civil Remedies

Article 41 of the Copyright provides remedies for copyright infringement.
Mauritius

The Supreme Court may grant remedies, by way of damages, injunction, and forfeiture of any infringing copy or article used for the making the infringing copies or otherwise, as the Supreme Court thinks fit.

Where a person has an infringing copy of a work in his possession, custody or control; or has in his possession, custody or control an article specifically designed or adapted for making copies of a work entitled to protection under this act, the copyright owner may apply to a Judge in Chambers for an order that the infringing copy or article be delivered to him or to such other person as the Judge in Chambers may direct.

**Criminal Penalties**

Article 44(3) provides that any person who commits an offence shall:

- On a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years.
- On a second or subsequent offence be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.

Also notwithstanding any other enactment, a District Magistrate shall have jurisdiction to try any person charged with an offence under this Act.

Order the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence.

Order that such apparatus, article or thing shall be delivered up to any person lawfully entitled to it.

### 3. Provisional measures

The provisional measures available in Mauritius are:

- Seizure (article 41 of the Copyright Act)
- Injunction (article 41 of the Copyright Act)

### 4. Penalties for copyright infringement

**Civil Remedies**

Article 41 of the Copyright provides remedies for copyright infringement.

The Supreme Court may grant remedies, by way of damages, injunction, and forfeiture of any infringing copy or article used for the making the infringing copies or otherwise, as the Supreme Court thinks fit.

Where a person has an infringing copy of a work in his possession, custody or control; or has in his possession, custody or control an article specifically designed or adapted for making copies of a work entitled to protection under this act, the copyright owner may apply to a Judge in Chambers for an order that the infringing copy or article be delivered to him or to such other person as the Judge in Chambers may direct.

**Criminal Penalties**

Article 44(3) provides that any person who commits an offence shall:

- On a first conviction, be liable to a fine not exceeding 300,000 rupees and to imprisonment for a term not exceeding 2 years
- On a second or subsequent offence be liable to a fine not exceeding 500,000 rupees and to imprisonment for a term not exceeding 8 years.
Mauritius

Also notwithstanding any other enactment, a District Magistrate shall have jurisdiction to try any person charged with an offence under this Act.

- Order the forfeiture of any apparatus, article or thing which is the subject matter of the offence or is used in connection with the commission of the offence
- Order that such apparatus, article or thing shall be delivered up to any person lawfully entitled to it.

Publication
It is not compulsory for the Court to publish the judgment in the press.

5. Requirements for foreign persons

Part IV of the Copyright Act 1997 states that:

- The protection shall apply to a performer who is not a citizen of Mauritius but whose performance is incorporated in a sound recording that is protected under the Copyright Act (section 31(2)).
- The protection shall apply to a sound recording in the case of which the first fixation of the sound was made in Mauritius or which was first published in Mauritius (section 31(3)).
- The protection shall apply to a broadcast of a broadcast organization the headquarters of which are situated in Mauritius or transmitted from transmitters situated in Mauritius (section 31(4)).

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law
The authorities responsible for enforcing the copyright law are the Courts and the Police Customs.

b) Enforcement bodies entitles to act ex-officio in copyright infringement cases
The enforcement bodies are entitled to act ex-officio in copyright infringement cases.

c) Courts dealing with copyright cases
The Courts dealing with copyright cases are the lower, intermediate and Supreme Courts.

2. Enforcement at the boarder
The Customs Act 1988 provides for specific measures under the law for enforcing copyright at the border.

Article 66A of the Customs Act 1988 provides that any owner of copyright may apply in writing to the Director-General to suspend the clearance of any goods imported or being exported on the grounds that the copyright is being or is likely to be infringed.

The application shall specify a period not exceeding 2 years during which the Director-General may suspend the clearance of such goods.
An application) shall be accompanied by -

(a) Any evidence that the applicant is the owner of the copyright;
A statement of the grounds for the application, and in particular, the prima facie evidence showing that his right has been or is likely to be infringed; and

(c) Particulars relating to the description of the goods making them readily recognizable by Customs, and the place where such goods are to be found.

The applicant shall furnish adequate security to protect the Director-General for any loss or damage that may result from the suspension of the clearance of the goods and to cover any reasonable expenses likely to be incurred as a result of such suspension.

Article 66B provides that on receipt of an application under section 66A the Director-General shall within 7 days of the date of receipt of the application –

(a) Grant or reject the application; and

(b) Notify the applicant in writing of his decision.

Where the application is granted, the Director-General shall notify in writing the applicant, importer, exporter, or his agent of the suspension of the clearance of the goods.

Article 66C provides that where within a period of not more than 10 working days after the applicant has been served notice of the suspension under section 66B (3), the Director-General has not been informed in writing that legal proceedings have been initiated by the applicant, the goods shall be released, provided that all other conditions for importation or exportation have been complied with.

The Director-General may, in appropriate cases and on the applicant’s request, extend the time limit by another period of not more than 10 working days. The Director-General shall release the goods forthwith where he is informed by the registered owner or authorized user referred to in section 66A that the collective mark, mark or copyright registered in the name of the owner has ceased to be valid provided that all other conditions for importation or exportation have been complied with.

Article 66D provides that without prejudice to the protection of confidential information, the Director-General may authorize the owner of a collective mark or mark, or copyright owner, or importer, exporter or agent, to -

(a) Inspect the goods of which the clearance has been suspended;

(b) Remove samples for examination, testing and analysis.

The Customs Department is the competent authority that acts on behalf of copyright holders for the protection of their intellectual property rights at borders by way of an application being made at Customs for the suspension of clearance of goods suspected to be infringing. Suspension of clearance of IPR infringing goods is governed by Part VI A of the Customs Act 1988.

Guidelines for application:

(i) Copyright holders should ensure that their Copyrights are registered at the Mauritius Society of Authors (MASA).

(ii) At Customs an application form downloadable from the Department’s website should be fully completed and submitted for approval by Mauritius Customs.

(iii) A Power of attorney is required in case applicant is an authorized user.

(iv) Adequate security is required to protect the Director General of the Mauritius Revenue Authority for any loss or damage that may result from the suspension of clearance of the goods and to cover any reasonable expenses likely to be incurred as a result of such suspension as required under Section 66(A) (4) of the Customs Act 1988. Presently the security in the form of a bank guarantee equivalent to Rs. 20,000 [Mauritian rupees] may be initially furnished by the applicant at the time of application. However, if it is found
Mauritius

upon suspension of a consignment that the initial security is not sufficient, Customs will request additional security.

Whenever a suspension of goods is affected, the right holder and the importer are informed expeditiously by way of fax and letter the details of such suspension.

The prescribed time limit for any suspension of goods is 10 working days to allow for copyright holders to file legal proceedings and may be extended for a further 10 days [section 66C of the Customs Act].

Upon determination of infringement, IPR infringing goods are considered prohibited goods by virtue of Part VI of the Customs Act and as such they are liable for destruction. Mauritian Customs are entitled to act ex-officio in copyright infringement cases by virtue of section 63(c) of the Customs Act.

The Customs Act do not provide for an ‘de-minimis‘ import exception while section 19 of the Copyright Act 1997 do provide importation for personal use.

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

V. Capacity-building

1. Training
   Information not available

2. Establishment of specialized units and intersectoral group

   The main specialized units is the MASA, Mauritius Society of Authors

3. Best practices

As at February 2009, some 175 piracy related cases have been sent to the law courts; 150 cases are still being investigated by Police; and about a hundred culprits have been condemned.

In February 2009, 1.4 million CDs and sleeves have been disposed of at the Mare Chicose landfill.

The destroyed CDs were seized by the APU in 2003 and 2007.
VI. Other

1. TPM/DRM
Information not available

2. Licensing schemes
Information not available

3. Optical discs
Information not available

4. Hotlines
Information not available

5. Contact details

Ministry of Education, Culture and Human Resources (Culture Division)
7th floor, Renganaden Seeneevassen Building,
Port Louis,
Republic of Mauritius
Tel: (+230) 212 2112
Fax: (+230) 211-0681
Email Address: moac@mail.gov.mu

ADSU Office
Anti Piracy Unit (APU)
Line Barracks, Port-Louis, Republic of Mauritius
Tel: (+230) 208 1212

Mauritius Society of Authors (MASA)
MASA House,
Artist Avenue
Beau Bassin,
Republic of Mauritius
Tel: (+230) 4672219 / (230) 4547931
Fax: (+230) 4540578
Email: copyrightsoc@intnet.mu

Mauritius Council of Registered Librarians (MCRL)
c/o Ministry of Arts & Culture
7th Floor, Renganaden Seeneevassen Building,
Pope Hennessy Street,
Port Louis,
Republic of Mauritius
Tel: (+230) 211 9230
Fax: (+230) 212 9366