

UNESCO
WORLD ANTI PIRACY OBSERVATORY

BHUTAN

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I. Legislation

1. Copyright laws

Copyright is protected in Bhutan through international Agreements, the [Copyright Act of Kingdom of Bhutan of 2001](#), as well as other legislation related to enforcement of copyright or affecting copyright protection.

The Copyright Act was adopted during the 79th session of the National Assembly of Bhutan and came into force on July 17, 2001.

2. Other laws

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

- The Environmental Assessment Act, 2000, National Environment Commission
- The Biodiversity Act, 2003, Ministry of Agriculture
- The Bhutan Information, Communications and Media Act 2006
- [The Penal Code of Bhutan, 2004](#)
- The Constitution of the Kingdom of Bhutan 2008
- The Civil and Criminal Procedure Code 2001

3. Latest developments and perspectives

The Copyright Act of Kingdom of Bhutan is currently being reviewed for amendment.

4. Summary of legislation

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

The exclusive rights are divided into economic and moral rights.

The author or the owner of copyright has the exclusive economic rights to carry out or to authorize the reproduction, translation adaptation, arrangement or other transformation of the work, the first public distribution of the original and each copy of the work by sale, rental or otherwise (excluding rentals of computer programs where the program itself is not the essential object of the rental); rental or public lending of the original or a copy of an audiovisual work, a work embodied in a sound recording, a computer program, a data base or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental or public lending; importation of copies of the work, even where the imported copies were made with the authorization of the author or other owner of copyright; public display of the original or a copy of the work; public performance of the work; broadcasting of the work; and other communication to the public of the work (Section 8 of the Copyright Act).

Independently of their economic rights, authors enjoy moral rights which give them the right to claim authorship of their work; that his name not be indicated on the copies, and in connection with any public use, of his work, or that his pseudonym be so indicated; and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, his work which would be prejudicial to his honour or reputation (Section 9 of the Copyright Act).

Related / neighbouring rights are protected under Sections 23 to 26 of the Copyrights Act. These rights are the rights of performing artists in their performances; producers of sound recordings

(phonograms) in their recordings; radio and television broadcasting organizations in their radio and television programs.

A performer has the exclusive right to carry out or to authorize the broadcasting or other communication to the public of his performance, with exceptions; the fixation of his unfixed performance; and the reproduction of a fixation of his performance (Section 23)

A producer of a sound recording has the exclusive right to carry out or to authorize the direct or indirect reproduction of the sound recording; importation of copies of the sound recording, even where the imported copies were made with the authorization of the producer; adaptation or other transformation of the sound recording; and rental or public lending of a copy of the sound recording, irrespective of the ownership of the copy rented or lent (Section 24)

A broadcasting organization has the exclusive right to carry out or to authorize the rebroadcasting of its broadcast; the communication to the public of its broadcast; the fixation of its broadcast; and the reproduction of a fixation of its broadcast (Section 26).

- *Exceptions and limitations to copyright / Permitted Acts in relation to copyright works*

Limitations to exclusive rights are provided in sections 10 to 17 of the Copyright Act. In general the law allows for the use of a work without the permission of the copyright owner under limitations and exceptions. The exceptions apply in the following cases:

- Private Reproduction for Personal Purposes

The reproduction of a published work in a single copy by a physical person exclusively for his own personal purposes is permitted without the authorization of the copyright owner. This exception does not extend to a work of architecture in the form of building or other construction; an entire book or a substantial part thereof, or of a musical work in graphic form; a computer program, except in specific cases; a database, or simply any work where reproduction would conflict with a normal exploitation of the work or which would otherwise unreasonably prejudice the legitimate interests of the copyright owner (Section 10).

- Importation of a work for Personal Purposes (section 16)

The importation of a copy of a work by a person for his personal purposes is allowed without the authorization of the author or other owner of copyright in the work (Section 16).

- Quotation

This form of reproduction is permitted provided indication of the source and the name of the author of the original work are reflected (Section 11).

- Production for teaching

Section 12 of the Copyright Act permits reproduction for teaching purposes specifically, reproduction of short part of a published work, by way of illustration, in writings or sound or visual recordings for teaching provided that such reproduction is compatible with fair practice and its extent does not exceed the extent justified by the purpose; and reprographic reproduction, for face-to-face teaching in educational institutions whose activities do not serve direct or indirect commercial gains provided specific conditions are met. The above acts are permitted provided the source and the name of the author are indicated as far as practicable.

- Reprographic Reproduction by Libraries and Archives

Section 13 of the Copyright Act permits reprographic reproduction by libraries and archives under specific conditions and provided that such works are solely used for the purpose of study, scholarship or private research.

- Reproduction for Informatory purposes

Section 14 of the Copyright Act permits the reproduction of broadcasting and other communication to the public for informatory purposes under specific conditions and provided the source and the name of the author are indicated as far as practicable.

- Reproduction and adaptation of computer programs

The reproduction in one copy and the adaptation of the computer programs are allowed without the authorization of the author or the owner of copyright provided specific conditions are met (Section 15).

- Importation for Personal Purposes

The importation of a copy of a work, by a physical person, for his personal purposes, shall be permitted without the authorization of the author of, or other owner of copyright in, the work (Section 16).

- Display of Works

The public display of originals or copies of works shall be permitted without the authorization of the author, provided that the display is not made by means of a film, slide, television image or otherwise on screen or by means of any other device or process, and further provided, either, that the work has been published, or, that the original or the copy displayed has been sold, given away or otherwise transferred to another person by the author or his successor in title (Section 17).

Limitations on the protection of neighboring rights are provided under section 27 of the Copyright Act and include the cases where the acts are related to the use by a physical person exclusively for his own personal purposes; using short excerpt for reporting current events to the extent justified by the purpose of providing current information; use solely for the purpose of face to face teaching or for scientific research; and cases where, a work can be used without the authorization of the author or the other owner of copyright in, the work.

Excluded from copyright protection are any idea, procedure, system, method of operation, concept, principle, discovery or mere data, even if they are expressed, described, explained, illustrated or embodied in a work; and any official text of a legislative, administrative or legal nature, as well as any official translation thereof (Section 7 of the Copyright Act).

- *Protection of foreign works*

In addition to works of authors, performers, and producers of sound recordings who are nationals of the Kingdom of Bhutan, the Copyright Act applies to works of authors , who have their habitual residence in Bhutan; works first published in another country but also published in Bhutan within thirty days of the date of first publication irrespective of the nationality or residence of the author; works that are to be protected in the Kingdom of Bhutan by virtue of and in accordance with any international convention or other international agreement to which the Kingdom of Bhutan is party; performers who are not nationals of the Kingdom of Bhutan but whose performances take place on the territory of the Kingdom of Bhutan, or are incorporated in sound recordings that are protected under the Copyright Act, or have not been fixed in a sound recording but are carried by broadcasts qualifying for protection under the Copyright Act; sound recordings in the case of which the first fixation of the sounds was made in the Kingdom of Bhutan; sound recordings that were first published in the Kingdom of Bhutan; broadcasts of broadcasting organizations the headquarters of which are situated in the Kingdom of Bhutan; broadcasts transmitted from transmitters situated in the Kingdom of Bhutan; and performers, producers of sound recordings and broadcasting organizations that, are to be protected by virtue of, and in accordance with, any international convention or other international agreement to which the Kingdom of Bhutan is party (Sections 32 and 33 of the Copyright Act).

- *Period of copyright protection*

As a general rule, the economic and moral rights are protected during the life of the author and 50 years after his death; 50 years from the end of the year following the death of the last surviving author in the event of works of joint authorships; 50 years from the first authorized publication for

collective works (other than works for applied art) and audiovisual works – or 50 years from the making of the work should the work not have been published within 50 years from its creation; 50 years from the year of the first authorized publication for anonymous or pseudonymous works - or 50 years from the author's death when the pseudonym adopted by the author leaves no doubt as to his identity or if the author of an anonymous or pseudonymous work discloses his identity during the above mentioned period; and 25 years from the making of the work for works of applied arts. The above mentioned periods shall run to the end of the calendar year in which it would otherwise expire (section 18 of the Copyright Act).

Rights of performers shall run from the moment in which the performance takes place until the end of the fiftieth calendar year following the year when the performance takes place; rights of producers of sound recordings shall run from the publication of the sound recording until the end of the fiftieth calendar year following the year of publication or, if the sound recording has not been published, from the fixation of the sound recording until the end of the fiftieth calendar year following the year of fixation; and rights of broadcasting organizations shall be protected from the moment when the broadcasting takes place until the end of the fiftieth calendar year following the year when the broadcasting takes place (Section 23, 24 and 26 of the Copyright Act).

- *Registration*

The registration of a work is not mandatory to claim protection in Bhutan according to the Act. However, Bhutan has started Voluntary Deposit and Registration System to register copyright works voluntarily. The competent authority responsible for copyright registration is the Copyright Office in the Intellectual Property Division at the Ministry of Economic Affairs.

5. International treaties

Bhutan 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.](#)

II. Measures and remedies

1. Copyright infringement

There is no clear definition of copyright infringement under the Copyright Act. However, definition can be deduced from several provisions which identify acts that constitute copyright infringements, in particular the following:

- infringement of a right protected under the Copyright Act, if committed wilfully, or by gross negligence, and for profit-making purposes;
- manufacture or importation for sale or rental of any device or means 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 copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means");
- manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, by those who are not entitled to receive the program.

2. Remedies to protect copyright holders

Civil Remedies (Section 29)

The remedies available to the court are:

- Damages (including legal costs, moral damages, and recovery of lost profits)
If the infringement has occurred unwillingly the court may limit damages to the infringer's profits, attributable to the infringement and/or to pre-established damages.
- Destruction of the copies or other reasonable disposition of those copies outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, unless requested by the owner of the right holder. This provision shall not extend if the copies of the work was acquired in good faith by a third party.
- Destruction of the copies or other reasonable disposition of those copies outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the right in cases where there is a danger that implements may be used to continue or commit acts of infringement,.
- Fine from Nu. 5000/- to Nu. 50,000/- to be paid should the court order not have been respected.

Criminal Remedies (Section 30)

Imprisonment for a maximum period of one year and/or a fine up to Nu. 10,00,000 (USD 25,000) in the case of infringement of rights committed wilfully, by gross negligence, and for profit making purposes. The amount of the fine shall be fixed by the court, taking into account, in particular, the defendant's profits attributable to the infringement.

Should a new act of infringement be committed by the defendant within five years of his conviction for a previous infringement, the court shall have the authority to increase the upper limit of the penalties to the double.

3. Provisional measures

The Copyright Act permits the court having jurisdiction of a civil action arising under the Copyright Act, to take provisional measures to grant injunction to prohibit the committing, or the continuation of the committing, of infringement of any right protected under the Copyright Act; and to order the impounding of copies of works or sound recordings suspected to have been made or imported without the authorization of the owner of any right protected under the Copyright Act where the making or importation of copies is subject to such authorization, as well as of the packaging of, the implements that could be used for the making of, and the documents, accounts or business papers referring to, such copies (Section 28).

The provisions of the civil and criminal law dealing with search and seizure shall apply mutatis mutandis on infringements of copyright.

The provisions of the Customs Rules dealing with suspension and release of suspected illegal goods shall apply mutatis mutandis on articles and implements protected under the Copyright Act.

4. Penalties for copyright infringement

- Imprisonment for a maximum period of one year and/or a fine up to Nu. 10,00,000 (USD 25,000) in the case of infringement of rights committed wilfully, by gross negligence, and for profit making purposes. The amount of the fine shall be fixed by the court, taking into account, in particular, the defendant's profits attributable to the infringement. Should a new

- Damages may be ordered (including legal costs, moral damages, and recovery of lost profits)
- Destruction of the copies or other reasonable disposition of those copies outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, unless requested by the owner of the right holder. This provision shall not extend if the copies of the work was acquired in good faith by a third party.
- Destruction of the copies or other reasonable disposition of those copies outside the channels of commerce in such a manner as to minimize the risks of further infringements, including surrender to the owner of the right in cases where there is a danger that implements may be used to continue or commit acts of infringement,.
- Fine from Nu. 5000/- to Nu. 50,000/- to be paid should the court order not have been respected.

5. Requirements for foreign persons

The principle of national treatment is accorded to any foreign person.

III. Enforcement

1. Enforcement authorities

a) Authorities responsible for enforcing the copyright law

The competent authorities are:

- the Royal Court of Justice
- the Royal Bhutan Police
- the Department of Customs

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

The Copyright Act is silent with regard to ex-officio actions by enforcement authorities.

c) Courts dealing with copyright cases

Bhutan does not have specialized court to deal with intellectual property rights. Apart from dealing with other issues, the Royal Court of Justice deals also with litigations related to intellectual property rights in Bhutan.

2. Enforcement at the border

The Copyright Act does not spell out the roles of the Enforcement Agencies at the border. However, border measure and the Customs Rules dealing with suspension and release of suspected illegal goods of the Department of Customs should apply. The mentioning of the Department of Customs or any other enforcement agencies is not there, however, the Act empowers both the Royal Bhutan Police and the Customs to deal with border issues. (Section 27).

IV. Public Awareness

1. Awareness campaigns and actions

Intensive awareness and outreach programs on Copyright awareness have been conducted on regular basis. This include seminars/workshops and coverage through local media. In collaboration with the World Intellectual Property Organization (WIPO) the Intellectual Property Division conducts seminars as a part of the Division's Nationally Focused Plan of Action, which is a core activity. The celebration of the World Intellectual Property Day on April 26, is also another forum of information dissemination to the public. The Division distributes pamphlets, brochures, CDs and other material relating to copyright and other intellectual property rights.

2. Promotion of legal exploitation

3. Associations and organizations with awareness-raising purpose

4. Best practices

V. Capacity-building

1. Training

2. Establishment of specialized units and intersectoral groups

The Intellectual Property Division has been vigorously working on the promotion and fostering of copyright protection in the country. The Intellectual Property Division has closely worked with the National Library, the National Biodiversity Centre, the Royal Court of Justice, the Royal Bhutan Police, the Department of Customs and the Motion Picture Association of Bhutan to fight against piracy. The Office is working to establish:

1. The Collective Management Organization in Bhutan
2. Specialized Unit within the enforcement agencies
3. Multi-sectoral task force for anti-piracy

3. Best practices

VI. Other

1. TPM/DRM

The Copyright Act provides protection for Technological Protection Measures (TPM) through imposing criminal sanctions on any person who commits any of the following acts (Section 31 of the Copyright Act):

- the manufacture or importation for sale or rental of any device or means 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 copies made (the latter device or means hereinafter referred to as "copy-protection or copy-management device or means");
- the manufacture or importation for sale or rental of any device or means that is susceptible to enable or assist the reception of an encrypted program, which is broadcast or otherwise communicated to the public, by those who are not entitled to receive the program.

The author of, or other owner of copyright in, a work shall be entitled to damages provided for by the Copyright Act in the same way as in a case where his or its rights are infringed, where:

- copies of the work have been made by him or it, or with his or its authorization, and offered for sale or rental in an electronic form combined with a copy-protection or copy-management device or means, and a device or means specifically designed or adapted to circumvent the said device or means is made or imported for sale or rental;
- the work in which he or it has a right is included in an encrypted program broadcast or otherwise communicated to the public by him or it, or with his or its authorization, and a device or means enabling or assisting the reception of the program by those who are not entitled to receive the program is made or imported for sale or rental.

2. Licensing Schemes

3. Optical Discs

4. Hotlines

5. Contact Details

Intellectual Property Division
Website: www.ipbhutan.gov.bt