

**UNESCO**  
WORLD ANTI PIRACY OBSERVATORY

**BOTSWANA**

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**This country profile is based on information provided by Copyright Office, Botswana.  
March 2009.**

## I. Legislation

### 1. Copyright laws

The main legislation for the protection of copyright and related rights in Botswana is the [Copyright and Neighbouring Rights Act \[Chapter 68:02\]](#).

### 2. Other laws

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

- The Copyright Arbitration Panel 6 of 2006, section 5.
- The Customs and Excise Duty Act CAP 51:01, sections 119 and 120

### 3. Latest developments and perspectives

The Act and its amendment; Copyright and Neighboring Rights (Amendment) Act, 2005, came into force in 2006 following the review of the Copyright Act [Chapter 68:01] of 1965.

While the Act is in operation, a number of institutional mechanisms are yet to be operational. These include: the establishment of the Copyright Arbitration Panel (s 35A), the imposition of a levy on technical devices (s 35C) and implementation of a security device (hologram) provided for under section 35A.

### 4. Summary of legislation

Protected works include literary and artistic works, expressions of folklore, musical works, photographic works, audio-visual works, speeches, works of drawing, stage productions, illustrations, works of applied art and computer programmes (s 3(1)).

Derivative works, which include translations, adaptations, arrangements and other transformations or modification of works are also protected (s 4).

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

#### Exclusive Rights of the authors

The author or other owner of the copyright enjoys the exclusive right to do or to authorize the following acts in relation to the work (s 7 (1) (a-j)):-

- The reproduction of the work;
- The translation of the work;
- The 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;
- The rental or public lending of the original or a copy of an audio-visual work, a work embodied in a sound recording, a computer, a database or a musical work in the form of notation, irrespective of the ownership of the original or copy concerned;

- The importation of copies of the work even where the imported copies were made with the authorization of the author or other owner of copyright;
- The public display of the original or a copy of the work;
- The public performance of the work;
- The broadcasting of the work; and
- Other communication to the public of the work.

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

The law defines neighboring rights as the intellectual property rights provided for the protection of the legal interests of certain persons and legal entities who either contribute to making works available to the public or produce subject matter which, will not qualify as 'works' under the general understanding of copyright, but who nevertheless express creativity or technical organizational skill sufficient to justify recognition of their contribution as deserving protection. Such rights include the rights of performers, producers of sound recordings and broadcasting (s 23-25).

In respect of **performers**, they enjoy both economic and moral rights. The economic rights include the following:

- Broadcasting or communicating in any form to the public of the performance;
- Fixing an unfixed performance;
- Reproducing a fixation of a performance;
- Renting to the public a fixation of his performance or copies thereof;
- First making available to the public a fixation of a performance or copies thereof, through sale or other transfer;
- Making available to the public a fixed performance, by wire or wireless means; and
- Equitable remuneration (s 26)

Independent of the above economic rights, the performer also has a right to claim to be identified as the performer of the performances, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation (s 24 (3)).

In respect of **producers of sound recordings**, their exclusive economic rights include:

- Direct or indirect reproduction of the sound recording;
- Importation of copies of the sound recording, even where the imported copies were made with authorization of the producer;
- Adaptation or other transformation of the sound recording;
- Rental or public lending of a copy of the sound recording;
- The first making available to the public by sale or other transfer of the original copies of the sound recording;
- The making available of sound recordings by wire or wireless means; and
- Equitable remuneration (s 26).

In the case of **broadcasting organizations**, they have the exclusive right to authorize:

- Re-broadcasting of the broadcast;
- Communication to the public of the broadcast;
- Fixation of the broadcast; and
- Reproduction of a fixation of the broadcast.

The rights of rental and lending of the original or a copy of an audio-visual work, a work embodied in a sound recording, a computer, a database or a musical work in the form of a notation, irrespective of the ownership of the original copy concerned, does not apply to rental or lending of computer programmes where the programme itself is not the essential object of the rental or lending.

- *Exceptions and limitations to copyright*

The law allows for use of copyright protected material subject to certain conditions, without the authorization of the author or other owner of the copyright in the following instances:

- Private reproduction for personal purposes provided that such reproduction does not conflict with the normal exploitation of the work or prejudices the legitimate interests of the owner of the copyright (s 13).
- Reproduction in the form of quotations provided that reproduction is compatible with fair practice and does not exceed the extent justified by the purpose and is accompanied by an indication of source and the name of the author (s 14).
- Reproduction for teaching purposes provided that such reproduction is compatible with fair practice (s 15)
- Reprographic reproduction by libraries and archives (s 16).
- Reproduction and adaptation of computer programmes provided it is for archival purposes and for the purpose and extent for which the computer programme has been obtained (s 17).
- Reproduction, broadcasting and other communications to the public for informatory purposes (s 18).
- Temporary reproduction(s 19).
- Importation for personal purposes (s 20).
- Display of original works provided the work has been published or the original or copy displayed has been sold (s 21).

- *Protection of foreign works*

The copyright law does not specifically provide for the protection of foreign works, but such protection can be implied from the provisions of section 35(1). The specific provisions state that:

- Works of authors who have their habitual residence in Botswana shall be protected;
- Works first published in Botswana, irrespective of the nationality or residence of the authors shall be protected;
- Works first published in another country and also published in Botswana within thirty days of their publication, irrespective of the nationality or residence of their authors, shall be protected;
- Audiovisual works, the producer of which has his headquarters or habitual residence in Botswana, shall be protected; and
- Works of architecture erected in Botswana and other artistic works incorporated in a building or other structure located in Botswana shall be protected;

Section 35(2) further states that the provisions of the Act shall also apply to works protected in Botswana by virtue of and in accordance with any international convention or other international agreement to which Botswana is party.

In relation to sound recordings, the copyright law contains the following provisions for foreign works to receive protection (s 35(3));

- Performers who are not nationals of Botswana but whose performances take place on the territory of Botswana, are incorporated in sound recordings and protected under the Act, have not been fixed in a sound recording but are included in broadcasts qualifying for protection under the Act shall be protected;
- Sound recordings first fixed in Botswana;
- Sound recordings first published in Botswana;
- Broadcasts of broadcasting organizations the headquarters of which are situated in Botswana; and
- Broadcasts transmitted from transmitters situated in Botswana.

The provisions of the Act also apply to performers, producers of sound recordings and broadcasting organizations protected by virtue of and in accordance with any international convention or other international agreement to which Botswana is party.

- *Term of copyright protection*

- Copyright protection is provided for under section 10(1)–(6), and extends for the life of the author and for fifty (50) years after his death.
- The rights of performers are protected for fifty years following the year in which the performance was fixed in a phonogram or in which it took place (s 24(6)).
- The economic rights of broadcasting organizations are protected for a period of fifty years from the year in which the broadcast took place (s 27(2)).
- The economic rights of producers of sound recordings are protected for fifty years from the year of publication or the year of fixation of the sound recording.

- *Registration*

The mere fact of creation automatically qualifies a work as copyrightable. (s 6).

However, the copyright law provides that the Copyright Office must maintain a register of works published in Botswana as well as an effective database on copyright matters and on authors and their works, which is a clear optional procedure for registration (deposit) of literary and artistic works (s 22B).

## 5. International Conventions and Treaties

Copyright in Botswana is protected through international treaties, conventions and protocols as provided in section 36 of the Copyright and Neighboring Rights Act.

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

- [Berne Convention on the Protection of Literary and Artistic Works](#)
- [WTO Agreement on Trade Related Aspects of Intellectual Property Rights](#) (TRIPS)
- [WIPO Copyright Treaty](#) (WCT), in force since January 27, 2005
- [WIPO Performances and Phonograms Treaty](#) (WPPT)

### Membership to Regional Treaties and Convention/Protocols

- Botswana is also a member of the [African Regional Intellectual Property Organization](#) (ARIPO)

## II. Measures and Remedies

### 1. Copyright infringement

There is no clear definition of copyright infringement under the Botswana legislation. An infringement occurs when acts prohibited under the act are carried out without authorization or permission from the right holder. Such acts include reproduction of sound recordings (pirating), adaptation or transformation of sound recording and public lending without the authors consent that the following acts constitute copyright infringement as well (section 33 (1)(a-d)):

- 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, sound recording or a broadcast, or to impair the quality of copies made (the latter device 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, including by satellite, by those who are not entitled to receive the program;
- The removal or alteration of any electronic rights management information without authority; and
- The distribution import for distribution, broadcasting, communication to the public or making available to the public, without authority, of works, performances, sound recording or broadcasts, knowing or having reason o know that electronic rights management information has been removed or altered without authority.

There are no specific provisions concerning Internet copyright Infringement under the copyright law of Botswana.

## 2. Remedies to protect copyright holders

The Act provides for civil remedies, criminal sanctions and other remedies for protecting copyright holders in the case of copyright infringement.

### Civil remedies

These remedies as provided for under Section 30 include the following:

- Grant of injunctions to prohibit the committing of infringement of any right protected under the Act;
- Order the impounding of copies of works or sound recordings suspected of being imported without the authorization of the owner of any right protected in the Act, where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging of the implements that could be used, and the documents, accounts or business papers referring to such copies;
- Order of payment of any damages suffered in consequence of the infringement, including any profits enjoyed by the infringing party that are attributable to the infringement;
- Award of punitive damages where the court finds that the infringement is prejudicial to the honor or reputation of the person whose rights were infringed; and
- The Act also provides for monetary damages to be paid to compensate the copyright holder for the material and/or moral injury and damage incurred [section 30 (4) and 31].

### Criminal sanctions

- Criminal sanctions may be imposed as provided for under section 31 of the Act; in particular, imprisonment for a term not exceeding 10 years and/or a fine not exceeding 20 000 Botswana pula.
- The placing of goods imported into the country to the detriment of the right holder may be placed under an embargo, destroyed or otherwise disposed of as provided for under section 119 and 120 of the Customs and Excise Duty Act.
- Any person who, in contravention of the rights of the right holders as provided for under subsections 1 and 2 of Section 30, and who fails to carry out the order of the court for the destruction or other reasonable disposition of the infringing copies or implements, shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding 10 000 Botswana pula or imprisonment for a term not exceeding 5 years or to both.
- Under Section 31(2), any person convicted of a second or subsequent offence shall be fined between a minimum of 30 000 Botswana pula or a maximum of 5 million pula or be imprisoned for a term not exceeding 10 years or to both.

### **3. Provisional measures**

In addition to the civil remedies, the Botswana court shall have the authority to order the destruction or other reasonable disposition of infringing copies to avoid harm to the holder of the right, unless the owner of the right requests otherwise.

Furthermore, under section 30 (3), the Act provides for provisional measures to prevent impending infringement or continuation of infringement by ordering the destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements.

In addition, there are certain conservatory measures available to owners of copyright in order to enforce their rights in terms of section 29. The Act provides that in cases where a complaint of the contravention of the provisions of the Act that infringing material or equipment is being concealed in a particular premise, a police officer may enter the premises or conduct a search or seizure provided that the consent in writing of the owner of the premises or the person in charge of premises has been obtained; or a search warrant has been issued by a Chief or Senior Magistrate upon satisfaction that urgent action is required to obtain evidence pertaining to the contravention of the provisions. The search warrant has to be executed by day unless the court authorizes execution by day. The police officer can only execute the search or seizure after handing the person from whose possession or charge the item is being seized, a receipt of the seizure in the prescribed form [section 29(7)].

Where there is a danger that implements may be used to commit or continue to commit acts of infringement, the court can whenever and to the extent that is reasonable, order their destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringements [section 30(3)].

### **4. Penalties for copyright infringement**

#### Civil Penalties

The courts will grant civil remedies, such as granting injunctions to prohibit the committing or continual committal of infringement of any right protected under the Act or order the impounding and the destruction of infringing copies [section 30(1C)].

The courts can order payment of damages to complainants suffered in consequence of infringement and also award exemplary damages where it finds that the infringement is prejudicial to the honor or reputation of a person whose rights were infringed.

#### Criminal Sanctions

Criminal proceedings can also be brought against those who conduct acts that contravene provisions of the Act. A minimum fine of P20 000.00 and a maximum of P5 000 000.00 or a term not exceeding ten years can be imposed [section 30].

#### Provisional Measures

Where there is danger that the implements may be used to commit or continue to commit acts of infringement, the court shall, whenever and to the extent that it is reasonable, order their

destruction or other reasonable disposition outside the channels of commerce in such a manner as to minimize the risks of further infringement [section 30(3)].

### **5. Requirements for foreign persons**

There are no requirements for foreign persons to obtain any special approvals, engage any special agents, or present any special documentation in order to gain access to national courts, customs officials, or police officials to obtain enforcement of their copyright in Botswana.

Foreign natural and legal persons shall enjoy the right to take action in the Courts of Botswana on the same footing as natural and legal persons, as provided for in the Berne Convention or in any international convention which Botswana is party to.

## **III. Enforcement**

### **1. Enforcement authorities**

#### **a) Authorities responsible for enforcing the copyright law**

The Act states the competent authorities responsible for enforcing copyright law [section 29(1)];

Police officers:

- i) Any other person the Minister may by order appoint and grant investigating powers
- ii) Copyright Office;
- iii) Copyright Society of Botswana; and
- iv) Botswana Musicians' Union.

The Chief or Senior Magistrate, if satisfied by the information given on oath or affirmation by the investigating officer, may dispense with any procedural requirements and grant a search warrant to the investigating officer at such time and place and under such conditions as the urgency of the matter may require.

The Botswana Customs officials are entitled to act ex-officio in copyright infringement cases as provided for under section 32 of the Act.

Police officers or other investigating officers appointed by the Minister have the power to enter, search and seize from a premise any infringing material provided that the necessary conditions for such acts under the Act have been fulfilled.

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

The Botswana Customs Officials are entitled to act ex-officio in copyright infringement cases as provided for under section 32 of the Act.

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

Currently, the Magistrate Court and the High Court are the competent courts responsible for the adjudication of copyright and related rights under Section 29(4). However, the law

provides for the establishment of a Copyright Arbitration Panel, which shall be responsible for settling disputes under the Act [section 33A].

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

Customs is the Authority responsible for combating piracy at the borders. Customs officers may act ex-officio at the borders and in the country in copyright infringement cases. They are entitled to impound copies of works or sound recordings suspected of being made or imported without the authorization of the owner of any right protected in the Act, where the making or importation of copies is subject to such authorization, as well as the impounding of the packaging thereof, the implements that could be used, and the documents, accounts or business papers referring to such copies. The Customs Officers are given this power by the courts as provided for under section 30 (b) of the Act.

Section 32 of the Act provides that any goods imported into the country that are in contravention of the provisions of the Copyright Act may be placed under an embargo, destroyed or otherwise disposed of as provided for under section 119 and 120 of the Customs and Excise Duty Act [Cap 51:01].

The law also provides for the accreditation of importers of any sound or audiovisual recording for the purposes of sale, rental, lending or distribution in any other manner to the public for commercial purposes. Only accredited importers are allowed to use a security device in connection with such works.

Section 35G provides for the imposition on all imported and locally manufactured blank sound and audio visual carriers, compact discs and equipment capable of being used to copy protected materials. The fee is prescribed by the Minister from time to time. The levy is to be collected by the Department of Customs and Exercise, now known as Botswana Revenue Services (BURS), and deposited in a fund to be established by the Minister of Finance and Development for the development of authors and publishers of works.

## **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**

Stakeholders in Botswana, with collaboration from regional and international organizations, have held and continue to hold several anti-piracy training and sensitization programs for law enforcement agencies and the general public.

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

Section 36A calls for the establishment of a Collective Management Organization which is a non-profit making company. The CMO is known as “The Copyright Society of Botswana” (COSBOTS). It is responsible for negotiating and granting licenses in written agreement with the owners of copyright, setting the rates for royalties in accordance with acceptable international standards and the collection and distribution of royalties to appropriate owners of copyright. The Copyright Society shall represent the owners of the copyright in the various categories of works protected under the Act and put in place rules and regulations, approved by the Copyright Office, which contain such provisions as are necessary to ensure the protection of the interests of its members.

The establishment of the Technical Committee on Intellectual Property Rights (IPR), following the establishment of the National Committee on Trade Policy and Negotiations (NCTPN), came as an initiative to consolidate the country’s position on IP matters.

The Committee agreed on the following terms of reference for its operation:

1. Prepare Botswana’s position in the area of IPR for bilateral, regional and multilateral negotiations;
2. Promote the implementation of IPR laws in bilateral, regional and multilateral agreements at national level;
3. Develop a strategy for enforcement of IPR legislation in Botswana;
4. Monitor the impact of IPR regulation enforcement on the economy of Botswana and propose amendments accordingly;
5. Promote understanding of IPR at institutional and grassroots levels in Botswana;
6. Continuously review Intellectual Property legislation to enable Botswana to benefit from international agreements;
7. Promote the rights of IPR holders through registration and other protection mechanisms;
8. Facilitate the development of a database on IPR issues; and
9. Prepare briefs on IPR issues for the National Committee on Trade, as well as the Parliamentary Committee on Foreign Affairs, Trade and Security.

### **3. Best practices**

Information not available.

## VI. Other

### 1. TPM/DRM

Information not available.

### 2. Licensing Schemes

Information not available.

### 3. Optical Discs

There is also a provision in the copyright law which deals with the introduction of security device systems (hologram) to authenticate sound recordings on devices such as tapes, discs, compact discs read only memory (CD-ROM), digital video discs (DVDs) and so forth, and to strengthen copyright enforcement and to reduce piracy [section 35A].

Any person who contravenes provisions relating to the security device shall be guilty of an offence and shall be liable to a fine not exceeding P20 000 or to imprisonment for a term not exceeding two years, or both. In addition, any person, without the permission of the Copyright Office, who is in possession of or reproduces a security device, or is in possession of an instrument intended to be used to produce infringing devices, shall be guilty of an offence and liable upon conviction to a fine not exceeding P50 000 or to imprisonment for a term not exceeding five years or to both [section 35A (5) and (6)].

### 4. Hotlines

Information not available

### 5. Contact Details

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