



SCHOOL OF LAW

**AN ANALYSIS OF COPYRIGHT PROTECTION AND ENFORCEMENT
IN THE DIGITAL ERA IN ZAMBIA**

BY

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of Laws in Corporate and Commercial Law

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DEDICATION

This study is lovingly dedicated to the memory of my beloved mother, **Agness Sampa Kampamba**, and my **grandmother, Margaret Kampamba**. Though you are no longer physically present, your enduring love, values, and strength have continued to guide and inspire me every step of the way. Your absence has never diminished your impact on my life; in fact, it has fuelled my determination to persevere and make you proud.

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ABSTRACT

Copyright protection and enforcement in Zambia is governed by the Copyright and Performance Rights Act Chapter 406 of the laws of Zambia, read together with its Amendment No. 25 of 2010. Copyright law protects the rights of the owner of literary, musical, dramatic and artistic works against those who copy or otherwise take and use the form in which the original work is expressed by the author. With the advancement in technology, the replication and sharing of copyrighted materials without proper authorisation has been made easy. As a result, copyright infringement has become a prevalent issue, challenging the effectiveness of traditional IPR enforcement frameworks which were not designed to address the rapid and widespread dissemination of digital content. It is with this view that the researcher undertakes to analyse copyright law in Zambia as well as the enforcement mechanisms currently in place in order to determine whether they are in line with modern trends in copyright, especially with the ever changing and widespread application of digital technology and the use of digital networks such as the internet which has brought about new challenges in the exercise, management and enforcement of copyright and related rights. This research will discuss the current legal framework of Copyright in Zambia, the effect of the digital age on the protection and enforcement of Copyright, analyse the current enforcement mechanisms for Copyright in Zambia and suggest practical steps for effective enforcement of Copyright and related rights in the digital age in Zambia.

ABBREVIATIONS

- | | | |
|----------------|---|---|
| 1. ARIPO | - | African Regional Intellectual Property Organisation |
| 2. CMO | - | Copyright Management Organisation |
| 3. IFRRO | - | International Federation of Reproduction Rights Organisations |
| 4. PACRA | - | Patent and Company Registration Authority |
| 5. WIPO | - | World Intellectual Property Organisation |
| 6. WIPO (WCT) | - | WIPO Copyright Treaty |
| 7. WIPO (WPPT) | - | WIPO Phonograph and Performers Treaty |
| 8. WTO | - | World Trade Organisation |
| 9. ZAMCOPS | - | Zambian Music Copyrights Society |
| 10. ZARRSO | - | Zambia Reprographic Rights Society |

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CHAPTER ONE

INTRODUCTION TO THE STUDY

1.0 Introduction

Intellectual Property (IP) is a critical concept in today's digital world. It encompasses creations of the minds such as inventions, artistic works, designs, symbols, names and images used in commerce¹. These ideas, inventions and creative expressions hold immense value and must therefore be protected. Intellectual property law deals with legal rights associated with creative effort or commercial reputation and goodwill². It protects applications of information and ideas that are of commercial value.

The digital age has brought about an unprecedented transformation in the creation, dissemination and protection of Intellectual Property more specifically, Copyright. As the world increasingly becomes interconnected, the digital landscape presents both immense opportunities and complex challenges for copyright. In this rapidly evolving environment, safeguarding the rights of creators and innovators while promoting innovation and knowledge dissemination has become a paramount concern for policy makers, legal practitioners, and technology stakeholders.

There are various kinds of Intellectual Property Rights (IPRs), each of which protects certain kinds of inventions and creations. Copyright law protects the rights of the owner in the literary, musical, dramatic and artistic works against individuals that merely copy or take and use the form in which the original work is expressed by the author. The substantive law governing Copyright is the Copyright and Performances Rights Act³. This Act was amended in 2010 by the Copyright and Performance Rights (Amendment) Act⁴ in order to enhance enforcement provisions and introduce some important features such as the hologram.

The rationale behind the protection of copyright laws is such that it instills in the authors' the ability to invest time, patience, skill and creativity. It is therefore necessary to give authors the incentive to carry on their work by providing the means to ensure their livelihood and recoup their investment. The rapid advancements in technology and the widespread adoption of the internet

¹ World Intellectual Property Organization, 'What is Intellectual Property?' <https://www.wipo.int/en/web/about-ip> accessed 30 June 2026

² Moyo T, *Cultural Expressions and Intellectual Property in Africa* (Routledge 2023)

³ Copyright and Performance Rights Act, Cap 406 of the Laws of Zambia

⁴ Copyright and Performance Rights (Amendment) Act No 25 of 2010

have revolutionized the way information is accessed, shared and consumed. In the digital age, intellectual property has become an integral part of the global economy, as innovative ideas, creative works, and innovations are more valuable than ever before⁵. However, this digital transformation has also posed significant challenges to protecting and enforcing intellectual property rights⁶.

This research intends to analyze Intellectual Property Law in the digital age with a focus on Copyright. It will look at how copyrights have been existing in Zambia and how they have changed given the digital technological advancement

1.1 Background of the Study

Copyright laws allow creators to enjoy the economic fruits of their work by preventing unauthorized use, including duplication, publication and adaptation of original work such as literary, artistic or musical works. With the growth of the internet around the world, the defense of the interests of copyright owners and the regulation of their rights has become more complicated as it has provided an outlet for copyright infringement. Copyright law essentially provides that if a person performs one of the acts restricted by copyright without the permission or license of the copyright owner, the latter can sue for copyright infringement, and obtain remedies such as damages, injunction or seizure of the infringing copies.

In most countries, copyright protection arises automatically upon the work being created provided it fulfils the criteria for copyright protection such as the work being original. In Zambia, the Copyright and Performance Rights Act⁷ provides for the registration of copyrights notwithstanding the fact that registration of copyrights is optional and their existence and enforceability is independent of whether or not it is registered. Unlike other jurisdictions, the copyright registration in Zambia is required for the original owner to obtain evidence of copyright. Copyright Registration in Zambia is done through the Patents and Companies Registration Authority (PACRA). The evidence is of utmost importance even when the works are automatically protected according to copyright law because it provides legally recognized proof of authorship that cannot

⁵Ngulube M, The Enforcement of Intellectual Property Rights as a Tool for Economic Development in Zambia (*LLM dissertation, University of Zambia 2021*).

⁶ Ibid

⁷ Copyright and Performance Rights (Amendment) Act No 25 of 2010

be denied. Proof of copyright is essential in the digital age as works of art are easily accessible because of exposure to the internet.

In instances where the rights under copyright law are violated, owners of copyright suffer considerable economic loss, especially in a world where expanding technologies have facilitated infringement of protected rights to an unprecedented extent. An effective enforcement mechanism on copyright laws would therefore greatly benefit not only individuals and organizations involved directly in the creative industry but also the nation as a whole.

Realizing the important role which the creative industry plays in the development of the country, there is need to ensure that both protective and enforcement measures are available to victims of infringement. Copyright law infringement is not only a drawback to authors or owners of creative works but also retards national development hence the need to protect and enforce copyright laws. According to the Copyright and Performance Act⁸, it is up to the owner of the copyright to enforce the right. In this regard, accessible, sufficient and adequately funded arrangements of rights are crucial in any worthwhile intellectual property system

In essence, the significance of enforcement of copyright and other related rights cannot be over emphasized. With the emergence of the internet, the unauthorized distribution and copying of copyrighted materials have become easier than ever before. This has led to significant losses for creators, as well as a decrease in the quality of their work. In the past, enforcing copyright meant physically monitoring and seizing illegal copies of copyrighted material. Now, anyone with an internet connection can copy and distribute content in seconds, making it difficult to track and monitor every instance of infringement. The anonymity provided by the internet means that it can be challenge to trace the source of infringement, making it difficult for owners to hold those responsible accountable.

1.2 Statement of problem

The protection and enforcement of copyright in Zambia is primarily governed by the Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia, as amended by the Copyright and Performance Rights (Amendment) Act No. 25 of 2010. Although the Act provides legal protection for literary, musical, artistic and other copyright works, it was enacted before the rapid

⁸ Ibid

development of the digital environment and does not comprehensively address many contemporary forms of digital copyright exploitation and infringement. The emergence of the internet, social media platforms, digital streaming services, cloud computing and other digital technologies has fundamentally transformed the manner in which copyrighted works are created, reproduced, distributed and communicated to the public, thereby exposing limitations in traditional copyright protection and enforcement mechanisms.

While Zambia has undertaken legislative reforms through the 2010 Amendment, questions remain as to whether the existing legal framework adequately responds to challenges such as online piracy, unauthorised digital reproduction, electronic distribution of copyrighted works, intermediary liability, technological protection measures and cross-border digital infringement. Furthermore, practical challenges relating to institutional capacity, investigation, prosecution and enforcement continue to undermine the effective protection of copyright in the digital environment.

The absence of comprehensive legal provisions specifically addressing these emerging digital challenges raises concerns regarding the adequacy and effectiveness of Zambia's copyright regime in protecting the rights of creators while simultaneously promoting innovation, access to information and technological development. Consequently, there is a need to critically examine whether Zambia's current copyright legal framework and enforcement mechanisms are sufficient to address the realities of the digital era and to identify the legal and institutional reforms necessary to strengthen copyright protection and enforcement.

1.3 Purpose of the study

The purpose of this study is to critically examine the legal framework governing copyright protection and enforcement in Zambia and to assess its adequacy in addressing the challenges presented by the digital era. The study seeks to analyse whether the existing legal and institutional framework effectively protects copyright owners against emerging forms of digital infringement and whether the current enforcement mechanisms are capable of responding to technological developments. The study further aims to identify the legal and practical challenges affecting copyright protection and enforcement in Zambia and to propose legal and institutional reforms that will strengthen the country's copyright regime in the digital environment.

1.4 Research Objectives

The objectives of this research are to:

1. Examine the legal framework governing copyright protection in Zambia.
2. Assess the adequacy of Zambia's copyright legal framework in addressing challenges posed by the digital era.
3. Analyse the effectiveness of the current copyright enforcement mechanisms in Zambia.
4. Recommend legal and institutional reforms for strengthening copyright protection and enforcement in the digital era.

1.5 Research Questions

The following are the research questions:

1. What is the legal framework governing copyright protection in Zambia?
2. To what extent is Zambia's copyright legal framework adequate in addressing the challenges posed by the digital era?
3. How effective are the current copyright enforcement mechanisms in protecting and enforcing copyright in Zambia?
4. What legal and institutional reforms are necessary to strengthen copyright protection and enforcement in the digital era?

1.6 Significance of the Study

This study is significant because it contributes to the growing body of legal scholarship on copyright protection and enforcement in the digital era, with particular reference to Zambia. By critically examining the adequacy of the existing legal framework and the effectiveness of the current enforcement mechanisms, the study provides an informed legal analysis of the challenges posed by technological advancements to copyright protection. The findings of this research are expected to assist legislators and policymakers in identifying gaps within the current legal framework and in formulating legal and institutional reforms that strengthen copyright protection and enforcement in the digital environment. The study will also be beneficial to law reform institutions, judicial officers, legal practitioners, copyright administrators, collective management organisations, and law enforcement agencies by providing a comprehensive analysis of the legal issues surrounding digital copyright infringement and enforcement. Furthermore, the research will

serve as a valuable academic resource for students, researchers and scholars undertaking further studies in intellectual property law and will contribute to the broader discourse on the development of copyright law in Zambia in response to emerging digital technologies.

1.7 Scope and Limitations

The scope of this research is mainly Copyright laws in Zambia. The focus of the study is thus to determine a safe and more informed way of protecting and enforcing copyrights in the digital age in Zambia. The research will rely mainly on available literature, legislative texts, and case studies on Copyright as an intellectual Property. Practical challenges in data collection, such as limited access to specific information, may limit the depth of analysis in certain areas.

1.8 Methodology

This research will primarily adopt a doctrinal legal research methodology. The study will involve a critical examination and analysis of existing legal materials, including primary and secondary sources. Primary sources will comprise legislation, judicial decisions, international and regional legal instruments, and relevant policy documents, while secondary sources will include textbooks, journal articles, legal commentaries, dissertations, reports, and other scholarly publications relating to copyright protection and enforcement in the digital era. Through the analysis and synthesis of these materials, the research will evaluate the adequacy of Zambia's legal framework governing copyright protection, identify gaps in the current enforcement regime, and propose recommendations for strengthening copyright protection in the digital environment.

1.9 Literature review

This chapter reviews the existing literature relevant to the protection and enforcement of copyright laws in the digital era, with particular reference to Zambia. It critically examines scholarly books, journal articles, policy documents, legislation, international instruments, and judicial decisions that address the development of copyright law, the challenges posed by digital technologies, and the mechanisms available for the enforcement of copyright protection.

Intellectual property is traditionally divided into two branches, that is industrial property and copyright and related rights. In essence, Copyright law is concerned with the negative rights of preventing the copying of physical material existing in the field of literature and the arts. Its object

is to protect the owner of the works from the unlawful reproduction of his work.⁹ The owner of a copyright in a work is given 'exclusive rights' to use the work as he wishes or perform certain acts in relation to the work and to protect others from using the work without his authorization. Thus anyone will not infringe the copyright in the work if he performs acts which are not restricted or controlled by the copyright owner. Besides, he does not need to get permission from the owner of the copyright owner for the acts in relation to work not restricted or controlled by the copyright owner. It is because of this that for one's works to be protected they must fall within the ambit of the restricted works¹⁰. Copyright forms one of the principal branches of intellectual property law and exists to protect original literary, artistic, musical, dramatic and other creative works by granting authors exclusive rights over the exploitation of their works. The rationale behind copyright protection has traditionally been to reward creativity, encourage innovation and ensure that authors receive both economic and moral recognition for their intellectual effort.

George M Kanja explains that copyright protects the expression of ideas rather than the ideas themselves and discusses the principal theories justifying copyright protection, namely the reward, incentive, labour and moral rights theories. His work remains the leading text on Zambian intellectual property law. However, having been published in 2006, it does not address the legal implications of online platforms, digital streaming services, social media and artificial intelligence, all of which have transformed copyright protection in recent years.¹¹

Atanasova¹² provides one of the most comprehensive analyses of how digital technologies affect copyright enforcement by identifying three principal characteristics of the digital environment. First, digital works can be reproduced repeatedly without any reduction in quality, allowing a single electronic copy to generate millions of identical reproductions at virtually no cost. Secondly, digital networks facilitate instantaneous dissemination of copyrighted material across the globe, making infringement more widespread and considerably more difficult to detect. Thirdly, advances in digital storage technology permit enormous quantities of copyrighted material to be stored within relatively small devices, making unauthorized copying and distribution increasingly convenient. Collectively, these technological characteristics significantly undermine traditional

⁹ George Mpundu Kanja, *Intellectual Property Law* (University of Zambia Press 2006)

¹⁰ George Mpundu Kanja, *Intellectual Property Law* (University of Zambia Press 2006)

¹¹ George M Kanja, *Intellectual Property Law* (UNZA Press 2006)

¹² I Atanasova, 'Copyright Infringement in Digital Environment' (2019) 1(1) *Journal of Law and Economics* 13

copyright enforcement mechanisms that were originally designed for physical rather than digital works. The relationship between technological advancement and copyright protection has received considerable scholarly attention.¹³ According to the author, these technological characteristics enable copyrighted works to be copied and distributed almost instantaneously, thereby reducing the effectiveness of traditional enforcement mechanisms.

Peters¹⁴ similarly argues that the internet has fundamentally transformed copyright enforcement because unauthorised copying and distribution now occur on a global scale at minimal cost. Both studies demonstrate how technological innovation has weakened conventional copyright enforcement, although neither specifically examines the adequacy of Zambia's copyright framework. Peters observes that platforms such as Facebook, Instagram and X (formerly Twitter) provide creators with valuable opportunities to reach wider audiences while simultaneously facilitating unauthorised distribution of copyrighted works.¹⁵ Although many digital platforms have introduced content recognition technologies and notice-and-takedown procedures, their effectiveness remains subject to debate because of the sheer volume of digital content uploaded daily. The impact of digital technology on copyright protection has received considerable scholarly attention. She further argues that although technological innovation has historically influenced copyright law from the invention of the printing press to broadcasting technologies the emergence of the internet presents the greatest challenge to copyright protection because of the unprecedented ease with which copyrighted works can be copied and disseminated globally.¹⁶

Adetunji further examines the challenges of copyright protection within the digital environment by analysing digital piracy, online infringement and cross-border enforcement difficulties.¹⁷ He also notes that digital technologies have fundamentally altered the nature of copyright infringement by enabling instantaneous reproduction, distribution and modification of copyrighted

¹³ I Atanasova, 'Copyright Infringement in Digital Environment' (2019) 1(1) *Journal of Law and Economics* 13.

¹⁴ Marybeth Peters, 'The Challenge of Copyright in the Digital Age' (2006) 9 *Revista La Propiedad Inmaterial* 59

¹⁵ Marybeth Peters, 'The Challenge of Copyright in the Digital Age' (2006) 9 *Revista La Propiedad Inmaterial* 59, 63.

¹⁶ Marybeth Peters, 'The Challenge of Copyright in the Digital Age' (2006) 9 *Revista La Propiedad Inmaterial* 59, 63.

¹⁷ AO Adetunji, *Challenges of Copyright Protection in the Digital Age* (2022).

works at minimal cost. While the author successfully identifies the principal enforcement challenges, comparatively little attention is devoted to practical legislative reforms capable of strengthening copyright protection in developing countries. The study concludes that many copyright regimes continue to rely on enforcement mechanisms designed for physical markets rather than digital environments. This research therefore extends that discussion by proposing reforms specifically applicable to Zambia.

Katleho examines the evolution of intellectual property rights within the digital era and argues that technological innovation requires copyright law to evolve continuously if it is to remain effective¹⁸ and maintains that traditional copyright enforcement mechanisms were developed primarily for tangible works and therefore struggle to address contemporary digital infringement. OAPI¹⁹ reaches a similar conclusion, observing that piracy and counterfeiting remain widespread across many African jurisdictions due to weak enforcement institutions, inadequate resources and insufficient regional cooperation. The study emphasises harmonisation of domestic legislation with international intellectual property standards and highlights the importance of adapting legal frameworks to emerging technologies. However, the discussion remains largely international in scope and does not critically examine Zambia's copyright legislation or its enforcement institutions.

Recent comparative scholarship has also focused on digital music streaming. Anamela, Kalifungwa, Nguluwe and Muhyila compare copyright regulation in Zambia, Kenya and the United States and conclude that although Zambia possesses a functioning legal framework, its copyright legislation has not sufficiently adapted to online music streaming and other digital forms of exploitation.²⁰ They recommend stronger digital rights management measures, enhanced judicial enforcement and greater participation by copyright owners. While this comparative analysis provides valuable insight into possible reforms, its primary focus remains music streaming

¹⁸ Katleho A, 'The Evolution of Intellectual Property Rights in the Digital Age' (2024) 4(2) *Journal of Media Law and Policy* 1.

¹⁹ African Intellectual Property Organisation (OAPI), *Challenges of Intellectual Property Enforcement in Africa* (2021)

²⁰ T Anamela, C Kalifungwa, C Nguluwe and MC Muhyila, 'A Comparative Analysis of Copyright Laws Governing Music Streaming in Zambia, Kenya and the United States' (2024) 4(3) *Journal of Modern Law and Policy* 90.

and therefore does not comprehensively address digital copyright protection across the wider creative industry.

The broader African perspective is provided by the African Intellectual Property Organisation (OAPI), which observes that weak enforcement remains one of the greatest obstacles to effective intellectual property protection across the continent.²¹ Counterfeit goods, piracy, limited institutional capacity and inadequate enforcement coordination continue to undermine copyright protection despite legislative reforms. Similar concerns are expressed by Perwej, Parwej and Perwej, who argue that technological solutions such as digital watermarking and authentication systems can significantly improve protection of digital works.²² Nevertheless, these studies focus primarily on technological solutions without fully examining the legal reforms necessary to support their implementation

The relationship between copyright protection and economic development has clearly attracted scholarly attention. Ngulube argues that effective intellectual property enforcement contributes directly to economic growth by encouraging innovation, attracting investment and strengthening creative industries.²³ He further argues that copyright protection in the digital era requires striking an appropriate balance between protecting creators' exclusive rights and preserving public access to information and freedom of expression.²⁴

Similarly, Moyo contends that African cultural expressions represent valuable intellectual assets requiring stronger legal protection if they are to contribute meaningfully to national development.²⁵ Both authors successfully establish the economic importance of copyright protection but do not

²¹ African Intellectual Property Organisation (OAPI), *Challenges of Intellectual Property Enforcement in Africa* (2021).

²² Y Perwej, Parwej and A Perwej, 'Copyright Protection of Digital Images Using Robust Watermarking Based on Joint DLT and DWT' (2012) 3(6) *International Journal of Scientific & Engineering Research* 1.

²³ M Ngulube, *The Enforcement of Intellectual Property Rights as a Tool for Economic Development in Zambia* (University of Zambia 2021)

²⁴ Misozi Ngulube, *The Enforcement of Intellectual Property Rights as a Tool for Economic Development in Zambia* (LLB dissertation, University of Zambia 2013)

²⁵ T Moyo, *Cultural Expressions and Intellectual Property in Africa* (Routledge 2023).

comprehensively assess whether Zambia's present enforcement mechanisms adequately support creators operating within digital markets.

Wallerstein, Mogee and Schoen demonstrate that intellectual property rights have become increasingly significant within science, technology and international trade, particularly as innovation becomes increasingly digital and global.²⁶ Their work illustrates the importance of internationally coordinated intellectual property protection but primarily reflects experiences from developed economies, leaving questions regarding implementation within developing jurisdictions unanswered.

Further on the subject of digital copyright infringement, Joe argues that differences in national intellectual property laws create significant obstacles to effective cross-border enforcement and emphasises the need for harmonised legal frameworks capable of responding to rapidly evolving digital technologies.²⁷

Recent African scholarship^{28 29} demonstrates that copyright infringement in the digital environment is not unique to Zambia but represents a continental challenge requiring coordinated legal and institutional responses. Comparative studies reveal that although many African States have enacted copyright legislation consistent with international treaties such as the TRIPS Agreement and the WIPO Internet Treaties, enforcement remains significantly constrained by inadequate institutional capacity, insufficient technological infrastructure, limited financial resources and low public awareness. These deficiencies have enabled widespread online piracy, unauthorised digital distribution of creative works and weak compliance with copyright obligations. The literature therefore suggests that strengthening enforcement institutions should accompany legislative reform, as effective copyright protection depends not only upon the existence of legal rights but

²⁶ MB Wallerstein, ME Mogee and RA Schoen, *Global Dimensions of Intellectual Property Rights in Science and Technology* (National Academy Press 1993).

²⁷ Joe K, 'Copyright and Media Access in the Digital Age: A Critical Analysis' (2020) 4(1) *Journal of Media and Law* 12.

²⁸ T Pistorius and OS Mwim, 'The Impact of Digital Copyright Law and Policy on Access to Knowledge and Learning' (2019) 10(1)

²⁹ A Bah, *The Implementation and Enforcement of Copyright Law in Sierra Leone: A Comparative Analysis with Kenya, Ghana, Nigeria and South Africa (LLM thesis, Central European University 2025)*.

also upon practical mechanisms capable of detecting, preventing and remedying infringement within the digital economy.

Dawar, Sudarshan and Chitra³⁰ also contribute to the discussion by examining copyright protection in the digital era generally. Their work identifies digital piracy, unlawful access to protected content, circumvention of copyright laws and weak judicial responses as major problems faced by copyright holders. The study is useful because it shows that digital infringement is not only a legislative problem, but also an enforcement problem. Even where copyright law recognizes exclusive rights, those rights become difficult to protect where infringers can reproduce, distribute or access protected works through online platforms with limited accountability. This supports the position that Zambia must not only amend its copyright legislation, but must also strengthen enforcement mechanisms, judicial capacity and technological responses to online infringement.

García, Cedié, Teixidó and Gil³¹ approach the issue from a technological enforcement perspective by reviewing the use of blockchain technologies in media copyright management. Their study explains that blockchain may assist in ownership verification, licensing, royalty tracking and digital rights management. This literature is relevant because it demonstrates that modern copyright enforcement cannot depend solely on court action after infringement has occurred. Instead, copyright systems must increasingly adopt preventive and administrative tools that help creators prove ownership, track use and manage licensing in digital environments. However, the authors also observe that the academic literature on blockchain-based copyright management remains relatively immature, meaning that such technologies should be viewed as complementary tools rather than complete substitutes for legal reform.

WIPO's 2026 study³² on tools for combating copyright piracy is also useful, although it is used carefully because it discusses AI-enabled tools. For purposes of this research, its relevance lies less in artificial intelligence and more in its broader treatment of piracy detection, monitoring systems, responsive enforcement tactics and policy design. The study recognizes that copyright

³⁰ Dawar K, Sudarshan A and Chitra BT, 'Copyright Protection in Digital Era' (2021) *Journal of Intellectual Property Rights*.

³¹ García R, Cedié A, Teixidó M and Gil R, 'A Review of Media Copyright Management Using Blockchain Technologies from the Academic and Business Perspectives' (2023)

³² World Intellectual Property Organization, *Artificial Intelligence Tools for Dealing with Copyright Piracy: Technological, Legal and Policy Dimensions* (WIPO/ACE/18/35, 2026)

piracy has changed in nature because infringing content can be copied, hosted, streamed and redistributed across digital platforms at scale. This supports the argument that enforcement institutions must be equipped with modern monitoring and takedown systems, as well as legal authority to respond quickly to digital infringement. In the Zambian context, this strengthens the recommendation that institutions such as PACRA, law enforcement agencies and the courts require improved technical capacity to address online copyright violations.

At international level, the World Intellectual Property Organization (WIPO) recognises copyright as an essential mechanism for promoting creativity while balancing the interests of authors and society. The *World Intellectual Property Handbook*³³ explains that international copyright protection has evolved through treaties such as the Berne Convention, the TRIPS Agreement and the WIPO Copyright Treaty in response to technological developments. Likewise, WIPO's *Intellectual Property Reading Material* demonstrates that intellectual property systems must continuously evolve alongside technological innovation if they are to remain effective. Although these publications establish internationally accepted principles, they provide only limited discussion on the practical enforcement difficulties experienced by developing countries such as Zambia.

Beyond the legal framework, several scholars and policy documents have examined the institutional framework responsible for intellectual property administration in Zambia. The Revised National Intellectual Property Policy identifies the Patents and Companies Registration Agency (PACRA) as the principal institution responsible for administering both industrial property and copyright.³⁴ However, the Policy observes that PACRA continues to experience significant institutional challenges, including inadequate staffing levels, limited automation of intellectual property services and insufficient decentralisation despite its provincial presence. The Policy further notes that intellectual property services remain largely centralised in Lusaka, limiting accessibility for creators in other parts of the country. These institutional shortcomings weaken the effective administration and enforcement of copyright, particularly as technological

³³ World Intellectual Property Organization, *World Intellectual Property Handbook: Policy, Law and Use* (9th edn, WIPO Publication No 489(E), 2016).

³⁴ Ministry of Commerce, Trade and Industry, *Revised National Intellectual Property Policy* (Government of the Republic of Zambia 2020)

developments continue to increase the complexity of intellectual property management. The Policy therefore recommends strengthening PACRA's institutional, financial and human resource capacity in order to improve the delivery of intellectual property services.³⁵

African scholars increasingly argue that institutional effectiveness is the cornerstone of copyright enforcement in developing countries.³⁶ While copyright statutes generally provide adequate legal protection, enforcement agencies frequently lack specialised investigators, digital forensic expertise, technological monitoring systems and sufficient financial support to respond effectively to online infringement. Comparative analysis across Sierra Leone, Kenya, Ghana, Nigeria and South Africa illustrates that countries which invest in specialised enforcement units, judicial training and collaboration between government agencies and collective management organisations generally achieve higher levels of copyright compliance than those relying solely on statutory reform. These findings suggest that Zambia's copyright challenges cannot be resolved exclusively through legislative amendments but require sustained investment in institutional capacity and inter-agency cooperation.

Zambia's participation in international intellectual property organizations further demonstrates its commitment to international copyright protection. As a member of the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO) and the African Regional Intellectual Property Organization (ARIPO), Zambia is bound by several international intellectual property treaties and protocols. Nevertheless, both the National Intellectual Property Policy and the African Intellectual Property Organisation observe that enforcement remains the weakest component of intellectual property protection across many developing countries, including Zambia, where piracy and counterfeiting continue to undermine economic development and innovation.³⁷

In Zambia, like many other common law countries, the history of copyright law traces its origins from the United Kingdom copyright system. In 1886, the Berne Convention adopted the international convention on copyright called the Berne Convention for the Protection of Literary

³⁵ Ministry of Commerce, Trade and Industry, *Revised National Intellectual Property Policy* (Government of the Republic of Zambia 2020)

³⁶ *A Bah*, *The Implementation and Enforcement of Copyright Law in Sierra Leone: A Comparative Analysis with Kenya, Ghana, Nigeria and South Africa (LLM thesis, Central European University 2025)*.

³⁷ *Ibid*

and Artistic Works.³⁸ The Berne Convention required its member countries to provide the same protection to authors from other member countries as it provided to its own authors and also put in place certain minimum levels of copyright protection. The Convention introduced major changes to the United Kingdom copyright law which came into force on 1st July, 1912 and it is this Copyright Act of 1911 which formed the basis of the Copyright law throughout the British Empire and accounts for the similarities in copyright law between the United Kingdom and countries such as Zambia. Consequently, Zambia continued to rely on the foreign copyright laws until 1994 when the Copyright and Performance Act³⁹ was entered in force. This Act provides for copyright protection in literary, dramatic, musical, artistic works, computer programs, audiovisual works, sound recordings, broadcast and cable programs and process, for the rights of performers.

The Government of Zambia, through the *Revised National Intellectual Property Policy (2020)*, similarly acknowledges that intellectual property administration faces institutional challenges including inadequate staffing, insufficient automation, limited decentralisation of intellectual property services and low public awareness. While the Policy proposes institutional reforms intended to strengthen intellectual property administration, it does not comprehensively address digital copyright infringement or the enforcement challenges arising from internet-based technologies. Consequently, there remains a need to examine whether Zambia's legislative framework adequately addresses modern forms of copyright infringement.⁴⁰

Although African scholarship has increasingly examined copyright protection within the digital environment, relatively few studies focus specifically on Zambia's institutional framework for copyright enforcement. Existing research primarily adopts comparative regional approaches or examines broader intellectual property systems without undertaking detailed analysis of Zambia's legislative framework, enforcement institutions and practical challenges posed by digital technologies. Consequently, there remains a significant gap regarding the effectiveness of

³⁸ September 9 1886

³⁹ Copyright and Performance Rights Act, Cap 406 of the Laws of Zambia

⁴⁰ World Intellectual Property Organization, *World Intellectual Property Handbook: Policy, Law and Use* (9th edn, WIPO Publication No 489(E), 2016).

Zambia's copyright enforcement mechanisms in responding to online piracy, digital content distribution and emerging technological developments.⁴¹

Collectively, the foregoing literature demonstrates that although copyright law continues to serve as an essential mechanism for protecting creative works, the emergence of digital technologies has fundamentally altered the manner in which copyrighted works are created, distributed and infringed. Earlier Zambian scholarship, particularly Kanja's work, provides a strong doctrinal foundation for understanding copyright law within the domestic legal framework, but it predates many of the technological developments that now characterise the digital environment.⁴² More recent international and comparative studies have examined issues such as digital piracy, online music streaming, digital rights management and cross-border enforcement. Nevertheless, these studies generally focus on broader international trends and offer limited analysis of the practical operation of Zambia's Copyright and Performances Rights Act, Chapter 406 of the Laws of Zambia, and its enforcement institutions in responding to digital infringement.⁴³ Equally, existing scholarship has not comprehensively examined the interaction between legislative reform, institutional capacity, judicial enforcement and technological enforcement mechanisms within the Zambian context.

This study therefore, seeks to address that gap by critically evaluating whether Zambia's existing copyright legal framework and enforcement mechanisms are adequate to protect copyright in the digital era and by proposing practical legal and institutional reforms informed by international best practice while remaining responsive to Zambia's socio-economic and technological realities.

1.10 Ethical considerations

The research aims to provide accurate and reliable information. All data, findings, and interpretations will be presented transparently and based on rigorous analysis. The research will take measures to ensure that any potential biases or limitations are acknowledged, promoting transparency and integrity in the research process.

⁴¹ *A Bah*, The Implementation and Enforcement of Copyright Law in Sierra Leone: A Comparative Analysis with Kenya, Ghana, Nigeria and South Africa (*LLM thesis, Central European University 2025*).

⁴² George M Kanja, *Intellectual Property Law* (UNZA Press 2006)

⁴³ T Anamela, C Kalifungwa, C Nguluwe and MC Muhyila, 'A Comparative Analysis of Copyright Laws Governing Music Streaming in Zambia, Kenya and the United States' (2024) 4(3) *Journal of Modern Law and Policy* 90.

1.11 Chapter outline

This research is divided into five chapters. Chapter One introduces the study by outlining the background, statement of the problem, research objectives, research questions, significance of the study, scope and limitations, methodology and literature review, thereby establishing the foundation for the research. Chapter Two examines the legal framework governing copyright protection in Zambia, including the applicable domestic and international legal instruments. Chapter Three assesses the adequacy of Zambia's copyright legal framework in addressing the challenges posed by the digital era. Chapter Four analyses the effectiveness of the current copyright enforcement mechanisms in Zambia, highlighting the strengths and challenges of the existing enforcement regime. Finally, Chapter Five presents the findings and conclusions of the study and offers legal and institutional recommendations for strengthening copyright protection and enforcement in the digital era

1.12 Conclusion

This chapter has provided the foundation for the study by introducing the research problem, outlining the objectives and research questions, explaining the methodology adopted, and examining the existing literature on copyright protection and enforcement in the digital era. The literature reviewed demonstrates that although considerable scholarship exists on copyright law and digital infringement, there remains limited research specifically examining the adequacy of Zambia's legal and institutional framework in responding to the challenges presented by rapidly evolving digital technologies. This identified gap justifies the present study. The chapter has also established the significance and scope of the research and set the conceptual framework for the analysis that follows. Having established this foundation, the next chapter examines the legal framework governing copyright protection in Zambia, including the applicable domestic legislation, international legal instruments, and institutional arrangements relevant to copyright protection and enforcement.

CHAPTER TWO

THE LEGAL FRAMEWORK GOVERNING COPYRIGHT PROTECTION IN ZAMBIA

2.0 Introduction

In order to appreciate the effectiveness of the protection and enforcement of copyright and related rights in Zambia, it is crucial to understand what constitutes infringement in this regard. This second chapter therefore, looks at acts that amount to infringement, and also mechanisms that have been put in place to protect and enforce copyright and related rights. The Copyright and Performance Rights Act Zambia⁴⁴ read together with the 2010 Amendment⁴⁵, provides for enforcement of copyright. It provides that an infringement of copyright shall be actionable in the High Court or the Subordinate Court⁴⁶ at the suit of the owner of the copyright. This is done by considering institutions involved in the protection and enforcement of these copyright and related rights and ascertain the degree of efficacy and challenges these institutions encounter in the execution of their duties. The right of the owner of copyright to prevent others from making copies of his works is the most basic right under copyright.⁴⁷ The first of the acts restricted by copyright is “reproduction”. By reproduction is generally meant the right to multiply copies of the work, the production of even one copy being an infringement. Reproduction is not defined in any of the Acts, but its meaning is probably very similar to “copy”. What is a copy will be a question of fact and degree. Therefore, when the copy is not exact, the Court must examine the degree of resemblance with this in mind: that for infringement to arise there must be such a degree of similarity as would lead one to say that the alleged infringement is a copy or reproduction of the original having, in other words, adopted its essential features and substance.

2.1 The General Historical Development of Copyrights and their Influence on the Formulation of Zambia’s Copyright Law

Zambia’s copyright history is marked by the evolution of intellectual property law, starting with pre-independence legislation and culminating in the enactment of the Copyright and Performance Rights Act of 1994⁴⁸. This Act, which is still in place, establishes copyright protection for various

⁴⁴ Copyright and Performances Rights Act Cap 406 of the Laws of Zambia

⁴⁵ Copyright and Performance Rights (Amendment) Act No 25 of 2010

⁴⁶ Section 2(a) Copyright and Performances Rights (Amendment) Act No. 25 of 2010

⁴⁷ World Intellectual Property Organization (WIPO) *Intellectual Property Handbook: Policy, Law and Use* (9th edn, WIPO Publication No 489(E), Geneva 2016) 43.

⁴⁸ Copyright and Performances Rights Act Cap 406 of the Laws of Zambia

creative works and performance rights. The country's engagement with international copyright treaties like the Berne Convention and its membership in organizations like ARIPO also contribute to its copyright framework.

Zambia's pre-independence copyright framework relied on international copyright laws like the Berne Convention. The Copyright and Performance Rights Act 1994 was enacted after independence, is currently the primary legal framework governing copyright protection in Zambia. Zambia's membership in the African Regional Intellectual Property Organization (ARIPO) and the Lusaka Agreement demonstrate the country's commitment to regional cooperation in copyright matters. Zambia's adherence to international copyright treaties, such as the World Intellectual Property Organization (WIPO) Convention 1967, the Universal Copyright Convention and the Berne Convention, ensures its compliance with global standards for copyright protection. However, Zambia is in the process of acceding to the WIPO Copyright Treaty (WCT) and WIPO Phonograph and Performers Treaty (WPPT) which are under the Berne Convention.⁴⁹

2.2 The existing legal framework governing Copyright protection in Zambia

The legal framework governing copyright protection in Zambia is primarily anchored in the Copyright and Performance Rights Act of 1994⁵⁰. This comprehensive statute serves as the cornerstone of copyright law within the nation, outlining the rights of authors and creators of various works, including literary, artistic, and musical compositions. The Act establishes that copyright arises automatically upon the creation of an original work without the need for formal registration, thereby ensuring that creators have immediate protection over their intellectual property.

In addition to the Copyright and Performance Rights Act, Zambia is a signatory to several important international treaties that bolster its copyright regime. Notably, Zambia is a member of the Berne Convention for the Protection of Literary and Artistic Works, which sets minimum standards for copyright protection among its member states. This treaty not only reinforces the

⁴⁹ Ministry of Commerce, Trade and Industry, *National Intellectual Property Policy* (Republic of Zambia, June 2020).

⁵⁰ Copyright and Performances Rights Act Cap 406 of the Laws of Zambia

rights of creators but also facilitates international recognition of copyright and the protection thereof across borders.⁵¹

Furthermore, Zambia is a party to the World Intellectual Property Organization (WIPO) Copyright Treaty, which underscores the importance of safeguarding digital works in the age of technology.⁵² This treaty aligns Zambia's copyright laws with global digital trends, thus ensuring that the legal protections extend to the ever-evolving landscape of digital content.

Another significant development in Zambia's copyright legal framework is its integration with national policy efforts aimed at promoting cultural development and affirming the rights of indigenous creators. This reflects an awareness of the role of copyright in fostering creativity and innovation.⁵³ The legal framework not only protects individual creators but also nurtures the broader creative economy, contributing to economic growth and cultural preservation in Zambia.

2.2.1 Eligibility for Copyright Protection

The eligibility for copyright protection in Zambia is defined by the Copyright and Performance Rights Act⁵⁴. This comprehensive legal framework establishes the criteria under which various types of works can be afforded protection. Primarily, copyright laws cover literary, artistic, and musical works, granting creators exclusive rights to their original expressions.

Literary works⁵⁵ encompass several forms, including books, articles, poems, and other written content. It is essential that these works exhibit a degree of originality, meaning they must be the result of the author's intellectual effort and creativity, rather than mere replication of existing ideas or texts. Likewise, artistic works⁵⁶, which can include paintings, sculptures, and photographs, also require originality and creativity in their creation.

Musical works⁵⁷, which involve both the melody and lyrics, equally qualify for copyright protection. The uniqueness of the composition plays a crucial role in determining eligibility.

⁵¹ Michael Spence, 'Justifying Copyright' in Daniel McClean and Karsten Schubert (eds), *Dear Images: Art, Copyright and Culture* (Ridinghouse 2002)

⁵² World Intellectual Property Organization, *Intellectual Property Reading Material* (WIPO Publication, 2018)

⁵³ George M Kanja, *Intellectual Property law* (UNZA Press)

⁵⁴ Section 8 of the Copyrights Performance Act Chapter 406 of the Laws of Zambia Section 8

⁵⁵ Copyright and Performance Act Chapter 406 of the Laws of Zambia Section 8(a) (i)

⁵⁶ Copyright and Performance Act Chapter 406 of the Laws of Zambia section 8(a)(iii)

⁵⁷ Copyright and Performance Act Chapter 406 of the Laws of Zambia section 8(a) (ii)

Furthermore, it is important to note that the work must be fixed in a tangible medium, such as recordings, written scores, or physical art forms. This means that the creation should be documented or recorded in some manner that enables its replay or reproduction, solidifying the creator's rights.

Moreover, copyright protection arises automatically upon the creation of the work, provided it meets the originality and fixation criteria. These may also be computer programs⁵⁸ compilations, audio-visual works, sound recordings, broadcasts, cable programmes, and typographical arrangements of published editions of literary works.⁵⁹ Sections 38A-38F of the Copyright and Performance Rights (Amendment)⁶⁰ in Zambia focus on using security holograms to protect copyrighted works, particularly sound recordings and cinematograph films. These sections establish requirements for accreditation, implementation, and record-keeping related to hologram use. Section 38A mandates the use of hologram devices on sound recordings and cinematograph films intended for public or commercial distribution within Zambia. Section 38B requires that hologram devices be affixed to the physical media of sound recordings and cinematograph films, ensuring that the copyright is protected. Section 38C states that producers engaged in reproducing sound recordings and cinematograph films must apply to the Registrar for accreditation to use hologram devices. Accreditation is renewable annually, and a certificate is issued upon granting accreditation. Section 38D requires that importers of sound recordings and cinematograph films for commercial distribution must also apply to the Registrar for accreditation. They need to demonstrate that the imported copies are not infringing copies. Section 38E establishes a Technical Implementation Committee to assist the Registrar in functions related to the use of holograms. Section 38F requires that records are kept to track the use and distribution of hologram devices and related information, as required by the Registrar.

There is no need for formal registration in Zambia⁶¹, although creators may choose to register their works for additional legal advantages. Recognizing and understanding these criteria are vital for artists, authors, and musicians to safeguard their intellectual property. Proper awareness and

⁵⁸ Copyright and Performance Act Chapter 406 of the Laws of Zambia Section 8(a)(ix)

⁵⁹ Copyright and Performance Act Chapter 406 of the Laws of Zambia Section 8(b)(c)(c)(d)(e)(f)(g)

⁶⁰ Copyright and Performance Rights (Amendment) Act No. 25 of 2010

⁶¹ Copyright and Performance Act Chapter 406 of the Laws of Zambia, Section 8(3)

adherence to the eligibility standards for copyright protection empower creators to defend their works against potential infringement effectively.

2.2.2 The Process for Copyright Registration

In Zambia, the process of registering copyright⁶² involves several meticulous steps designed to ensure the legal protection of original works. The primary agency responsible for copyright registration is the Patents and Companies Registration Agency (PACRA).⁶³ It is crucial for creators to understand that, while copyright exists automatically upon the creation of a work, formal registration offers added advantages and increased legal standing in case of infringements.

To begin the registration process, applicants must complete the prescribed application form. This can typically be obtained from PACRA's office or its official website. The application should contain comprehensive details about the work being registered, including the title, the nature of the work, and the authorship information. It is advisable to include a copy of the work, as this may be necessary for review purposes.⁶⁴

Once the application form is completed, it should be submitted along with the required fees. The fee structure can vary based on the type of work being registered, whether it be literary, musical, or artistic. It is essential for applicants to verify the latest fee schedule from PACRA to avoid delays in processing. Payment can usually be made via prescribed methods, including bank transfers or direct payments at PACRA offices.⁶⁵

After submission, the agency will conduct an examination of the application. This process may take some time, depending on the volume of applications being processed. If the application meets all requirements and is approved, the copyright will be officially registered, and the applicant will receive a certificate as evidence of ownership.⁶⁶

Registering copyright not only serves to protect the work but also strengthens the creator's rights against unauthorized use, thereby enhancing the legal framework needed for enforcement.

⁶² Copyrights Performance Act Chapter 406 of the Laws of Zambia Section 39-43

⁶³ European Commission: Intellectual Property in Zambia, 2022 https://intellectual-property-helpdesk.ec.europa.eu/document/download/1f179ab4-a1af-48d2-b912-e49418adeeee_en

⁶⁴ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 39

⁶⁵ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 39(3)

⁶⁶ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 40(3)

Understanding the registration process is essential for individuals and entities seeking to safeguard their creative expressions in Zambia.

2.2.3 Duration of Copyright Protection

Copyright protection in Zambia is governed by the Copyright and Performance Rights Act of 1994. Under this framework, the duration of copyright protection varies depending on the type of work. For literary, musical, and artistic works, the standard duration is the lifetime of the author plus 50 years.⁶⁷ This means that once the creator passes away, their work remains protected for an additional half-century, ensuring that heirs or successors can benefit from the earnings and rights associated with that work. In cases where the work is a collective creation, such as in the case of joint authorship, the duration is similarly calculated based on the life of the last surviving author plus 50 years.

For cinematographic works and sound recordings, the duration of copyright protection is outlined as 50 years from the date of publication.⁶⁸ The same also applies for computer programs and typographical arrangements. If such works are unpublished, the protection lasts for 50 years from the year they were created. This aspect of copyright law ensures that creators of audiovisual and recorded content have sufficient time to exploit their works commercially.

In respect of holograms, Section 38C⁶⁹ states that producers engaged in reproducing sound recordings and cinematograph films must apply to the Registrar for accreditation to use hologram devices and that accreditation is renewable annually, and a certificate is issued upon granting accreditation.

Once copyright protection expires, the work enters the public domain. This transition has significant implications; it allows the public to freely use, distribute, and build upon these works without seeking permission or paying royalties. The shift from copyright to public domain plays a crucial role in fostering creativity, innovation, and access to cultural content. Additionally, the public domain status of expired works promotes new interpretations and adaptations that can

⁶⁷ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 12

⁶⁸ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 13-16

⁶⁹ Copyrights and Performance (Amendment) No. 25 of 2010 of the Laws of Zambia Section 12

enrich the cultural landscape. However, it is essential for creators and users alike to remain aware of the specific durations attached to different types of works to navigate copyright effectively.

2.2.4 Rights of third parties to Copyright

In regard to collecting societies, Section 22 of the Copyright and performance Rights Act⁷⁰ states that collecting societies may be authorized to represent copyright owners. Owners of copyrights may allow a collecting society to administer and negotiate collective copyright license agreements on behalf of the owners of copyrights. Some of these rights include performances in public areas such as clubs, bars, restaurants, cafe's, television performances such as wireless broadcasting, rights to reproduce the works for educational or scholarly works, for private use, sound recordings used in films and the like.⁷¹ This means that they can take a copyright infringer to court by suing on behalf of the copyright owner without permission from the copyright owner if they have been granted an assignment as stated in the case of **Jonathan Cape Ltd v Consolidated Press Ltd**.⁷² If the collecting society has a license, they must sue an infringer with the permission of the copyright owner.⁷³

Despite having some backing from the law, collecting societies such as ZAMCOPS and ZARRSO, have faced significant challenges in enforcing digital copyright infringements in Zambia due to lacunas in the law. Zambian Music Copyrights Society (ZAMCOPS), monitors usage of its member's music, analyze data from music users, collects and distributes royalties and licenses users of copyrighted music.⁷⁴ Zambia Reprographic Rights Society (ZARRSO) is a non-profit making organization which belongs to authors, creators and publishers of literary and artistic works who together with stakeholders established it to address the problem of unauthorized reproduction of their works in Zambia. ZARRSO is also a member of the International Federation of Reproduction Rights Organisations (IFRRO) and thereby operates in accordance with internationally accepted standards of administering reproduction rights of copyright.⁷⁵

⁷⁰ Ibid

⁷¹ Ibid

⁷² *Jonathan Cape Ltd v Consolidated Press Ltd* [1954] 3 All ER 253.

⁷³ Ibid

⁷⁴ <https://zamcops.org/>

⁷⁵ <https://www.zarrso.org/>

2.2.5 Rights Granted by Copyright

In Zambia, copyright law provides creators with a set of exclusive rights that empower them to control the use of their original works. These rights are essential for ensuring that creators can benefit financially and morally from their creative efforts. The main rights afforded to copyright holders in Zambia include the right to reproduction, distribution, public performance, and adaptation.

The right to reproduction⁷⁶ allows copyright holders to make copies of their works. This includes a wide array of formats, from books and music to digital content. By holding this right, creators can prevent unauthorized individuals or entities from reproducing their work without permission, thus maintaining control over how and when their creations are used. The *Zambian Copyright and Performance Rights Act*⁷⁷, grants copyright holders the exclusive right to reproduce their works, which includes making copies, versions, and arrangements of various types of creative works. This includes literary, musical, artistic, computer programs, audiovisual works, and sound recordings. The Act also covers performances, broadcasts, and cable programs. Additionally, the Act allows the Registrar to grant permission for reproduction and distribution in Zambia to Zambian citizens or companies.⁷⁸ Copyright holders have an exclusive right to authorize the reproduction of their works. This includes creating copies, versions (translations, adaptations), and arrangements (musical), and other transformations of the original work. The Act covers a wide range of creative works, including literary, musical, and artistic, computer programs, audiovisual works, sound recordings, broadcasts, and cable programs. The Act also addresses the reproduction of imported works, requiring accreditation for those intending to use hologram devices. The Registrar plays a key role in granting permissions for reproduction, distributing licenses, and verifying accreditation.

Additionally, the distribution right⁷⁹ enables copyright holders to distribute copies of their works to the public. This encompasses selling, renting, or lending the works, which is critical for artists and authors to generate revenue. Unauthorized distribution, whether it be through illegal downloads or pirated copies, directly affects a creator's ability to earn a living from their work.

⁷⁶ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Part III

⁷⁷ Copyrights and Performance Act Chapter 406 of the Laws of Zambia

⁷⁸ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 54

⁷⁹ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Part IV

The Zambian Copyright and Performance Rights Act⁸⁰, grants copyright holders exclusive rights, including the right to distribute their work. This right allows them to control how their work is shared and made available to the public. Copyright owners have the sole right to distribute their work, meaning they can authorize or prohibit others from sharing it. Any unauthorized distribution of a copyrighted work is considered infringement, which can lead to legal consequences. The case of **Hot FM v Changwe and Yar FM Limited** was an attempt to exercise the right to prohibit news bulletins and broadcasts. The claim under copyright was unsuccessful because the news bulletins and broadcasts were non-compliant with Sections 7, 8 and 17(1) of the Copyrights and Performance Act⁸¹ as the alleged infringed material were not copyrighted with PACRA. For a successful claim in distribution, the work must be registered and licensed. The Act covers a wide range of creative works,⁸² including literary, musical, and artistic works, computer programs, audiovisual works, sound recordings, broadcasts, and cable programs. The Act also addresses the role of CMOs⁸³, which manage copyright on behalf of multiple rights holders, such as the Zambia Reprographic Rights Society (ZARRSO) for literary works and the Zambia Music Copyright Society (ZAMCOPS) for music rights. The Act outlines procedures for enforcing copyright rights, including the ability to use affidavits or statutory declarations as evidence in court. In addition to economic rights, the Act also recognizes moral rights, which protect an author's connection to their work, such as the right to be identified as the author.⁸⁴

In Zambia, an employer generally owns the copyright in works created by an employee in the course of their employment.⁸⁵ This means the employer has the exclusive rights to exploit the work, such as reproducing, distributing, and publicly performing it. However, the Copyright and Performance Rights Act outlines specific scenarios where the employer's ownership of copyright may be affected or assigned.⁸⁶ The employer is generally the first owner of copyright in works created by employees in the course of their employment. The employer has the exclusive rights to exploit the work, including reproduction, distribution, and public performance. While the employer is the first owner, there can be agreements to assign ownership of future copyright. The

⁸⁰ Copyrights and Performance Act Chapter 406 of the Laws of Zambia

⁸¹ Copyrights and Performance Act Chapter 406 of the Laws of Zambia

⁸² *Hot FM v Changwe and Yar FM Ltd* (HPC 3 of 2010) [2012] ZMHC 87 (29 April 2012)

⁸³ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 22

⁸⁴ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 24

⁸⁵ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 10(1)

⁸⁶ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 10(3)

Act in Section 10(4)⁸⁷ also outlines situations where the employer's ownership may be affected or the employee retains some rights stating that where works have been completed in another jurisdiction, the law of that country in relation to first ownership of copyright shall apply. There may be exceptions to the employer's first ownership, such as when the employee and employer agree otherwise. If an employee or anyone else infringes on the employer's copyright, the employer has the right to take legal action.

The public performance right⁸⁸ is particularly relevant for artists, musicians, and performers, as it grants them the authority to display or perform their works in a public setting. This right ensures that creators receive recognition and, when applicable, financial compensation whenever their works are performed in venues, broadcasts, or even streamed online. Sections 44 to 53 of the Act, outlines public performance rights, granting copyright owners the exclusive right to authorize or prohibit the public performance of their works, including musical and literary works. This right extends to broadcasting, cable programs, and other forms of public communication of their creations. The Act grants copyright holders the exclusive right to perform their works publicly or authorize others to do so. Public performance is considered a “controlled act”⁸⁹ under the Act, meaning copyright owners have the right to prohibit unauthorized performances. The Act allows copyright owners to authorize Collective Management Organizations (CMOs) to negotiate and administer collective licenses on their behalf. The Act regulates the initial ownership of copyright, typically vesting it in the author or creator. Unauthorized public performance is considered infringement, which carries penalties under the Act. Copyright in various works, including broadcasts, computer programs, and typographical arrangements, has a defined duration after which it becomes part of the public domain. The Patents and Companies Registration Agency (PACRA) is responsible for registering and supervising CMOs in Zambia

Lastly, the adaptation right⁹⁰ permits copyright holders to make derivative works based on their original creations. This includes adaptations for different languages, formats, or mediums. By securing this right, creators can explore new creative avenues while preserving their ownership over the original work. The *Zambian Copyright and Performance Rights Act*⁹¹, grants adaptation

⁸⁷ Copyrights and Performance Act Chapter 406 of the Laws of Zambia

⁸⁸ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 44-53

⁸⁹ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 17

⁹⁰ Copyrights and Performance Act Chapter 406 of the Laws of Zambia Section 17

⁹¹ Copyrights and Performance Act Chapter 406 of the Laws of Zambia

rights to copyright holders of literary, dramatic, musical, and artistic works. This includes the right to translate, modify, or change the form of a copyrighted work, ensuring that the copyright holder retains control over how their work is adapted. The Act protects the rights of copyright holders in their original works and their adaptations, meaning that anyone wishing to create an adaptation of a copyrighted work must first obtain the necessary permission from the copyright holder. The original author typically retains ownership of the copyright in their original work, and the rights to adapt that work are also vested in them. However, the author of the adaptation can have their own copyright in their adaptation, provided it meets the criteria for copyright protection. Adaptation rights are crucial for promoting creative expression and fostering the development of new artistic works based on existing ones. They ensure that the copyright holder's interests are protected while allowing for the evolution and transformation of artistic works.

2.2.6 Acts Constituting Copyright Infringement under Zambian Law

Copyright infringement occurs when a person or entity uses a copyrighted work without the appropriate permissions from the copyright holder.⁹² According to Zambian law, a copyright provides the creator exclusive rights over their work, granting them control over reproduction, distribution, and public performance of their content.⁹³ Infringement, therefore, represents a violation of these exclusive rights, leading to potential legal repercussions for the infringer.

One of the most common examples of copyright infringement is unauthorized reproduction. This occurs when individuals or organizations photocopy books, reproduce musical compositions, or duplicate software without obtaining permission from the copyright owner.⁹⁴ Another prevalent form of infringement involves the distribution of copyrighted material through digital platforms.⁹⁵ The rise of the internet has made it simpler to share content, yet it has also led to an increase in unauthorized distribution. Downloading movies, music, and software illegally, for example, constitutes infringement, as it bypasses the copyright holder's rights and undermines their ability to profit from their creations. This scenario highlights the importance of understanding and respecting copyright in the digital age.

⁹² William R Cornish and David Llewelyn, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (5th edn, Sweet & Maxwell 2003)

⁹³ Copyright and Performance Act Chapter 406 of the Laws of Zambia Section 17

⁹⁴ <http://copyrightservice.com.UK/copyright/p05-copyright-infringement>

⁹⁵ Copyright and Performance Act Chapter 406 of the Laws of Zambia Section 17

Additionally, public performance of music or displaying copyrighted works without permission can also amount to infringement.⁹⁶ Venues such as pubs or weddings that play music without acquiring necessary licenses may face legal action from copyright holders.⁹⁷ It is crucial for individuals and organizations to be aware of these potential pitfalls and ensure compliance with copyright laws to avoid infringement and uphold the rights of creators.

2.2.7 Civil, Criminal and Administrative Remedies for Copyright Infringement.

In Zambia, copyright protection is a vital component of intellectual property law, providing creators with exclusive rights to their works. When these rights are infringed upon, a range of remedies is available to copyright owners to restore their interests and hold infringers accountable. The legal framework includes both civil and criminal penalties, allowing for a comprehensive approach to addressing violations.⁹⁸

The Copyright and Performance Rights Act⁹⁹ in Section 8 provides for copyright protection in musical works and sound recordings. Section 8(3) of the Act¹⁰⁰ states that Copyright will not subsist in a musical work until it is recorded in writing or in some other form. The Zambian Copyright Laws do not provide for the protection of songs that are digital and are uploaded to digital streaming platforms unless they have been written. It points out that musical works must be “recorded in writing or in some other form”. It therefore does not protect on air freestyle works in which some authors may create a new act during interviews.

The Act however, has not given us other forms that constitute a copyright and whether songs in digital formats are protected. The section also points out that copyright subsists in sound recording but still does not address digital sound recordings. Due to the vagueness of the Act and the lack of explicit provision as to whether digital songs are protected and whether the creators of such digital songs will get protection, it may be reasonable to suggest that collecting societies may be able to protect these interests on behalf of artists. The penalties for infringement under this Act are

⁹⁶ Ibid

⁹⁷ W Chibesakunda, 'The Creative Industry: The Biggest Money Earner' *Financial Insight* (7 September 2021) <https://fizambia.com/the-creative-industry-the-biggest-money-earner/> accessed 30 June 2026.

⁹⁸ Copyright and Performance Act Chapter 406 of the Laws of Zambia Section 25

⁹⁹ Copyright and Performance Act Chapter 406 of the laws of Zambia

¹⁰⁰ Ibid

specified in Section 28¹⁰¹ of the Copyrights and Performance Act (Amendment) covers a variety of protected works which actionable, however, still silent on the downloading of music on the internet. This makes it difficult for the law enforcement agents and copyright holders to adequately prosecute the offenders. Looking at the high levels of piracy, there is need that the penalty for the infringement of copyright is most stringent. In present Zambia, all music is now available on the internet and free for anyone to download, with very few artists getting paid by these online platforms.¹⁰²

One of the primary civil remedies available to copyright owners is the pursuit of damages.¹⁰³ This allows the aggrieved party to seek compensation for losses incurred as a result of the infringement. Damages can be calculated based on the actual loss suffered or on profits made by the infringer attributable to the unauthorized use of the copyrighted work.¹⁰⁴ In some instances, statutory damages may also be pursued, providing a predefined compensation amount set forth in the law.

In addition to financial compensation, copyright owners may also seek injunctive relief. This remedy involves a court order that requires the infringer to cease their unlawful activities immediately. Injunctions serve to prevent further infringement and protect the integrity of the copyright owner's work.¹⁰⁵ This assertion was emphasized by the court in the case of **Airtel Holdings Limited and Others v Patents and Companies Registration Agency and Another**,¹⁰⁶ that an injunction is awarded when the plaintiff demonstrates that they will suffer substantial prejudice or hardship in any material respect if they were confined to the remedy of damages. These measures can be particularly critical in preventing ongoing harm and preserving the creator's rights while legal proceedings are underway.

Criminal penalties may also be applicable in cases of copyright infringement known as piracy. The Zambian legal system recognizes that certain infringements can rise to criminal levels, potentially leading to fines and imprisonment for the infringer.

¹⁰¹ Copyright and Performance (Amendment) Act No. 25 of 2010 Section 28

¹⁰² Nehal Wagle, 'Copyright in Digital Era' (12 May 2019) *iPleaders* <https://blog.ipleaders.in/copyright-digital-era/> accessed 30 June 2026.

¹⁰³ Copyright and Performance Act Chapter 406 of the Laws of Zambia Section 25(2)

¹⁰⁴ Ewan McKendrick, *Contract Law* (13th edn, Red Globe Press 2019) 66

¹⁰⁵ Ewan McKendrick, *Contract Law* (13th edn, Red Globe Press 2019) 67

¹⁰⁶ *Airtel Holdings Ltd and Others v Patents and Companies Registration Agency and Another* (HP 1216 of 2010) [2012] ZMHC 45.

*Any person who is guilty of piracy or any crime connected with or relating or akin to piracy is liable to be tried and punished according to the law of England for the time being in force.*¹⁰⁷

This serves as a deterrent and reinforces the seriousness of respecting intellectual property rights. The possibility of criminal prosecution underscores the importance of upholding copyright laws and protecting the rights of creators across the nation.

Zambian copyright owners have a variety of remedies at their disposal to combat infringement. Through civil actions for damages and injunctive relief, alongside potential criminal penalties, the legal framework aims to support and enforce the rights of creators, fostering a culture of respect for intellectual property in Zambia.

2.3. The Defense of Ignorance of the Law in Copyright Infringement

The general rule in law is that ignorance of the law is not a defense. However, the Copyright and Performance Act waived this rule and recognized ignorance as a defense. It is almost impossible for one to pirate on another person's work without the knowledge of infringement. The law needs to be written with zero tolerance attitudes to ignorance. It is common knowledge that ignorance of the Law is not an excuse or defense. In the case of **Performing Rights Society v Hickeyan**¹⁰⁸ application for injunction and claim for damages for infringement of copyright was made. The defendant played three musical records in public without obtaining a license from the plaintiff who was the owner of the copyright. The court found that this infringement was for one day; the defense raised that the infringement was done innocently and under mistake. The judgment in the above stated case allows copyright infringers to walk away unscathed, as long as they did it without the intention to deprive. The law must be in a position of deterring and not tolerate ignorance as a defense of copyright infringement.

2.4 Institutions Involved in the Protection and Enforcement of Copyright and Related Rights in Zambia

The administrative role of the State in the field of copyright and related rights varies greatly from country to country. A minimum role generally implemented in a government structure is the policy

¹⁰⁷ Penal Code Act Chapter 387 of the Laws of Zambia, Section 73

¹⁰⁸ Performing Rights Society v Hickeyan (1979) ZR 27 (HC).

level function, monitoring legislation, and enforcement strategies.¹⁰⁹ In addition, a number of administrative tasks may be performed, depending on the role attributed by national legislation to public administration. In Zambia, some of the institutions that are involved in the protection and enforcement of copyright and related rights are the copyright holders, The High Court of Zambia, The Subordinate Courts and Zambia Police. Copyright holders through an attorney can enforce copyright law against infringers by taking legal action either in civil or criminal proceedings. These matters can either be taken to the Subordinate Court or the High Court. The court determines whether infringement has occurred, assessing the extent of the infringement, and the appropriate remedies. The court's decisions are binding and enforceable, ensuring that the copyright owner's rights are protected. The Zambia Police Service is an institution whose role cannot be left out in the enforcement of copyright laws. The Zambia Police Service has created a Department known as the Intellectual Property Unit, whose functions are especially to:

- Investigate cases of copyright infringement such as piracy.
- Enforcement of legal action against infringers, often leading to prosecutions.
- Provide guidance to various stakeholders on copyrights matters, including businesses and government agencies.
- Conduct sensitization campaigns to raise awareness about the dangers of counterfeiting and piracy, as well as the importance of copyrights.
- Collaborate with other government agencies, such as the Patents and Companies Registration Agency (PACRA), and organizations like the Zambia Reprographic Rights Society (ZARRSO), to enhance enforcement efforts and protect copyright holders.

2.5 CONCLUSION

In summary, copyright protection laws in Zambia provide a structured legal framework aimed at safeguarding the rights of creators and intellectual property holders. As discussed throughout this

¹⁰⁹ Yusuf Perwej, Firoj Parwej and Asif Perwej, 'Copyright Protection of Digital Images Using Robust Watermarking Based on Joint DLT and DWT' (2012) 3(6) *International Journal of Scientific & Engineering Research* 1.

chapter, these laws protect literary, artistic, musical and other eligible works, thereby ensuring that creators maintain control over the use, reproduction and distribution of their original works. The significance of understanding these laws cannot be overstated, particularly in the digital era where copyrighted content is increasingly vulnerable to unauthorized use and infringement.

Moreover, it is essential for creators to be proactive in managing and protecting their intellectual property rights. This includes familiarising themselves with the legal framework governing copyright protection in Zambia, particularly the Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia, as amended by the Copyright and Performance Rights (Amendment) Act No. 25 of 2010. Although copyright protection arises automatically upon the creation of an original work, registration remains important as it provides evidentiary value and strengthens the enforcement of copyright in the event of disputes.

Furthermore, creators should understand the importance of licensing arrangements and collective management organisations, as these facilitate the lawful exploitation of copyrighted works while ensuring that creators receive appropriate remuneration. Such mechanisms also provide greater certainty and protection for both copyright owners and users of protected works.

Ultimately, the legal framework governing copyright protection in Zambia plays a significant role in promoting creativity, innovation and economic development. However, as technological developments continue to transform the manner in which copyrighted works are created, distributed and exploited, there is a need to assess whether the existing legal framework remains adequate to address the challenges presented by the digital environment. The next chapter therefore examines the impact of the digital era on copyright protection in Zambia and analyses the extent to which the current legal framework responds to these emerging challenges.

CHAPTER THREE

ASSESSMENT OF THE ADEQUACY OF ZAMBIA'S COPYRIGHT LEGAL FRAME WORK IN ADDRESSING CHALLENGES OF THE DIGITAL ERA

3.0 Introduction

The development of science, technology and culture is impossible without corresponding protection of the intellectual property rights of creators. One of the problems faced in Zambia is the illegal use of intellectual property, namely piracy, which easily crosses national borders through satellite broadcasting and the global internet. The unauthorised use of books, films, musical works, computer programmes and games has turned into a profitable illegal business, attracting not only those seeking to make easy money but also organised criminal groups whose activities have an international character.

The solution to the problem of offences against copyright is extremely important but complex, as users continue to promote piracy by purchasing cheap and, in many cases, low-quality products. The question to be asked is whether the amendment of more provisions under Chapter 406 of the Laws of Zambia is the solution to these problems and what effect the use of holograms will have on the protection of copyright works and the enforcement of copyright in the digital age. Another question is whether the problem lies with the law, the enforcement mechanisms, or both. This chapter examines the effects of the Copyright and Performance Rights Act, Chapter 406 of the Laws of Zambia, together with the Copyright and Performance Rights (Amendment) Act No. 25 of 2010, and assesses their adequacy in addressing the challenges posed by the digital era.

3.1 Challenges Posed by the Digital Era to Copyright Protection in Zambia

The digital age presents significant challenges to copyright protection and enforcement in Zambia, including the ease of digital reproduction and dissemination, the difficulty of tracing infringement, and the need for updated legislation to address online activities. While Zambia has laws addressing copyright, they may not fully address the complexities of the digital landscape, particularly regarding online music streaming and digital rights management, according to a study on Copyright Laws Governing Music Streaming in Zambia, Kenya, and the United States.¹¹⁰ The

¹¹⁰ Anamela T, Kalifungwa C, Nguluwe C and Muhyila MC, 'A Comparative Analysis of Copyright Laws Governing Music Streaming in Zambia, Kenya, and the United States' (2024) 4(3) *Journal of Modern Law and Policy* 90–108

study recommends measures like digital rights management and enhanced enforcement by copyright holders and interested third parties and the courts.

Copyright protection faces significant challenges in the digital age due to the ease of copying, sharing, and distributing content online, leading to widespread digital piracy and infringement. Enforcement is difficult due to the global reach of the internet, making it challenging to identify infringers and take legal action, especially when copyright enforcement is weak. Zambia is facing digital copyright challenges. Identifying and tracing the source of digital copyright infringement can be challenging because some online platforms are run by unidentified individual using false names. Zambia's copyright law may not fully address specific online activities like digital music streaming. Enforcing copyright rights in the digital space can be complex due to the ease of online sharing and the potential for international infringement. Too many people may share the content, making it complex for institutions like the Zambia Police to do their job.¹¹¹ Finding the right balance between protecting copyright and promoting freedom of information and online access is crucial.

Ease of reproduction and distribution. The digital age makes it incredibly easy to copy, manipulate, and distribute copyrighted material online. Unlike other formats, once a work is made in digital forms, it can be reproduced rapidly, with little or no cost without loss of quality. Each copy in turn can be further reproduced again without loss of quality, in this way, a single copy of work in digital form can supply the needs of millions of users. This results in the author losing economic of the work.¹¹² Another notable characteristic of the digital technology is the rapid manner in which information are disseminated across digital network. Thus, a single individual may cause an information to go viral within the shortest possible time in respective of the fact whether the information is correct or not.¹¹³

¹¹¹ Albert Olu Adetunji and Nosakhare Okuonghae, 'Challenges of Copyright Protection in the Digital Age: The Nigerian Perspective' (2022) *Library Philosophy and Practice* 1.

¹¹² Anamela T, Kalifungwa C, Nguluwe C and Muhyila MC, 'A Comparative Analysis of Copyright Laws Governing Music Streaming in Zambia, Kenya, and the United States' (2024) 4(3) *Journal of Modern Law and Policy* 90–108

¹¹³ Albert Olu Adetunji and Nosakhare Okuonghae, 'Challenges of Copyright Protection in the Digital Age: The Nigerian Perspective' (2022) *Library Philosophy and Practice (e-Journal)* 7159, 1.

Cheap Storage Devices are another interesting feature of digital technology, the ability of digital storage devices to store large document within a small space. Thus, a large document may be stored as a few kilobytes. Digital storage devices get denser with the passing of each year, making possible for individuals to store large quantities of materials in small space. For instance, an entire library collection can be stored in a single or multiple folder within a personal computer. Smart phones, satellite networks, and PDF documents are some common example of digitalisation of creative work, making it possible for music to be compressed and repackage without loss of sound quality. This, has indeed revolutionised the arts industry however it is also a detriment.¹¹⁴ This means a number of artists can have their copyrights infringed by millions of people. The Copyrights Amendment Act in Section 28¹¹⁵ prohibits the duplication of copyrighted works for the purposes of hiring, selling or distribution and it is a punishable offense by penalty, imprisonment or both.

The digital age offers advantages for copyright protection in Zambia by enabling new technologies to help prevent infringement, facilitate enforcement, and promote awareness. The digital age provides enhanced prevention and detection of infringement. Digital rights management and watermarking technologies can control access and identify unauthorized copies, while online platforms can be used to register content and raise awareness about copyright.¹¹⁶ It also offers facilitated enforcement and monitoring such as online platforms like websites and social media platforms can be used to register content, making it easier to track and identify infringements and increased awareness for example online campaigns and educational resources can raise awareness about copyright law and its importance. The introduction of the Cyber Security Act¹¹⁷ will enhance the scope of copyright protection on online platforms. The digital era has created new opportunities for creators. The digital age allows creators to reach wider audiences and access new revenue streams through online platforms. It has also fostered Global Collaboration. Online tools facilitate collaboration between creators across geographical boundaries. These international online collaborations are protected by the TRIPS Agreement,¹¹⁸ a landmark international agreement that

¹¹⁴ Yusuf Perwej, Firoj Parwej and Asif Perwej, 'Copyright Protection of Digital Images Using Robust Watermarking Based on Joint DLT and DWT' (2012) 3(6) *International Journal of Scientific & Engineering Research* 1.

¹¹⁵ Copyrights Performance (Amendment) Act No. 25 of 2010 of the Laws of Zambia

¹¹⁶ <https://sulleelaw.com/navigating-copyright-in-the-digital-age/>

¹¹⁷ Cyber Security Act No. 3 of 2025 of the Laws of Zambia

¹¹⁸ TRIPS Agreement https://unctad.org/system/files/official-document/ite1_en.pdf

sets minimum standards for intellectual property protection in trade-related areas covering a wide range of intellectual property, including copyrights.

3.2 Adequacy of Section 28 in Addressing Digital Copyright Infringement

Section 28 of the Amendment provides for more provisions under which a person can commit an offence during the subsistence of copyright in the work. More provisions in Section 28 of the Amendment have been included and the effect is that during the subsistence of copyright works state that an individual must not unlawfully use or combine copyrighted music and visual works without the owner's permission, unless they can prove in court that they acted in good faith and had no reason to believe they were infringing copyright. Otherwise, it is considered an offence. Based on this provision, it can be seen that the amendment to the Act was in line with the happenings world over on issues concerning intellectual property.

The inclusion of more sections in the principle Act under Section 28, therefore seeks to protect intellectual property in general and copyright in particular, and ensure that it conforms to international norms and best practices such as the TRIPS Agreement and the Berne Convention. Before the Amendment, the Principle Act was last amended in 1994, rendering the legislation irrelevant in the world of fast changing technological advancements. The levels of piracy had not only increased, but counterfeits had also become sophisticated and therefore the need for an updated law to deal with such infringement cases. Even with the introduction of the new Amendment, it can be seen that the levels of piracy keep increasing. These infringement copies are not only confined to audio and video products, they extend to anything that is copyrightable therefore, the law needs to be frequently updated according to the development of technology.

To further discuss some of the present problems that Zambia is facing particularly in the area of copyright infringement, in particular piracy.¹¹⁹ The majority of the musicians are struggling to make a living because their music is being illegally downloaded, duplicated and redistributed through the illegal copying of their works immediately it is released on the market, and this primarily affects the Zambian economy.¹²⁰ On this premise, it can be seen that the inclusion of more sections to the Copyright Act by the Amendment does not contribute positively to the

¹¹⁹ Musamvu K, 'MIBs: Copyright a Tool for Development' (2010)

¹²⁰ Ibid

protection and enforcement of Copyright laws in the sense that the law has retained the proviso that states that one must satisfy the court that they acted in good faith and had no reasonable grounds for supposing that copyright would or might be infringed leading to the commission of an offence.¹²¹

It is almost impossible for one to pirate another person's work without the knowledge of infringement. The law needs to be amended with zero tolerance. It is difficult for the owner of the copyright works to prove an infringement when a person states before the court that they acted in good faith and had no reasonable grounds that copyright would or thereby be infringed. It provides for an effective defence that might be used by unscrupulous people to escape conviction. In this regard, this section should be revised ensuring that copyright works are protected and enforced whenever there is an infringement. It is because of the piracy scourge that the government through the Ministry of information established the Anti- Piracy Crack Squad in 2003, whose mandate is to monitor the implementation of the Copyright law in the Country. This taskforce also serves as an advisory body to the government on all copyright and related matters.¹²²

3.3 The Role and Effectiveness of Security Holograms in Copyright Protection

Section 38A of the Copyrights Performance Act (Amendment)¹²³ provides for the use of security holograms in relation to sound recordings and cinematograph films intended or offered for sale, rental, hire, lending or otherwise distributed to the public or for commercial purposes within the republic. A hologram is a three-dimensional image reproduced from a pattern of interference produced by a split coherent beam of radiation such as a laser.¹²⁴ The hologram device shall be affixed to every cassette, disc, or other medium in which the sound recording or film is embodied, in such a manner as to make the hologram visible to prospective buyers. A hologram is regarded as a tool of fighting piracy and counterfeits.¹²⁵ The Copyright and Performance Rights Act¹²⁶ has

¹²¹ Copyright and Performance Rights (Amendment) Act No. 25 of 2010 o

¹²² Zambia Intellectual Property Help Desk https://intellectual-property-helpdesk.ec.europa.eu/document/download/1f179ab4-a1af-48d2-b912-e49418adeeee_en#:~:text=SECTION%202:%20OVERVIEW%20OF%20NATIONAL,the%20owner%20of%20the%20copyright.

¹²³ Copyright and Performance Rights (Amendment) Act No. 25 of 2010, Section 38A

¹²⁴ <https://www.merriam-webster.com/dictionary/hologram>

¹²⁵ Copyrights and Performance Rights (Amendment) Act No. 25 of 2010 of the Laws of Zambia

¹²⁶ The nature of Holograms www.Mcconnellinternational.com

also taken into account the challenges that law enforcement officers face in enforcing the law on copyright and related rights. Among the challenges officer's face is how to distinguish an original copy from a pirated or counterfeited product. The hologram is a three-dimensional security sticker that is affixed on audio and video products before they enter the market to help the enforcers to distinguish such products from the original ones.¹²⁷ The hologram is expected to greatly reduce incidences of piracy and counterfeits in Zambia. Clearly, pirated and counterfeited goods can be effectively addressed by border measures. Counterfeiting in Zambia "has successfully hindered growth of national productivity through legal channels, which consequently suffers economic losses and is unable to generate employment opportunities".¹²⁸

The Amendment to the Copyright and Performance Rights Act has revised the court of jurisdiction for copyright infringement matters and has included the Subordinate Courts. Having matters to be dealt with by the High Court alone has been a hindrance to speedy disposal of copyright infringement cases. The High Court is usually congested and cases take long to be disposed of, as shown by the statistics of the Intellectual Property Unit. It is, therefore, hoped that the revision of the Act to include other courts will speed up the disposal of such cases.¹²⁹ The Amendment to the principle Act has also revised the rank of police officers to handle cases of copyright infringement cases. Previously, it was only police officers above the rank of inspector who could deal with such cases, but this has now been broadened to include other officers such as constables. Our artists cannot be in all parts of the country to police the use of their works. The current Act only recognises the owner or his or her representative to complain on their behalf for the police to institute an action for infringement. The Amendment to the principal Act has, therefore, included the office of the Attorney-General to be the copyright holder for purposes of prosecution of an offence under this Act.¹³⁰ This in itself can be considered as a positive move by the law makers in that it broadens the representation of the copyright owners in ensuring that their rights are enforced whenever there is an infringement.

¹²⁷ Copyright and Performance Right (Amendment) Act No. 25 of 2010 Section 38A

¹²⁸ Pier Luigi Roncaglia, *Handling of Counterfeit Goods* (Paper presented on 22 November 2005) 3

¹²⁹ Copyright and Performance Rights (Amendment) Act No. 25 of 2010 Section 2(a)

¹³⁰ Copyright and Performance Rights Act (Amendment) No 25 of 2010

The measure in the Amendment will not only help fight piracy, but also help property right owners to be inspired and create more works which will increase the confidence of investors in this sector. It is, therefore, necessary that a neutral organisation, such as the Zambia Music Copyright Protection Society (ZAMCOPS) or the Zambia Bureau of Standards be the custodian of the hologram. Even with the use of holograms for security purposes, it can be seen that the process involved is not implemented and this is owing to the fact that not adequate funds have been released by the government to ensure that the holograms are made effective. It can also be seen that Zambia is lagging behind in the sense that the holograms will only be used in so far as the CDs and other sound recordings and also cinematography films. This means that both the artist and the government make huge losses as a result of piracy warranting an immediate need to review the copyright laws in the country.

It can be said that Section 38A is insufficient because in protecting copyright laws because it is made in such a way that it does not cater for all the categories of works in which copyright subsists as per Section 8 of the principle Act¹³¹ which categorises works in which copyright subsists. The hologram is only restricted to CDs, other sound recordings and also cinematography films. Is the problem the law or is it the enforcement mechanisms that are put in place in protecting copyright works?

3.4 Institutional and Legal Challenges in Addressing Digital Copyright Infringement

Bah's¹³² comparative study on copyright enforcement in Sierra Leone, Kenya, Ghana, Nigeria and South Africa is instructive in demonstrating that the effectiveness of copyright protection in Africa depends not merely on the existence of legislation, but on the strength of the institutions responsible for enforcement. Bah¹³³ observes that many African jurisdictions continue to experience weak enforcement because of inadequate institutional capacity, limited public awareness, insufficient specialised training for enforcement officers, and poor coordination between copyright offices, law enforcement agencies and collective management organisations. This analysis is relevant to Zambia because similar challenges affect the enforcement of copyright

¹³¹ Copyright and Performance Act Chapter 406 of the Laws of Zambia, Section 8

¹³² A Bah, *The Implementation and Enforcement of Copyright Law in Sierra Leone: A Comparative Analysis with Kenya, Ghana, Nigeria and South Africa (LLM thesis, Central European University 2025)*.

¹³³ Ibid

laws, particularly in the digital environment where infringement is often rapid, borderless and difficult to detect. Accordingly, the enforcement of copyright in Zambia requires not only statutory remedies but also well-resourced institutions capable of monitoring infringement, investigating complaints and ensuring that civil, criminal and administrative remedies are effectively implemented.

In Zambia, the administration of copyright consists of national copyright offices; training of stake holders like the law enforcement officers, artists and users of copyrighted works; and the registration of copyright works which includes the Zambia Music Copyright Protection (ZAMCOPS), Zambia Reprographic Rights Society (ZARRSO).¹³⁴ In Zambia, responsibilities for intellectual property enforcement are dealt with by the Zambia Police Intellectual Property Unit (IPU). The growing danger from crimes committed against computers, or against information on computers, is garnering attention in national capitals. This lack of legal protection means that businesses and governments must rely solely on technical measures to protect themselves from those who would steal, deny access to, or destroy valuable information.¹³⁵ Outdated laws and regulations, and weak enforcement mechanisms for protecting networked information create an inhospitable environment in which to conduct business within a country and across national boundaries. Inadequate legal protection of digital information can create barriers to its exchange and stunt the growth of commerce. As business expands globally, the need¹³⁶ for strong and consistent means to protect networked information will grow. The Copyright and Related Rights is administered by the Registrar of Copyright in the Ministry of Information and Broadcasting. The Zambian situation is such that it has a reasonably well established legal system and intellectual property office.¹³⁷

Regardless of a number of laws that are enacted in protecting intellectual property laws in the digital age, it can be seen that there are a lot of challenges that enforcers of such laws face. The use of holograms as security entails that the copies of such works will be more expensive further

¹³⁴ Musamvu K, 'MIBs: Copyright a Tool for Development' (2010).

¹³⁵ Cyber Crime and Punishment: "An overview of archaic laws threatening global information." (2020) www.mcconnellinternational.com

¹³⁶ M B Wallerstein, M E Mogee and R A Schoen, *Global Dimensions of Intellectual Property Rights in Science and Technology* (National Academies Press 2017) 34.

¹³⁷ Ministry of Commerce, Trade and Industry, *Revised National Intellectual Property Policy* (Government of the Republic of Zambia 2020).

encouraging users to buy cheap pirated products. It is for this reason that the law should be enacted in a manner that has no provision that provides for ignorance of the law as an infringement of copyright works as is stated in the proviso of section 28 of the Copyright and Performance Rights Amendment No. 25 of 2010.

Collective management copyright works are increasingly delivered in digital form via global networks such as the internet. As a result, the collective management of copyright and related rights by public, semi-public and market sector entities has to be re-engineered to take advantage of the efficiency gains offered by information technology.¹³⁸ The ever increasing opportunities offered to the right holders by the internet and the advent of multimedia productions are affecting the conditions of protection, the exercise and management of copyright and related rights and also the enforcement right. In the online world, the management of rights is taking on a new dimension. Protected works are now digitised, compressed, uploaded or downloaded, copied and distributed on the internet to any part in the world. The expanding power of this network allows mass storage and online delivery of protected material. The possibility of downloading the contents of a book, or listening to and recording music from cyberspace is now a reality as seen in the case of **World Vision Zambia Limited v Banda**¹³⁹ where the courts held that the use of the contents of another's creative works without their express consent, for the purposes of creating online content, amounts to Copyright infringement.

While this presents immeasurable opportunities, there are also many challenges for owners, users and collective management organisation. With the advancement in the technology, and the added vulnerability from downloading information on the internet, makes it difficult for a country like Zambia to fully protect the owners of Copyright works from the infringement of their works by third parties in that it is very hard for the country to keep up with the technological advancements in this digital age. It is important to note that the problem in enforcing the copyright laws is mainly attributed to the outdated laws for example the last amendment of the Copyrights Act was 15 years ago, and regulations, and weak enforcement mechanisms for protecting networked information.

¹³⁸ *World Intellectual Property Organization, Collective Management of Copyright and Related Rights* (WIPO 2016).

¹³⁹ *World Vision Zambia Limited v Banda* [2021] ZMCA 95 (20 August 2021).

The inadequate legal protection of digital information is also seen to be another barrier to growth of the economy. It is thus both the law which is seen to have a number of loopholes as well as the weak enforcement mechanisms that are a problem in enforcing the copyright laws. There is need to ensure that the law is enacted in such a way that there are no lacunas and from this, it is important for the law to be revised and amended so as to ensure that copyright works are protected and enforced effectively. Effective mechanisms must also be put in place to ensure that copyright works are protected and such mechanisms must be in line with the advancement in technology in this day and age.

3.5 Conclusion

In conclusion, this chapter has demonstrated that the protection of intellectual property rights in Zambia is fundamental to promoting creativity, innovation and economic development in the digital era. Despite the existence of a legal framework for copyright protection, significant challenges remain, including widespread digital piracy, rapid technological developments, limited institutional capacity and inadequate enforcement mechanisms. These challenges undermine the effective protection of authors and other copyright owners and threaten the growth and sustainability of the country's creative industries.

The chapter has further established that addressing these challenges requires a multifaceted approach comprising legislative reform, strengthened institutional and enforcement capacity, increased public awareness, and the adoption of appropriate technological protection measures, such as digital rights management technologies, holograms and other anti-counterfeiting mechanisms. Equally important is the need for coordinated collaboration among government institutions, law enforcement agencies, collective management organisations and other stakeholders to ensure that copyright laws remain responsive to the evolving digital landscape.

Ultimately, the effectiveness of copyright protection in Zambia depends not only on the adequacy of the legislative framework but also on the practical implementation and enforcement of the law. Against this background, the next chapter examines the enforcement of copyright laws in Zambia by analysing the available civil, criminal and administrative enforcement mechanisms, assessing

their effectiveness in combating copyright infringement in the digital environment, and identifying the challenges affecting their implementation.

CHAPTER FOUR

AN ANALYSIS OF THE EFFECTIVENESS OF COPYRIGHT ENFORCEMENT MECHANISMS IN ZAMBIA

4.0 Introduction

The Copyright and Performance Rights Act divides Copyright enforcement in four categories: conservatory or provisional measures, civil remedies, criminal remedies, criminal sanctions and measures to be taken at the border.¹⁴⁰ The enforcement of intellectual property rights could be considered by examining the different remedies that an intellectual property right owner is able to seek upon realising that the rights are being infringed upon. Conservatory or provisional measures are measures that prevent the entry of infringing copyright works that are protected by copyright laws into the entry of channels such as online portals, borders and airports, as well as imported goods after clearance by customs and to preserve relevant evidence concerning the alleged infringement.¹⁴¹

¹⁴⁰ Copyright and Performance Rights Amendment No. 25 of 2010, Part III

¹⁴¹ Copyright and Performance Rights Amendment No. 25 of 2010, Section 26

Civil remedies are remedies that look at the compensation of the copyright owner for the economic injury that is suffered because of the infringement and this is in the form of monetary damages. This forms an effective means to deter individuals from further infringement and in the case of **Mubanga v Chasemah and Advertising Media Ltd**,¹⁴² where a model's photographic material was used for commercial purposes without her consent was found to be copyright infringement and the court ordered the infringer to destroy the materials that have been used for copyright infringement. An injunction may also be issued against copyright infringement, failure to comply with the order subjects the infringer to a payment of a fine as seen in.¹⁴³ The effects of an injunction are that the infringer is ordered to cease infringement and prevents future infringements. In the case of **Chicken Slice Zambia Limited v Slice Investments Limited**¹⁴⁴, where there was a dispute in the use of the word "slice" to run a food production business, an injunction was awarded to the defendant based on their counter offer that they had copyright registration barring the plaintiff from using the word "slice" to sell groceries or food. Criminal sanctions intend to punish those who wilfully infringe copyright works and related rights on for the purposes of making a profit, and like civil remedies, to deter further infringement. However, most copyright owners in Zambia prefer civil litigation over criminal justice because of the higher awards civil remedies offer. The purpose of punishment is served by the imposition of substantial fines, and by sentences of imprisonment to those applied to crimes of a similar nature.¹⁴⁵

Measures to be taken at the border deal with administrative actions taken by the customs authorities rather than by the courts. It enables the copyright owner to prohibit the importation of infringing copies as well as suspending the release into circulation of goods which are suspected of infringing copyright.¹⁴⁶ There is need for there to be a prima facie evidence of the infringement.¹⁴⁷ Under the Copyright and Performance Rights Act,¹⁴⁸ copyright arises even though an application for protection has not been made because protection exists as soon as the work is written or comes into being. What this means is that copyright arises automatically upon creation. Any infringement

¹⁴² *Mubanga v Chasemah and Advertising Media Ltd* (HPC 524 of 2009) [2011] ZMHC 6 (23 February 2011).

¹⁴³ Copyright and Performance Rights Amendment No. 25 of 2010, Section 25

¹⁴⁴ *Chicken Slice Zambia Limited v Slice Investments Limited* (2018/HPC/0423) [2020] ZMHC 473 (20 January 2020).

¹⁴⁵ Copyright and Performance Rights Amendment No. 25 of 2010, Section 28

¹⁴⁶ Matthew R Taylor, 'Border Measures' in Andreas Schloenhardt and others (eds), *UN Convention against Transnational Organized Crime: A Commentary* (Oxford University Press 2023)

¹⁴⁷ Copyright and Performance Rights Amendment No. 25 of 2010, Section 27

¹⁴⁸ Copyright and Performance Rights Chapter 406 of the Laws of Zambia, Section 8

or interference in copyright is actionable in court at the suit of the copyright owner. In a suit for copyright infringement,¹⁴⁹ the plaintiff need not provide proof for actual damages.

International copyright is covered under treaties or conventions between nations requiring their signatories to respect, in their own countries, the copyright of nationals of other signatories. These international statutes are the Berne Convention, WIPO, ARIPO, TRIPS and the UCC. The Berne Convention is the oldest treaties on International Copyright law and all other treaties and conventions are derived from it. Article 5 of the Berne Convention guarantees automatic rights for all copyright works. Article 16 ensures that Article 5 is protected as it gives provision for seizure and injunction of infringed copyright works. There is no general principle of international law requiring such protection. In Zambia, such conventions or treaties are regarded as part of the law of the land.¹⁵⁰

4.1 Criminal Enforcement of Copyright in Zambia

The fundamental issue is the mere fact that intellectual property laws do not generally criminalise intellectual property infringement. However, what is observed is that whenever there is an overlap between civil and criminal liability, the right holder has a choice whether to pursue one or the other route.¹⁵¹ This was also mentioned by the court in **In Mind Enterprises Limited and Others v Stripes Zambia Limited and Another**¹⁵² where there was a copyright claim for the use of advertising material which was registered and an injunction was awarded to the appellants by the courts. In light of this, Article 61 of TRIPS makes criminal procedures and penalties that include imprisonment and monetary fines sufficient to provide a deterrent obligation. The Copyright and Performance Rights Act provides for certain criminal offences, such as piracy, for copyright infringement.¹⁵³ Zambian criminal law and procedure on intellectual property infringement is largely confined to counterfeit and piracy.

The local police and the Director of Public Prosecution office (DPP)¹⁵⁴ have jurisdiction over any matter relating to any alleged crimes. However, what happens in reality is that the police do not

¹⁴⁹ Copyright and Performance Rights (Amendment) Act No. 25 of 2010, Section 25(3)

¹⁵⁰ Copyright and Performance Rights Chapter 406 of the Laws of Zambia Section 2

¹⁵¹ Hepburn SJ, *Principles of Property Law* (3rd edn, Routledge-Cavendish 2006)

¹⁵² *In Mind Enterprises Limited and Others v Stripes Zambia Limited and Another* [2013] ZMHC 37

¹⁵³ George M Kanja, *Intellectual Property Law* (UNZA Press 2006).

¹⁵⁴ Constitution of Zambia (Amendment) Act No 2 of 2016, art 56.

execute their duties in enforcing copyright law, notwithstanding the fact that they are charged with the duty to investigate and reasonably prosecute criminal matters in conjunction with the DPP's office, leading in excess, uncontrolled infringement. Some of the reasons that are advanced are that penalties stipulated in the law are weak and law enforcement cannot effectively deter people from engaging in illegal intellectual property businesses of selling replicas of copyrighted work. Most individuals that are involved in the selling of pirated materials anticipate a fine or a suspended sentence and not imprisonment. In the case of **Amanita Premium Oils Ltd v Microsoft Corporation (Lusaka High Court 2001) (Unreported)**,¹⁵⁵ there was overwhelming evidence of piracy and the accused was found guilty and was ordered to pay \$13 901 for the illegal use of Microsoft software. This case is a landmark case in software copyright infringement as it was the first in the country. Ineffective punishment means that the levels of piracy will keep increasing owing to the fact that the culprits are rarely criminalised, rather they get a fine or injunction. In this vein, Zambia has a comprehensive legal criminal procedure and institutions that it could use to effectively curb the high levels of piracy.

4.2 Civil and Administrative Enforcement Mechanisms for Copyright Protection

A number of remedies for copyright infringement are provided under Section 25 of the Copyright and Performance Rights Act¹⁵⁶ such as an injunction, damages, account for profits and delivery up and destruction. It states that such an infringement is actionable in the court at the suit of the owner of the copyright. The remedies for copyright infringement are the same as those that are available for the infringement of any other property right. One common example is an Injunction as established in the case of **Anton Piller KG v Manufacturing Processes Ltd.**¹⁵⁷ The remedy has subsequently been adopted across numerous common law jurisdictions as an exceptional ex parte search and preservation order designed to prevent the destruction or concealment of evidence, particularly in intellectual property disputes. Nevertheless, its scope and application differ across jurisdictions, with some countries replacing the common law remedy with statutory search orders while others continue to apply the original doctrine. It is important to note that Zambia is endeavouring to provide a fair and equitable environment by the courts in the manner it handles its civil proceedings to deliver justice for copyright infringement. Principles on Impartiality by the

¹⁵⁵ *Amanita Premium Oils Ltd v Microsoft Corporation (Lusaka High Court, 2001) (unreported)*

¹⁵⁶ Copyright and Performance Rights Amendment No. 25 of 2010 Section 25

¹⁵⁷ *Anton Piller KG v Manufacturing Processes Limited* (1976) Ch 55

courts are strictly adhered to. In this respect, it can be seen that Zambia is seen to be striving to achieve the remedies under Section 45 of the TRIPS Agreement which pertains to damages in the context of intellectual property rights enforcement. It mandates that judicial authorities have the power to order infringers to pay damages to right holders, compensating them for the injury caused by the infringement. This section also allows for the possibility of pre-established damages, where the amount is determined in advance. It is important to note that in an action for copyright infringement, proof of actual damage shall not be needed.¹⁵⁸ An individual can pray to the court in the event of infringement of copyright laws pending the full determination of the case and this was exercised in the case of **Manal Investment Limited v Lamise Investment Limited**.¹⁵⁹ The case was an appeal against the High Court's refusal to grant an injunction awaiting the final judgment on the Appellants case for Copyright Infringement. For a successful application for an interim injunction, it must be established that there is a threat or apprehended injury.

The courts may issue out an order that is commonly known as an Anton Pillar Order for the search and seizure and the Mareva injunction to prevent the defendant from removing or disposing off his assets.¹⁶⁰ An Anton Pillar order is a court order that allows a party in a civil case to enter the premises of another party and seize relevant documents and evidence without prior warning.¹⁶¹ This is done to prevent the destruction or concealment of evidence that is crucial to the case. Anton Pillar orders are typically used in cases involving intellectual property rights, confidential information, and other situations where evidence might be at risk. The High Court in Zambia granted an Anton Pillar order in the case of **Hot FM v Changwe and Yar FM Limited**¹⁶² in order to investigate if the Plaintiff's interviews were used without consent by the Defendant to create content. Whereas a Mareva Injunction, also known as a freezing order, is a court order that prevents a defendant from disposing of or hiding their assets, typically during a legal dispute.¹⁶³ This is to ensure that if the plaintiff wins the case, the defendant will have assets available to satisfy the

¹⁵⁸ William R Cornish and David Llewelyn, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (5th edn, Sweet & Maxwell 2003) 74

¹⁵⁹ *Manal Investment Limited v Lamise Investment Limited* (SCZ 1 of 2001) [2001] ZMSC 3 (17 January 2001)

¹⁶⁰ *Ibid*

¹⁶¹ Kern Alexander, 'The Mareva Injunction and Anton Piller Order: The Nuclear Weapons of English Commercial Litigation' (1997) 11(3) *Florida Journal of International Law* 487.

¹⁶² *Hot FM v Changwe and Yar FM Limited* (HPC 3 of 2010) [2012] ZMHC 87

¹⁶³ *Ibid*

judgment. The injunction is granted when there's a risk that the defendant might try to avoid paying a potential judgment by moving or hiding their assets.

It should be stated that the grant of an injunction does not mean the end of the action but rather it is a means for a status quo, until the matter is amicably adjudicated upon to its final conclusion. Damages are granted to the author of the copyright works whose works have been infringed and this is to compensate the plaintiff for the harm or injury that is caused by the defendant without any justifiable cause. The granting of damages aims at placing the plaintiff in the position he would have been in had the damage not occurred.¹⁶⁴ With respect to punitive damages, it should be noted that the courts in Zambia are reluctant to award such damages owing to the fact that intellectual property law is seldom criminalised. Punitive damages are awarded in civil lawsuits to punish a defendant for egregious or intentional misconduct and to deter similar future behaviour. Punitive damages are typically awarded in cases where the defendant's actions are deemed malicious, oppressive, fraudulent, or demonstrate a high degree of negligence.¹⁶⁵

In line with the border measures, it is important to note that at the international level, the TRIPS Agreement provides the procedure for the exercise of border controls. Article 51 of the TRIPS Agreement puts emphasis on the fact that members are obliged to implement border measures which enable a right holder who has valid grounds for suspecting that the importation of the pirated goods may have taken place. The provision requires WTO Members to establish procedures allowing intellectual property right holders to request customs authorities to suspend the release of goods suspected of being counterfeit or pirated. This application must be based on valid grounds and submitted in writing to competent authorities. Additionally, members may extend these procedures to cover other types of IP infringements and to goods intended for export, as long as they meet the same procedural requirements.

4.4 Conclusion

This chapter has demonstrated how copyright laws protect the interests of creators by granting them property rights over their creations. It has further shown that the importance of protecting intellectual property is recognised in a number of domestic and international legal instruments.

¹⁶⁴ Ibid

¹⁶⁵ American Tort Reform Association, 'Punitive Damages' (American Tort Reform Association) <https://atra.org/issue/punitive-damages/> accessed 30 June 2026.

The rationale for protecting intellectual property through legislation is to give statutory expression to the moral and economic rights of creators, while at the same time promoting creativity, encouraging fair trade and contributing to social and economic development. However, as discussed in this chapter, the effectiveness of copyright protection depends not only on the existence of an adequate legal framework but also on the availability of effective enforcement mechanisms capable of responding to the challenges of the digital era. Essentially, for intellectual property to be fully appreciated and recognised as an important driver of economic development, there is a need to establish an effective and efficient system that ensures intellectual property rights are respected, recognised and effectively enforced. This forms the basis for the recommendations presented in the next chapter, which propose legal and institutional reforms aimed at strengthening copyright protection and enforcement in Zambia.

CHAPTER FIVE

LEGAL AND INSTITUTIONAL REFORMS FOR STRENGTHENING COPYRIGHT PROTECTION AND ENFORCEMENT IN ZAMBIA

5.0 Introduction

The research has shown that Copyright protection plays an essential role in promoting, enriching and disseminating the national cultural heritage. Copyright infringement is seen to be profitable but the profits are only beneficial to a few at the expense of the majority. A country's development depends to a great extent on the creativity of its people and the encouragement of individual's creativity is an essential tool for development. Economic trends have shown that a nation's ability to generate wealth and protect its cultural heritage depends on its access to and use of the intellectual property system. Intellectual property, copyrights in particular, should be approached in the context of broader societal interests and developments and these are the related concerns in Article 7 of TRIPS which promotes the protection and enforcement of intellectual property rights to boost growth in technological innovation and mutual advantage between producers and users of technology in a manner which is conducive to social and economic welfare. The right of the countries to implement their international obligations in accordance with their own legal systems and practices as clearly foreseen by Article 1.1 of the TRIPS, which encourages member countries

to implement provisions of the TRIPS to their own laws, should be safeguarded.¹⁶⁶ This research has:

- i. Examined the legal framework governing copyright protection in Zambia;
- ii. Assessed the adequacy of Zambia's copyright legal framework in addressing the challenges posed by the digital era;
- iii. Analysed the effectiveness of the current copyright enforcement mechanisms in Zambia; and
- iv. Recommended legal and institutional reforms for strengthening copyright protection and enforcement in the digital era.

The contemporary literature demonstrates a growing consensus that copyright protection in the digital era requires a balanced approach combining legislative reform, technological innovation, institutional capacity building and international cooperation. Recent studies consistently conclude that merely strengthening statutory provisions is insufficient without effective enforcement mechanisms and public awareness initiatives. Comparative experiences from both developed and developing jurisdictions further indicate that successful copyright systems rely upon specialised enforcement agencies, modern digital technologies and collaborative efforts among governments, copyright management organisations and internet service providers. These developments provide important guidance for Zambia as it continues to modernise its copyright regime in response to rapidly evolving digital technologies.

5.1 Recommended Legal reforms

5.1.1 Amendment of the Copyright and Performance Rights Act

The study established that although the Copyright and Performance Rights Act provides an adequate legal foundation for copyright protection, it does not comprehensively address several challenges associated with digital technologies. Parliament should therefore amend the Act to expressly provide for emerging forms of digital copyright infringement, including online piracy, digital streaming, cloud computing, artificial intelligence, intermediary liability, technological

¹⁶⁶ [World Intellectual Property Organization, Proposal by Argentina and Brazil for the Establishment of a Development Agenda for WIPO, WO/GA/31/11](https://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_31/wo_ga_31_11.pdf), WIPO General Assembly, Thirty-First (15th Extraordinary) Session, Geneva, 27 September–5 October 2004 (27 August 2004) https://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_31/wo_ga_31_11.pdf accessed 30 June 2026.

protection measures and digital rights management information.¹⁶⁷ Such reforms would modernise the legal framework and enhance its ability to respond to technological developments.

This recommendation is further supported by Zambia's Revised National Intellectual Property Policy, which recognises that technological developments require the continuous review and modernisation of intellectual property legislation to ensure that it remains effective in protecting rights holders and promoting innovation. Legislative reform would therefore align the Copyright and Performance Rights Act with national policy objectives and emerging international best practices.¹⁶⁸

5.1.2 Domestication and Implementation of International Copyright Instruments

The study found that Zambia is a party to several international and regional intellectual property instruments. However, continued efforts should be made to fully domesticate and implement international copyright standards relating to digital copyright protection. This will ensure that Zambia's legal framework remains consistent with international best practices and enhances cross-border protection of copyrighted works.¹⁶⁹

5.1.3 Introduction of Copyright Incentives

The Government of Zambia should consider introducing a comprehensive incentive framework to encourage creators to register, commercialise and effectively exploit their copyrighted works.¹⁷⁰ Such incentives may include tax relief for income derived from copyrighted works, innovation and creative industry grants, low-interest financing for creative enterprises, and government-supported programmes that facilitate the commercialisation and licensing of intellectual property. These measures would not only encourage greater compliance with copyright registration and management systems but would also stimulate investment in the creative sector, enhance the economic value of copyrighted works and contribute to national economic development. The

¹⁶⁷ Copyright and Performances Rights Act, Cap 406 (as amended by Act No. 25 of 2010); Atanasova (2019); Adetunji (2022); Anamela, Kalifungwa, Nguluwe and Muhyila (2024).

¹⁶⁸ Ministry of Commerce, Trade and Industry, *Revised National Intellectual Property Policy* (2020).

¹⁶⁹ WIPO, *World Intellectual Property Handbook* (2016); World Trade Organization, *TRIPS Agreement*; Ministry of Commerce, Trade and Industry, *National Intellectual Property Policy* (2020).

¹⁷⁰ Ministry of Commerce, Trade and Industry, *Revised National Intellectual Property Policy* (2020).

introduction of incentives would further recognise intellectual property as a strategic economic asset capable of fostering innovation, entrepreneurship, employment creation and international competitiveness.¹⁷¹ As scholars have observed, copyright law should not merely protect creators against infringement but should also provide an enabling environment that allows creators to derive meaningful economic benefit from their intellectual creations, thereby fulfilling the broader objectives of copyright as an instrument of economic and social development.

5.2 Recommended Institutional Reforms

5.2.1 Strengthening Copyright Protection Institutions

Drawing from Bah's¹⁷² analysis of copyright enforcement in selected African jurisdictions, this study recommends that Zambia should strengthen the institutional framework responsible for copyright protection and enforcement. This may be achieved through increased funding to enforcement bodies, specialised training for officers dealing with copyright infringement, improved coordination between PACRA, law enforcement agencies, collective management organisations and the judiciary, and the establishment of practical mechanisms for addressing digital infringement. Bah's study demonstrates that copyright enforcement is more effective where institutions are properly resourced, officers are trained in copyright-related matters, and there is continuous collaboration among relevant stakeholders. Therefore, strengthening Zambia's institutional enforcement capacity would enhance the practical effectiveness of copyright law and ensure better protection for authors and other copyright owners in the digital era.¹⁷³

5.2.2 Digitalisation of Copyright Registration and Administration

The study recommends that the Government of Zambia, through the Patents and Companies Registration Agency (PACRA), should prioritise the development and implementation of a fully integrated digital copyright registration and administration system. Such a system should facilitate

¹⁷¹ M Spence, 'Justifying Copyright' in D McLean and K Schubert (eds), *Dear Images: Art, Copyright and Culture* (Ridinghouse 2017).

¹⁷² A Bah, *The Implementation and Enforcement of Copyright Law in Sierra Leone: A Comparative Analysis with Kenya, Ghana, Nigeria and South Africa (LLM thesis, Central European University 2025)*

¹⁷³ Ministry of Commerce, Trade and Industry (2020); WIPO (2016); *Collective Management of Copyright and Related Rights* (WIPO, 2016).

the electronic registration of copyrighted works, online licensing, digital record management, searchable copyright databases and real-time monitoring of copyright ownership and transactions. A modern digital platform would enhance efficiency, transparency and accessibility by reducing administrative delays, improving the accuracy and security of copyright records, and enabling creators and copyright owners to manage their rights more effectively regardless of their geographical location. Furthermore, digital copyright administration would strengthen enforcement by providing reliable evidence of ownership, facilitating licensing transactions and supporting the detection and monitoring of infringement in the digital environment. This recommendation is consistent with the World Intellectual Property Organization's position that modern intellectual property offices should utilise digital technologies to improve service delivery, rights administration and public access to intellectual property information. It also accords with Zambia's Revised National Intellectual Property Policy (2020), which recognises the need to strengthen institutional capacity and modernise intellectual property administration through automation and digital transformation. As Peters further observes, technological advancements that have facilitated digital infringement should equally be utilised to strengthen copyright administration and provide effective protection for creators in the digital age.¹⁷⁴

5.3 Digital Enforcement Mechanisms

5.3.1 Strengthening Digital Copyright Enforcement

The existing enforcement framework should be enhanced by introducing legal mechanisms specifically designed to address online copyright infringement.¹⁷⁵ These should include notice and takedown procedures, cooperation with internet service providers, protection of digital rights management information and technological protection measures capable of preventing unauthorised access and reproduction of copyrighted works. The law should further establish clear obligations and liability standards for online intermediaries that knowingly facilitate copyright infringement while safeguarding legitimate online activities. In addition, enforcement agencies should be equipped with specialised digital forensic capabilities and supported by effective cross-

¹⁷⁴ WIPO publications on copyright administration; Ministry of Commerce, Trade and Industry (2020); Peters (2006).

¹⁷⁵ T Anamela, C Kalifungwa, C Nguluwe and MC Muhyila, 'A Comparative Analysis of Copyright Laws Governing Music Streaming in Zambia, Kenya, and the United States' (2024) 4(3) *Journal of Modern Law and Policy* 90–108.

border cooperation to investigate and combat online piracy, which frequently transcends national jurisdictions. Such measures would align Zambia's copyright enforcement regime with international best practices and strengthen its capacity to respond effectively to the evolving nature of digital copyright infringement. As the World Intellectual Property Organization has observed,¹⁷⁶ effective copyright enforcement in the digital environment requires not only adequate substantive legal protection but also practical enforcement mechanisms, technological safeguards and cooperation among rights holders, internet intermediaries and public authorities. Similarly, recent comparative studies have demonstrated that jurisdictions with robust online enforcement frameworks, including intermediary cooperation and technological protection measures, are better positioned to deter digital piracy and protect the economic interests of creators in the digital economy.¹⁷⁷

5.3.2 Enhanced Investigation of Digital Copyright Infringement

Law enforcement agencies should adopt modern digital forensic techniques and technological tools capable of detecting, investigating and prosecuting online copyright infringement. This will improve the effectiveness of enforcement in an increasingly digital environment.

5.4 Capacity Building for Enforcement Agencies

5.4.1 Training and Capacity Building

The study found that effective enforcement requires specialised knowledge of digital technologies. Continuous training should therefore be provided to judicial officers, prosecutors, police officers, customs officials, copyright inspectors and other relevant stakeholders on digital copyright protection, investigation of cyber-related copyright offences and developments in international copyright law.

5.4.2 Strengthening Inter-Agency Collaboration

¹⁷⁶ World Intellectual Property Organization, *Intellectual Property Reading Material* (WIPO Publication, 2018).

¹⁷⁷ *A Bah, The Implementation and Enforcement of Copyright Law in Sierra Leone: A Comparative Analysis with Kenya, Ghana, Nigeria and South Africa (LLM thesis, Central European University 2025).*

Greater cooperation should be encouraged among PACRA, the Zambia Police Service, the Judiciary, the Zambia Revenue Authority, internet service providers and collective management organisations to improve information sharing, coordinated enforcement and prosecution of copyright offences. To enhance the effectiveness of this collaboration, Government should establish a formal multi-agency enforcement framework comprising clearly defined institutional mandates, information-sharing protocols, joint investigations, coordinated enforcement operations and regular stakeholder engagement. Such collaboration should also include capacity-building initiatives, specialised training on digital copyright infringement, and the development of standard operating procedures for investigating and prosecuting copyright offences. Given the transnational nature of online copyright infringement, Zambia should further strengthen cooperation with regional and international organisations, including the World Intellectual Property Organization (WIPO), the African Regional Intellectual Property Organization (ARIPO) and law enforcement agencies in neighbouring jurisdictions, to facilitate intelligence sharing, technical assistance and cross-border enforcement.¹⁷⁸ A coordinated institutional approach would significantly improve the detection, investigation and prosecution of copyright offences while promoting a more efficient and responsive copyright enforcement regime capable of addressing the challenges posed by the digital environment.

5.5 Public Awareness and Copyright Education

5.5.1 Public Awareness Campaigns

The study established that limited public understanding of copyright law contributes significantly to infringement. Government, educational institutions, copyright organisations and stakeholders within the creative industry should therefore intensify public awareness campaigns to educate creators, users and the general public on copyright rights, responsibilities and available legal remedies. The study therefore recommends increased public awareness programmes targeting authors, musicians, software developers, filmmakers and other creators on the nature, scope and enforcement of copyright protection. Such awareness campaigns should be undertaken through collaborative efforts between government institutions, copyright administration bodies and

¹⁷⁸ World Intellectual Property Organization, *World Intellectual Property Handbook: Policy, Law and Use* (9th edn, WIPO Publication No 489(E), 2016).

educational institutions to improve creators' understanding of their rights and the legal remedies available in cases of infringement if any.¹⁷⁹

5.5.2 Copyright Education

Copyright education should be incorporated into educational curricula, professional training programmes and public legal education initiatives to promote greater respect for intellectual property rights and reduce instances of infringement.¹⁸⁰

5.6 Conclusion

The study concludes that while Zambia possesses a relatively comprehensive legal framework governing copyright protection, significant legal, institutional and practical challenges continue to affect its effectiveness in the digital era. Addressing these challenges requires legislative reform, stronger institutions, enhanced digital enforcement mechanisms, continuous capacity building and increased public awareness. Implementing these recommendations will strengthen copyright protection and enforcement, promote innovation and creativity, and ensure that Zambia's copyright regime remains responsive to emerging technological developments.

¹⁷⁹ World Intellectual Property Handbook (2016); WIPO, Intellectual Property Reading Material (2018); Ministry of Commerce, Trade and Industry, Revised National Intellectual Property Policy (2020).

¹⁸⁰ World Intellectual Property Handbook (2016); WIPO, Intellectual Property Reading Material (2018); Ministry of Commerce, Trade and Industry, Revised National Intellectual Property Policy (2020)

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