



Country Report – Namibia
Annual report to the IFLA CLM committee
Helsinki, Finland, August 2012

Copyright

Revision/changes in existing law or regulations

New legislation

- ***Copyright Review***

The legislation in place in Namibia is called the Namibian Copyright and Neighbouring Rights Protection Act, Act 6 of 1994. The 1994 Act was amended in 2001 and the process is still on-going. The plan is to finalise the amendments by the middle of this year and have it tabled in Parliament before the end of the current financial year.

The Ministry of Information and Communication Technology is the custodian of the Copyright Act. The Directorate Audio-visual Media and Copyright Services deals with the day-to-day activities related to copyright issues, Namibia has been a member to the Bern Convention 1886, for the Protection of Literary and Artistic works. Namibia is signatory to the two WIPO Internet Treaties namely; WCT and WPPT of 1996. We will definitely accede to the two afore-mentioned treaties as soon as the Copyright Bill had been passed in Parliament; we have also acceded to the TRIPS Agreement, the process of which is spearheaded by the Ministry of Trade and Industry.

The recognition and protection of traditional knowledge and expression of folklore was one of the motives behind the amendments of the 1994 Act. However, it was not an easy exercise for both the line Ministry, the Legal Drafters as well as the concerned stakeholders to reach a common consensus concerning the protection of folklore, more especially with regards to the sharing of benefits accruing from the usage of such works. The eventual resolution that appeared to have somehow, met the wishes of all concerned was to place the work in question under the custodianship of the Competent Authority i.e. the Hon. Minister of Information and Communication Technology.

So far, all the proposed legislative changes to the 1994 Act have been incorporated into the current Amendment Bill,

However, we are also studying various proposals and recommendations from our international stakeholders such as IERMO and DALRO (an RSA RRO)

- **Industrial Property Bill of 2010**

The Ministry of Trade and Industry and the custodian of the Industrial Property Office in Namibia has propose a this Bill, industrial property is defined as meaning patents, utility

models industrial designs, and trademarks including certification trademarks and collective trademarks. This Bill will thus replace other existing legislation on patents, designs and trademarks.

The Industrial Property Bill further appears to establish an Industrial Property Office responsible for the registration, recordal, maintenance and administration of industrial property rights. The Bill further consolidates the registration offices of patents, trade marks and designs into a single office to be called “the Industrial Property Office”.

According to the study it is considered and assumed that the Industrial Property Bill has been confirmed and concluded. The approach of the Ministry of Trade and Industry is thus to use the BIPA Bill to amend the Industrial Property Bill and align it with the Business Intellectual Property Agency (BIPA) Bill. Typically, the existing clause 2 of the Industrial Property Bill will be amended to be a reference to BIPA and not the Industrial Property Office which is currently contained in clause 2.

The Intellectual Property Amendment Bill (Traditional Knowledge) was passed in November 2011 by Parliament and currently awaits signature by the President. This Bill has been very controversial, with various versions, and with strong opposition from the majority of stakeholders. It proposes to amend four IP Acts, including the Copyright Act. It creates a whole new layer of works under copyright protection. IP legal experts claim that this legislation is totally impractical and should rather be considered under ‘sui generis’ legislation.

- ***Collection Societies***

Section 59 of the Namibian Copyright Act provides for the establishment of collective management organizations. Such organisations must be recognized by the Hon. Minister of Information and Communication Technology prior to the commencement of their respective operations as stipulated under Section 60. Section 61 compels managers of collective management organizations to be accountable to their respective members and stakeholders.

The Namibia Government has taken a resolution not to intervene in the affairs of the collective management organisation, whatsoever. The only role played by the Government is the allocation of resources such as human resources and the provision of logistic support towards the establishment of such organisations, Relevant Government bodies related to the existing collective management organisations play an advisory role towards collective management organisations where necessary. All such organisations are autonomous bodies governed by independently elected Boards of Directors. There is absolutely no control over the collective management organisations by the Government.

The Ministry of Trade and Industry administers the Competition law in Namibia. However, there have been no recorded cases of gross violation of this legislation in relation to the collective management of rights.

There are two collective management organisations in existence in Namibia at the moment, NASCAM, which was established in 1994 with technical, material and financial support from WIPO, CISAC and SAMRO (RSA), deals with collective management of musical works only. It has a current membership of 5560. The distribution is expected at the end of the current Financial Year, NASCAM is immensely involved with the enforcement activities such as the combating of Piracy. They do this in collaboration with other law enforcement agencies such as the Namibian Police, Customs and Excise and Immigration. Most of these operations are carried out; with financial and logistic support from UNESCO.

A second collective management organisation NAMRRO was established at the beginning of 2006 and it was officially launched by the Hon. Minister of Information and Communication Technology on 18 September 2006 in Windhoek. The launching coincided with a four-day training workshop on Piracy sponsored by UNESCO's Windhoek Cluster Office. It is ray pleasure to mention, once again, that the establishment of NAMRRO could not have been a reality was it not for the kind consideration of UNESCO, IFRRO and DALRO, who provided everything one needs to start an RRO.

In early 2011, the South African Minister of Trade and Industry created a Commission chaired by a judge to review the distribution of copyright royalties by collecting societies in South Africa. The final report has been not yet been made public.

- ***Orphan Works, Mass Digitization and Levies.***

No developments to report.

- ***Legal Deposit***

Ministry of Education, department of Library Services, National library and National archive of Namibia is responsible for legal deposit in the country. Any work of published author will be deposited to national library and national archive of Namibia. In Namibia, the legal framework has been revised by the library and information services Act,(Act 4 of 2000) which stipulates that each publication must be delivered in five copies to the National Library(For Government publications: 20 copies to the National Archives)

- ***Public Lending Rights***

No developments to report.

- ***Creative Commons***

No development to report.

Legal Matters

Revisions/changes in existing law or regulations

New legislation

- ***Trade Agreements, Privacy, Anti-Terrorist Law and ACTA***

At this stage, there is nothing to report on trade agreements, privacy issues or anti-terrorist laws. In addition to these treaties, the Anti-Counterfeiting Trade Agreement (ACTA) is a multilateral treaty governing multiple aspects of intellectual property, including copyright. As of February 2012, ACTA has been signed by 31 countries, but has not been ratified by any. As far as I can established no formal discussion on ACTA have been instigated by the Namibian Government.

- ***TMP/DRMs***

Technical Protection Measures (TPM) is provided for under Sections 28(1) and (2), which stipulate that a person infringes copyright if he:

- a. manufactures or imports for sale or hire any device designed or adapted to circumvent any device that is intended to prevent or restrict a reproduction of a work or impair the quality of the copies so made;
- b. removes or alters any electronic rights management information without the consent of the owner of the copyright;
- c. distributes, imports or communicates to the public an infringing work from which the (electronic) rights management information has been removed and while knowing or having reason to know that such information has been removed from the work in question.

Law Cases

Namibia as a small country with a population of 2, 1 million so far no arrogant cases has been reported yet.

Lobby activities

The Government and private and civil societies play a combined role in the fight against piracy in the following manners:

- a. Assisting officials from law enforcement institutions to obtain training from inter-governmental organizations, such as WIPO and UNESCO on issues related to the fight against piracy and counterfeiting; and

- b. Assisting in the establishment of collective management organizations, such as Namibian Society of Composers and Authors of Music (NASCAM) and NAMRRO.

The Ministry of Information and Communication Technology is contemplating has spearheading the establishment of an anti-piracy organization in Namibia as a result of the newly reputable Namibia Reproduction Rights Organisation (NAMRRO) with licensing, collection activities and advocacy activities.

The Department, continue to lobby to various A/O/Government departments for more appropriate copyright and access to knowledge legislation. Many Government officials receive information materials on copyright activities such as “**Basic Fact About Copyright**” and online information pertaining to copyright materials.

We also lobby at the annual celebration of the WIPO day (26 April) whereby we invite all the stakeholders to the celebrations and pay tribute to authors, artists, innovators and creators, who are among the contributors to the economic, social and cultural developments of societies everywhere who through their works created and shaped our lives.

The other lobby activity was during the World Music Day that was celebrated this year at different towns of the country that has attracted a large number of musicians and stakeholders and this contributed to awareness of copyright in Namibia

Educational activities

The Ministry of Information and Communications Technology has developed an annual Public Awareness Campaign programme that is carried out in collaboration with the two collective management organizations. It includes copyright information-sharing seminars and workshops at institutions of higher learning, targeting lecturers and students alike.

The annual MICT IPR Information-sharing Programmes where NAMRRO and NASCAM conduct joint seminars and workshops at institutions of higher learning are doing wonders in terms of education and informing lecturers, students, regional councils and members of the general public about the significance of IP as a tool for socio-economic development.

The Police and Customs officials are also trained on the above subject from time to time by the officials from the two collective management organizations and the Ministry of ICT.

Copyright awareness workshops are offered at university and school campuses. NAMRRO, the rights organization, held a copyright information workshop for tertiary institutions in early 2012.

Strategic plans for future

Since Namibia a is member and signatory to diverse convention/accords, information is the building block of knowledge, it is of such crucial importance that its availability or restriction should be of concern to all societies.

This is more so for developing countries where, for a number of reasons, information is often restricted. One of the reasons why information may not be free-flowing in society is due to the nature of its intellectual property protection system.

The ability of copyright to affect access to information is multi-dimensional and can be understood in two principal ways. On the one hand, copyright protection is an incentive for creative minds to continue in their work, ensuring that they can, in turn, generate new works in the market, based on the information that their novelty has brought. This is an issue of crucial public interest.

It will be also in to the public interest that, in certain defined conditions, the public will and shall have free access to copyrighted works because this sustains the innovation cycle that feeds societal development and renewal. Therefore as Namibia play a leading role in the Africa Group at WIPO and is currently involved in the discussions on the Draft WIPO Treaties including the Beijing Treaty on Audiovisual Performance. I continue to encourage copyright at library services meetings and to Government officials.

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