

## **COPYRIGHT**

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### **Legislation**

#### *Ghana*

The Copyright Act of 2005 (Act 690) (Copyright Act) was adopted on May 17, 2005 and replaced the Copyright Law of 1985. The purpose of the new Copyright Act was to bring Ghanaian copyright law into conformity with the Ghanaian Constitution, to help strengthen protection of copyrights and related rights in Ghana and to bring Ghana into compliance with its international obligations.

The Copyright Act provides for exclusive rights of authors in their literary works, artistic works, musical works, sound recordings, audio-visual works, choreographic works, derivative works, and computer software programs. It also affords protection for the related rights of performers and broadcasting organizations. The law provides several limitations and exceptions to those rights.

The Copyright Act provides that ownership of the copyright in all eligible works except folklore vests in the author. In order to be eligible for protection, the Copyright Act requires that the work be original, fixed, and (1) created by a citizen or resident of Ghana; (2) published within Ghana within 30 days of its publication outside Ghana; or (3) if published outside of Ghana is a work in respect of which Ghana has an obligation to grant protection to under an international treaty.

The duration of copyright protection for an eligible work is life of the author plus 70 years. Where a work is a joint work, the duration of protection is for the life of the last surviving author plus 70 years. In the case of a corporate entity, protection is 70 years from the date the work was first made or published, whichever is later. The duration of protection for the related rights for performers is 70 years from fixation or the end of the calendar year in which the performance occurred, and 40 years from the date of making the broadcast or the signal for broadcasting organizations. Special provisions regarding duration also apply for anonymous works, audio-visual works, sound recordings and folklore. Moral rights exist in perpetuity.

Works fall into the public domain either by expiration of the term of protection, renunciation of rights by the author, or by being a work from a foreign country that does not enjoy copyright protection in Ghana.

An author has the right to transfer copyright ownership in the economic right to the work by assignment, testamentary disposition or operation of law. License of an exclusive economic right may be granted in writing, orally or inferred by conduct. A levy is imposed on every device capable of copying a work protected by copyright. Those levies are collected by the Internal Revenue Service of Ghana (IRS) at the time of importation or production of the device.

Registration of a work with the Copyright Administration (Copyright Office) is not a prerequisite for copyright protection; there is, however, a voluntary registration system in Ghana, the purpose of which is to maintain a record of works, publicize the rights of owners and provide evidence of ownership and authentication of copyright and related rights. Several measures to enforce copyright and related rights are available in Ghana, including criminal prosecution, civil action, customs actions and mediation.

Copyright infringement is a criminal offense in Ghana. Violations under the Copyright Act are punishable by a fine of up to 1000 penalty units (currently 1 penalty unit = GHC 12.00, the current maximum fine is GHC 12,000.000) or by up to three years imprisonment or to both.

#### *International*

Ghana is a member of or has ratified the following international agreements regarding copyright:

- [The Convention Establishing the World Intellectual Property Organization \(WIPO\);](#)
- [The Universal Copyright Convention \(UCC\);](#)
- [The Berne Convention for the Protection of Literary and Artistic Works;](#)
- [The World Trade Organization \(WTO\) Agreement on Trade-Related Aspects of Intellectual Property Rights \(TRIPS\);](#)
- [The African Regional Intellectual Property Organization \(AIRIPO\);](#)
- [The WIPO Copyright Treaty;](#) and
- The [WIPO Performances and Phonogram Treaty](#) (ratified by the Ghanaian Parliament but not yet lodged with WIPO).

#### **Coverage – What is Included in Copyright Protection?**

##### *What Can be Copyrighted?*

Under Section 1 of the Copyright Act, copyright protection is available for the following:

- Literary works;
- Artistic works;

- Musical works;
- Sound recordings;
- Audio-visual works;
- Choreographic works;
- Derivative works; and
- Computer software or programs.

*What is Excluded from Copyright Protection?*

Under Section 2 of the Copyright Act, copyright protection is not available for:

- Ideas;
- Concepts;
- Procedures;
- Methods; or
- Other things of a similar nature.

*Rights Conferred by Copyright*

Copyright holders in Ghana enjoy the following exclusive rights:

- The reproduction of the work in any manner or form;
- The translation, adaptation, arrangement or any other transformation of the work;
- The public performance, broadcasting or communication of the work to the public;
- The distribution to the public of originals or copies of the work by way of first sales or any transfer of ownership; and
- The commercial rental to the public of originals or copies of the work.

Upon notice and payment, a manufacturer, producer or production company may make sound recordings of a musical work that has previously been made or imported into Ghana, with the license of the copyright owner or authorized collective administration society, for the purpose of retail sale.

In addition to economic rights, Ghana also confers the following moral rights to authors of works:

- The right to claim authorship of the work and in particular to demand that the name or pseudonym of the author be mentioned when any of the acts related to the economic rights are done in relation to the work; and
- To object and seek relief in connection with a distortion, mutilation or any other modification of the work where that act would be or is prejudicial to the reputation of the author where the work is discredited by the act.

Broadcasting organizations have certain economic rights and performers have certain economic and moral rights reserved under the law.

*Special Provisions for Sound Recordings/Audio-visual Works (Security Devices)*

Further protections exist for sound recordings or audio-visual copyrighted materials. Under Section 25 of the Copyright Act, security devices are required to be purchased by manufacturers, importers and publishers of sound or audio-visual recordings and affixed to all copies of sound or audio-visual recordings; the purpose of such security devices is to provide an additional layer of protection against piracy. Under the Copyright Regulations, 2010 (L.I. 1962) (Copyright Regulations), the form of security device is approved by the Minister for Justice (Minister) in consultation with the Copyright Monitoring Team. Rights-holders are not required to pay a fee where they have obtained the approval of the Minister to affix their own alternative security device to the sound or audio-visual work.

A rights-holder who wishes to sell copyrighted sound or audio-visual works in Ghana applies to the Copyright Office for such device. After the device is approved and all applicable fees and taxes have been paid to the IRS, the Copyright Management Team or authorized representative will affix the security device to the sound or audio-visual work. Under the Copyright Regulations, the Minister has seven days to grant approval for the purchase of a security device. According to the Copyright Regulations, when an alternative device is used, no fee is paid to the IRS for use of the device, although taxes are still due for sales of the work. Under the Copyright Regulations, security devices are required to be affixed to all sound or audio-visual recordings available for reproduction, manufacture, production, importation, renting, lending or otherwise distributing to the public.

The Copyright Monitoring Team is responsible for the enforcement of the use of the security devices and may enter premises and search and seize any works that do not comply with this requirement. Failure to use approved security devices on specified items may result in fines. The penalty for selling a copyrighted work without such security device is punishable by a fine of not less than 500 penalty units (1 penalty unit is currently equal to GHC 12.00; the current maximum penalty is GHC 6000.00).

While the law provides for this procedure and mechanism, it is not currently implemented in Ghana as the authorities have not yet approved the actual form of the security device. Rights-holders who import, export or produce copyrighted sound or audio-visual works or are otherwise required under Ghanaian law to affix security devices to their products, should contact the Copyright Office to determine the most recent procedures regarding security devices.

## Registration

### *General*

Parties need not register in order to obtain copyright protection for their works, however, parties seeking to enforce their copyright in Ghana may wish to register their works to establish evidence of ownership should enforcement actions be necessary. Rights-holders register their copyright with the Copyright Office within the office of the Attorney General. Persons with exclusive rights, such as distributorship, or authorized agents of the copyright owner may also register in order to enforce their rights in Ghana.

The website of the Copyright Office has some forms online; to download forms, go to <http://www.copyright.gov.gh/>. We recommend that you check the site for updates and current information regularly.

An application for registration may be made by:

- an author;
- an authorized agent of the author; or
- a producer or publisher on behalf of the author.

While it is not required for an applicant not normally present and residing in Ghana to be represented by local counsel, applicants may find it helpful to hire a local practitioner. Applicants are encouraged to seek out firms that have an attorney on staff with experience in Ghanaian copyright law.

Set out below are the general steps for applying for copyright registration in Ghana.

### Step One: Prepare and Submit the Application

An application for registration of a copyrighted work is filed with the Copyright Office and must be filed on the form specified in the First Schedule of the Copyright Regulations.

Rights-holders are required to state on their application:

- the name and citizenship of the author and/or main performers;
- the title of the work;
- the year the original work was produced; and
- the date and place of first publication (if applicable).

If the work to be registered has been published, the applicant must deposit two copies of the work with the application; if the work has not been published, the applicant only deposits one copy. Applicants registering sound and audio-visual works must deposit two copies of the phonograms and any printed or perceptible material published with the work,

irrespective of its publication status. For collective works appearing in newspapers or periodicals (within a 12-month period), one copy of the entire newspaper or periodical, or the applicable section thereof, must be filed with the application. In certain situations, a photograph or illustration may be submitted in lieu of a true copy.

The application shall also include the payment of the current application fee.

#### Step Two: Registration of Copyright and Issue of Certificate

On receipt of the application for registration of copyright or related right (such as derivative works or adaptations), the fee and the deposit of the work, the Copyright Office shall, within two weeks after their receipt, determine whether the work is a subject matter for registration or not and in writing inform the applicant accordingly. Where the Copyright Office determines that a deposited work is a subject matter for registration, the Copyright Office shall issue a certificate of registration of copyright or related right to the applicant within two weeks after informing the applicant that the work is a subject matter for registration.

#### *Registration of Agency or Other Exclusive Right*

The Copyright Office encourages owners of exclusive rights (e.g., distributorship) or authorized agents to register with the Copyright Office. Any interested party may deposit a "catalog" or "repertoire" of copyrighted goods it is an agent for or has an exclusive right to with the Copyright Office. The registration certificate issued by the Copyright Office may be used as evidence in enforcement actions, or to obtain a court order for the Customs Division of the Ghana Revenue Authority (formerly known as the Customs, Excise and Preventive Service (CEPS)) (Customs) to seize goods imported by another person or entity that allegedly violates the exclusive agency arrangement or right held by the rights-holder.

Some rights-holders have successfully capitalized on this opportunity by contacting the Copyright Office to ascertain whether a business has previously registered with the Copyright Office for the importation of their product. This method of investigation, while not always successful, has resulted in the detection of foreign companies exporting infringing goods under false registration to the Ghanaian market or individuals who have registered as agents when in fact they are not. Upon detection, the rights-holder, in conjunction with the Copyright Office, can coordinate seizure and confiscation of any allegedly infringing goods and commence legal proceedings either through the Copyright Office or privately retained legal counsel. In order to initiate this process, however, the complainant would need to obtain an injunction and court order.

## **Enforcement Approaches**

### *Criminal Enforcement*

#### *The Commercial Crime Unit (CCU) of the Criminal Investigation Department (CID) – Ghana Police Services*

For infringing goods that are suspected of having been produced in Ghana or have been imported into Ghana, rights-holders may approach the Commercial Crime Unit (CCU) of the Criminal Investigation Department (CID) of the Ghana Police Service.

The majority of the CCU's investigations into copyright violations originate from tips from either rights-holders or from informants. Under Ghanaian law, there is a reward for information that leads to the discovery of infringing goods and conviction of the infringer; certain enterprising individuals make their living as professional informants. Upon receiving a tip about infringing goods, the CCU will investigate and upon confirmation that the goods are infringing, is empowered to seize the infringing goods and to arrest any persons in possession of infringing goods. The CCU may allow rights-holders to participate in raids. Rights-holders reporting copyright infringement should contact the Copyright Office and the CCU regarding the specifics of reporting any infringement.

The Preventive Unit of CID has a rapid response unit (RRU) that has the capacity to prevent the often quick dissemination of pirated goods. The RRU is used when it is known to a high degree of certainty the location and means by which a shipment of pirated or otherwise illicit products are entering the country. A court order is usually required before the RRU will investigate possible copyright violations.

### *Criminal Prosecution*

The Criminal Code 1960 (Code) defines a list of types of fraud, including intellectual property fraud. While most often IP fraud is prosecuted under the relevant IP law, upon occasion a charge may be brought under the Code for fraud or fraudulent representation, if the authorities deem it more relevant. If charges are brought under the Code rather than under IPR laws, a rights-holder may elect to pursue damages under the Unfair Competition Act. Anyone found guilty of infringement under the Copyright Act may be sentenced to a maximum of three years imprisonment.

Criminal prosecution can better deter violators from repeating their crimes. Many individuals may commit intellectual property crimes not only because they can be relatively easy to commit, but also because the perpetrators believe that they will not be prosecuted. Criminal prosecution plays an important role in establishing public expectations of right and wrong, and in educating the public about intellectual property rights. If you believe that you are a victim of intellectual property theft, we recommend that you document all investigative steps, preserve evidence and contact the relevant authorities right away. Intellectual property crimes may be reported to the relevant offices (e.g., the Copyright Office) and to either the Customs Division of the Ghana Revenue Authority, Chief Collector, Preventative OPS - Headquarters (for import and export of pirated goods) at +233 (0)302 686106/684363 or +233 (0)244 364 642 or via email at [pr@ghanacustoms.gov.gh](mailto:pr@ghanacustoms.gov.gh) or the CCU at +233 (0)302 76 17 34.

You may also submit a tip through the Ghana Police Service website at <http://www.ghanapolice.info/>

#### *Administrative Enforcement*

##### *The Copyright Monitoring Team*

The Copyright Act established a Copyright Monitoring Team, composed of police officers, rights-holders representatives and officers from the Copyright Office, to monitor copyright works, investigate cases of infringement, undertake anti-piracy activity and to perform any function necessary to protect authors. The Copyright Monitoring Team, however, has not yet been officially constituted. In the interim, representatives from the Copyright Office, the police and rights-holders meet as an "interim" Copyright Monitoring Team, and carry out activities that will eventually be performed by the Copyright Monitoring Team once it has been confirmed and constituted. This interim Copyright Monitoring Team is called to meet when it is determined that it is necessary to investigate a copyright violation.

The Copyright Regulations give the Copyright Monitoring Team authority to enter any premises where the members of the team suspect that commercial transactions in pirated works or works which are not protected or do not have a security device affixed to them are taking place, about to take place or likely to take place, and may search the premises and seize any work to which that transaction relates. The Copyright Regulations require the members of the Copyright Monitoring Team to adhere to certain procedural safeguards, such as presentation of identification, inspection and verification.

In order for the Copyright Monitoring Team to take action, a rights-holder must first demonstrate to the Copyright Office that he or she is either legally vested in the rights being infringed or that he or she has the express permission from the owner to act on the owner's behalf, which may or may not require a court order. Upon this showing, and the showing that rights are being infringed, the Copyright Administrator may determine that it is necessary to constitute the Copyright Monitoring Team. The Copyright Administrator has indicated that currently the Copyright Monitoring Team is formed only for systematic issues, e.g., piracy operations producing or distributing copyrighted works over a period of time or in significant volume. For smaller scale or individual violations, rights-holders should report directly to either the CCU or Customs, as appropriate. At any time, however, a rights-holder may report a copyright violation to the Copyright Office, whether or not the violation in question is determined to require the attention of the Copyright Monitoring Team.

Since the beginning of 2009, the Copyright Office has been successful in taking large quantities of pirated materials off the market. In spite of the recent increase in enforcement actions, there remains a visible prevalence of pirated goods in the Ghanaian market.

#### *Mediation by the Copyright Office and Copyright Tribunal*

Under the Copyright Act, a rights-holder may petition for mediation through the Copyright Office for any copyright dispute. Mediation is generally regarded by rights-holders in Ghana as more efficient and effective than pursuing claims in the courts. A party who is dissatisfied with a decision to submit to mediation may file suit with the High Court.

The Copyright Regulations established the Copyright Tribunal to handle any disputes arising out of royalty allocations. The Copyright Regulations set the current fee for dispute settlement at twenty-five Ghana Cedis (GHC 25.00), plus five percent (5%) of the amount recovered on behalf of one of the parties to the dispute, although the Copyright Regulations also indicate that the Copyright Tribunal may charge fees for its services. The Copyright Tribunal, once officially constituted, will have the power to hear disputes regarding licensing schemes and licensing bodies.

#### *The Customs Division of the Ghana Revenue Authority (Customs)*

Another agency that rights-holders may approach for assistance in combating copyright infringement is Customs.

Businesses exporting products that carry a high risk of being infringed are encouraged to work directly with Customs. The Preventive Department of Customs is chiefly responsible for blocking infringing goods and otherwise illicit material from entering the country. Businesses that export high risk products should supply Customs with a detailed description and sample of their product.

Infringing goods are known to enter Ghana from its ports and multiple borders. Customs recommends that if a rights-holder believes that infringing goods are entering the country from multiple entry points that the rights-holder conduct an informational workshop.

Preventive Customs officers from around the country attend workshops in which producers and rights-holders describe and supply prototype authentic and infringing goods. The more detailed the information and training provided by the rights-holder, the more likely Customs officers are to stop infringing goods at the ports and borders.

If a Customs agent believes that a shipment contains infringing goods, the agent can stop the shipment at the border. When infringing goods have entered the country and are being warehoused, distributed or retailed, Customs officers are authorized to enter a warehouse, factory or store and take an account of the excisable goods in the custody or possession of the seller. Customs officers are further authorized to take samples of goods suspected of being infringing, to the extent that the usual price of goods is paid. When the Commissioner of the Customs Division of the Ghana Revenue Authority (Commissioner) is satisfied by information and samples that there is reasonable cause to suspect that infringing goods are harbored, kept, or concealed in any premises, the Commissioner may issue a written order authorizing an officer to enter and search the premises, and to seize and take away any of the infringing goods. In addition to seizure of any infringing goods, Customs officers may also arrest any person in whose possession and under whose control the infringing goods are found.

The law provides for a reward for any person whose "tip-off" leads to the confiscation of infringing goods and the arrest of anyone dealing in infringing goods. Customs regularly benefits from tip-offs from private citizens in addition to receiving information from rights-holders and discovery of infringing goods by members of the Customs units itself.

Rights-holders with the requisite evidence may submit a written request of detention to Customs independent of any Customs investigation or action. The request must provide evidence that demonstrates a high likelihood that infringement is occurring and that injunctive action is necessary to avoid further damage; such request may or may not require a court order. Discussions with the Copyright Administrator indicated that requests must be in writing and that there must be enough detail in the request in order to identify the shipment, seller or manufacturer, as appropriate. Copies of the infringed work are also helpful. Rights-holders reporting copyright infringement should contact the Copyright Office and Customs regarding the specifics of reporting any infringement.

If the allegedly infringing goods are imported into Ghana and the seizure is based on an agency or other exclusive right on register with the Copyright Office, a court order is necessary before the Commissioner may authorize a search and seizure action, and must be included with the request. However, if the materials are clearly pirated, a court order may not be necessary, and if the Commissioner is satisfied by the evidence provided, Customs officers will detain the offending goods, and criminal and civil proceedings may begin.

Upon occasion, Customs will allow rights-holders more direct participation beyond informing the Preventive Department that infringement is occurring. In order for a rights-holder to participate more directly in Customs anti-piracy investigations and procedures, Customs requires the producer to demonstrate in writing reasonable grounds for suspecting that infringing products are entering or being sold within the country.

It is recommended that rights-holders pay a courtesy call to Customs officials upon entering the Ghanaian market, provide Customs with copies of originals and hints on how to spot pirated goods and to establish a relationship with Customs on an ongoing basis, providing information, intelligence and training and support. Face-to-face interaction with enforcement officials may be a more effective means of communication than phone or email.

### *Civil Enforcement*

#### *Civil Litigation*

At the request of the rights-holder, the High Court may grant an injunction to prevent infringement or imminent infringement, award damages and grant any other relief provided for in the general law. There are three types of High courts in Ghana: the standard High Courts, the “fast track” High Courts and the commercial High Courts. While each offers its own advantages, judges on the commercial courts tend to be more IP-savvy, many having completed IP training. Under the rules of civil procedure, the High Court may grant an award of damages to a rights-holder if it is determined that infringement has occurred. Burden of proof for an award of damages is on the rights-holder, and the amount of damages is determined by the High Court.

The chief advantage of pursuing IPR claims in civil litigation is that unlike administrative or criminal proceedings, they may be initiated directly by the rights-holder. Rights-holders are advised to engage local counsel experienced in copyright issues in the event of any litigation.

### **Other Measures**

#### *NGOs and Professional Organizations*

Several non-governmental organizations in Ghana play important roles in helping enforce IPR, including participating in public information campaigns, reporting suspected infringements and training government personnel. Rights-holders are encouraged to seek out such NGOs for information and support. These organizations include:

- Business Coalition Against Counterfeiting and Illicit Trade (CACIT)  
<http://bcacit.com/home/index.php>
- Ghana Employers’ Association (GEA)  
<http://www.ghanaemployers.com/>
- Institute of Packaging Ghana  
<http://www.iopg.org.gh/>
- The Association of Ghanaian Industries  
<http://www.agighana.org/>

- The Consumers' Association of Ghana  
Tel: +233 (0) 302 784461; +233 (0) 302 238042

Rights-holders may find it useful to work with one or more of these organizations in protecting their copyrights.

#### *Public Information Campaigns*

In general, public awareness in Ghana is the cornerstone of a successful copyright protection plan. Upon detection of pirated goods entering the Ghanaian market, rights-holders have informed the public of the illegal nature of pirated goods, with varying degrees of success. In the past, public relations campaigns have resulted in the return of a portion of the pirated goods that have infiltrated legitimate retail businesses. In one recent campaign, software companies held billboard campaigns to educate and inform the public about the implications of piracy. Rights-holders may also contact relevant agencies and offer training to those individuals charged with search and seizure of pirated goods.

## FREQUENTLY ASKED QUESTIONS: FAQ

1. Do I have to register my copyright in Ghana in order to receive copyright protection?

*You do not have to register your copyright in Ghana in order to receive protection. Copyright protection is automatic at the time of creation provided that the work is original and fixed in tangible medium. However, registration of copyright is helpful in proving your rights, and parties who register their copyrights typically enjoy greater success in enforcing their copyrights and related rights in Ghana.*

2. If I want to register my copyright in Ghana, where would I go?

*Registration is made with the Copyright Office in Accra, Ghana. You may contact them outside of Ghana by telephone at +233 (0)302 229 190 and by e-mail at [info@copyright.gov.gh](mailto:info@copyright.gov.gh). You may also visit their website for more information at <http://www.copyright.gov.gh/>.*

3. What is the term of copyright protection in Ghana?

*In general, the term of copyright in Ghana is the life of the author plus 70 years.*

4. May I license/assign the copyright to another person or entity in Ghana?

*Yes. Rights-holders who elect to license or assign their copyright are recommended to engage local counsel familiar with copyright law in Ghana and to consider carefully the rights they license or assign. A license to do an act that falls within copyright may be oral, written or inferred from conduct. An assignment of copyright must be made in writing. Moral rights may not be transferred.*

5. What are the penalties for copyright infringement in Ghana?

*Violations under the Copyright Act are punishable by a fine of up to 1000 penalty units (currently 1 penalty unit = GHC 12.00, the current maximum fine is GHC 12,000.000) or by up to three years imprisonment or to both.*

***We strongly emphasize that the information provided in this Toolkit does not constitute legal advice and should not be a substitute for advice of legal counsel. Its intended purpose is to provide an overview of Ghana's IPR environment, available enforcement mechanisms and Ghanaian government offices sharing jurisdiction over IPR protection and enforcement. We recommend that U.S. companies seeking to do business in Ghana or facing IPR infringement issues in Ghana seek qualified U.S. and/or Ghanaian legal counsel in pursuing their rights through Ghana's IPR enforcement regime. The U.S. Government, the U.S. Department of State, the U.S. Department of Commerce, their employees and contractors assume no legal liability for the accuracy or completeness or usefulness of any information, resource or process contained disclosed herein.***