



***ENFORCEMENT GUIDE
(COPYRIGHT AND RELATED RIGHTS)***

BELIPO
BELIZE INTELLECTUAL PROPERTY OFFICE

BELIPO'S MISSION STATEMENT

“Our mission is to create an efficient and modern intellectual property system leading to the emergence of a vibrant intellectual property culture in Belize.”

CONTENTS

<u>INTRODUCTION</u>	4
<u>WHAT IS INTELLECTUAL PROPERTY?</u>	4
<u>INFRINGEMENT OF COPYRIGHT AND RELATED RIGHTS</u>	5
<u>CIVIL REMEDIES</u>	6
<u>BORDER MEASURES (CUSTOMS)</u>	8
<u>CRIMINAL OFFENCES</u>	9
<u>POWERS OF POLICE OFFICERS</u>	11
<u>CONCLUSION</u>	12

ENFORCEMENT GUIDE (COPYRIGHT AND RELATED RIGHTS)

By Alhaji Tejan-Cole

Deputy Registrar

Belize Intellectual Property Office (BELIPO)

INTRODUCTION

This guide focuses on the legal framework for the enforcement of copyright and related rights in Belize. It starts by defining the main types of intellectual property (IP) rights and then provides examples of such rights. The guide also covers the exclusive rights granted by copyright and related rights and then moves on to the thrust of the guide - the enforcement of copyright and related rights in Belize.

[↑Back to contents](#)

WHAT IS INTELLECTUAL PROPERTY?

Intellectual property is the area of the law that deals with creations of the mind such as inventions, literary and artistic works, and symbols, names, and images that are used in commercial activities. Intellectual property is divided into two categories-industrial property and copyright.

The main areas of industrial property are trademarks, industrial designs and patents. A trademark is a sign that is capable of distinguishing the goods or services of a business or professional undertaking from the goods or services of other undertakings. There are many famous local examples of trademarks in Belize. These include BRODIES AND BELIKIN BEER.

A patent is the exclusive right to make, use, or sell an invention for a specified period of time. A patent is the title granted to protect an invention. Good examples of patents can be found in medical drugs or fertilizers.

An industrial design is the ornamental or aesthetic qualities of a product. Industrial designs cover a wide range of products of industry and handicraft. These products range from furniture to technical and medical instruments to

watches, jewelry, and other luxury items; from housewares and electrical appliances to vehicles; from textile designs to leisure goods.

As was indicated earlier, the other main area of intellectual property is copyright. Copyright is the legal protection given to the creator of an original literary or artistic work. Copyright is the exclusive right granted by the law to the creator of such original work, to do, authorize, or prohibit certain acts in relation to such work. Such a creator is also known as the author or the owner of the rights.

Works included under the banner of copyright include novels, poems, plays, reference works, newspapers, and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs, and sculpture; architecture; and advertisement, maps and technical drawings.

While copyright protects the rights of authors, another set of similar rights, known as “related rights” or neighbouring rights”, protects the rights of other owners of rights, namely, performers, producers of phonograms and broadcasting organizations. Related rights belong to the intermediaries in the production, recording or diffusion of the works of copyright owners. These intermediaries (performers, producers of phonograms and broadcasting organizations) facilitate the intellectual creation process by assisting authors to communicate their works to the public.

[↑Back to contents](#)

INFRINGEMENT OF COPYRIGHT AND RELATED RIGHTS

Section 9(1) of the Copyright Act grants the owner of copyright (including broadcasts) the exclusive right to make, or authorize other persons to make copies of the work, to issue copies of the work to the public, to perform, show or play the work in public, to broadcast the work or include it in a cable program service, or to make an adaptation of the work. Under the Copyright Act, the exploitation of a copyright work without the authorization of the copyright owner constitutes an infringement of copyright.¹

The Copyright Act then outlines several instances in which the rights of a performer can be infringed. Firstly, by a person who, without the performer’s

¹ Section 33.

consent, makes, otherwise than for his private and domestic use, a recording of the qualifying performance, or makes a live performance, or makes a live broadcast of the qualifying performance or a live inclusion of the qualifying performance in a cable program service.² Secondly, by a person who, without the performer's consent, shows or plays the qualifying performance in public, or broadcasts or includes the qualifying performance in a cable program service, by means of a recording that the person knows or has reason to believe was an unauthorised recording.³ Thirdly, by a person who, without the performer's consent and payment of royalty, uses an original recording of a qualifying performance for making an adaptation of the recording.⁴ Fourthly, by a person who, without the performer's consent, imports otherwise than for private and domestic use, or uses in the course of a business, a recording of a qualifying performance that the person knows or has reason to believe is an illicit recording.⁵

The Copyright Act outlines several instances in which the rights of a person having recording rights can be infringed. Firstly, by a person who, without the consent of the person having recording rights or the performer, makes, otherwise than for his private and domestic use, a recording of the whole or any substantial part of the performance.⁶ Secondly, by a person who, without the consent of the person having recording rights or the performer (in the case of a qualifying performance), shows or plays the performance in public, or broadcasts or includes the performance in a cable program service, by means of a recording that the person knows or has reason to believe was an unauthorized recording.⁷ Thirdly, by a person who, without the consent of the person having recording rights or the performer (in the case of a qualifying performance), imports otherwise than for private and domestic use, or uses in the course of a business, a recording of a qualifying performance that the person knows or has reason to believe is an illicit recording.⁸

 [Back to contents](#)

² Section 108(1).

³ Section 109.

⁴ Section 110(1).

⁵ Section 111(1).

⁶ Section 112(1).

⁷ Section 113(1).

⁸ Section 114(1).

According to section 36(1) of the Copyright Act, “infringements of copyright shall be actionable in the Supreme Court at the suit of the owner of the copyright; and in any action for such an infringement all such relief by way of damages, injunction, accounts or otherwise shall be available to the plaintiff as is available in any corresponding proceedings in respect of the infringements of other proprietary rights”.

However, in a copyright infringement action relating to the construction of a building, no injunction or other order shall be made after the construction has begun, so as to prevent the building’s completion, or to require the demolition of the building.⁹

Where a person, in the course of business, has in his possession, custody or control, an infringing copy of a work, or an article specifically designed or adapted for making copies of a protected work knowing the purpose of such article, or an illicit recording of a performance, the copyright holder, or holder of the rights in performances, may apply to the court for an order for the delivery up of the infringing copy or article or recording to such right holder or such other person as the court may direct.¹⁰ An application for an order for delivery up shall not be made after the end of the period of six years from the date on which the infringing copy or article or illicit recording was made.¹¹ No order for delivery up shall be made unless the court also makes, or it appears to the court that there are grounds for making, an order for the disposal of the infringing copies or illicit recordings.¹² Further, if an order for disposal of infringing copies or illicit recordings is not made, a person to whom an infringing copy or other article is delivered up pursuant to an order for delivery up shall retain it until a decision about a disposal order is made.¹³

Also, an infringing copy of a work or an illicit recording, that is found exposed or otherwise immediately available for sale or hire, may be seized and detained by the copyright holder, or holder of the rights in performances, or a person authorized by such right holder.¹⁴ However, certain conditions must be met before and during such seizure. Firstly, the copyright owner should be

⁹ Section 36(4).

¹⁰ Sections 37(1) and 119(1).

¹¹ Sections 37(2) and 119(2) read with section 136(1).

¹² Sections 37(2) and 119(2).

¹³ Sections 37(3) and 119(3).

¹⁴ Sections 38(1) and 120(1).

entitled to apply for an order for delivery up of the infringing copy, or the holder of the performing rights should be entitled to apply for an order for disposal of the illicit recording.¹⁵ Secondly, before such a seizure is made, notice of the time and place of the proposed seizure shall be given to a local police station.¹⁶ Thirdly, whenever any seizure is done, there shall be left at the place where the seizure took place a prescribed notice containing the prescribed particulars as to the person by whom or on whose authority the seizure is made and the grounds on which it is made.¹⁷

The infringement of a moral right is actionable as a breach of a statutory duty owed to the person entitled to the right.¹⁸ According to section 46(2), “in an action for infringement of the right conferred by section 16 (right to object to derogatory treatment of work), the court may, if it thinks it an adequate remedy in the circumstances, grant an injunction on terms prohibiting the doing of any act unless a disclaimer is made on such terms and in such manner as may be approved by the court, dissociating the author or director from the treatment of the work”. Where an infringement of a moral right is proved or admitted, the court may order the defendant to publish such correction in such terms and in such newspaper as the court may direct.¹⁹

[↑Back to contents](#)

BORDER MEASURES (CUSTOMS)

The copyright owner may give a written notice to the Comptroller of Customs that he or she is the owner of copyright in the work, and that he or she requests the Comptroller, during a period specified in the notice, to treat as prohibited goods copies of the work.²⁰ As long as such a notice is in force, the commercial importation of any copy of the work is prohibited.²¹ However, such a notice shall not apply to the importation of any article for private and domestic use.²² In making such a notice to the Comptroller, the copyright owner shall comply with such conditions relating to the form of the notice, the furnishing of

¹⁵ Sections 38(1) and 120(1).

¹⁶ Sections 38(2) and 120(2).

¹⁷ Sections 38(3) and 120(3).

¹⁸ Section 46(1).

¹⁹ Section 46(3).

²⁰ Section 51(1).

²¹ Section 51(3).

²² Ibid.

evidence, the payment of fees, the giving of security, the indemnification of the Comptroller, and any other incidental or supplementary matters.²³

 [Back to contents](#)

CRIMINAL OFFENCES

Section 52(1) of the Copyright Act states that a person commits an offence who, without the consent of the copyright owner, knowingly makes for sale or hire an infringing copy of a copyright work; in the course of business sells or lets, or offers or exposes for sale or hire; or publicly exhibits or distributes an infringing copy of a copyright work; imports an infringing copy of a copyright work for non-private and non-domestic use; distributes an infringing copy of a copyright work otherwise than in the course of business and in a manner that is prejudicial to the copyright owner; or possesses an infringing copy of a copyright work in the course of business and with a view to committing an infringing act. Any person who commits any of the above offences is liable on summary conviction in the case of a first conviction, to a fine not exceeding \$1,000 for each article to which the offence relates.²⁴ If the offence continues after the first conviction, to a fine not exceeding \$1,500 for each such article, or to imprisonment for a term not exceeding twelve months.²⁵

According to section 52(2) of the Copyright Act, “any person who, at the time when copyright subsists in a work by virtue of this Act makes or has in his possession an article specifically designed and adapted for making copies of a particular protected work, knowing that it is to be used for making infringing copies for sale or hire or for use in the course of business, commits an offence”. A person commits an offence who causes a copyright work to be performed, played or shown in public, otherwise than by reception of a broadcast or cable program, knowing or having reason to believe that the work is a protected work and that such performance constitutes an infringement of copyright.²⁶

Any person who commits any of the above offences is liable on summary conviction in the case of a first conviction, to a fine not exceeding \$3,000.²⁷ If

²³ Section 51(4).

²⁴ Section 52(4).

²⁵ Ibid.

²⁶ Section 52(3).

²⁷ Section 52(5).

the offence continues after the first conviction, to a fine not exceeding \$5000, or to imprisonment for a term not exceeding two years.²⁸

With regard to offences relating to rights in performances, section 121(1) of the Copyright Act states that-

“A person commits an offence who without sufficient consent-

- (a) makes for sale or hire; or
- (b) imports into Belize otherwise than for his private or domestic use; or
- (c) possesses in the course of a business with a view to committing any act infringing the rights conferred by this Part; or
- (d) in the course of a business-
 - (i) sells or lets for hire; or
 - (ii) offers or exposes for sale or hire; or
 - (iii) distributes,

a recording which is, and which he knows or has reason to believe is, an illicit recording.”.

Section 121(2) of the Copyright Act states that a person commits an offence who, knowingly causes an unauthorized recording of a performance, to be shown or played in public, or broadcast or included in a cable program service, thereby infringing any of the rights in performances.

Any person who commits an offence under section 121(1)(a), (b) or (d)(iii) of the Copyright Act is liable on summary conviction, to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.²⁹ Such a person is liable on conviction on indictment, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding five years, or to both such fine and imprisonment.³⁰ Any person who commits an offence under section 121(1)(c) or (2) of the Copyright Act is liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year, or to both such fine and imprisonment.³¹

It is an offence for a person to falsely represent that he or she is authorized by any person to give consent relating to rights in performances, unless he or she

²⁸ Section 52(5).

²⁹ Section 121(6)(a).

³⁰ Section 121(6)(b).

³¹ Section 121(7).

reasonably believes in the existence of such authority.³² Any person who commits the above offence is liable on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding eighteen months, or to both such fine and imprisonment.³³

The court may also make an order for delivery up in such criminal proceedings, if it is satisfied that at the time of the offender's arrest or charge, he or she possessed in the course of business an infringing copy of a protected work, or an article specifically designed or adapted for making copies of a particular protected work, or an illicit recording of a performance.³⁴ The court shall not make an order for delivery up after the end of the period of six years from the date on which the infringing copy or article or illicit recording was made, or if it appears unlikely that an order for disposal of an infringing copy or article or illicit recording will be made.³⁵ The defendant has the right of appeal against an order for delivery up.³⁶ Also, a person to whom an infringing copy or article or illicit recording is delivered up pursuant to an order for delivery up shall retain it until a decision about a disposal order is made.³⁷

However, no prosecution shall be commenced after the expiration of five years after the commission of the offence or one year after the discovery of the offence, whichever date occurs last.³⁸

[↑Back to contents](#)

POWERS OF POLICE OFFICERS

Any police officer may enter and search any premises, stop, board and search any vessel, aircraft, or vehicle, or seize, remove or detain any infringing copies, articles or recordings.³⁹ A police officer may also, in exercise of the powers conferred by the Copyright Act, break open any outer or inner door of any place, forcibly board any vessel, aircraft or vehicle, forcibly remove any person or thing obstructing the police officer, detain any person until such place has been searched, detain any vessel or aircraft and prevent any person from approaching or boarding such vessel or aircraft until it has been searched, or

³² Section 123(1).

³³ Section 123(2).

³⁴ Sections 54(1) and 122(1)

³⁵ Sections 54(2) and 122(2).

³⁶ Sections 54(3) and 122(3).

³⁷ Sections 54(4) and 122(4).

³⁸ Section 137.

³⁹ Section 138(1).

detain any vehicle until it has been searched.⁴⁰ However, no domestic premises shall be entered and searched by a police officer unless a magistrate has issued a warrant authorizing a police officer to enter and search the premises.⁴¹

[↑ Back to contents](#)

CONCLUSION

In conclusion, it must be stated that Belize has now successfully created the legislative and administrative framework for the effective implementation of copyright and related rights. The Copyright Act clearly outlines the exclusive rights of the copyright and related rights owners, together with a host of civil remedies, border measures, criminal offences and penalties.

[↑ Back to contents](#)

⁴⁰ Section 138(2).

⁴¹ Section 139(1).